

Federal Court



Cour fédérale

Date: 20240808

Docket: IMM-2510-23

Citation: 2024 FC 1241

Toronto, Ontario, August 8, 2024

PRESENT: Madam Justice Go

BETWEEN:

Adalberto SOTO LEANDRO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Adalberto Soto Leandro, is a citizen of Cuba. The Applicant alleges that he took part in an anti-government protest in July 2021. As a result, he received warnings at work, and the authorities stopped him on the street and questioned him at home.

[2] The Applicant left Cuba on April 9, 2022. After travelling through several countries including the United States, where he was briefly detained, the Applicant reached the Canadian border on May 24, 2022 and made a refugee claim. The Applicant submitted his Basis of Claim [BOC] a month later. As part of his disclosure to the Refugee Protection Division [RPD], the Applicant submitted supporting documents and filed an amended BOC narrative.

[3] The RPD refused the Applicant's claim after finding that the presumption of truthfulness was rebutted in the Applicant's claim and the Applicant lacked sufficiently credible and trustworthy documentation to support his allegations [Decision]. The Applicant seeks a judicial review of the Decision.

[4] The hearing of this judicial review application was held on February 1, 2024 before a judge who has since retired from the Court. By Order of the Chief Justice dated June 24, 2024, the application was reassigned to a different judge. The parties agreed that the application would be determined based on the written record and audio recording of the hearing. With the parties' agreement, I also ordered the Respondent to file a copy of the transcript of the RPD hearing.

[5] Having reviewed all the materials and submissions, I find the RPD made several errors with its credibility findings and failed to address a critical incident of persecution. I therefore grant the application.

II. Issue and Standard of Review

[6] The Applicant raises two main issues challenging the Decision, namely: a) the RPD's credibility findings were unreasonable and b) the RPD erred by failing to address the most serious incident of persecution. Regarding the RPD's credibility findings, the Applicant raises a number of sub-issues:

- a. The RPD erred by making a negative credibility finding prior to assessing the corroborative evidence;
- b. The RPD erred by finding that the Applicant did not attend the July 2021 protest solely based on the lack of corroborative evidence;
- c. The RPD erred by undermining the Applicant's credibility due to the BOC amendment; and
- d. The RPD erred by failing to address the corroborative evidence.

[7] The parties agree that the appropriate standard of review for the RPD's refusal is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]. A reasonable decision is one that displays justification, transparency and intelligibility with a focus on the decision actually made, including the justification for it: *Vavilov* at para 15. Overall, a reasonable decision is one that is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85.

III. Analysis

[8] I find the RPD committed two errors that are determinative of this application. First, the RPD erred by making a negative credibility finding prior to assessing the corroborative evidence,

and in relation to that, the RPD failed to assess the corroborative evidence. Second, the RPD erred by failing to address a critical incident of persecution in the Applicant's claim.

A. *Errors with respect to the assessment of the corroborative evidence*

[9] The Applicant submits that the RPD made a negative credibility finding before it assessed the corroborative evidence, instead of assessing such evidence together with the Applicant's testimony and BOC narratives. This was an error.

[10] I agree.

[11] The Applicant, who worked as teacher in Cuba, alleges that he took part in a demonstration in July 2021 to protest against the crippling socio-economic conditions and the government's repressive policies related to the pandemic restrictions. The Applicant claims that when he returned to school in September, his principal told him that he had been visited by a State Security Officer in the Ministry of Education and that the Committee for the Defense of the Revolution [CDR] had informed him of the Applicant's participation in the protest. The Applicant's colleagues, who were members of the Communist Party, began to question him about his activities outside work. The President of the CDR and the head of the Neighbourhood Police Sector also came to his home numerous times to question him. Further, on several occasions, the head of the Police Sector would stop him on the street and search him, looking for incriminating evidence.

[12] As part of his disclosures, the Applicant submitted a number of corroborative documents including two summonses from Cuba, a letter from his wife attesting to the authorities visiting after the Applicant fled, and letters from friends and a school colleague. The Applicant also submitted an amended BOC narrative with some additional details about his claim.

[13] The Decision contains 83 paragraphs, The RPD's analysis of the corroborative evidence can be found in paragraphs 78 and 79, right before the conclusion section. The analysis was brief, stating as follows:

[78] I find that the handwritten letters of the claimant's family friends do not assist me in my credibility assessment of the claimant because firstly, they do not speak to his attendance at this protest which is a fact that goes to the heart of the claim, and secondly, because they contained details that were noticeably absent from the claimant's original narrative, raising questions about the credibility of both the letter writers and the claimant himself.

[79] For those reasons, I find that what little weight I can assign to those letters is insufficient to overcome the myriad of negative inferences drawn against the claimant's overall credibility.

[14] There are several issues with the RPD's analysis. First, these findings were made *after* the RPD already concluded that the Applicant was not credible, had not participated in the July 2021 protests, had not been harassed and watched by the authorities, and did not face persecution upon return.

[15] Second, the RPD did not mention all the corroborative evidence, let alone assess them in the Decision. Most notably the RPD did not refer to the summonses the Applicant received, one for March 30, 2022 and another for April 11, 2022. The Applicant testified that he attended the

first but not the second since he had fled the country two days earlier. The summonses were provided by the Applicant as corroborating evidence to signify the threats he would face if he were to return to Cuba.

[16] The only remark in the Decision about the summonses was in the context of the RPD questioning why the Applicant answered “no” to the question in his Schedule 12 form at the border, whether he has “ever been sought, arrested, or detained by the police or military or any other authorities in any country, including Canada?” The RPD noted that the Applicant stated in his amended narrative that he was summonsed in April to appear before the police. The RPD did not accept as credible the Applicant’s explanation that he understood the question as asking if he was detained or arrested, and that the police wanted to talk to him, but he was not detained. The RPD did not analyze the summonses themselves, nor did the RPD provide its reasons, if any, for rejecting this evidence. Indeed, as the Applicant points out, and as the transcript confirms, the RPD member never asked to see the original summonses during the hearing.

[17] The case law confirms that the RPD must consider documentary evidence before reaching a conclusion on the Applicant’s credibility, rather than making a credibility finding without considering the corroborative evidence, and dismissing the corroborative evidence in consequence.

[18] In *Singh v. Canada (Citizenship and Immigration)*, 2022 FC 1583 at paragraphs 25-26, the Court addressed the RPD’s error of assessing credibility prior to assessing the corroborative evidence, and described it as a type of “circular reasoning” that shows a lack of “internally

coherent reasoning” and undermines the reasonableness of the decision: *Vavilov* at paras 102–104. The Court further stated such an error is “contrary to the basic concept of corroborative evidence, which is to support or confirm the applicant’s evidence.”

[19] Further, as Justice Gascon stated in *Vall v Canada (Citizenship and Immigration)*, 2019 FC 1057 at para 31: “[d]etermining credibility and then looking into evidence submitted to corroborate a refugee claimant’s story would circumvent the purpose of corroborating evidence, which is precisely to support the story...”

[20] In addition, in *Chen v Canada (Citizenship and Immigration)*, 2010 FC 262 [*Chen*], where the RPD had barely mentioned a summons in a footnote, the Court concluded that this was insufficient considering the negative credibility findings the RPD made. Citing *Zhang v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1198, the Court in *Chen* noted that given the summons was an important piece of evidence in the applicant’s claim, the RPD “had an obligation to assess the summons and to give reasons for either accepting it or rejecting it as credible corroborating evidence:” *Chen* at para 19.

[21] The type of error as described in the above cases is also present in this case.

[22] In sum, the RPD’s failure to assess the corroborative evidence before making its negative credibility findings against the Applicant rendered the Decision unreasonable.

B. *Failing to address a critical incident of persecution*

[23] The Applicant also submits that, without deciding whether the main incident of persecution actually took place, the Applicant's narrative should retain the presumption of truthfulness. Specifically, the Applicant refers to the March 30, 2022 summons as the "most important incident" in his case, and submits that there is no indication that the RPD questioned the Applicant on this issue. As such, the Applicant argued the RPD made an end run around the *Maldonado* principle, referring to *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (FCA), by attacking the lack of particular corroborative evidence, without ever focusing on the credibility of the crux of the claim through questioning.

[24] The March 30, 2022 summons may not be "the most important incident" of persecution, as the Applicant suggests, it was certainly a critical incident. Having reviewed the transcript, I agree that the RPD failed to question the Applicant about the summonses, other than in the context of the Schedule 12 form as noted at para 16 above. Further, the RPD failed to address this incident anywhere in the Decision.

[25] The Applicant cites *Rasiah v Canada (Minister of Citizenship and Immigration)*, 2019 FC 408 [*Rasiah*] at paras 21-27 where the Court found the RPD member erred by failing to make any express findings about a particular incident anywhere in the decision. The Court found the incident in question was not a "peripheral event" and found the RPD's failure to address this incident a serious flaw in the reasons.

[26] The reasoning in *Rasih* applies to the case at hand. The March 30, 2022 summons was certainly not a “peripheral event.” Yet the RPD never addressed this incident, or for that matter, analyzed the summonses as mentioned above.

[27] The Respondent points to different paragraphs of the Decision to argue that the RPD specifically found that the Applicant did not establish, on a balance of probabilities, that he was ever summonsed by any authority in Cuba. I reject this argument as an attempt on the part of the Respondent to search for reasons that simply were not there. Nothing in the Decision indicates the RPD made such a specific finding as the Respondent submits.

[28] The Applicant also raises some serious issues about the RPD’s flawed credibility findings based on the BOC amendment and the lack of social media posts and photos of the Applicant’s participation at the protest. In view of my findings above, I need not address these remaining arguments. However, my silence on these arguments does not mean I reject them.

IV. Conclusion

[29] The application for judicial review is allowed.

[30] There is no question to certify.

JUDGMENT in IMM-2510-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The decision under review is set aside and the matter referred back for redetermination by a different decision-maker.
3. There is no question to certify.

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2510-23

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