

Federal Court



Cour fédérale

**Date: 20230728**

**Docket: IMM-2079-22**

**Citation: 2023 FC 1030**

**Toronto, Ontario, July 28, 2023**

**PRESENT: The Honourable Madam Justice Aylen**

**BETWEEN:**

**IVAN MIRON DELGADO  
ELVIRA DEL ROCIO SANCHEZ HERRERA  
LOURDES ISABELA MIRON SANCHEZ**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicants, citizens of Mexico, seek judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board, dated February 7, 2022, in which the RPD held that the Applicants were not Convention refugees nor persons in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The RPD further held, pursuant to subsection 107(2) of the IRPA, that the Applicants' claim had no credible basis.

[2] The Principal Applicant, Ivan Miron Delgado, is the husband of the Associate Applicant, Elvira Rocio Sanchez Herrera, and they are both the parents of the Minor Applicant, Lourdes Isabela Miron Sanchez. The Applicants sought refugee protection on the basis of threats made by various criminals in connection with the Applicants' relationship with "J", the Associate Applicant's father. "J" held an important position as an employee in the prison system in Veracruz and was able to secure a position for the Principal Applicant in the same prison system, where the Principal Applicant was involved in implementing security measures to prevent the smuggling and possession of contraband within prison facilities.

[3] In 2015, while employed at the prison, the Principal Applicant was threatened on a number of occasions by unknown criminals attempting to recruit him into some unspecified criminal activity and demanding information about contraband searches and prisoner transfers. The Principal Applicant was told by "J" to hide in another state for a period of time and when he ultimately returned, he was given a different position within the prison system and his family was given police protection.

[4] In 2016, "J" was charged with a number of serious offences, including corruption and taking part in the forced disappearance and killing of a young man. He was incarcerated pending trial and remained incarcerated at the time of the hearing before the RPD.

[5] In 2017, the Applicants' police protection was withdrawn and in 2018, the Principal Applicant was demoted by the prison to a different position in a different facility. He refused to accept the demotion and was banned from the facility in March of 2018.

[6] In May of 2018, the Principal and Associate Applicants visited “J” in prison and “J” told them to flee, as there would be reprisals against “J”’s family if he pled not guilty to the corruption charges and because many prisoners were upset that the Principal Applicant refused to take the position at the new facility, as the prisoners had made plans for the Principal Applicant to work with them.

[7] Later in 2018, “J” called the Associate Applicant to advise the Applicants to flee again as “they” already knew the Applicants were in Pachuca and he suggested that soon-to-be-released prisoners affiliated with the Jalisco New Generation Cartel and Los Zetas could seek out the Principal Applicant for revenge. The Applicants departed Mexico for Canada shortly thereafter.

[8] The RPD determined that, while the Applicants were generally credible witnesses and had a subjective fear of persecution, the Applicants had not established an objective basis for their belief that they would face persecution or a personalized risk throughout Mexico. In that regard, the RPD noted that: (a) the Applicants were unable to identify a specific agent or agents of persecution in their allegations, but rather broadly feared being personally targeted for harm by all cartel organizations and state authorities throughout Mexico as part of an apparent conspiracy to harm “J”; (b) nothing in the documents provided by “J”’s lawyer specifically referred to any potential danger or risk to the Applicants; (c) the handwritten letter from “J” only mentioned the Applicants insofar as it states that they left Mexico for Canada “fearing the threats they received” and the threats referred to only those from August to September of 2015 and nothing thereafter; (d) the handwritten letter from “J” contained multiple inconsistencies with the Applicants’ version of events; (e) the Applicants testified that they did not personally receive any threats after

September of 2015, but that “J” relayed additional threats to them; (f) “J” was not a reliable witness based on his profile and any allegations made by “J” about threats to the Applicants were not credible; and (g) there was no objective evidence supporting any of the Applicants’ allegations.

[9] The RPD found that, on a balance of probabilities, the Applicants had not credibly established that any persons had sought to harm them or otherwise target them for harassment, or pressure them in any way, since September of 2015. When considering forward-looking risk, the RPD found no serious possibility of persecution, nor a likelihood of harm arising out of the evidence.

[10] The RPD further concluded that, pursuant to subsection 107(2) of the *IRPA*, the Applicants’ claim had no credible basis as the record contained no credible and trustworthy evidence upon which the RPD could have rendered a favourable decision pertaining to a serious possibility of persecution or a likelihood of harm on a balance of probabilities in a forward-looking assessment. As the credible evidence on the record established only facts peripheral to the central allegations of the claim, the RPD held that it was not capable of supporting a positive determination.

[11] The sole ground of review raised by the Applicants is whether the RPD erred in finding that the Applicants’ claim had no credible basis. The parties agree and I concur that this issue is reviewable on a reasonableness standard. When reviewing for reasonableness, the Court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that

constrain the decision-maker [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adenijj-Adele v Canada (Minister of Citizenship and Immigration)*, 2020 FC 418 at para 11].

[12] The RPD may make a finding that there is no credible basis for a refugee claim pursuant to subsection 107(2) of the *IRPA* if “there was no credible or trustworthy evidence on which it could have made a favourable decision”.

[13] The leading case interpreting subsection 107(2) of the *IRPA* (then subsection 69.1(9.1)) is *Rahaman v Canada (Minister of Citizenship & Immigration)*, 2002 FCA 89, wherein the Federal Court of Appeal stated:

[28] Moreover, the wording of subs. 69.1(9.1) provides that a "no credible basis" finding may only be made if there was no credible or trustworthy evidence on which the Board member could have upheld the claim. In other words, the Board member may not make a "no credible basis" finding if there is credible or trustworthy evidence before it that is capable of enabling the Board to uphold the claim, even if, taking the evidence as a whole, the Board decides that the claim is not established.

[29] However, as MacGuigan J.A. acknowledged in *Sheikh, supra*, in fact the claimant's oral testimony will often be the only evidence linking the claimant to the alleged persecution and, in such cases, if the claimant is not found to be credible, there will be no credible or trustworthy evidence to support the claim. Because they are not claimant-specific, country reports alone are normally not a sufficient basis on which the Board can uphold a claim.

[30] On the other hand, the existence of some credible or trustworthy evidence will not preclude a "no credible basis" finding if that

evidence is insufficient in law to sustain a positive determination of the claim. Indeed, in the case at bar, Teitelbaum J. upheld the "no credible basis" finding, even though he concluded that, contrary to the Board's finding, the claimant's testimony concerning the intermittent availability of police protection was credible in light of the documentary evidence. However, the claimant's evidence on this issue was not central to the Board's rejection of his claim.

[14] The Applicants assert that the RPD's "no credible basis" finding is unreasonable as:

- A. The RPD conflated credibility findings with a finding of no credible basis. The findings of the RPD are more appropriately characterized as credibility findings rather than the claim lacking no credible basis.
- B. The Applicants were found to be credible witnesses and thus should be afforded the benefit of the doubt and the presumption of truthfulness. Moreover, the RPD's finding is contradictory because on the one hand, the Applicants were found to be credible, but on the other hand, the RPD found no credible basis for the claim.
- C. The RPD's requirement for corroborating evidence was unreasonable given that the Applicants' own evidence had not been contradicted and the RPD failed to explain why such corroborating evidence was required.
- D. The Applicants did in fact adduce credible evidence to establish certain elements of their claim, such as evidence that showed "J"'s position at the prison and how the Principal Applicant was able to secure his position at the prison.

[15] I am not satisfied that the Applicants have demonstrated that the RPD's "no credible basis" finding was unreasonable. The Applicants' submissions overlook the fact that the RPD was concerned with the absence of objective evidence to support the Applicants' subjective fear. Relying on the presumption of truthfulness of the Applicants' sworn evidence does not avoid the need to provide sufficient evidence to support the key elements of a claim for protection. The RPD did not need to doubt the truthfulness of the Applicants' evidence to find that there was insufficient evidence to establish their claim.

[16] Moreover, the existence of some trustworthy evidence will not preclude a "no credible basis" finding if that evidence is insufficient in law to sustain a positive determination, which was the case here [see *Rahaman, supra* at para 30]. Little objective evidence was tendered by the Applicants to support their allegations and the majority of the objective evidence now pointed to by the Applicants was peripheral to the central element of their claim (the threats made to the Applicants) and thus could not sustain a positive determination. While the Applicants also point to the evidence of "J" as being sufficient to sustain a positive determination, the RPD found that "J"'s evidence was not credible and accorded it no weight, leaving an insufficiency of credible and trustworthy objective evidence that could sustain a positive determination. I am not satisfied that the Applicants have demonstrated that the RPD erred in its assessment of "J"'s evidence.

[17] The Applicants further assert that the RPD erred in refusing their claim on the basis that they could not identify the agent of persecution through direct evidence. However, nothing in the RPD's "no credible basis" determination turned on the Applicants' failure to identify the agent of

persecution with precision. Rather, the decision turned on the lack of objective evidence related to the threats made to the Applicants post-2015.

[18] Based on the evidence before the RPD, I am satisfied that the RPD's "no credible basis" finding was reasonable. Accordingly, the application for judicial review shall be dismissed.

[19] The parties propose no question for certification and I agree that none arises.



**JUDGMENT in IMM-2079-22**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. The parties proposed no question for certification and none arises.

“Mandy Ayles”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2079-22

**STYLE OF CAUSE:** IVAN MIRON DELGADO, ELVIRA DEL ROCIO  
SANCHEZ HERRERA, LOURDES ISABELA MIRON  
SANCHEZ v MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JULY 27, 2023

**JUDGMENT AND REASONS:** AYLEN J.

**DATED:** JULY 28, 2023

**APPEARANCES:**

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