

Federal Court



Cour fédérale

Date: 20240822

Docket: IMM-12559-23

Citation: 2024 FC 1308

Toronto, Ontario, August 22, 2024

PRESENT: The Honourable Justice Battista

BETWEEN:

CAMILO ANDRES HERNANDEZ LAFONT

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of the Refugee Appeal Division (“RAD”) decision dated September 19, 2023 dismissing the appeal of his rejected claim for refugee protection. The Applicant submits that the RAD decision is unreasonable due to its erroneous credibility findings.

[2] In my view, the RAD rendered a reasonable decision that is justified in relation to its legal and factual constraints. I dismiss this application for judicial review.

II. Background

[3] The Applicant is a citizen of Colombia who alleged persecution in Colombia at the hands of the Ejército de Liberación Nacional (“ELN”). His evidence was that he was kidnapped in 2022 when his father was unable to pay an extortion fee and that before his release, the ELN warned his father that they would kill the Applicant.

[4] The Applicant arrived in Canada in March 2022 and made a claim for refugee protection. The Refugee Protection Division (“RPD”) refused his claim in a decision dated June 1, 2023, primarily on the basis that the Applicant was not credible owing to inconsistencies in his evidence.

[5] The Applicant appealed the RPD’s decision to the RAD. In a decision dated September 19, 2023, the RAD found that the Applicant was not an individual described in sections 96 or 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The RAD found that the RPD correctly identified inconsistencies in the Applicant’s testimony and his documentary evidence.

III. Issue and Standard of Review

[6] The issue in this application is whether the RAD’s decision is reasonable pursuant to the principles described by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (“Vavilov”).

IV. Analysis

[7] The parties agree that there were three main pillars of the RAD's decision based on adverse credibility findings:

- i. The Applicant's shifting testimony regarding the date of his kidnapping;
- ii. The Applicant's failure to mention post-abduction threats in his Basis of Claim ("BOC") form; and
- iii. The RAD's disbelief of the timing of threatening text messages sent to the Applicant's father.

[8] The Applicant argues that the first two pillars of the RAD's decision were unreasonable.

[9] I do not agree. The RAD's findings regarding these credibility assessments of the Applicant's evidence are clear and reasonable.

[10] The Applicant states that the RAD ignored the Applicant's explanation that his difficulties in remembering the date of his kidnapping was due to his stress and anxiety at the hearing. The Applicant states that the RAD had an obligation to assess this explanation.

[11] It is true that the RAD acknowledged the Applicant's explanation but maintained the adverse credibility finding without a detailed analysis of the explanation. However, at more than

one point the RAD refers to the fact that the Applicant did not provide a reasonable explanation for the multiple changes in his testimony and as well as the testimony's inconsistency with other evidence. This is reasonable in the circumstances. The RAD pointed out that it was not the specific differences in dates that led to the credibility issues, but the tendency of the Applicant to shift his testimony. As Justice Shirzad Ahmed has stated, "while the RAD or the RPD must take into account an applicant's explanation, they are not obliged to accept it" (*Ehichoya v Canada (Citizenship and Immigration)*, 2022 FC 1329 at para 31).

[12] I agree with the Applicant that decision makers are "obligated to consider the explanations provided by the applicant which are not obviously implausible and to provide reasons 'in clear and unmistakable terms' so as to reject these explanations with respect to the whole of the evidence before it" (*Meija v Canada (Citizenship and Immigration)*, 2015 FC 434 at para 34 [citations omitted]).

[13] However, I agree with the Respondent that *Meija* is factually distinguishable from this matter. The applicant in that decision provided detailed explanations for the alleged inconsistencies in the evidence (*Meija* at para 33). The Applicant here did not. As above, the RAD rejected the Applicant's explanation clearly with respect to his shifting testimony and the documentary evidence.

[14] The RAD also reasonably doubted the Applicant's credibility for omitting the fact that he received continuing post-abduction threats from his BOC narrative.

[15] Counsel for the Applicant took the Court to the section of the BOC narrative referring to these threats. Reviewing this section, the threats are described as having been made to the Applicant's father rather than the Applicant, and they appear to have been made prior to his release, not after his release.

[16] The Applicant correctly points out that negative credibility findings based on omissions from the BOC should not be made unless the omissions are "material and significant to the claim" (*Brown v Canada (Citizenship and Immigration)*, 2022 FC 1607 ("*Brown*") at para 14, citing *Nwabueze v Canada (Minister of Citizenship and Immigration)*, 2019 FC 1577 at para 11). However, evidence establishing whether the Applicant was threatened after his release by the agent of persecution is significant and material to his claim.

V. Conclusion

[17] Overall, the RAD's findings were clearly described and reasonable in light of the relevant constraining facts and law (*Vavilov* at para 99). The application for judicial review is dismissed.

JUDGMENT in IMM-12559-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

“Michael Battista”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-12559-23

STYLE OF CAUSE: CAMILO ANDRES HERNANDEZ LAFONT
v. THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: AUGUST 20, 2024

JUDGMENT AND REASONS: BATTISTA J.

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