

Federal Court



Cour fédérale

Date: 20230728

Docket: IMM-9559-22

Citation: 2023 FC 1039

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 28, 2023

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

**MOISES MISAEL COLLAZO CHAGOYA
MAYRA ALEJANDRA GUADALUPE GARCIA ROCHA
JEFFERSON TADEO COLLAZO GARCIA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicants, Moises Misael Collazo Chagoya, his wife, Mayra Alejanda Guadalupe Garcia Rocha, and their minor child, Jefferson Tadeo Collazo Garcia, are citizens of Mexico. They are seeking judicial review of a decision by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada [IRB]. The RAD confirmed the decision of the

Refugee Protection Division [RPD] determining that the applicants are not Convention refugees or persons in need of protection.

[2] Mr. Collazo Chagoya alleges that he began a training program to become a municipal police officer in September 2018; however, this program was infiltrated by a criminal gang, the Cártel Jalisco Nueva Generación [CJNG]. As of November 2018, Mr. Collazo Chagoya began receiving telephone calls informing him that he would have to traffic drugs for CJNG once his training was completed. Mr. Collazo Chagoya claims to have received a total of about five calls from CJNG members and that they threatened to kill him and his family if he refused to cooperate. These events led him to question his decision to become a police officer and he therefore left his training program in March 2019.

[3] On May 15, 2019, as he was returning home, two men stopped him and called him by his name. They accused him of going back on his promise to the CJNG and threatened to kill him and his family members. He managed to escape them and decided that day, with his family, to leave Mexico. The applicants remained in hiding at home, going out only when needed, and left Mexico for Canada three weeks later. They claimed refugee protection when they arrived in June 2019.

[4] The RPD found the applicants' claims to not be credible. It found that the principal applicant had been vague in his description of the telephone calls with the CJNG and that he was unable to accurately describe how each of the five calls went. The RPD also did not believe the

allegation regarding the principal applicant's conversation with his mother about the murder of his nephew.

[5] Before the RAD, the applicants argued that the RPD's questions were unclear. The RPD repeatedly asked Mr. Collazo Chagoya to provide more details about the threatening phone calls without specifying what details it wanted. The applicants also challenged other RPD findings regarding the murder of the applicants' nephew, as well as the RPD's failure to consider the evidence in the National Documentation Package stating that criminalized gangs target police officers in order to have allies in the police and, in case of refusal, they are killed.

[6] The RAD dismissed the applicants' appeal; it was not persuaded by their arguments regarding the RPD's vague questions about the telephone calls and the nephew's murder. However, the RAD raised another determinative element that was not addressed by the RPD, namely that the applicants' behaviour was inconsistent with their fear and that this undermined their credibility. The RAD noted that the applicants took three weeks to leave Mexico after the incident of May 15, 2019, and that they continued to live in the same place during those three weeks, despite the fact that the incident took place near their home; they should have suspected that the CJNG knew where they lived.

I. Analysis

[7] The RAD's credibility findings must be reviewed by this Court on the reasonableness standard of review (*Pedro v Canada (Citizenship and Immigration)*, 2022 FC 1575 at para 7; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras

16–17). Issues of procedural fairness, however, are reviewed on the correctness standard (*Mission Institution v Khela*, 2021 SCC 385 at para 10; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43).

[8] The applicants submit that it was unreasonable for the RAD to have determined that the principal applicant was not credible because of his answers to the RPD’s questions about telephone calls. The RPD’s questions were unclear. Mr. Collazo Chagoya believed he was being asked to talk about the contents of the calls, but the RPD wanted answers about contextual details, which it did not explain. In my view, given my conclusion that the RAD breached its duty of procedural fairness, it is not necessary to address this issue.

[9] The applicants submit that the RAD breached the principle of procedural fairness by basing its decision on their inconsistent behaviour, as this issue was first raised by the RAD, without notifying the applicants and without giving them an opportunity to respond to its concerns (*Kwakwa v Canada (Citizenship and Immigration)*, 2016 FC 600; *Husian v Canada (Citizenship and Immigration)*, 2015 FC 684 at para 10). Although the RPD addressed the incident that occurred on May 5, 2019 and the applicants’ behaviour following the incident, it did not ask questions about why the applicants were not hiding elsewhere during these three weeks and did not mention it in its assessment of their credibility.

[10] The respondent did not address this issue in his memorandum.

[11] I agree with the applicants that the RAD's decision must be set aside, albeit not on a procedural fairness issue, but simply because of insufficient evidence on this issue, which renders the RAD's findings unintelligible.

[12] The issue of inconsistent conduct was clearly a determinative factor for the RAD. These are the important sections of the RAD decision:

[5] Then, on May 15, 2019, while he was returning home, two men approached him and referred to him by name. In a threatening tone, they accused him of having reneged on his promise to the CJNG and threatened to kill him and other members of his family. However, he managed to get away from them. He stated that it was on that day that he and the associate appellant decided to leave the country to save their lives. The appellants left for Canada three weeks later and claimed refugee protection on arrival.

...

[8] I do not agree with the appellants' arguments. I am of the opinion that they were given a full opportunity to be heard before the RPD. The principal appellant's testimony is not credible because it does not contain the level of detail that could reasonably be expected from him in the circumstances. It has nothing to do with how the RPD worded its questions, which in my opinion were sufficiently clear. There is also the fact that the appellants' behaviour was inconsistent with the alleged fear.

...

[10] I am also of the opinion that the appellants' credibility is tarnished by the fact that they continued to live in the same place even though they must have known that the CJNG knew where they lived as the confrontation on May 15, 2019, between the principal appellant and two members of the CJNG took place near there. They did not deem it necessary to go into hiding elsewhere, which is surprising as they certainly must have expected the CJNG to try to find the principal appellant again.

[Emphasis added.]

[13] In order for the RAD to reach this conclusion, there would have to be evidence that the agents of persecution knew where the applicants lived. As the applicants claim, the issue was only briefly addressed at the hearing before the RPD:

[TRANSLATION]

MEMBER: And so between June 4 . . . May 15, pardon me, and June 4, did anything else happen?

CLAIMANT: No, because we were hidden. We weren't going out. We were very scared, so it was 15 days and we came here.

[TRANSLATION]

MEMBER: Then you hid where? Where?

CLAIMANT: In the house of my in-laws.

[TRANSLATION]

MEMBER: But that's where you lived, am I wrong?

CLAIMANT: Yes.

[TRANSLATION]

MEMBER: Okay, so you stayed in this house?

CLAIMANT: Yes.

[TRANSLATION]

MEMBER: While you were in this house, did something else happen? Were you threatened again?

CLAIMANT: No, it's just . . . we didn't go out for anything. We were only waiting to be able to travel here.

[TRANSLATION]

MEMBER: Did you have other calls after you changed your phone number?

CLAIMANT: No, because I changed my phone number, so they couldn't call me. It was only when they found me in person.

[Emphasis added.]

[14] This is the only time that the RPD questioned Mr. Collazo Chagoya on this issue.

[15] During the hearing, I asked counsel for both parties if there was any evidence that the agents of persecution knew where the applicants lived. The applicants responded in the negative; the respondent stated that it was reasonable for the RAD to assume that they knew because the applicants had been saying from the beginning that this criminal gang [TRANSLATION] “knew everything”.

[16] I disagree with the respondent. In order for the RAD to reasonably conclude that the applicants “they must have known that the CJNG knew where they lived”, there is an assumption that the CJNG knew where the applicants lived. The RAD states that the May 15, 2019 confrontation between Mr. Collazo Chagoya and two members of the CJNG took place near the applicants’ home, but there is no evidence of the distance between Mr. Collazo Chagoya and his home at that time—was it 10 metres or 10 kilometres? All we know is that this event took place while Mr. Collazo Chagoya was “returning home”. The RAD’s finding is purely speculative. There was insufficient evidence for the RAD to reach the conclusion that, by staying at home, the applicants showed behaviour inconsistent with their fear of persecution. Therefore, the RAD’s decision is neither transparent, intelligible, nor justified , and is therefore unreasonable.

JUDGMENT in IMM-9559-22

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is allowed and the RAD decision is set aside.
2. The matter is to be sent back to a differently constituted RAD panel for redetermination.
3. There are no questions to certify.

“Peter G. Pamel”

Judge

Certified true translation
Janna Balkwill

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9559-22

STYLE OF CAUSE: MOISES MISAEL COLLAZO CHAGOYA, MAYRA ALEJANDRA GUADALUPE GARCIA ROCHA, JEFFERSON TADEO COLLAZO GARCIA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JULY 27, 2023

JUDGMENT AND REASONS: PAMEL J

DATED: JULY 28, 2023

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