

Federal Court



Cour fédérale

Date: 20190726

Docket: IMM-5687-18

Citation: 2019 FC 1005

Ottawa, Ontario, July 26, 2019

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

LILIA VILLEGAS GARCIA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of the decision by a Senior Immigration Officer [the Officer] at Immigration, Refugees and Citizenship Canada [IRCC] dated September 17, 2018, which refused the Applicant's Pre-Removal Risk Assessment [PRRA] application.

II. Background

[2] The Applicant, Lilia Villegas Garcia, is a citizen of Mexico born September 22, 1980.

[3] The Applicant alleges risk based on repeated sexual assaults stemming from a common-law relationship with Mr. Alfredo Zuniga. Her allegations as outlined in her affidavit before the Officer dated August 31, 2016 [the 2016 Affidavit] can be summarized as follows:

- (i) Beginning at the age of 7, the Applicant suffered repeated sexual abuse by her step-father, and later by strangers.
- (ii) The Applicant met Mr. Zuniga in July 2005, and they began living together in January 2006 in Cuernavaca, Mexico. The Applicant had two daughters from a prior relationship, but at the request of Mr. Zuniga she ceded custody to her daughters' father.
- (iii) Mr. Zuniga began physically and sexually abusing the Applicant shortly after they moved in together. She also learned around this time that he had defected from the military, was involved in drug trafficking, and hid weapons in their home.
- (iv) The Applicant suffered severe sexual abuse at the hands of Mr. Zuniga, including multiple incidents where Mr. Zuniga forced the Applicant to have intercourse with his friends.
- (v) Mr. Zuniga beat the Applicant on an almost daily basis, and repeatedly threatened to kill her if she tried to leave him.
- (vi) In April 2006, the Applicant tried to report Mr. Zuniga to the police. The police said they could not do anything to help because there was no proof of the assaults, but to come back to the police station if the assaults continued.
- (vii) When the Applicant left the police station, Mr. Zuniga was waiting for her. Mr. Zuniga took her home, beat her, and did not let her leave the home for several days.
- (viii) The Applicant was fired from her job at an optometrist company because she did not show up to work during this period of confinement.
- (ix) In early August 2006, Jorge, one of Mr. Zuniga's friends, helped the Applicant escape by driving her to a bus station and giving her some money. The Applicant took a bus to Cuautla City, and stayed with a friend.

- (x) The Applicant changed her phone number, but nonetheless received threatening phone calls from Mr. Zuniga.
- (xi) In February 2007, Mr. Zuniga stopped the Applicant when she was leaving her work at an optometrist company in Cuautla City, took her to his friend's home, and locked her in a room for two days. During this time he repeatedly physically and sexually assaulted her, and told her that he had killed Jorge for helping the Applicant escape from Cuernavaca.
- (xii) On the third day of this captivity, the Applicant managed to escape into the street and a stranger helped her hide from Mr. Zuniga.
- (xiii) The Applicant travelled by bus to Mexico City, and remained there for two months, before deciding that she needed to leave Mexico to get away from Mr. Zuniga.

[4] The Applicant came to Canada in May 2007. She began a relationship with a Canadian citizen, and believed that her partner would sponsor her for permanent residency, so did not file a refugee claim until her relationship deteriorated in 2010. The Applicant filed a refugee claim in April 2010.

[5] The Applicant testified before the Refugee Protection Division of the Immigration and Refugee Board of Canada [the RPD] at a hearing held July 6 and October 5, 2011 [the RPD Hearing], and was represented by counsel. In a decision dated November 1, 2011, the RPD rejected the Applicant's claim, finding that she was neither a Convention Refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] [the RPD Decision].

[6] The determinative issue before the RPD was credibility; the RPD found the Applicant's testimony not to be credible. This determination was based largely on the Applicant's inability,

in her testimony before the RPD, to remember dates and details surrounding her alleged abuse. There was no psychiatric evidence before the RPD.

[7] The Applicant was ordered to appear for an interview with Canada Border Services Agency [CBSA] in October 2012. She did not appear, fearing deportation to Mexico.

[8] On May 5, 2016, the Applicant was arrested by the CBSA.

III. Decision Under Review

[9] The Applicant filed her PRRA application on May 18, 2016. The Officer refused the PRRA Application on June 30, 2016 without having received counsel's submissions.

[10] The Applicant sought judicial review of the negative PRRA determination. In July 2016, this Court granted the Applicant a stay of removal pending the outcome of her judicial review application.

[11] The parties subsequently settled the judicial review application, and the PRRA application was returned to the same Officer for reconsideration.

[12] The Applicant placed the following psychiatric evidence before the Officer:

- (i) A Physician Summary Report by Dr. Jeremy Frank, Psychologist, dated August 23, 2016, which diagnosed the Applicant with chronic post-traumatic stress disorder [PTSD], and outlined persistent issues of anxiety, sleep difficulties, and panic attacks. This diagnosis was formed over three visits with the Applicant in August 2016.

- (ii) A report by Ms. Natalie Riback, registered psychotherapist, dated July 4, 2016, which concluded that the Applicant “is exhibiting symptoms consistent with post-traumatic stress disorder, general anxiety disorder, and major depressive disorder.” The report went on to detail the Applicant’s memory problems and difficulties concentrating, stemming from her history of abuse.
- (iii) A second report by Ms. Riback dated May 25, 2017, which concluded that the Applicant was exhibiting the same symptoms of post-traumatic stress disorder, generalized anxiety disorder, and major depressive disorder, and that her symptoms seemed to be increasing as the date of her PRRA Interview approached. Ms. Riback outlined that the Applicant’s symptoms of anxiety had manifested in both short and long-term memory issues, and recommended that certain accommodations be made at the PRRA Interview.

[13] The Applicant also submitted documentary evidence outlining the prevalence of domestic abuse in Mexico and a general lack of state protection, as well as three sworn statements by the Applicant’s family members:

- (i) A notarized letter from Lilia Garcia Ajuria, the Applicant’s mother, dated May 31, 2016, stating that the Applicant was abused by Mr. Zuniga, that Mr. Zuniga seems to belong to a criminal gang, and that she fears Mr. Zuniga will kill the Applicant if the Applicant returns to Mexico.
- (ii) A notarized letter from Zaira Torres Garcia, the Applicant’s sister, dated May 31, 2016, which outlined an incident on May 10, 2016 where Mr. Zuniga threatened the Applicant’s family if they concealed the Applicant’s arrival in Mexico.
- (iii) A notarized letter from Leticia Garcia Ajuria, the Applicant’s aunt, dated May 31, 2016, stating that the Applicant had no choice but to flee Mr. Zuniga.

[14] Additionally, in the 2016 Affidavit which was before the Officer, the Applicant outlined the continued threats from Mr. Zuniga since she has come to Canada:

- (i) Mr. Zuniga has regularly contacted her mother and aunt, including parking outside their homes and following them around town, seeking information about the Applicant’s whereabouts.
- (ii) Mr. Zuniga has indicated that he has now joined a powerful Mexican drug cartel, and has even more influence to locate the Applicant upon her return to Mexico.

- (iii) Mr. Zuniga somehow became aware in the spring of 2016 that the Applicant might soon be returning to Mexico, and intercepted her sister in the street, threatening to hurt the Applicant's family if they concealed the date of her return.

[15] The Officer convoked an oral hearing held May 31, 2017 [the PRRA Interview]. The Applicant made additional written submissions to the Officer dated June 6, 2017.

[16] In a decision dated September 17, 2018, the Officer rejected the Applicant's PRRA application, on the basis that she was not a person in need of protection within the meaning of sections 96 and 97 of the IRPA [the PRRA Decision].

[17] The Officer first reviewed the RPD Decision, and highlighted the negative credibility determination made by the RPD. The Officer noted that the Applicant's PRRA application reiterated the same elements of harm that were before the RPD.

[18] The Officer noted the two reports by Ms. Riback, but discounted them because Ms. Riback is not a registered psychologist, the reports are not a clinical diagnosis, Ms. Riback did not indicate she had specialized training in the assessment of psychological illnesses, Ms. Riback based her reports on 60-minute interviews, and the reports were based on the same narrative that the RPD found to not be credible. Nowhere did the Officer acknowledge the evidence of Dr. Frank.

[19] The Officer then proceeded to make numerous adverse credibility findings on the basis of inconsistencies between the Applicant's oral testimony at the PRRA Interview and her prior evidence, including:

- (i) The Applicant stated at the Interview that she had only once been sexually assaulted by Mr. Zuniga's friends, but in her refugee claim and her 2016 Affidavit, she indicated that these assaults had happened more than once.
- (ii) Differences in her addresses while living in Mexico, most significantly that her refugee application indicated she had lived Cuautla between August 2005 and August 2006, while her 2016 Affidavit indicated that she lived in Cuernavaca during this time.
- (iii) Statements at the PRRA Interview that the Applicant had never initiated contact with Mr. Zuniga since coming to Canada, which conflicted with a statement before the RPD that she had initiated an online chat in order to gather evidence for her refugee claim.
- (iv) Some minor discrepancies around how Mr. Zuniga appeared at the police station in the spring of 2006 – whether he was called by the police, or whether he appeared at the station without being called.
- (v) A statement at the PRRA Interview that the Applicant was fired from her job in April 2006, while in her refugee application she indicated that she was fired from her job in March 2006.

[20] The Officer rejected the Applicant's post-Interview submission that these inconsistencies could be explained by the Applicant's PTSD, by repeatedly noting that there was no evidence of a formal diagnosis of PTSD, and discounting Ms. Riback's reports on the basis that they were not a formal diagnosis.

[21] At several points throughout the decision, the Officer returned to the RPD's determination that the Applicant was not credible, and used this determination to reinforce conclusions regarding the Applicant's lack of credibility.

[22] The Officer then discounted the three letters from the Applicant's family members, generally due to a lack of detail and a lack of objectivity. In particular, the Officer discounted the letter from the Applicant's sister because the Officer was incredulous that Mr. Zuniga would

approach the Applicant's family in 2016 after not contacting them in the 10 years following the Applicant's departure from Mexico.

[23] Finally, having entirely rejected the Applicant's version of events, the Officer found that if in fact the Applicant was to be a victim of domestic violence upon return to Mexico, she had a viable internal flight alternative in Cancun, Mexico.

IV. Issues

[24] The issues are:

- (i) Did the Officer err when assessing the psychiatric evidence and the Applicant's credibility?
- (ii) Was the Officer unreasonable when assessing the evidence as a whole?

V. Standard of Review

[25] The standard of review for PRRA decisions is reasonableness (*Zazaj v Canada (Citizenship and Immigration)*, 2018 FC 435 at paras 38-41).

VI. Analysis

A. *Did the Officer err when assessing the psychiatric evidence and the Applicant's credibility?*

[26] The Applicant submits that the Officer erred by failing to acknowledge the diagnosis by Dr. Frank. Dr. Frank's diagnosis, based on three appointments with the Applicant, was

highlighted in both the Applicant's redetermination submissions dated September 7, 2016, and her post-Interview submissions dated June 6, 2017.

[27] The Respondent argues first that the Officer accepted that the Applicant had PTSD, and as such the Officer did not need to mention Dr. Frank's diagnosis. I disagree. Nowhere in the PRRA Decision does the Officer accept that the Applicant has PTSD. Rather, the Officer accepts that the Applicant has symptoms consistent with PTSD.

[28] This distinction, between a diagnosis of PTSD and symptoms consistent with PTSD, might be insignificant in isolation. However, the Officer repeatedly cites the lack of a formal PTSD diagnosis as reason to discount both Ms. Riback's reports and the Applicant's suggestion that the difficulties in her oral testimony may stem from her PTSD and more importantly ignores the report of Dr. Frank.

[29] The Respondent also argues that as the Officer appears to accept that the Applicant had symptoms consistent with PTSD, and made some accommodation at the Interview, the failure to mention Dr. Frank's report was not significant. However, as outlined above, the lack of a formal PTSD diagnosis formed an integral part of the Officer's reasoning, and the mention of some accommodations made at the Interview, such as allowing the Applicant breaks while testifying, does not detract from the Officer's unwavering focus on the lack of a formal diagnosis.

[30] Finally, the Respondent argues that the Applicant's PTSD cannot corroborate the Applicant's narrative, because the Applicant suffered other traumatic events prior to her

relationship with Mr. Zuniga. This submission misses the point – the Applicant does not submit that her PTSD corroborates her narrative, but simply that her PTSD must be accounted for when considering discrepancies in her evidence, due to her difficulties in recalling details of her past trauma.

[31] I find that the Officer erred unreasonably in assessing the psychiatric evidence. The Officer erred by failing to acknowledge the formal PTSD diagnosis of Dr. Frank, and then repeatedly using the lack of a formal diagnosis to dismiss both Ms. Riback's reports and the Applicant's submission that her difficulties in oral testimony stemmed from her PTSD. This reasoning is central to the Officer's reasoning, and is repeated throughout the PRRA Decision.

[32] Moreover, there was no psychiatric evidence before the RPD, and the evidence of Dr. Frank and Ms. Riback was put before the Officer to offer some explanation for the Applicant's memory issues which precipitated the negative credibility finding by the RPD. As such, the Officer's repeated references to, and reliance upon, the negative credibility findings made by the RPD is highly questionable.

[33] The strong inference from the evidence of Dr. Frank and to a lesser degree of Ms. Riback is that the Applicant's PTSD, along with her related symptoms, presented a significant barrier to the Applicant clearly preparing her claim before the RPD and her oral testimony at the PRRA Interview. The Officer's particular failure to acknowledge Dr. Frank's PTSD diagnosis unreasonably tainted the remainder of the Officer's reasoning and conclusions, notably the credibility findings discussed below.

[34] The Officer's failure to appreciate the effects of the Applicant's PTSD led the Officer to focus on minor discrepancies in the Applicant's oral testimony to justify adverse credibility findings. These discrepancies included the number of times she had been sexually assaulted by Mr. Zuniga's friends, a minor discrepancy in her address history, whether she had initiated contact with Mr. Zuniga since coming to Canada, some apparent confusion between the Applicant and the Officer surrounding how Mr. Zuniga came to the police station in April 2006, and whether the Applicant was fired from her job at the optometrist company in Cuernavaca in March 2006 or April 2006.

[35] Based on each discrepancy, the Officer made a negative credibility finding against the Applicant, before concluding that the Applicant was not a credible witness and therefore an unreliable source of evidence.

[36] The Applicant outlines each finding, generally arguing that each is overly microscopic and insufficient to undermine the Applicant's credibility. The Respondent submits that each finding was reasonable and not deserving of judicial intervention.

[37] I find that the Officer's error in failing to acknowledge and appreciate the Applicant's PTSD symptoms and diagnosis led the Officer to conduct an unreasonable credibility analysis.

[38] In light of the Applicant's traumatic personal history, the psychiatric evidence that was before the Officer, and the intervening seven years between the filing of her refugee claim and her PRRA Interview, some minor discrepancies in the details of the Applicant's oral testimony

are not unexpected. This is particularly the case when an applicant diagnosed with PTSD and memory difficulties stemming from violent physical and sexual trauma is asked to delve into the details of their past trauma. None of the discrepancies detract from the clear suggestion that the Applicant repeatedly suffered violent sexual and physical abuse at the hands of Mr. Zuniga over the course of their relationship, that the Applicant was forced to flee from both Cuernavaca and later Cuautla, and that the Applicant remains at risk in Mexico due to Mr. Zuniga's persistent threats and connections with criminal organizations.

B. *Was the Officer unreasonable when assessing the evidence as a whole?*

[39] As this matter should be returned for redetermination based on my findings above, I have only two further comments in respect of the Officer's consideration of the evidence.

[40] First, when considering the documentary evidence regarding domestic abuse and the possibility of state protection and a viable IFA, the Officer had already rejected the evidence of Mr. Zuniga's violent past, criminal connections, and continued threats against the Applicant. As such, the Officer failed to consider that state protection would not be available, and that Cancun would probably not be a viable IFA, in light of the Applicant's particular circumstances and those of her agent of persecution.

[41] Second, the Officer dismissed the letter from the Applicant's sister because it was implausible that Mr. Zuniga would contact the Applicant's family for the first time in May 2016, some weeks before the filing of her PRRA application, having not contacted the Applicant's family in the intervening 10 years since the Applicant had left Mexico.

[42] This was not a fair representation of the evidence that was before the Officer. In her 2016 Affidavit, the Applicant described how Mr. Zuniga had persistently contacted, stalked, and threatened the Applicant's family since her departure from Mexico. Nowhere did the Officer acknowledge that this history of harassment was contained elsewhere in the Applicant's evidence.

[43] It was reasonable for the Applicant's sister to relate only the most recent incident of harassment by Mr. Zuniga. As this Court has repeatedly held, evidence must be considered for what it does say, not for what it does not say (*Mahmud v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 729 (FC) at para 11; *Sitnikova v Canada (Citizenship and Immigration)*, 2016 FC 464 at paras 22-24).

JUDGMENT in 5687-18

THIS COURT'S JUDGMENT is that

1. The application is allowed and the matter is referred to a different officer for redetermination.
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5687-18

STYLE OF CAUSE: LILIA VILLEGAS GARCIA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JULY 25, 2019

**REASONS FOR JUDGMENT
AND JUDGMENT:** MANSON J.

DATED: JULY 26, 2019

APPEARANCES:

Giselle Salinas FOR THE APPLICANT

Amy Lambiris FOR THE RESPONDENT

SOLICITORS OF RECORD:

Bondy Immigration Law FOR THE APPLICANT
Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario