Federal Court  Cour fédérale

Date: 20240523

Docket: IMM-1003-23

Citation: 2024 FC 785

[ENGLISH TRANSLATION]

Ottawa, Ontario, May 23, 2024

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

MONSERRAT GUADALUPE CONDE ALVARADO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision of the Refugee Appeal Division [RAD] confirming the decision of the Refugee Protection Division [RPD] that Ms. Conde Alvarado [applicant] is neither a Convention refugee nor a person in need of protection. The RAD found that the determinative issues were credibility and membership in a particular social group within the meaning of section 96 of the *Immigration and Refugee Protection Act*,

SC 2001, c 27 and the Chairperson's *Guideline 4: Gender Considerations in Proceedings Before the IRB* (hereinafter the social group of women).

[2] The only issue before the Court is the reasonableness of the RAD's decision. For the following reasons, the application for judicial review must be dismissed.

I. Facts

[3] The applicant is a Mexican citizen born in April 1993.

[4] In February 2011, she gave birth to a daughter. The girl's father was violent towards the applicant during their relationship. After they broke up, the applicant was awarded custody of her daughter and alimony. However, contact with the girl's father ceased completely in 2012.

[5] On February 1, 2013, the applicant had a son with her new partner, who was also violent towards her, including sexual violence. In 2014, after their breakup, the father of the applicant's son allegedly approached her in an intimidating manner with the aim of being able to see his child again, which the applicant refused. After the birth of the second child, the applicant and the father of the second child separated. The applicant and her two children returned to live with her parents. It appears that the son's father's attempts to see him again began in 2014.

[6] The applicant claims that she has a serious fear of persecution at the hands of her son's father because of her refusal to allow him to see the child. According to her testimony before the

RPD, she received regular threatening calls from her son's father between July 2015 and July 2019. The RPD did not believe her, nor did the RAD.

[7] Because of the alleged threats, the applicant testified that she was forced to move from Ecatepec to Nezahualcóyotl in June 2016, and from Nezahualcóyotl to Mexico City in June 2019. Furthermore, even if she changed her telephone number, the agent of persecution would apparently track down her new numbers because the threatening calls did not stop. The applicant also alleges that in January 2020, after her arrival in Canada, she received threatening messages from the Facebook account of the mother of her son's father. She alleges that these messages were actually written by her son's father. The RAD did not find these allegations credible either.

[8] On August 17, 2019, the applicant allegedly came alone to Canada, leaving her two children with her parents in Mexico; she then claimed refugee protection in Canada.

[9] The initial version of Schedule A to her Basis of Claim Form (BOC Form), signed on November 29, 2019, stated that the applicant lived in Mexico City between January 2015 and August 2019. She also stated that she lived in Ecatepec from 2012 to 2014. No mention was made of Nezahualcóyotl. On June 27, 2022, a few days before her hearing before the RPD, the applicant made several changes to Schedule A. The amended version presented significant changes to the applicant's residences prior to her departure for Canada. For example, it stated that the applicant lived in Nezahualcóyotl between July 2015 and July 2019 (whereas the applicant's testimony had her arriving in Nezahualcóyotl in June 2016) and in Mexico City in

July and August 2019. Moreover, it should be noted that the stay in Ecatepec is no longer from January 2012 to December 2014, as claimed in the original version of Schedule A, but was changed to June 2011 to June 2015 in the amended version. Neither the places of residence nor the periods of stay are consistent from one version to the next.

[10] The RPD rejected the refugee protection claim, concluding that the applicant had not demonstrated a serious possibility that she would be persecuted in Mexico, because of flaws in the applicant's credibility. The RPD found that between 2011 and 2013, the applicant had two children, a daughter and a son, with two different partners at whose hands she experienced domestic violence. In addition, the RPD accepted the allegation that, in 2014, the father of her son approached the applicant with the aim of being able to see his child again. Rather, it was the rest of the story that lacked the necessary credibility to support a refugee protection claim.

[11] The RPD did not find the applicant credible regarding the allegations that she had received regular threatening calls from her son's father thereafter and that, as a result, she had to relocate on several occasions. The RPD also concluded that the applicant could benefit from state protection because she had already benefitted from it at the time of the breakup with her daughter's father (RPD Decision at para 24). In addition, the RPD concluded that, taking into account her education, her experience in the labour market and the support of her family, the applicant had not demonstrated that she belonged to the particular social group of vulnerable women who face a serious possibility of persecution because of their gender. The applicant appealed to the RAD. It is from this decision alone that judicial review can be sought.

II. Decision subject to judicial review: RAD decision

[12] The RAD rejected the applicant's appeal in December 2022.

[13] The determinative issues for the RAD were also the applicant's credibility and her membership in the social group of women. The RAD did not address the issue of state protection. The RAD upheld the RPD's finding that the claimant "[was] not credible with regard to the interest of her son's father or his family in finding her or her son" (RAD Decision at para 5). The RAD's conclusion as to the claimant's credibility is based on several inconsistencies and contradictions:

- The RAD drew an unfavorable conclusion as to the applicant's credibility from the fact that she had amended Schedule A to her BOC Form. The original version established her residence in the city of Ecatepec from January 2012 to December 2014. Thereafter, her residence was established in Venustiano in the Federal District of Mexico City. The amended version specified different addresses in Ecatepec from June 2011 to June 2015 (and not December 2014, as in the original version). In addition, the duration that she lived in Venustiano (CDMX) was significantly shortened. In fact, she stayed there in July and August 2019 only. Between July 2015 and July 2019, the applicant now stated in Schedule A that her address was in Nezahualcóyotl. The RAD did not accept the applicant's explanation that she had no knowledge of French when she completed the initial version of Schedule A, and that she believed it was simply necessary to write an address where she had lived in Mexico. The RAD observed that, even if it accepted that the applicant had no knowledge of French on her arrival in Canada, the applicant had nevertheless given precise dates to correspond with the addresses included in the initial version of Schedule A, and that this version made no mention of Nezahualcóyotl. The RAD considered that this inconsistency undermined the applicant's credibility, as the move to Nezahualcóyotl, allegedly prompted by incessant harassment from her son's father, is a central element of her testimony.

- The RAD also noted difficulties regarding addresses. Before the RPD, the applicant testified that she had lived in Nezahualcóyotl from June 2016, not July 2015. What makes the testimony even more murky is the fact that the father's (2017) and mother's (2013) voter registration cards do not list the cities of Ecatepec and Nezahualcóyotl as the cities of residence of either parent. Instead, it was Mexico City. Paragraph 22 of the RAD's decision states that the applicant and her children had lived with the applicant's parents in Ecatepec from February 2013 (after the birth of the son) until June 2015, then in Nezahualcóyotl from July 2015 to July 2019, before moving to Mexico City. The RPD and RAD

share the view that the balance of probabilities favours the conclusion that the applicant's parents were not living in Ecatepec in 2013 or in Nezahualcóyotl in 2017. In fact, the address on both voter's cards corresponds to the address in Mexico City where the applicant says she lived for the two months prior to her departure for Canada in 2019. In fact, the applicant testified before the RPD that her parents did not take up residence in Mexico City until June 2019. To obtain a voter's card, a person must provide proof of address, such as a lease or utility bill. Even taking into account the Chairperson's *Guideline 4: Gender Considerations in Proceedings before the IRB*, the RAD was unable to find a valid explanation for these incongruities.

- The RAD found that the written testimony of the applicant's father and mother did not support the central allegation of the claim that the father of the applicant's son called her regularly to threaten her between 2016 and 2019. The RAD noted that the testimony of the applicant's father did not specify any incidents, dates or previous addresses. The RAD also observed that, in her presentation of the allegations, the applicant's mother made no mention of the threatening calls the applicant alleges to have received from her son's father.

- The RAD gave no probative value to the Facebook messages allegedly written by the father of the applicant's son, and sent from his mother's account on January 15, 2020. The RAD noted that there is no mention of these messages in the applicant's BOC Form, despite the significant changes that were made to the form's answers on June 27, 2022. The RAD examined the screenshots and found that the identity of the person who sent them was not obvious. Moreover, the content of the messages was highly critical of the applicant's son's father. Thus, the RAD concluded that it was unlikely that they came from the account of the son's mother. The RAD therefore concluded that the applicant was attempting to embellish her testimony with these messages and that this undermined her credibility.

[14] The RAD also upheld the RPD's finding that the applicant had not demonstrated that her membership in the social group of women would expose her to a serious risk of persecution. The RAD acknowledged that the situation for women in Mexico is difficult. In particular, the RAD acknowledged that it is difficult for women who leave violent partners to find employment. However, according to the RAD, the applicant has not demonstrated that her personal circumstances would lead to a serious risk of persecution. The RAD pointed out that the applicant would not be alone with her children, as she could return to live with her parents. In

addition, it pointed out that the applicant holds a high school diploma and acquired varied work experience between 2014 and 2019. The RAD concluded that, despite the difficulties the applicant might face, her experience in the job market will serve her well in finding employment. Taking into account the support of her family and her work experience, the RAD concluded that the applicant had not established that she fits into the particular social group of vulnerable women in Mexico. Accordingly, the RAD rejected her refugee protection claim.

III. Arguments and analysis

[15] The applicable standard of review is reasonableness. The burden is on the applicant to show that a decision is unreasonable (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*] at para 101). 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" [emphasis added] (*Vavilov* at para 85). The reviewing court does not conduct a *de novo* analysis of a case, nor does it substitute its conclusions for those of the administrative decision maker (*Vavilov* at para 83). Rather, the reviewing court "puts those reasons first" in order to try to understand "the reasoning process followed by the decision maker to arrive at its conclusion" (*Vavilov* at para 84). It must have a respectful attitude towards the administrative decision (*Vavilov* at para 14) and show judicial restraint (*Vavilov* at para 13), while conducting a sensitive and respectful, but robust, evaluation (*Vavilov* at para 12).

[16] The applicant argues that the RAD's decision is unreasonable. She claims that the RAD placed too much emphasis on the inconsistencies between her testimony and the BOC Form's

Schedule A. According to the applicant, the case law is clear that a decision maker must be careful [TRANSLATION] "before reproaching an applicant on the basis of inconsistencies, omissions and details between a document signed upon arrival in Canada and observations made later, such as oral testimony" (Applicant's Memorandum at para 16, citing *Cetinkaya v Canada (Citizenship and Immigration)*, 2012 FC 8 at para 51; *Guven v Canada (Citizenship and Immigration)*, 2018 FC 38 at para 39; *Chikadze v Canada (Citizenship and Immigration)*, 2020 FC 306 at para 21). But the cases cited are about notes taken at the port of entry in Canada. This is not the case here.

[17] The applicant cites only case law concerning contradictions between notes filled in at the port of entry and subsequent documents or testimony. Being careful in considering notes taken at the port of entry is justified by the fact that they are "not a part of the claim itself and, consequently, it should not be expected to contain all of the details of the claim" (*Cetinkaya v Canada (Citizenship and Immigration)*, 2012 FC 8 at para 51, cited in *Guven v Canada (Citizenship and Immigration)*, 2018 FC 38 at para 41; *Chikadze* at para 21). The comments that are reported most often come from the officer at the port of entry, who will have interpreted what he or she has heard. On the other hand, the BOC Form, which includes Schedule A, forms the very basis of the refugee protection claim. In fact, the BOC Form is often prepared and signed some time after the claimant arrives in Canada, long after the emotions of the journey have subsided. Here, the applicant signed the initial version of Schedule A on November 29, 2019, three months after her arrival in Canada, and outside any time frame that would allow an analogy to case law dealing with notes taken by an officer at the port of entry.

[18] The presumption of truthfulness of a claimant's sworn testimony in immigration law applies "unless there be reason to doubt [it]" (*Maldonado v Minister of Employment and Immigration*, 1979 CanLII 4098 (FCA), [1980] 2 FC 302 at 305). The presumption is short at best. It prevents the arbitrariness of someone who chooses not to believe without reason. As stated by the respondent, [TRANSLATION] "it is well established that the RAD may consider contradictions and inconsistencies between the applicant's testimony and the documentary evidence in determining its credibility" (Respondent's Memorandum at para 26, citing *Udemba v Canada (Citizenship and Immigration)*, 2021 FC 1215 at para 20; *Su v Canada (Citizenship and Immigration)*, 2015 FC 666 at para 11; *Lawal v Canada (Citizenship and Immigration)*, 2010 FC 558 at para 20. See also *Singh v Canada (Citizenship and Immigration)*, 2022 FC 79 at para 39; *Almustafa v Canada (Citizenship and Immigration)*, 2024 FC 114 at para 27). Thus, it is not unreasonable for the RAD to take into account the contradictions in the applicant's file when assessing her credibility. This is in fact the task an administrative tribunal is bound to perform. The trier of fact does not leave common sense at the door when entering the courtroom (*R v Barton*, 2019 SCC 33 at para 154), without obviously falling into unfounded logical hypotheses, or relying on myths and stereotypes (*Kruk v R*, 2024 SCC 7).

[19] The applicant also argues that it is unreasonable to treat a refugee claim as a memory test and expect a claimant to remember every detail of her experience in Mexico (Applicant's Memorandum at paras 18–20, citing *Akhtar v Canada (Citizenship and Immigration)*, 2022 FC 989 at para 61). It is not so much that the BOC Form needs to be turned into a difficult memory test, but rather that we need to see whether the decision maker's reasoning holds up in light of

the inconsistencies and contradictions identified. This is certainly the case here. Simply put, there was no memory test, just repeated inconsistencies. This argument must also fail.

[20] It is well established in the case law that a decision maker "cannot base a negative credibility finding on minor contradictions that are secondary or peripheral to the refugee protection claim" (*Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 23). I cannot see in this case how the decision would deal with minor contradictions that would not justify the decision taken. It is clear from a proper examination of the RAD's reasons that "the address concerned here [is] a central element of the refugee protection claim because the appellant alleged that she was threatened by José from 2016 to 2019 while she was living in Netzahualcóyotl", whereas this city was not listed in the initial version of Schedule A, and her parents' voter cards, dated 2013 and 2017, showed the same address in Mexico City where the applicant allegedly lived from June to August 2019 (RAD Decision at para 26). These difficulties identified by the administrative decision makers are real and have not been explained despite the opportunities that have been offered. As in any judicial or quasi-judicial challenge, the decision maker operates on the basis of the evidence offered to him or her, which he or she is obliged to weigh, using common sense and human experience. Insofar as the decision remains reasonable, within the meaning of *Vavilov*, as recently confirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21, the reviewing court cannot intervene. Thus, the RAD did not treat the claim as a test of memory, but rather reasonably drew a negative inference from contradictions in the evidence on a central element of the claim (see *Kamara v Canada (Citizenship and Immigration)*, 2024 FC 13 at para 46; *Onukuba v Canada (Citizenship and*

Immigration), 2023 FC 877 at para 20; *Linares Garavito v Canada (Citizenship and Immigration)*, 2023 FC 836 at para 23).

[21] In paragraph 12 of these reasons, I have described other difficulties encountered by the administrative decision maker that cast a definite shadow over the applicant's arguments. The applicant states that it was unreasonable for the RAD to attribute no probative value to the written testimony of her parents [TRANSLATION] "for the sole reason that such documents do not contain the level of detail" sought by the tribunal (Applicant's Memorandum at para 28). However, as stated by the respondent, the assessment of the probative value of a piece of evidence "has to do with the capacity of the evidence to establish the fact of which it is offered in proof" (*R v T(M)*, 2012 ONCA 511 at para 43, cited in *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 [*Magonza*] at para 21). In other words, one must ask oneself "to what degree is this information useful in answering the question I have to address?" (*Magonza* at para 21). In this case, the allegation central to the refugee protection claim is that the applicant regularly received threatening calls from her son's father over a period of several years. During this period, she lived with her two children at her parents' home. The testimony of her parents contains no mention of this allegation. It was therefore reasonable for the RAD not to attribute any probative value to these documents, since they provided no support for the determination of the central issue of the claim. It is even somewhat surprising that the parents, who now have custody of the children, did not corroborate the story in their written testimony.

[22] In addition, the applicant argues that it was unreasonable for the RAD to attribute no probative value to the Facebook messages allegedly sent by the mother of her son's father (or at

the very least using her account) for the simple fact that this information was not included in her amended BOC Form. On reading the RAD's reasons, it is clear that its assessment of these messages took into account several elements, including the inability to verify the identity of the person who sent them and the fact that their content was highly critical of her son's father, despite the fact that they were supposed to have come from his mother's Facebook account. Taking into account the shortcomings of this evidence, the RAD reasonably drew a negative inference as to the credibility of the applicant's account. There are no grounds for judicial intervention.

[23] With regard to the question of belonging to the social group of women, the applicant states that the RAD erred in its analysis by focusing on characteristics [TRANSLATION] "that point to the applicant's resilience", without considering the characteristics that contribute to her vulnerability as a young single parent and victim of domestic violence (Applicant's Memorandum at para 35). The applicant draws attention to Tab 5.6 of the National Documentation Package [NDP] on Mexico, which deals with the reality of violence against women in Mexico.

[24] This argument is not convincing. Firstly, the applicant made no mention of NDP Tab 5.6 in her submissions to the RAD (see Applicant's Memorandum at para 38). This would suffice to dispose of the application for judicial review in this regard, since the RAD was unable to consider the matter. Moreover, even if this particular document is taken into account, it has no impact on the reasonableness of the RAD's conclusion. Violence against women in Mexico is not in dispute. Rather, in order to demonstrate membership of a vulnerable group, an applicant

has the burden of demonstrating the link between the situation in the country of origin and her own circumstances. In other words, "[j]ust because the documentary evidence shows that the situation in a country is problematic from the point of view of respect for certain human rights does not necessarily mean that a risk to a particular individual must be inferred" (*Garces Canga v Canada (Citizenship and Immigration)*, 2020 FC 749 at para 52). The burden on a claimant is to make this demonstration, not to find a passage in a given document and claim it *ex post facto*. In other words, to be convincing, you need a demonstration that personalizes the risk. The mere existence of the risk is not enough. In this case, the RAD analyzed the applicant's personal circumstances. The RAD recognized the vulnerability of women who leave violent relationships. However, in considering the applicant's personal circumstances, the RAD reasonably concluded that the support of her family, her education and her experience in the labour market meant that the applicant did not have "the profile of a single and vulnerable woman" (RAD Decision at para 62). The addition of Tab 5.6 of the NDP is of no use. The applicant has therefore not met her burden.

IV. Conclusion

[25] The burden of proving that a decision is unreasonable is on the applicant, who must demonstrate that there are serious shortcomings (*Vavilov* at para 100) that have the effect of undermining its reasonableness, the hallmarks of which are justification, transparency and intelligibility. Given the evidence presented, the reviewing court must determine whether the applicant has demonstrated that the decision is not justified in the face of the relevant factual and legal constraints. For the reasons set out above, the application for judicial review is dismissed.

The RAD has reasonably concluded that the applicant is neither a Convention refugee nor a person in need of protection.

[26] There are no questions to certify.

JUDGMENT in IMM-1003-23

THE COURT ORDERS as follows:

1. The application for judicial review is dismissed.

2. There are no questions to certify.

"Yvan Roy"
Judge

Certified true translation
Janna Balkwill

FEDERAL COURT

SOLICITORS OF RECORD

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