

Federal Court



Cour fédérale

Date: 20240212

Docket: IMM-492-23

Citation: 2024 FC 240

Ottawa, Ontario, February 12, 2024

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

**CLAUDIA PATRICIA SALDARRIAGA
CARDONA**

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of the Refugee Protection Division [RPD] dated December 22, 2022 [Decision], which found that the Applicant is neither a Convention refugee nor a person in need of protection. The Decision turned on the RPD's assessment of the Applicant's credibility.

[2] As explained in greater detail below, this application for judicial review is dismissed, because the Applicant's arguments do not undermine the reasonableness of the Decision.

II. Background

[3] The Applicant is a citizen of Colombia. She asserts fear of the urban militias of the Fuerzas Armadas Revolutionarias de Colombia [FARC], who she claims threatened to kill her because of her and her family's social activism in the San Jose neighbourhood in Medellin. The RAD rejected her claim based on cumulative adverse credibility findings.

III. Decision under Review

[4] The Applicant alleged that the FARC began threatening her in January 2019, when two men came to a liquor store business that she jointly owned with her mother and began demanding extortion payments. Because of inconsistencies between her testimony and her Basis of Claim [BOC] form and addendum, as to the series of incidents in which she was allegedly targeted, the RPD drew a negative credibility inference and found that she was not targeted by FARC dissidents as alleged.

[5] The RPD also found that the Applicant did not own a business as alleged, based on inconsistencies between her testimony and her BOC as to when she closed the business, the fact that her testimony as to her work in Colombia did not include reference to the business, and the fact the business was not included in her Schedule A form that asked about her occupations and jobs. When asked if she had any documentary evidence to demonstrate that she owned a liquor

store business in Colombia, she referenced such documents being included within her disclosure package, but the RPD observed that there were no such documents.

[6] The RPD also concluded that the Applicant failed to establish that she was a social advocate. She testified that she volunteered with the Community Action Board [CAB] in the San Jose neighbourhood for approximately 10 years. However, when asked to be specific about how often she volunteered with the CAB and what she did with the CAB, the RAD found her testimony to be vague and evolving. The RPD also noted that the Applicant's Schedule A form asked if she had ever been a member of an organization, such as a political, social, youth or student organization, and she responded in the negative. The RPD again drew a negative inference as to the Applicant's credibility.

[7] The RAD also asked the Applicant about her family's social activism, which included the roles of her father and uncle, but found that she could not clearly and consistently testify about their titles. The RAD considered her testimony that she had unsuccessfully requested a letter to demonstrate her father's position, but it noted that she had previously testified that there were no documents that she had unsuccessfully tried to get to support her claim. The RAD drew a negative inference as to the Applicant's credibility and as to her allegation that she and her family were social activists in Colombia.

[8] The RPD then considered the Applicant's documentary evidence, including letters of support from organizations, friends and family members in Colombia. While these letters indicated that the Applicant's family had a history of being targeted in Colombia, they did not

speak in detail about the threats that the Applicant received and did not mention FARC dissidents. The RPD placed minimal weight upon these letters. The Applicant also provided a death certificate for her father and a report that she filed with respect to the disappearance of her late common law partner. Based on these documents, the RPD accepted that these family members were murdered in Colombia but observed that the documents did not mention FARC dissidents and therefore failed to establish on a balance of probabilities that the Applicant had been targeted by the FARC.

[9] The RPD considered a complaint that the Applicant made with the Attorney General with respect to an alleged incident in January 2020 but, noting that this report did not mention FARC dissidents, the panel found that it did not overcome the credibility concerns. Rather, the negative inferences drawn from those concerns were too weighty for the limited corroborative evidence to overcome the credibility concerns or to establish the central allegations of the Applicant's claim.

[10] Finally, the RPD considered a psychoemotional report but observed that the report did not diagnose the Applicant with any memory or perception issues. Noting that breaks were taken throughout the hearing and that the Applicant was advised to let the RPD know if a question needed to be rephrased for clarity, the RPD found that the report did not provide a reasonable explanation for the negative credibility findings.

[11] Finding on a balance of probabilities that the Applicant's allegations were not credible, the RPD concluded that she had not established on a balance of probabilities that she was being targeted by FARC dissidents in Colombia. The RPD therefore rejected her claim.

IV. Issues and Standard of Review

[12] The Applicant's Memorandum of Law and Argument articulates the following issues for consideration by the Court:

- A. Whether the RPD failed to consider its own objective evidence (the National Documentation Package);
- B. Whether the RPD's credibility assessments were flawed and unreasonable;
- C. Whether the RPD conflated the Applicant's reliability in recalling dates and other events with her credibility;
- D. Whether the RPD failed to assess the Applicant's profile pursuant to section 96 of the *Immigration and Refugee Protection Act*, SC 2001, C 27, as a member of a particular social group, namely family, which had been specifically targeted by the FARC in Colombia; and
- E. Whether the RPD failed to consider the intersectionality of her claim and to conduct a risk assessment.

[13] The parties agree, and I concur, that these issues are reviewable on the reasonableness standard.

V. Analysis

A. *Whether the RPD failed to consider its own objective evidence (the National Documentation Package)*

[14] In support of her position that the Decision is unreasonable because the RPD failed to consider objective evidence in the National Documentation Package [NDP], the Applicant emphasizes evidence therein surrounding human rights defenders and other social activists being targeted by the FARC in Colombia. She submits that it was an error for the RPD to negatively assess her credibility without recourse to this country condition evidence [CCE].

[15] Jurisprudentially, the Applicant relies principally upon *Abdi v Canada (Citizenship and Immigration)*, 2018 FC 93 [*Abdi*], which referred to the importance of an assessment of credibility based on relevant CCE (at para 1). In that case, the Court found that the RPD's decision was unreasonable on its credibility, identity and internal flight alternative findings, because the RPD ignored the CCE and did not assess it correctly. Because of that poor assessment, the RPD had failed to consider the claimant's story in the context of the relevant background situation in the country of origin (at para 32).

[16] I agree with the Respondent's position that *Abdi* does not stand for the general proposition that failure to take CCE into account when assessing a claimant's credibility necessarily amounts to a reviewable error. Rather, as I read *Abdi*, the RPD's analysis of the claimant's credibility in that case turned at least in part on an examination of his narrative against

the background of the CCE and, as the RPD's assessment of the CCE was itself flawed, its credibility analysis was unreasonable.

[17] In contrast, in the case at hand, the RPD's credibility analysis turned on inconsistencies and omissions in the Applicant's testimony and documentation. The adverse credibility conclusions were not based on inconsistency with CCE.

[18] I interpret the Applicant's argument to be, in effect, that the fact her narrative was consistent with the CCE could have served to rehabilitate her credibility and that the RPD therefore erred in failing to examine the CCE and compare it to that narrative. Given the basis for the adverse credibility findings in this case, which related to the evidence personal to the Applicant, I find no reviewable error in the RPD's approach.

B. *Whether the RPD's credibility assessments were flawed and unreasonable*

[19] The Applicant also advances arguments related to specific components of the RPD's credibility analysis, which she argues demonstrate that its assessment was microscopic and flawed. Those submissions focus significantly upon the Applicant's corroborative documentary evidence.

[20] The Applicant notes that such evidence included a number of letters of support, including that of a parish priest. She argues that the RPD's treatment of that letter is unreasonable, because the Decision does not reveal the basis on which the RPD rejected the letter. The Applicant

submits that the RPD simply applied to the letter its credibility concerns related to the Applicant herself and thereby rejected it on an unreasonable basis.

[21] I find no merit to this submission. This letter states simply that the priest knows the Applicant and that she had to leave the country due to threats of conflict, because of her relationship to her father who was a councillor of their municipality. In the paragraph of the Decision that the Applicant seeks to impugn, the RPD explains that the letters of support refer to the claimant's family having a history of being targeted in Colombia but do not speak in detail about threats that the Applicant received in Colombia and make no mention of FARC dissidents. The RPD's reasoning is clear, that the letters were not sufficiently probative of the Applicant's allegations.

[22] The Applicant also argues that the RPD unreasonably impugned the credibility of her documentary evidence in its assessment of her father's death certificate and necropsy report. She notes the RPD's explanation that, although it accepted that her father was murdered in Colombia, this documentation did not mention FARC dissidents or the Applicant. The Applicant submits that it was unreasonable to impugn the credibility of this documentation on the expectation, for instance, that a death certificate would identify the person who murdered the deceased.

[23] I agree with the Respondent's submission that the Applicant's argument misunderstands the RPD's analysis. The RPD did not impugn the credibility of the documentation based on expectations that it should have contained additional information. Rather, it explained that the

information available from the documentation such as the death certificate was not probative of the Applicant's allegation that she was being targeted by FARC dissidents.

[24] The Applicant also impugns the RPD's treatment of a report that she made to the Attorney General in Colombia following an alleged January 2020 incident, in which she states she was threatened by two men on a motorcycle while on her way home from work. She notes her explanation in the report that the nature of the threat was that she, as the owner, had to make a payment or face consequences. She also states in the report that the men said she should remember what happened to her family. The Applicant submits that her report is consistent with her evidence, both that she was the owner of a liquor store business and that the threat emanated from the FARC, which she says was responsible for the deaths in her family.

[25] The RPD considered this report but noted that it did not mention FARC dissidents. Referencing its earlier analysis of the Applicant's evidence surrounding the alleged January 2020 incident and resulting adverse credibility inferences, the RPD found that the fact the Applicant had authored a report of the alleged incident did not mean that the reported events were true. In my view, the Applicant's argument on this evidence ask the Court to weigh the evidence differently than the RPD, which is not the Court's role on judicial review. The RPD's reasoning is intelligible, and the Court finds no reviewable error therein.

[26] Unrelated to its treatment of the documentary evidence, the Applicant submits that the RPD erred in drawing a negative credibility inference because she did not know the political titles of her father and uncle. She notes that she was a child of the relevant time. When

considered in context, I do not find this aspect of the RPD's analysis unreasonable. Its consideration of the issue of her family members' titles included the fact that she had provided particular titles in her BOC and then testified as to different titles. In other words, the RPD made a negative inference in significant measure because she provided inconsistent evidence about them.

[27] The Applicant also relies on the RPD's treatment of her evidence as to how frequently she volunteered for the CAB. She testified that she did this work once or twice a week or every eight days. When asked for clarification, she explained that "every eight days" was a Colombian expression meaning on the weekends. The RPD found the Applicant's testimony to be vague and evolving.

[28] I agree with the Applicant that it is not clear how this aspect of her testimony was vague or evolving. However, the fact that this component of the Decision is lacking in intelligibility does not undermine the reasonableness of the RPD's overall analysis of the Applicant's volunteer work or the Decision as a whole. As I read the Decision, the RPD's negative inference as to the credibility of the Applicant's evidence of her social activism with the CAB turned significantly on the lack of clarity of her testimony as to the specifics of the work she did with the CAB and her testimony's inconsistency with her Schedule A form.

[29] In summary, I do not find the Applicant's arguments surrounding the RPD's negative credibility findings to undermine the reasonableness of the Decision.

C. *Whether the RPD conflated the Applicant's reliability in recalling dates and other events with her credibility*

[30] The Applicant also argues that the RPD erred by conflating the concepts of credibility and reliability. As she notes, credibility and reliability are different. Credibility has to do with a witness's veracity, while reliability relates to the accuracy of testimony, which engages consideration of the witness's ability to accurately observe, recall and recount events in issue (*R v HC*, 2009 ONCA 56 at para 41). Noting that a refugee claim is not a memory test (*Sheikh v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15200 (FC) at para 28), the Applicant submits that the inconsistencies and omissions in her testimony should have been attributed to memory issues rather than to her veracity.

[31] In support of this submission, the Applicant relies on the Psychoemotional Report of psychologist Brenda Perez Gil-Figueroa [Report] that the Applicant provided to the RPD. The Applicant emphasizes the Report's statement that the Applicant was experiencing symptoms related to traumatic stress including loss of concentration, and she argues that the RPD erred in failing to consider how this inability to focus may have affected her ability to accurately recall details that occurred many years ago.

[32] The RPD considered the Report, including its reference to the possibility that the Applicant was suffering from posttraumatic stress disorder, but noted that the psychologist did not diagnose the Applicant with any memory or perception issues. The RPD explained that it had considered the Report's findings when assessing the Applicant's credibility but concluded that

the Report did not provide a reasonable explanation for the deficiencies in her testimony. It is not the Court's role in judicial review to reassess the psychological evidence.

[33] The Applicant also notes that the Report incorrectly referred to the psychologist as if she was male and incorrectly described her as a doctor. While I agree that this demonstrates factual errors, I find no basis to conclude that those error were consequential. To the extent the Applicant is arguing that the RPD erroneously expected a diagnosis of memory or perception issues, because the RPD thought the psychologist was a physician, I find no reviewable error. I read the RPD's reasoning as based on the fact that the medical evidence did not provide any such diagnosis that might explain the deficiencies in the Applicant's testimony.

[34] Finally, returning to the distinction between credibility and reliability, I note that the RPD's consideration of the Report demonstrates that it turned its mind to this distinction.

D. *Whether the RPD failed to assess the Applicant's profile pursuant to section 96 of the Immigration and Refugee Protection Act, SC 2001, C 27, as a member of a particular social group, namely family, which had been specifically targeted by the FARC in Colombia*

[35] The Applicant submits that the Applicant erred by failing to consider her nexus to a Convention ground, as a member of a social group (her family) targeted by the FARC. However, the Decision was not based on a conclusion that the Applicant's claim was not of a nature that would have a nexus to the Convention. The rejection of the Applicant's claim turned on her credibility, as a result of which she did not establish the factual assertions necessary to

demonstrate such a nexus. This argument does not undermine the reasonableness of the Decision.

E. *Whether the RPD failed to consider the intersectionality of her claim and to conduct a risk assessment*

[36] The Applicant also argues that the RPD failed to consider the intersectionality of her claim, as a woman, engaged in social activism, from a family that was also involved in politics and social activism.

[37] Much like the Applicant's nexus argument, this argument in support of an intersectional claim fails because, due to the adverse credibility findings, the Applicant failed to establish a factual basis for such a claim.

VI. Conclusion

[38] As the Applicant's arguments do not undermine the reasonableness of the Decision, this application for judicial review will be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-492-23

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-492-23

STYLE OF CAUSE: CLAUDIA PATRICIA SALDARRIAGA CARDONA v
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APPEARANCES:

Adela Crossley FOR THE APPLICANT

Teresa Ramnarine FOR THE RESPONDENT

SOLICITORS OF RECORD:

Crossley Law FOR THE APPLICANT
Barrister & Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario