

Federal Court



Cour fédérale

Date: 20160706

Docket: IMM-5445-15

Citation: 2016 FC 759

Ottawa, Ontario, July 6, 2016

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

LORETA ESCOBAR ANEL

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of the November 20, 2015 decision of the Refugee Appeal Division [RAD] confirming the April 30, 2015 decision of the Refugee Protection Division [RPD] of the Immigration Review Board, that denied refugee or person in need of protection status to Ms. Loretta Escobar Anel under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

II. Background

[2] The Applicant, Ms. Loretta Escobar Anel, is a citizen of Cuba who claims she is being persecuted by state security officials who suspect her of collusion with dissidents. The Applicant worked as Chief of Accounts for the Baptist Convention, a church organization with ties to a network of other Baptist churches. As part of her duties, she was responsible for keeping track of donations from these affiliated churches, which are predominantly in Canada, the United States, and Europe. Her daughter (who is not party to this application) also worked for this organization as secretary to the president.

[3] In late 2013, the Applicant returned from a trip to Canada where she was visiting her mother and brother to find that her daughter had been questioned by state security officials regarding whom the church had been aiding with its donations. Specifically, the officials sought to find out if the church supported dissidents with tangible or monetary donations.

[4] In September 2014, two officers attended the Applicant's place of work and escorted her to a police station, where she was questioned as to where donations were allocated. The Applicant responded she did not know, as such decisions are confidential and made by the president. Prior to her release, the officers instructed the Applicant to convince her daughter to give them information.

[5] Over the following months, the Applicant and her daughter were repeatedly questioned. On the final occasion, the officers threatened to charge the daughter with "failure to collaborate

with state security”, and both were threatened with charges of “revealing state secrets” if they told anyone of the questioning. As a result, neither the Applicant nor her daughter sought help from church officials.

[6] The daughter left Cuba for Ecuador in December of 2014. Shortly thereafter, the Applicant was questioned and again threatened with charges for failing to reveal the benefactors of the donations.

[7] In her personal narrative, the Applicant states that she supports the dissident movement and fears she will be subject to harassment and surveillance by local authorities, as well as denied employment if she returns to Cuba.

[8] In the RPD decision, the RPD accepted the Applicant’s identity, and several aspects of her claim. The RPD believed that both the Applicant and her daughter worked for the organization in the roles they claimed to have, and that they had been questioned by authorities regarding the church’s support of dissidents.

[9] However, the RPD also found the Applicant lacked credibility on a number of issues. It drew a negative inference due to the Applicant’s vague recollection of the dates of when she was interrogated by the authorities: the incidents were fairly recent, central to her claim and directly precipitated her fleeing Cuba.

[10] Further, the RPD found the Applicant was the author of her own misfortune for the number of times she had been questioned. The Applicant testified that the church does not support dissidents, and she should have disclosed this to the officials, instead of refusing to cooperate.

[11] The RPD also found it unreasonable for the Applicant to have refrained from seeking help from the president or other higher-ups in the church organization. Notwithstanding the Applicant and her daughter had been threatened with state security charges were they to reveal they had been questioned, this threat did not occur until later questioning, and there was no barrier preventing her from informing her superiors following the earlier questioning.

[12] Finally, the RPD found that even if all of the allegations were true, they did not amount to risk of persecution under section 96 or 97, either prior to leaving Cuba or forward-looking if the Applicant were to return to Cuba. The RPD reasoned that since the Applicant no longer works for the church, she would no longer be of interest to the authorities. Moreover, though she may have difficulty getting a job with the government, she would be employable in the private or non-profit sectors, and accordingly, there is no forward-looking risk. Further, as an older woman who worked for a church, the Applicant does not fit the profile of someone at risk upon return to Cuba as a failed asylum seeker.

[13] Considering the entirety of the record, the RAD concluded the Applicant was not credible, and even if her allegations were taken as true, the facts do not support a finding of discrimination elevated to the level of persecution if she were returned to Cuba.

[14] The RAD agreed with the RPD's findings on several fronts. The RAD found it significant that the Applicant could not recall specific dates for the incidents which constitute the foundation for her claim. Upon reviewing the audio recording of the RPD hearing, the RAD determined that the RPD correctly assessed this credibility issue, particularly given the fact the events were recent and central to the Applicant's claim.

[15] The RAD also agreed with the RPD that although the Applicant's personal narrative states that she supports the dissidents, there is nothing in the record to suggest Cuban officials are aware of this fact.

[16] In addition, the RAD agreed it did not make sense for the Applicant and her daughter to refuse to provide information to the officers when they knew the church did not support dissidents. The RAD also agreed with the plausibility finding that the president of the church likely knew of the questioning already, and thus rejected the Applicant's explanation for why she did not ask for assistance. The RAD also agreed with the observation that the Applicant could and should have told someone about the questioning months after it began and before the later questioning took place when she was warned to keep silent.

[17] Further, the RAD held that the laws under which the Applicant claims to face discrimination are laws of general application, which are presumed to be neutral unless there is evidence to the contrary. The RAD examined the National Documentation Package and found that although the Applicant may face some discrimination in terms of finding employment and gaining access to social services, there was no evidence to suggest she would be entirely cut off

from these resources. The documentation also indicates that control over individuals considered to be dissidents has been relaxed since 2012, and there is insufficient credible evidence that the Applicant would be subject to treatment rising to the level of persecution should she return to Cuba. This is particularly true given that the Applicant was not considered a dissident when she left for Canada, and does not have a profile which would cause her to be so targeted if returned to Cuba.

III. Issues

[18] The issues are:

- A. Did the RAD apply the correct standard of review to the RPD's decision and was the RAD's decision reasonable?

IV. Standard of Review

[19] The RAD is to conduct an independent assessment of the RPD's decision, and review it on the standard of correctness. This Court is then to review the RAD's decision on the standard of reasonableness (*Huruglica v Canada (Minister of Citizenship and Immigration)*, 2016 FCA 93 [*Huruglica*]).

V. Analysis

A. *Did the RAD apply the correct standard of review to the RPD's decision, and was the RAD's decision reasonable?*

[20] The Applicant submits that the RAD committed four errors. First, with regard to the negative credibility finding, the RAD erred by not considering the Applicant's submissions as to why she did not give specific dates for the interrogations and for not providing reasons for rejecting these submissions. Moreover, the Applicant argues it is inconsistent for the RAD to have found that not all of the alleged interrogations took place, but also that the Applicant caused the state security officers to be persistent by being uncooperative.

[21] Second, the Applicant claims it was improper for the RAD to find her refusal to cooperate with the officers unreasonable. The RAD failed to consider the fact that the Applicant did not know for certain that none of the money was going to dissidents, and thus could not provide the officers a list of the beneficiaries.

[22] Third, the Applicant argues the RAD's plausibility finding that the president of the organization likely knew of the questioning was unjustified.

[23] Fourth, the Applicant contends the RAD failed to assess the Applicant's risk profile as an individual who sympathises with the dissidents. The Applicant is perceived as someone who hid information from the state, and the documentary evidence supports the view that all forms of dissent can have an impact on individuals. The RAD erred by considering surveillance and

denial of employment as forms discrimination, rather than persecution.

[24] Contrary to the Applicant's above assertions, I find that the RAD applied the correct approach to reviewing the RPD decision, and committed no reviewable error in its assessment of the evidence that rendered its decision unreasonable.

[25] In *Huruglica*, above, the Federal Court of Appeal held that while the RAD must conduct its own analysis of a matter and review the RPD findings on the standard of correctness, the requirements insofar as deference to the RPD are to be evaluated on a case-by-case basis. Where a case involves considerations of credibility, the RAD must determine if the RPD was in fact better positioned to make a determination on that aspect of the claim. Where the error or lack thereof is easily identified by the RAD, the RPD may not have any real advantage; only where the RAD concludes the hearing of oral evidence by the RPD is essential should it remit the matter back to the RPD for redetermination.

[26] The fact that the RAD came to the same conclusions as the RPD is not an indication that no independent review was conducted. The RAD referenced not only the RPD decision, but also reviewed the record, including the audio tape of the hearing and the Applicant's submissions. The RAD's analysis not only reviews the RPD reasoning but expands upon the RPD's findings and factual bases for its reasons. I find that the RAD undertook an independent analysis, as instructed by the Federal Court of Appeal, and did not simply pay lip service to the notion of independent review.

[27] The Applicant's contention that the RAD did not give adequate consideration to her submission that questioning before the RPD should not be a memory test is also not supported on the record. It was reasonable for both the RPD and RAD to draw negative inferences from the lack of details provided by the Applicant in answering relevant and pertinent questions in respect of recent events central to her claim.

[28] I also do not find that the Applicant's contention that the RAD ignored evidence relating to a list of donors and benefactors had any significant impact on the RAD's decision. It is apparent that the RAD considered the relevant facts and reviewed the evidence before coming to its conclusion. Moreover, it is trite law that the RAD need not make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*NLNU v Newfoundland & Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

[29] While it was unnecessary to speculate about what the President knew and for the RAD to adopt the RPD's finding that the Applicant's lack of cooperation worsened her situation, these findings were not material to the RAD's ultimate decision. Moreover, it was entirely reasonable for the RAD to find the Applicant's testimony inconsistent regarding why she did not tell the president about the interrogations, considering the fact she was only threatened with charges during later incidents.

[30] Counsel for the Applicant acknowledged that the Applicant was not at risk of persecution prior to leaving Cuba. I equally find that the RAD reviewed the arguments and the record on this

matter and reasonably came to the conclusion that the facts also do not support a forward looking risk, or a risk of treatment rising to the level of persecution.

[31] Given the above findings, the RAD's decision is reasonable, and I would therefore dismiss the application for judicial review.

JUDGMENT

THIS COURT'S JUDGMENT is that:

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

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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