

Federal Court



Cour fédérale

20200109

Docket: IMM-1717-19

Citation: 2020 FC 16

Ottawa, Ontario, January 9, 2020

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

**CAROLINA GARCIA GARCIA
SALOME SUAZA GARCIA
JUAN MIGUEL SUAZA MACHADO**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Carolina Garcia Garcia [the Principal Applicant], her common-law spouse [the male Applicant] and her younger daughter [together with the Principal Applicant and the male Applicant, the Applicants] are applying for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, LC 2001, c 27 [IRPA]. This application concerns a

decision made by the Refugee Protection Division [the RPD], dated February 18, 2019, rejecting the Applicants' refugee claims because of insufficient credible and trustworthy evidence.

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

II. Facts

[3] The Applicants are citizens of Colombia. The Principal Applicant is 39 years old, has about twelve years of education, is a high school graduate, and worked for over ten years in Colombia in hospital administration at Cartago Hospital. The Male Applicant is a 45-year-old jeweller from Cartago, with a grade 8 of education.

[4] The Principal Applicant alleges that the "Los Rastrojos Group", a Colombian drug trafficking paramilitary organization, assassinated her former husband, Luis Alfonso Betancourt Lopez, in December 2001. At that time, she alleges that the group declared her a Military Objective.

[5] On January 2, 2002, she was abducted in Cartago together with her other daughter, Juanita Betancourt Lopez, then ten months old. Her kidnappers blindfolded her, beat her, and verbally abused the Principal Applicant. They said they have killed her husband and ordered her to change the name of the daughter, and remove her own name from the daughter's birth certificate. The kidnappers forced the Principal Applicant to comply, and arranged with an aunt to register the child as the aunt's offspring, under a different name.

[6] The Principal Applicant then left Cartago for Cali where she lived for six years. She met her current common-law partner, the male Applicant, after her return to Cartago in 2007. Their daughter, Salome, was born in 2014. They lived in an uneventful life until 2016.

[7] In November 2016, the Principal Applicant received several telephone phone calls demanding that money should be paid to the Rastrojos. In addition, the Rastrojos distributed pamphlets in the area, including the Applicants' home, demanding "money for protection". The Principal Applicant received telephone calls identifying her by name, in which the caller also insulted her and asked why she had returned in the area with her daughter. The Principal Applicant filed a police complaint in Cartago. The police accepted the complaint but verbally advised her to comply with the demand of Los Rastrojos.

[8] The Applicants decided to leave Colombia due to the stress; they felt that their lives were in danger. They already had passports, so they applied for and obtained United States visas in August 2017. The Principal Applicant also tried, without success, to obtain a US visa for her older daughter, Juanita. In January 2018, the demands from the Rastrojos increased and the telephone calls became more threatening. They had discovered that the Principal Applicant had applied for and obtained passport for her older daughter, Juanita, using her original name. The Rastrojos warned the Principal Applicant that because she had not complied with their order from 2002, she had now become "Military Objective" again, and had been sentenced to "capital punishment".

[9] The Principal Applicant went to file a complaint again with the police, but was informally told that there was not much the police could do so she should protect herself. The Applicants arranged to leave Colombia on February 6, 2018, and went to the USA. They now seek Canada's protection

[10] The RPD noted that the Principal Applicant's mother, sister, and two brothers were already living in Canada when she arrived here to make a refugee claim.

I. Issues

[11] The Applicants submit that this case raises the following issues:

1. Did the RPD err in assessing the Principal Applicant's credibility?
2. Did the RPD err in its application of section 97 of the IRPA?

II. Standard of Review

[12] By the revised principles in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] S.C.J. No. 65 at para. 26 [*Vavilov*], reasonableness is presumed to be the applicable standard of review for all aspects of the decision. None of the exceptions described in *Vavilov* would affect the presumption that the reasonableness standard should apply in this matter.

[13] The reviewing court no longer attempts to ascertain the "range" of possible reasonable conclusions that would have been open to the decision maker (*Vavilov*, para 83). Instead, a reasonable decision is one that is based on a reading that is both rational and logical and justified in light of the legal and factual constraints that bear on the decision.

[14] Regarding the first factor, the reasoning must be both rational and logical, allowing the reviewing court to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic and following a line of analysis that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived, (*Vavilov*, para 102). In addition, "it is

not enough for the outcome of a decision to be justifiable... the decision must also be justified”
(*Vavilov*, para 86).

[15] In the second instance, a reasonable decision is justified in light of the particular legal and factual constraints that bear on the decision. It is not possible to catalog all of the legal and factual considerations that could constrain an administrative decision-maker in a particular case.

[16] With respect to the constraints on factual findings, which extends to inferences of fact, applicants must demonstrate that exceptional circumstances apply which would permit the reviewing court to interfere with factual findings, and that they are not requesting the court to reweigh and reassess the evidence considered by the decision-maker: *Vavilov*, para 125, *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31, [2018] 2 S.C.R. 230, at para. 55; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 (CanLII), [2009] 1 SCR 339 at para. 64; *Dr. Q. v College of Physicians and Surgeons of British Columbia*, 2003 SCC 19 (CanLII), [2003] 1 SCR 226, at paras. 41-42.

[17] Otherwise, the applicant must demonstrate that the decision is not justified in light of the facts based on the evidence that was actually before the decision-maker. This would include where the decision maker has not taken the evidentiary record and the general factual matrix that bears on its decision into account. Examples include where there is a flawed logical process by which the fact is drawn from the evidence, or where the decision maker has fundamentally misapprehended or failed to account for the relevant evidence, or made a finding that was contrary to the overwhelming weight of the evidence, nevertheless while respecting the relative

advantage enjoyed by the decision-maker who heard the viva voce evidence for questions of credibility, which are quintessentially findings of fact: *Vavilov* at para. 126; *Dunsmuir v New Brunswick*, 2008 SCC 9 (CanLII), [2008] 1 SCR 190, at para. 47; *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at para. 48; *Canada (Director of Investigation and Research) v Southam Inc.*, 1997 CanLII 385 (SCC), [1997] 1 SCR 748, at para. 56.

[18] The particular constraint at issue in this matter pertains to the evidence before the RPD and its fact-findings, including those relating to credibility.

III. Analysis

[19] Lacks of credibility findings by the RPD included the following:

- The Principal Applicant's mother, sister and two brothers were sponsored and were already living in Canada when she arrived here, but her mother was unable to sponsor her because she was too old;
- the Principal Applicant's failure to mention that she had been refused a United States visitor visa in 2007 and her misleading explanation;
- the Principal Applicant's failure to mention the initial rejected claims for her sister and family in Canada in her Basis of Claims [BOC] and misleading explanation;
- the reavilment of male Applicant to the country of persecution and his failure to make asylum claims in Panama during his trip there between February and March 2017, which provided reasons to doubt the Applicants' truthfulness;

- given that counsel represented the Applicants, there was a lack of corroborating documents from the aunt to allegations concerning the daughter's name change, in addition to unsatisfactory explanations from the Principal Applicant that she did not know that a letter of corroboration would be necessary;
- the presence of the Principal Applicant's father in Cartago was inconsistent, including stating that she had no knowledge of problems experienced by him from the Rastrojos, even though present when she received threatening phone calls and where the country condition documentation states that any threat to a victim also extends to their family;
- evasive answers regarding the presence of witnesses during threatening phone calls, as she did not consider her direct family as admissible witnesses;
- the lack of consistency between the two police reports and the presence of witnesses and lack of consistency in testifying evidence regarding whether or not other individuals were present during threatening phone calls;
- stating in the first complaint to the police that she used to have a tranquil life with her family until this group appeared without referring to the earlier murder episode of her first husband by the same group;
- inconsistent evidence between the Principal Applicant's oral testimony, the written narrative and the BOC regarding the moment that she was threatened she would be killed. When asked to explain the discrepancy, she was evasive and failed to explain;
- inconsistent evidence in the Principal Applicant's second complaint to police regarding the motive of Los Rastrojos to threaten her and her family with death in

January 2018, when in the January 2018 complaint to police documents her complaint was that Los Rastrojos were angered because they learned that the Principal Applicant and her daughter had returned to Cartago;

- similar inconsistencies in her oral testimony and the BOC Narrative that Los Rastrojos were furious because they found out that the Principal Applicant and her first daughter, Juanita, had obtained a passport for Juanita bearing her real name, contrary to the order they had given the Principal Applicant back in 2002, to effectively erase her first husband's name;
- that the second police report and the witness statements as allegedly filed on or about January 17, 2018, were filed as the Applicants were purchasing their air tickets to leave Canada. Consequently, the RPD also found and determined, on a balance of probabilities, that these and other inconsistencies illustrate that the Principal Applicant went to police for the sole reason of corroborating her subsequent refugee claim, and not actually to seek state protection;
- adverse credibility inferences from the police reports and witness statements given the inconsistencies whether relocation in Colombia was sufficient for the Los Rastrojos and the lack of credible evidence regarding any witnesses to the events;
- her repeated error as to the year the Principal Applicant had been threatened;
- indications of memorization of sections of the BOC, including typographical errors as to given dates, and reference to being declared "Military Objective", an explanation for the term when a term of art used in Response to Information Request with little or no understanding of its import, which did not reflect any

personal experience on her part was used to embellish or exaggerate the claim;
and

- reference to capital punishment on two occasions when the dates were wrong without inability to provide an explanation.

[20] The RPD concluded that the Applicants did not have a forward facing risk on a balance of probabilities because they failed to produce sufficient credible and trustworthy evidence to prove their claims that the Los Rastrojos Group were interested in exhorting or harming them, while the Applicants' father has not been threatened or harmed in Colombia in their absence.

[21] In addition, the country condition evidence from 2017 indicated that the presence of Los Rastrojos is less significant than in previous years and they are on track to disappear.

[22] The Applicants are requesting that the Court reweigh the evidence when there is no basis to do so and there is more than sufficient evidence supporting a finding of facts of a lack credibility on the part of the Principal Applicant and her husband.

[23] Recourse to the decisions of *Maldonado v MEI*, 2 FC 302 (CA) or *Valtchev v Canada (MCI)*, 2001 FCT 776, regarding the acceptance of the Applicant's sworn testimony and avoiding adverse implausibility credibility findings, would have no application in the face of the serious lack of credibility of the adult Applicants. That is without regard to decisions of this Court, indicating that Rule 11 of the RPD rules requires corroboration. *Maldonado* does not

eliminate the need for producing trustworthy evidence, or that the rule in *Valtchev* is no longer considered good law: (*Kallab*, para 158)

[24] The Applicants allege that even if Los Rastrojos is a criminal gang, the RPD did not dispute the fact that the Principal Applicant fears a vendetta by Los Rastrojos. I disagree. The evidence of the Member is quite clear that “on a balance of probabilities that the claimants would not be troubled by them [Los Rastrojos] if they return to Columbia.”

IV. Conclusion

[25] The Court concludes that the decision is reasonable being justified based both on its internally coherent transparent and intelligible reasoning and in light of the legal and factual constraints that bear on the decision. Accordingly, the application is dismissed with no questions certified for appeal.

JUDGMENT in IMM-1717-19

1. The application is dismissed.
2. There are no questions certified for appeal.

"Peter Annis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1717-19

STYLE OF CAUSE: CAROLINA GARCIA GARCIA, SALOME SUAZA GARCIA, JUAN MIGUEL SUAZA MACHADO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO (ONTARIO)

DATE OF HEARING: OCTOBER 30, 2019

ORDER AND REASONS: ANNIS J.

DATED: JANUARY 9, 2020

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JUSTICE CANADA