

Federal Court



Cour fédérale

Date: 20210106

Docket: IMM-373-20

Citation: 2021 FC 17

[ENGLISH TRANSLATION]

Ottawa, Ontario, January 6, 2021

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

**SAUL ENRIQUE JAIMES IZQUIERDO
GENOVCA SANCHEZ GONZALEZ
ALAN SAID JAIMES SANCHEZ
DANSA SOLANGE JAIMES SANCHEZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The principal applicant, Saul Enrique Jaimes Izquierdo, is applying for judicial review of a decision of the Refugee Appeal Division [RAD] that confirmed a decision of the Refugee Protection Division [RPD]. In both cases, the application by the applicant, his wife and their two

children was dismissed. The application for judicial review is, of course, made pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

I. Facts

[2] The facts of the claim for refugee protection are relatively simple. Since the only issue before the Court in judicial review is an alleged defect in a translation, it is not necessary to go into a lengthy recital of those facts.

[3] This case starts with the death of the principal applicant's paternal grandfather, who, upon his death, bequeathed land to his children, including the principal applicant's father.

[4] Thus, the father and his brothers (who are the principal applicant's uncles) decided in 2008 to sell farmland to a certain Jesus Zambada. His brother was the owner of land adjacent to the inherited land.

[5] When the brothers discovered Jesus Zambada's connections with the Sinaloa cartel, they refused to complete the transaction.

[6] There appears to have been a second attempt to purchase these lands in July 2016. In fact, the conditions offered by the Zambada family were less advantageous than those offered eight years earlier. This allegedly resulted in threats to the principal applicant's father that all his family members would be killed if the land was not sold on the terms then offered. The principal

applicant testified that he was targeted by Zambada family members because he was the one who had been in charge of selling the land to third parties in 2016.

[7] Both the RPD and the RAD concluded that the determinative issue was credibility.

[8] Conducting its own analysis of the file, the RAD identified essentially the same omissions and contradictions between the Basis of Claim Form (BOC Form) and the testimony before the RPD.

[9] The first difficulty arose from the principal applicant's explanation before the RPD of why he was threatened. The reason is allegedly that he had been put in charge of selling the land by his father. However, this explanation is not found in the BOC Form. The RAD adds that the BOC Form stated that it was the principal applicant's uncle who was in charge of selling the land. This directly contradicts the principal applicant's claim that he was in charge, which was used to explain why he had been threatened.

[10] Second, it is noted that the principal applicant allegedly had a meeting with a potential buyer but that he knew he was meeting a lady connected with the Zambada family. Such a meeting is not mentioned in the BOC Form, and the principal applicant was questioned on this subject. Given the importance of such a meeting in an account about threats, the RPD concluded that the meeting was important but that it was not even mentioned in the BOC Form. However, the RAD added that the principal applicant testified that the threats were sometimes passed along

by his cousins and sometimes by his father. Again, not only is this an omission, but there is also a contradiction within the testimony given before the RPD.

[11] Two other omissions were noted by the RPD. The principal applicant stated that the threats were passed along by his cousins in July 2016. The principal applicant testified that his cousins went to his father's house claiming that representatives of the Zambada family were demanding that the land be sold. The threats were allegedly that the family members would be killed and that the attackers had means of tracing them. But the story continued to evolve as he testified. For example, the principal applicant stated that the five members of the Zambada family accompanied the cousins on a visit to his father's home in 2016. A visit of the cousins in July 2016 revealed that the cousins did not come alone. According to the testimony, Zambada family members were also present. This is far from insignificant. The RAD states that "[n]ot only was this factor omitted from the principal appellant's account, but it directly contradicts his testimony that it was only the cousins who went to his father's house, according to the account. The appellants' credibility with regard to their story of persecution, risk, and threats is undermined" (RAD decision, para 11).

[12] Finally, the RAD concluded that on a balance of probabilities, it cannot conclude that the principal applicant was the target of alleged threats, which it says would have been direct if the principal applicant had met with a potential buyer. This person was allegedly a member of the Zambada family, but the explanations given are considered vague and not acceptable from a person alleging fear for his safety. The failure to address this in the BOC Form is significant, but

it is also significant that the principal applicant was unable to provide details about what appears to be an important meeting.

II. Applicants' argument and discussion

[13] The applicants argue that the law is based on essential formalities. When questioned by the Court in this regard, counsel could offer no authority to support such an allegation of formalism. Indeed, the only assertion made before the Court was that the interpretation before the RPD was flawed. When the applicants' counsel asked the principal applicant in his testimony before the RPD whether the information provided in his BOC Form was true, complete and accurate, the Spanish translation was that the documents were true and accurate. For the principal applicant, this makes a difference as he stated that this could explain an incomplete account as presented in the BOC Form.

[14] In my opinion, this argument is worthless. That the translation at the hearing before the RPD omitted the word "complete" does not change the fact that the BOC Form was very short, even though an applicant must provide the information that supports his or her refugee protection claim, and that these omissions became even more significant when the RAD noted that the story before the RPD was adjusted over time, even leading to contradictions.

[15] In fact, procedural fairness was not violated in this case. The issue for the principal applicant is not his statement before the RPD that the account in the BOC Form is true and accurate, in response to his counsel's question about the true, complete and accurate story, but rather that this BOC Form omits important elements that should have been there. Put another

way, the lack of a translation of the word “complete” in the question posed by the applicants’ counsel to the principal applicant is not the problem facing the principal applicant. Rather, the problem is that the BOC Form omits many important elements of the account that are being told for the first time before the RPD. Indeed, these are not only omissions but also contradictions that have been identified by the RAD. The reason that both the RPD and the RAD found the principal applicant’s credibility to be lacking is that the BOC Form does not report material that appears at the hearing before the RPD.

[16] No one argues that the standard of interpretation is that of perfection. Since *Mohammadian v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 191, [2001] 4 FC 85 [*Mohammadian*], it has been recognized that the criminal case *R. v Tran*, [1994] 2 SCR 951 [*Tran*] applies to the quality of interpretation in the context of immigration applications (paras 17 and 4). The standard is one of continuity, fairness, competence, impartiality and concurrency. This standard was met in this case. The Federal Court of Appeal in *Mohammadian* echoed this passage from *Tran*, at page 987, where the Chief Justice of Canada wrote the following:

However, it is important to keep in mind that interpretation is an inherently human endeavour which often takes place in less than ideal circumstances. Therefore, it would not be realistic or sensible to require even a constitutionally guaranteed standard of interpretation to be one of perfection. . . .

What is required by law is linguistic understanding.

[17] The case law reminds us that errors of interpretation must be of more than negligible importance (*Huang v Canada (Minister of Citizenship and Immigration)*, 2003 FCTD 326;

Banegas v Canada (Minister of Citizenship and Immigration), 1997 CanLII 5304; *Sherpa v Canada (Citizenship and Immigration)*, 2009 FC 267 [*Sherpa*]). Thus, again, the difficulty of interpretation would have to affect the disposition of a case (*Sherpa, Roy v Canada (Citizenship and Immigration)*, 2013 FC 768; *Canada (Minister of Citizenship and Immigration) v Patel*, 2002 FCA 55). As I noted above, it is not so much the truth or falsity of the principal applicant's statements about the completeness of the narrative that is the problem. Rather, it is the fact that he had produced a BOC Form that neglected to include fundamental facts and events in his claim. The RAD is explicit in this regard. Paragraph 13 of its decision states:

[13] In their memorandum, the appellants argue that it is obvious that the principal appellant wrote a summary of his story, as do many refugee protection claimants. This argument cannot be accepted and the case law is clear on this matter. In his account, the principal appellant failed to write the factors that are at the heart of his refugee protection claim that could allegedly explain why he would be personally [emphasis added] subjected to a risk to his life or a risk of cruel and unusual punishment or treatment should he return to Mexico. In his testimony, he tried to mitigate this shortcoming; however, the explanations above undermined his credibility.

[18] As a result, the application for judicial review must be dismissed. The parties agree that there is no question to be certified. The Court agrees.

JUDGMENT in IMM-373-20

THIS COURT ORDERS as follows:

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

"Yvan Roy"
Judge

Certified true translation
Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-373-20

STYLE OF CAUSE: SAUL ENRIQUE JAIMES IZQUIERDO ET AL
v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE BETWEEN OTTAWA,
ONTARIO AND MONTRÉAL, QUEBEC

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JUDGMENT AND REASONS: ROY J.

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