

Federal Court



Cour fédérale

Date: 20210119

Docket: IMM-5309-19

Citation: 2021 FC 66

Ottawa, Ontario, January 19, 2021

PRESENT: Mr. Justice James W. O'Reilly

BETWEEN:

**MARIA CAMILA RODRIGUEZ LOPEZ
JUAN ANDRES GONZALEZ QUINTERO
JUAN MARTIN GONZALEZ RODRIGUEZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] In 2017, Ms Maria Camila Rodriguez Lopez, along with her husband and son, sought refugee protection in Canada based on their fear of persecution in Colombia by the Ejército de Liberación Nacional (ELN). Ms Rodriguez Lopez claimed that the ELN had tried to extort money from her father who had fled the country before her, seeking refugee protection in

Canada. In his absence, the ELN, according to Ms Rodriguez Lopez, had tried to force her to pay his outstanding debt. She alleged that the ELN threatened her, followed her, and shot at the family while they were inside their car.

[2] A panel of the Refugee Protection Division (RPD) denied the family's claims. It characterized their circumstances as being the product of criminality, not persecution, so it found that they were not refugees according to s 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] (see Annex for provisions cited). It went on to consider the family's claims under s 97 of IRPA, but found that their evidence was not credible. The RPD based its conclusion, in part, on the fact that Ms Rodriguez Lopez's father's prior refugee claim had been dismissed for a lack of credible evidence.

[3] Ms Rodriguez Lopez appealed the RPD's decision to the Refugee Appeal Division (RAD), but the RAD dismissed the appeal for a lack of jurisdiction. Ms Rodriguez Lopez now seeks judicial review of the RPD's decision, arguing that its negative credibility findings were unreasonable. In particular, she submits that the RPD unreasonably expected her to answer the shortcomings in her father's refugee claim. Ms Rodriguez Lopez asks me to quash the RPD's decision and order another panel to reconsider her claim.

[4] I agree with Ms Rodriguez Lopez that the RPD unreasonably shouldered her with the burden of shoring up the deficiencies in her father's refugee claim, and wrongly concluded that her failure to do so undermined her credibility. Given my given conclusion on that point, I need not consider the other alleged errors in the RPD's credibility analysis.

[5] Ms Rodriguez Lopez also seeks an extension of time for her application for judicial review. The Minister does not oppose this request. I am satisfied that an extension is merited under the applicable test (*Canada (AG) v Hennessey*, 1999 CarswellNat 967 (FC AD)).

II. The RPD's Decision

[6] The RPD began by summarizing Ms Rodriguez Lopez's claim as being based on her alleged fear of the ELN due to her father's failure to pay the full amount demanded. It then described her father's claim that he had been approached numerous times by the ELN to pay substantial amounts of money and threatened with death if he failed.

[7] The RPD found on a balance of probabilities that the evidence before it, in conjunction with the findings made in respect of the father's claim, was not credible. It noted that Ms Rodriguez Lopez had received notice of the materials relating to her father's claim before filing her own Basis of Claim form. Therefore, she could have responded to those materials in her own claim.

[8] The RPD noted that the father's claim was found not to be credible. The RPD recognized that it was not bound by the prior decision and had to arrive at a conclusion based on the evidence before it. However, given that Ms Rodriguez Lopez's claim was based on the facts alleged by her father, the RPD found on a balance of probabilities that the credibility of her own claim had been undermined.

[9] When the RPD asked Ms Rodriguez Lopez to explain the deficiencies in her father's claim, she could only speculate that he may have been "scared and in shock" after his arrival in Canada. The RPD found her answer to be vague, and concluded that she did not have a satisfactory explanation for the credibility issues in her father's claim. It emphasized that the burden lay on Ms Rodriguez Lopez to address those issues in her own claim. Given her failure to do so, the RPD felt bound to accept the findings of fact in her father's claim "at face value".

A. *Was the RPD's reliance on the father's failed refugee claim unreasonable?*

[10] Generally speaking, one panel of the RPD can rely on fact-finding conducted by another. This usually occurs uncontroversially in the context of documentary evidence about conditions in the country in question. Still, it must be done sparingly. A panel cannot "blindly" or "blithely" adopt another panel's findings (*Badal v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 311 at para 25). Rather, "reliance on the findings of another panel must be limited, careful and justified" (*ibid*).

[11] Here, we are not dealing with general country condition evidence. The RPD relied on credibility findings made by the panel in Ms Rodriguez Lopez's father's claim to draw conclusions about her own credibility. This was not a reasonable or fair use of the fact-finding of another panel. Ms Rodriguez Lopez was ill-placed to rehabilitate her father's claim, not knowing what evidence might have overcome the panel's concerns in his case. She had the burden of presenting her own claim about how she was treated by the ELN and it was her evidence that the RPD had to weigh in deciding whether she had established it. I recognize that the RPD did go on to discuss other credibility concerns, but it did so only after concluding that the father's failed

refugee claim should be taken at “face value” – that is, that the father’s claim of persecution by the ELN was false. There was little that Ms Rodriguez Lopez could do to sustain the veracity of her own claim once the RPD had determined, based on her father’s claim, that there had been no persecution by the ELN. Accordingly, having erred by applying the credibility findings of another panel to the claim before it, the RPD’s decision cannot stand.

[12] In my view, therefore, the RPD’s principal adverse credibility finding was unreasonable.

III. Conclusion and Disposition

[13] The RPD unreasonably relied on the credibility findings of another panel in discounting the credibility of Ms Rodriguez Lopez’s claim. I must, therefore, allow this application for judicial review and order another panel of the RPD to reconsider the matter. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT IN IMM-5309-19

THIS COURT'S JUDGMENT is that

1. The applicants' request for an extension of time is granted.
2. The application for judicial review is allowed and the matter is returned to another panel of the RPD for reconsideration.
3. No question of general importance is stated.

"James W. O'Reilly"

Judge

ANNEX

Immigration and Refugee Protection Act (SC 2001, c 27)

96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

Loi sur l'immigration et la protection des réfugiés (LC 2001, ch 27)

96 A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques:

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

97 (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée:

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant:

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5309-19

STYLE OF CAUSE: MARIA CAMILA RODRIGUEZ LOPEZ, JUAN
ANDRES GONZALEZ QUINTERO, JUAN MARTIN
GONZALEZ RODRIGUEZ v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HEARING HELD BY VIDEOCONFERENCE IN
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DATE OF HEARING: DECEMBER 09, 2020

JUDGMENT AND REASONS O'REILLY J.

DATED: JANUARY 19, 2021

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