Federal Court  Cour fédérale

Date: 20160211

Docket: IMM-2125-15

Citation: 2016 FC 181

Ottawa, Ontario, February 11, 2016

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

MANUELA JANICE CANTOS ROCHA
ALEXANDRA JANICE MIO CANTOS
STEFANY BETZABET MIO CANTOS
BRYAN JAMILL MIO CANTOS

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada, determining that the Applicants are not Convention refugees pursuant to section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] nor persons in need of protection pursuant to section 97 of IRPA.

[2] For the reasons that follow, this application is allowed.

I. Background

[3] Manuela Janice Cantos Rocha [the Principal Applicant], and her three children, Alexandra Janice Mio Cantos, Stefany Betzabet Mio Cantos and Bryan Jamill Mio Cantos, are citizens of Peru. The Principal Applicant is 35 years old. She alleges that when she was 17 years old, she began a common law relationship with Percy Lorenzo Mio Huancas [her Husband]. Their union produced the three children. However, her Husband turned into a violent person and began to verbally and physically attack her. He would also physically abuse the children.

[4] The Principal Applicant alleges that the violence escalated over the years and that, despite several police complaints, arrests and the issuance of guarantee orders, the abuse continued. The Applicants accordingly left Peru on October 25, 2012 and came to Canada, making a refugee claim on November 30, 2012.

II. RPD Decision

[5] The determinative issues in the RPD's rejection of the Applicants' claim were subjective fear, credibility and state protection.

[6] The RPD accepted that the Principal Applicant and her Husband had been in an abusive relationship until 2007. However, the RPD found that the Principal Applicant wished to join her relatives in Canada and instead of dealing with the matter under immigration laws, decided to engage the refugee system by manipulating a basic set of facts, being that domestic violence is a significant problem in Peru. The RPD's conclusion was that the Principal Applicant concocted a

story that she was continually abused by her Husband until she left Peru on October 25, 2012 and that the police did not provide adequate protection.

[7] In reaching its conclusion, the RPD had credibility concerns related to the relationship between the Principal Applicant and her father. The RPD noted that close female relatives of the Principal Applicant were aware of the abusive relationship, but it was alleged that her father found out only in June 2012 and then sent her an invitation letter to apply for a visa and the money to purchase plane tickets to Canada. The RPD found that if the Applicants had been victims of abuse for 17 years, the Principal Applicant's father would have found this out before June 2012. The RPD also noted that the Principal Applicant had made a number of errors around the date she alleged that her father found out about the abuse, which ranged from 2011 to 2012.

[8] The RPD also observed that, after the Principal Applicant spoke to her father and obtained the passports, there was then a flurry of activities associated with alleged domestic violence. Prior to that, the last incident had been on May 2, 2007. The RPD noted that two incidents alleged to have occurred in October 2012 were registered with the police only after the Principal Applicant left Peru. It assigned very little weight to police reports dating to 2011 and 2012.

[9] As there was no complaint recorded between May 2007 and June 2011, the RPD found it reasonable to assume that, during this period, the Principal Applicant and her Husband were separated and that the Principal Applicant had obtained a summons of guarantee resulting from

the May 2, 2007 incident, requiring her Husband to stay away from her, with which obligation he complied.

[10] Although the RPD referred to taking into account that victims of domestic abuse may not report abusers, it noted that the Principal Applicant had made several complaints to the police about domestic violence, starting from 1997, and therefore found it was reasonable to conclude that she would have reported any abuse from 2007-2011 to the authorities.

[11] The RPD also noted that the police reports she submitted from 2011 and 2012 referred to contradictory reasons for not reporting the abuse – in one case due to the death threats and in another due to not knowing the procedure. The RPD found this contradictory and confusing, particularly as the Principal Applicant was alleging she did not know the procedure to make a complaint but was also presenting police reports demonstrating the making of complaints. The RPD made similar findings resulting from the Principal Applicant's testimony that she didn't report every incident because of fear her Husband would beat her, which the RPD considered to conflict with her testimony as to over 20 reports she had made.

[12] The Principal Applicant's description of how she was able to leave her Husband to come to Canada was also found to be unreasonable. The RPD noted inconsistency between the Principal Applicant's evidence that she made up a story that she and her children wanted to travel to Canada to attend her brother's wedding but also that she drugged him and tricked him into signing the visa applications.

[13] In examining the totality of the evidence before it, the RPD assigned very little weight to the testimony of the Principal Applicant's daughter Stefany, which corroborated her mother's testimony of abuse, because there was no mention of abuse in a psychological assessment of Stefany performed in 2010.

[14] The RPD assigned little weight to psychological and medical reports and letters from the Principal Applicant's mother and uncle, concluding that the reports could not corroborate the claim and that if there was suffering, the family would have told the father sooner.

[15] On the subject of state protection, the RPD referred to the Principal Applicant having made denunciations to the police. However, it found that to bolster the claim, she had made up the story that she didn't receive any help from the authorities She testified that she asked for and obtained a summons of guarantee three times but that her Husband would breach the guarantee, she would call the police, and they did not protect her. The RPD noted that nothing about the summons of personal guarantee was ever mentioned in her Personal Information Form [PIF] narrative. It rejected her explanation that she thought saying she had gone to the police for help and that they didn't help her was sufficient.

[16] Finally, the RPD cited documentary evidence on Peru and the subject of violence against women but concluded that Peru was making serious efforts to protect its citizens and that there was adequate, although not perfect, state protection available. It found that the Principal Applicant sought and received state protection in Peru and that there were resources available to her, which she did not pursue.

III. Issues and Standard of Review

[17] The Applicants submit the following issues for the Court's consideration:

A. Whether the RPD's credibility findings are unreasonable, perverse and capricious;

B. Whether the RPD erred by failing to apply the Chairperson's Gender Guidelines, despite its reference to them, and by ignoring relevant evidence before it; and

C. Whether the RPD erred in fact and in law in making its state protection finding.

[18] I consider the standard of review to be applied to the RPD's decision in this matter to be one of reasonableness (*New Brunswick (Board of Management) v. Dunsmuir*, 2008 SCC 9 at para 47).

IV. Submissions of the Parties

A. *The Applicants' Position*

[19] The Applicants argue that the Member's credibility findings amount to a justification of his belief that the abuse ended in 2007. His conclusions are based on speculation and conjecture and not on the evidence before him.

[20] The Applicants submit that the Principal Applicant gave a reasonable explanation for not speaking to her father about the abuse. They were estranged and her father was angry with her for leaving home to live with a man. The finding that her father would have known about the abuse earlier and would have done something about it is conjecture without any evidentiary support.

[21] The Applicants also argue that the RPD is incorrect in finding that the activities after the Principal Applicant's conversation with her father were in attempt to bolster the claim. The PIF describes incidents of abuse in 2009 and 2010 which predated that conversation. The RPD also failed to appreciate that the two most recent police report documents, while registered in the police computer system on dates following her departure from Peru, refer to the complaints having been made on dates that pre-dated her departure. Further, there was no evidence that the reports are not genuine.

[22] The Applicants then refer to the RPD's finding regarding a protection order respected by the Principal Applicant's Husband from 2007 onwards, arguing that this is speculation and conjecture and in contradiction to the actual evidence. The Principal Applicant's evidence about the protection orders or personal guarantees was that they did not work as the police did not enforce them.

[23] The Applicants argue that the RPD has made an unreasonable finding that the Principal Applicant would have reported any abuse occurring between 2007 and 2011, as the Principal Applicant explained why she would not always report abuse. They also submit that the RPD

erred in finding an inconsistency between the Principal Applicant's explanation that she didn't know the procedure for making a complaint and the fact that she had made many complaints. The Applicants points out that the Principal Applicant's testimony on her uncertainty as to the procedure was a reference to her frustration that the procedure she had employed in the past had been ineffective.

[24] The Applicants also submit that the evidence given by the Principal Applicant in describing their escape to Canada (giving him a temporary reason for going to Canada and tricking him into signing the visa application papers) is not contradictory.

[25] At the hearing of this application, the Applicants argued that RPD erred in deciding to assign very little weight to the testimony of the Principal Applicant's daughter, which corroborated her mother's testimony of abuse, on the basis that there was no mention of abuse in a psychological assessment of her daughter Stefany performed in 2010. The Applicant points out that while Stefany was the subject of the psychological assessment, it was not Stefany but rather the elder daughter Alexandra, who provided the corroborative testimony at the hearing before the RPD.

[26] With respect to state protection, the Applicants submit that the RPD repeats in its state protection analysis many of its earlier negative credibility findings. The Applicants also argue that it was not reasonable for the RPD to find that there was no corroborative evidence of a violation of the personal guarantees, given the evidence that the police did not turn up to assist. It

was unreasonable to expect the Applicants to provide proof from the Peruvian authorities that they refused to enforce an order that they were supposed to enforce.

[27] While the RPD produces parts of the country documentary evidence, the Applicants submit that the RPD does not engage in any meaningful analysis of this evidence. The documentary evidence demonstrates inadequate protection for abused women, that corruption remains a chronic problem in Peru and, even though a framework for protection exists, adequate state protection is not available for victims of domestic violence. This corroborates the Principal Applicant's evidence that she approached the police and other authorities for protection many times, but her Husband was never prevented from continuing his attacks.

[28] Finally, the Applicants submit that the RPD erred in law in stating that Peru is making serious efforts to protect its citizens and that adequate state protection therefor exists. Serious efforts made by a state are not sufficient and do not constitute the provision of adequate protection (*Muvangua v Canada (Minister of Citizenship and Immigration),* 2013 FC 542).

[29] On the subject of the Gender Guidelines, the Applicants argue that the RPD refers to the Guidelines but does not apply them in a meaningful way. They rely on *Danelia v Canada (Minister of Citizenship and Immigration),* 2014 FC 707 at paras 32 and 33 and *Evans v Canada (Minister of Citizenship and Immigration),* 2011 FC 444 at para 8,14,16,17 -18, a case which involved the same member of the RPD.

B. *Respondent's Position*

[30] The Respondent emphasizes that this Court has held that it will show significant deference to findings on credibility. It submits that the RPD reasonably found that the Principal Applicant's credibility had been undermined and that she had concocted her allegations. This includes her father only learning of the abuse in June 2012, so that she could justify her failure to leave Peru despite being allegedly continually abused over the years.

[31] The Respondent submits that the RPD reasonably found that the Principal Applicant concocted the allegations of domestic violence to bolster her refugee claim, relying on the absence of any police reports between 2007 and 2011. It reasonably disbelieved the evidence that she could not leave her Husband and that she had to drug him to obtain his signature for the visa applications. The RPD also reasonably relied on the psychological assessment of the Applicant, Stefany, which did not speak at all about any abuse. The Respondent notes that the RPD found the Applicants lacked a subjective fear of persecution and that this was sufficient for the claim to fail.

[32] On the subject of state protection, the Respondent submits that, based on all the evidence, the RPD reasonably found that there was adequate protection available to the Applicants in Peru and that they had not rebutted the presumption of state protection. The Principal Applicant's omissions in her PIF were reasonably found to affect her credibility on her evidence going to inadequacy of state protection. The RPD also found there was insufficient evidence to support an allegation that her Husband had connections with the police.

[33] The Respondent further submits that the documentary evidence was specifically considered, as the RPD noted the problems in the area of violence against women but concluded that there were structures in place to address these concerns. The Respondent canvassed case law surrounding state protection, including arguing that evidence that protection being offered is adequate, though not perfect, is not clear and convincing proof of a state's inability to protect.

[34] Finally, the Respondent submits that the Gender Guidelines were reasonably considered and applied. The Guidelines are not intended to serve as a cure for all deficiencies in the Applicants' claims or evidence. The Applicants bore the onus of proving their claims and in the case at hand failed to do so.

V. Analysis

[35] My decision to allow this application turns on the RPD's credibility analysis, which is significantly impacted by conclusions that are unsupported by evidence, based on improper implausibility findings, or lacking in logic necessary to make them transparent and reasonable. The Respondent correctly submits that this Court should show significant deference to the RPD on credibility findings. However, such findings are of course not immune to review, and I consider this to be a case where the RPD's conclusion, that the Principal Applicant had manipulated a basic set of facts surrounding domestic violence in Peru to concoct a story of continual abuse by her Husband, is unreasonable and cannot be upheld as being within the range of acceptable outcomes.

[36] The RPD accepted that the Principal Applicant had been in an abusive relationship until 2007 but then went on to conclude that the abuse stopped at this stage and that the allegations of post-2007 abuse and inadequate state protection were concocted in order to facilitate her wish to join her relatives in Canada. However, there was no evidence before the RPD that the abuse had ended in 2007. Rather, the RPD's conclusion to that effect was based on a finding that her father would have found out earlier than 2011 or 2012 if the abuse had continued, the absence of alleged incidents of abuse between 2007 and 2011, and concerns the RPD had with the police reports related to the 2011 and 2012 incidents.

[37] I acknowledge that the Principal Applicant provided inconsistent evidence as to the date in 2011 or 2012 when her father first learned of the abuse, and I take no issue with the RPD finding this to detract from the Principal Applicant's credibility. However, the RPD's finding, that she made up the story that her father found out about the abuse only in 2012 to justify her failure to leave Peru earlier, does not appear to be based principally on this inconsistency. Rather, it appears to be based principally or at least significantly on the RPD's conclusion that, if the Applicants had been victims of abuse for the 17 years they alleged, the father would have found out and taken steps to assist much earlier.

[38] In my view, this represents an impermissible plausibility finding, that it is not plausible that her father could have been unaware that she was being abused for this many years. The Respondent argues this finding to be reasonable, particularly given the evidence that the Principal Applicant's mother and other family members were aware of the abuse. However, as pointed out by the Applicants, the Principal Applicant had explained that she had been estranged

from her father for 15 years. Implausibility determinations must be based on clear evidence, as well as a clear rationalization process supporting the Board's inferences, and should refer to relevant evidence which could potentially refute such conclusions (*Santos v Canada (Minister of Citizenship & Immigration)*, 2004 FC 937 at para 15). The RPD's finding does not satisfy this test.

[39] Moreover, this finding by the RPD cannot logically be reconciled with its acknowledgment that the Principal Applicant had suffered abuse until 2007. The basis for the RPD's finding is that, if the Principal Applicant had continually suffered abuse, her father would have found out and done something about it. However, there is no suggestion that her father learned of the abuse and took steps to assist during the portion of the 17 year period up to 2007 when the RPD accepted the abuse was occurring. This logical inconsistency further detracts from the reasonableness of the RPD's finding.

[40] To explain the conclusion that the abuse stopped in 2007, the RPD found it reasonable to assume that the Principal Applicant and her Husband were separated, that the Principal Applicant had obtained a summons of guarantee related to the incident that occurred on May 2, 2007, and that her Husband complied with his resulting obligation to stay away from her. However, there is no evidence to support these assumptions. The RPD refers only to the fact that the Principal Applicant had testified to having obtained three such summonses over the years and had given dates for only two of them, which I cannot conclude represents evidence capable of supporting the RPD's finding. On the contrary, the Principal Applicant's evidence was that these summonses were invariably ineffective and that she lived with her Husband throughout the

period of abuse until she left Peru in 2012. I therefore agree with the Applicants' submission that this aspect of the RPD's decision is unsupported by and inconsistent with the evidence and therefore further detracts from the reasonableness of the RPD's conclusion that the Principal Applicant had fabricated her story of abuse continuing beyond 2007.

[41] That conclusion is also unreasonable because it turns on what the RPD considered to be the lack of reliable evidence of any abuse following 2007. The RPD's findings demonstrate misunderstandings with respect to the evidence of such abuse. The RPD referred to what it called the "flurry of activities with alleged domestic violence" after the Applicants obtained their passports in July 2011 and stated that, prior to that, the last incident of domestic violence was on May 2, 2007. However, the RPD appears to have overlooked the evidence in the Principal Applicant's PIF narrative describing incidents of abuse in 2009 and 2010.

[42] Regarding the police reports of 2011 and 2012, I agree with the Applicants that there is no logical basis that can be derived from the RPD's reasons for assigning little weight to these reports arising from the fact that some were obtained by the Principal Applicant and others by her mother. I also find the RPD to have erred in basing the decision to assign the 2012 reports little weight on the fact they bear a registration date following the Principal Applicant's departure from Peru. The Principal Applicant left Peru on October 25, 2012. The 2012 reports give October 30, 2012 and October 31, 2012 as their respective dates of registration. It isn't clear what the date of registration means. However, each report also contains a narrative section that refers to the time and date of the alleged abuse and the time later on that same date when the Principal Applicant reported such abuse to the police. In both reports, the date of the abuse and

its reporting by the Principal Applicant pre-date her departure. It is accordingly my conclusion that the RPD either misinterpreted the significance of the date of registration (which is clearly different from the date of the incident and its reporting) or at least failed to advert to the date of the incident and its reporting, making its disregard of these police reports based on the registration dates unreasonable.

[43] The Applicants also correctly point out that it is an error to reject an official document absent evidence tending to show its invalidity (see *Halili v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 999). The RPD's decision does not reveal a defensible basis to reject the 2011 and 2012 police reports.

[44] In addition to the police reports, the Applicants refer to other evidence, corroborating abuse following 2007, which they argue the RPD unreasonably disregarded. In my view, it is not necessary to consider the RPD's approach to each piece of corroborating evidence, as the errors I have already identified are sufficient to warrant this application being allowed. However, I would note that perhaps the most compelling of the errors the Applicants allege with respect to the corroborating evidence is the RPD's statement that it assigns little weight to the testimony of the daughter Stefany that corroborated her mother's story that they are victims of abuse at the hands of her father. The decision indicates that the RPD reached this conclusion because Stefany's psychological report says nothing about this abuse.

[45] The RPD appears to have confused the daughters, as the corroborating testimony was from the eldest daughter Alexandra, not from Stefany who was the subject of the psychological

report. At the hearing of this application, the Respondent argued that this error was immaterial and the RPD's analysis remains reasonable, as Stefany would have been aware of the abuse if it had taken place. With respect, I cannot accept this argument and must find the RPD to have been in error in rejecting Alexandra's corroborating testimony of the abuse based on the misunderstanding that she was the same daughter about whom the psychological report made no reference to abuse.

[46] With respect to state protection, it is not necessary for me to consider the Applicants' arguments that the RPD erred in its expression of the relevant law and in its consideration of the relevant country condition documents, as the errors in the RPDs' credibility analysis themselves make the state protection analysis unreasonable.

[47] Consistent with the RPD's conclusion that the abuse stopped in 2007 because the Principal Applicant's Husband was complying with a summons of guarantee, the RPD found that the Principal Applicant did receive protection from the authorities. The RPD bases this conclusion on the fact that the Principal Applicant mentioned nothing in her PIF narrative about the summonses of personal guarantee or her allegation that these were breached by her Husband. When asked to explain this, she replied that she thought it was sufficient to say that she had gone to the police, asked for help, and did not receive any. The RPD rejected this explanation, as the PIF specifically requests details of any steps taken to obtain protection from authorities.

[48] While it might be debated whether the Principal Applicant provided a satisfactory explanation for not referring to the summonses of guarantee in her PIF, my view is that the

RPD's findings are unreasonable because they are again unsupported by the evidence and logically inconsistent. The RPD finds that the Principal Applicant did receive protection from the authorities, without any evidence to support this conclusion. Moreover, the RPD rejects the Principal Applicant's evidence because she didn't mention anything in her PIF about obtaining the summonses of guarantee or her Husband breaching such summonses, while at the same time appearing to rely on such summonses for its conclusion that she did receive protection from the authorities. It is not reasonable for the RPD to reject the Principal Applicant's evidence about the summonses, because she did not refer to them in her PIF, while at the same time relying on that evidence to support its conclusions.

[49] Having found reviewable errors in the RPD's credibility analysis that impact its findings with respect to subjective fear and state protection, the RPD's decision must be set aside as unreasonable.

[50] Counsel for both parties confirmed that neither party proposes any question of general importance for certification for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is allowed and the matter is referred to the Refugee Protection Division for re-determination by a different panel member. No question is certified for appeal.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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