

Federal Court



Cour fédérale

Date: 20190225

Docket: IMM-1324-18

Citation: 2019 FC 223

Toronto, Ontario, February 25, 2019

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

**WILMEN DAMIAN RAMIREZ CHACIN,
MELBA MERCEDES CAMBA DE RAMIREZ,
VICTOR MANUEL RAMIREZ CAMBA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

Overview

[1] This is an application for judicial review of the decision [Decision] of the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada, dated January 30, 2018, in which the RPD found that the Applicants were not Convention refugees or persons in need of protection.

[2] As explained in more detail below, this application is allowed, because I have found that the RPD's decision is unreasonable in failing to consider evidence relevant to its determination that the Applicants submitted fabricated correspondence from the Coordinator of the political party that the Principal Applicant claimed to have joined before the events alleged to give rise to the Applicants' refugee claim.

Background

[3] The Applicants are a family of three, all of whom are citizens of Venezuela. They came to Canada via the United States on October 16, 2017, and claimed refugee protection based on fear of persecution in Venezuela as a result of their anti-regime political opinions and participation by the Principal Applicant, Wilmen Damian Ramirez Chacin, in a political opposition party. The facts alleged by the Applicants are as follows.

[4] The Principal Applicant was a civil construction technician in Venezuela and recently worked as a sales coordinator for a multinational corporation. His wife was an industrial engineer and worked as a project manager and as an expense controller. Both worked in Valencia and Caracas.

[5] The Applicants claim that they have opposed the Venezuelan regime under Hugo Chavez and later Nicolas Maduro for approximately the last 18 years. Their activities included signing petitions and sometimes participating in protests and demonstrations. In 2003, they signed a petition asking for a referendum to impeach then-President Chavez. They say that, as a result,

their names were published on the so-called “Tascon List.” Those on the list were denied government benefits and were prohibited from working for government institutions.

[6] The Applicants submit that the recent social, political, and economic crisis in the country has affected them significantly. As a result, the Principal Applicant joined an opposition political party for the first time in February 2017. He signed up as an activist for the Voluntad Popular [VP], which is part of the coalition of opposition parties known as the Mesa de la Unidad Democrática [MUD].

[7] The Applicants allege that the Principal Applicant’s wife was identified and robbed of her cellphone at gunpoint in April 2017. Within a week or two, the Principal Applicant received a threatening phone call while at home. The Applicants believe these incidents to be related to their political views. When they reported the theft of the phone to the police, the police refused to file a report.

[8] The Principal Applicant alleges that he participated in many protests after April 2017. He and his wife took part in a protest on June 14, 2017 in Caracas. While driving home afterwards, their car was attacked by people on motorcycles, they were called pejorative names for anti-regime individuals, and they were threatened. On June 23, 2017, while returning from another protest, their car was attacked again. They submit that both attacks were carried out by the Colectivos, a state-linked paramilitary group.

[9] The Applicants state that these incidents increased their fear of persecution in Venezuela. While they had considered fleeing since April 2017, the Principal Applicant spoke with his brother in Canada in June-July 2017, and his brother then arranged for their travel, tickets, and a refugee shelter in Canada. The Applicants say that the arrangements took some time.

[10] While still in Venezuela, the Applicants signed a plebiscite and participated in protests against President Maduro seeking to modify the Constitution to empower himself further. President Maduro succeeded in this endeavor in July 2017, and the Applicants say that they then stopped protesting in order to reduce their risk while they waited to leave.

[11] The Applicants travelled to the United States on October 7, 2017 and then to Canada on October 16, 2017.

Decision under Review

[12] The Applicants' RPD hearing took place on December 8, 2017. At the hearing, the Applicants submitted a letter from "Fedly Cimino", Coordinator of the VP in Guaicaipuro. The Panel confronted the Applicants with the Twitter page of "Freddy Cimino," spelled differently. The Principal Applicant's name was also misspelled ("Wilmer" rather than "Wilmen") in the letter. The Principal Applicant agreed that there were misspellings in the letter and answered that the author of the letter must have made a typographical error. The RPD also asked why the letter did not originate from the Principal Applicant's local VP office and he answered that he had difficulty obtaining the letter from the local office and obtained it from the Guaicaipuro office through a friend who was also a VP member.

[13] To address the RPD's concerns about the authenticity of this letter, the Applicants also submitted an errata letter from Mr. Cimino, along with his identity card, a tracking label, and an email from Mr. Cimino confirming that he had sent both letters.

[14] In concluding that the Applicants are not Convention refugees or persons in need of protection, the RPD considered both letters and other evidence given by the Principal Applicant but found credibility to be the determinative issue for the Applicants' claims.

[15] The RPD first considered country condition documentation related to the VP, finding that its requirements for *activistas* included participation in territorial work teams, adherence to its manifesto, specific party responsibilities, and active participation in organic party life and political activities organized by the VP. The RPD noted that the Principal Applicant visited the VP's Chacao office three times and never attended any events organized solely by the VP. The RPD therefore found him to have very limited political participation.

[16] The RPD then raised a number of credibility concerns with the VP letter that was submitted by the Applicants to show the Principal Applicant's participation in the VP. The RPD was concerned about the discrepancy between the letter calling the Principal Applicant an *activista* and his testimony about not visiting the Guaicaipuro VP office or participating in events organized solely by the VP. Observing that the letter contained obvious misspellings of "Freddy" and "Wilmen", the RPD found that there was insufficient evidence that the Principal Applicant had met Mr. Cimino.

[17] As noted above, the RPD put Mr. Cimino's Twitter page to the Principal Applicant at the hearing, in order to identify the correct spelling of Mr. Cimino's first name, to which the Principal Applicant responded that "Feddy" was perhaps a typographical error. The RPD found this explanation unsatisfactory, reasoning that an official letter from the VP would not have this misspelling and that Mr. Cimino would have noticed the error. The RPD therefore made a negative credibility finding regarding the letter's authenticity.

[18] The RPD also asked the Principal Applicant about the misspelling of his own name, to which he said people commonly misspell his name. Reasoning that it would expect the letter's author to know the Principal Applicant's correct name if he had sufficient VP involvement, the RPD drew a further negative credibility finding from this and concluded that the letter was not genuine. Based on the Principal Applicant's testimony that he only visited the VP's Chacao office three times and the Principal Applicant's submission of a non-genuine letter, the RPD concluded that the Principal Applicant had fabricated his participation in the VP.

[19] Turning to the post-hearing submission of the errata letter, the RPD found it insufficient to overcome the credibility concerns because there was no explanation why the Coordinator of a VP office that the Principal Applicant had never attended would write a letter of support for an *activista* who had not met the party's responsibilities. The RPD did not find it reasonable that Freddy Cimino would have given support to someone with limited party involvement. The RPD concluded that this letter too was fabricated.

[20] The RPD also noted the Applicants' delay in departing Venezuela and stated that it had credibility concerns relating to the Applicants' actions prior to coming to Canada. The RPD observed that the Applicants had valid passports in July 2015 and U.S. visas three years prior to the hearing date. The RPD put to the Principal Applicant the discrepancy between the timing of the incidents in April 2017, his testimony that the Applicants decided in June-July 2017 to leave Venezuela, and their departure in October 2017. The Principal Applicant responded that their fear had increased since April 2017 and that he did not know the reason for the delay in his brother purchasing the tickets. The RPD found this explanation unsatisfactory and said that it would have expected the Applicants to clarify when the Principal Applicant's brother could have sent the tickets. As such, the RPD drew a negative credibility inference from the delay in departure.

[21] Finding a general lack of credibility in relation to the Applicants' evidence, the RPD was not satisfied that the Applicants had a profile which would draw negative attention in Venezuela. The RPD found the Applicants not to be Convention refugees or persons in need of protection pursuant to ss 96 and 97 or the *Immigration and Refugee Protection Act*, SC 2001, c 27.

Issues and Standard of Review

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

- A. Whether the RPD erred in finding the party membership letter to be fraudulent;
- B. Whether, in assessing the Principal Applicant's political party involvement, the RPD misconstrued evidence before it; and

C. Whether the RPD ignored evidence of the Applicants' political involvement.

[23] The standard of review applicable to these issues is reasonableness.

Analysis

[24] My decision to allow this application for judicial review turns on the RPD's treatment of evidence relevant to the authenticity of the correspondence allegedly authored by Mr. Cimino, the Coordinator of the VP political party in Guaicaipuro. The RPD's analysis of the authenticity of both Mr. Cimino's original letter, and the errata letter submitted to address the RPD's concerns about the original letter, form a material component of the Decision. As I read the Decision, the RPD's conclusion that the Applicants fabricated evidence from Mr. Cimino contributed significantly to its findings that the Principal Applicant had invented his involvement with the VP party in an effort to bolster the Applicants' refugee claims, that the Principal Applicant was not a credible and trustworthy witness, and that the adult Applicants did not have the profile that, in Venezuela, would draw the negative attention they claimed.

[25] I agree with the Applicants' arguments that the Decision demonstrates reviewable errors in connection with the treatment of both Mr. Cimino's original letter and the post-hearing evidence submitted in response to the RPD's concerns.

[26] With respect to the original letter, the Applicants submitted that it was an error for the RPD to reject the authenticity of the letter based on the spelling errors in Mr. Cimino's name and the Principal Applicant's name. The Applicants rely on authorities in which decisions were

overturned on the basis of such an analysis (see *Gbemudu v Canada (Citizenship, Refugees and Immigration)*, 2018 FC 451 at para 78; *Ali v Canada (Minister of Citizenship and Immigration)*, 2015 FC 814 at para 31; *Mohamud v Canada (Citizenship and Immigration)*, 2018 FC 170 at para 3). While I agree that such analysis raises concerns, I also note the Respondent's submission that these authorities may not support overturning a decision, which rejected a claim based on spelling errors in a document, unless such errors formed the only basis for the rejection. As the RPD had other concerns with Mr. Cimino's letter, based on the Principle Applicant not having attended the Guaicaipuro office, VP meetings, or events organized solely by the VP (as opposed to protests organized by the umbrella organization MUD), I would not find a reviewable error based solely on the RPD's analysis surrounding the spelling errors.

[27] However, I agree with the Applicants' submission that the RPD's analysis is deficient in failing to consider the authenticating features of Mr. Cimino's letter. As the Applicants note, the letter was written on party letterhead, bore an original signature, provided Mr. Cimino's national ID card number, and provided his phone number. I agree that the circumstances are comparable to those considered by Justice Russell in the recent decision in *Downer v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 45, at paras 61-63:

[61] Relevant factors that are not mentioned or assessed by the RAD are that the letter is signed, dated and provides the name, badge number, mailing address and phone number of the author.

[62] In submissions to the RAD, Applicant's present counsel made the following point:

This evidence is credible, as it appears to be as purported on its face, and is supported by a sworn affidavit. It also provides a contact number. If its credibility is not accepted, the Board has the resources to verify the letter by contacting the author through the Research Directorate.

[63] The RAD may feel that it has no obligation to make simple checks even when lives are at stake. I hope not, but what the RAD cannot do is to simply ignore evidence that contradicts its own conclusions. See *Cepeda-Gutierrez v Canada (Minister of Citizenship & Immigration)* (1998), 157 FTR 35 at para 17 (TD). In this case, the RAD ignored the important authenticating features of the letter and simply chose to base its credibility finding upon other factors that were either not conclusive in themselves or could be connected back to a BOC that could not be considered adequate because it was prepared by incompetent former counsel. And I think the RAD also has to answer the obvious question: Why would a dishonest applicant provide information that would allow the RAD to easily check her reliability on the whole basis of her claim? In my experience, liars are not in the habit of providing an easy means to check the reliability of their evidence. In this case, the RAD provides no reason for not making the check (reasons may exist but they are not explained) and failed to mention the Applicant's request that the RAD use the means at its disposal to dispel or confirm any credibility concerns.

[28] This error becomes even more acute in the context of the post-hearing evidence. The errata letter purportedly authored by Mr. Cimino, which confirms that the Principal Applicant is registered as an activist of the VP and states that spelling errors were made in the original letter, is again on letterhead, is signed, provides Mr. Cimino's national ID card number and phone number, and includes Mr. Cimino's email address. Again, the RPD did not take these authenticating features into account before concluding that the errata letter was fabricated.

[29] Nor did the RPD conduct any analysis of the other evidence submitted in conjunction with the errata letter. This included what purported to be a copy of Mr. Cimino's national ID card, showing the same ID number as on the letters, a covering email purportedly from Mr. Cimino to the Applicants' counsel (stating that Mr. Cimino had prepared the two letters for the Principal Applicant), and DHL documentation related to the transmission of the errata letter and ID documentation from Venezuela to Canada. While the RPD is presumed to have considered all

the evidence before it, even if that evidence is not expressly mentioned, that presumption can be rebutted if the evidence is inconsistent with the RPD's conclusions (*Cepeda-Gutierrez v Canada (Minister of Citizenship & Immigration)*, [1998] FCJ No 1425 (Fed TD)). In my view, the documentation which accompanied the errata letter is sufficiently material to the assessment of the authenticity of both the original letter and the errata that the RPD's failure to engage with that evidence represents a reviewable error.

[30] I have considered the argument advanced by the Respondent at the hearing of this application that the RPD's finding, that the letter was non-genuine, does not necessarily mean that the RPD did not believe it was authored by Mr. Cimino. The Respondent submits that the evidence surrounding the manner in which the letter was obtained from Mr. Cimino, by a friend of the Principal Applicant, supports a conclusion that the letter was written as a favour, rather than in Mr. Cimino's official capacity, and therefore does not accurately reflect the Principal Applicant's involvement with the VP. However, I do not read the Decision as reflecting a conclusion of that sort by the RPD. Rather, the RPD considered the evidence to have been fabricated.

[31] I therefore find the RPD's treatment of the evidence surrounding the Principal Applicant's involvement with the VP party to be unreasonable. This aspect of the RPD's analysis was sufficiently material to the Decision that this finding requires that the application for judicial review be allowed and the matter returned to a differently constituted panel of the RPD for redetermination. It is therefore unnecessary for the Court to consider other arguments raised by the Applicants in this matter. However, I have considered the Respondent's argument that the

Applicants have not challenged the RPD's negative credibility inference drawn from their delay in departure from Venezuela. I agree with the Applicants' submission on this point that, while delay is a relevant factor to be taken into account, it should not be decisive in the rejection of a refugee claim (see *Huerta v Canada (Minister of Employment and Immigration)* (1993), 157 NR 225 (Fed CA)). I do not consider the RPD's delay analysis to be sufficient to sustain the reasonableness of the Decision in the context of the reviewable errors identified above.

[32] Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT in IMM-1324-18

THIS COURT'S JUDGMENT is that this application for judicial review is granted and the matter is returned to a differently constituted panel of the Refugee Protection Division for redetermination. No question is certified for appeal.

“Richard F. Southcott”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1324-18

STYLE OF CAUSE: WILMEN DAMIAN RAMIREZ CHACIN, ET AL V THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 20, 2019

JUDGMENT AND REASONS SOUTHCOTT, J.

DATED: FEBRUARY 25, 2019

APPEARANCES:

Amedeo Clivio FOR THE APPLICANTS

Catherine Vasilaros FOR THE RESPONDENT

SOLICITORS OF RECORD:

Clivio Law Professional Corporation FOR THE APPLICANTS
Barrister and Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT