

Federal Court



Cour fédérale

Date: 20210112

Docket: IMM-7207-19

Citation: 2021 FC 43

[ENGLISH TRANSLATION]

Ottawa, Ontario, January 12, 2021

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

**NIXON CONDE BENAVIDES
ANGELA MARCELA RAMIREZ MEZA
JUAN PABLO CONDE RAMIREZ
ANA MARIA CONDE RAMIREZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Nixon Conde Benavides [Mr. Conde], his wife, Angela Marcela Ramirez Meza, and their minor children, Juan Pablo Conde Ramirez and Anne Maria Conde Ramirez [collectively the

applicants] are seeking judicial review of a decision by the Refugee Appeal Division [RAD] dated November 6, 2019, confirming a decision by the Refugee Protection Division [RPD] dated March 27, 2019, pursuant to section 111(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], that they were neither Convention refugees nor persons in need of protection under sections 96 and 97 of the IRPA.

[2] In this Court, the applicants are contesting the RAD's refusal to admit some of the new evidence and its assessment of their credibility, as well as the RPD's breaches of procedural fairness.

[3] For the reasons that follow, I dismiss the application for judicial review.

II. Facts and proceedings

[4] The applicants are citizens of Colombia.

[5] Mr. Conde alleges that he is being persecuted by members of a criminal group known as "Los Pelusos", which he refused to collaborate with when the group approached him on June 9, 2017, in a public establishment in the town of Gramalote. The group wanted to obtain information from him about certain architects who own the company *Arquitectura Y Concreto S.A.S.*, where Mr. Conde was working as a heavy equipment operator on construction sites. It would appear as though Mr. Conde became close with the owners, who trusted him, and that he was privy to some of their personal information.

[6] Members of Los Pelusos are involved in kidnappings, extortion and theft, and had taken an interest in the owners of this business.

[7] It was clear that Los Pelusos were not directly interested in Mr. Conde, and indeed, they stated the following [TRANSLATION]: “take it easy, the issue isn’t with you, we have checked you out, and we know who you are, where you live, who your family members are . . . we need you to give us information about the managers and owners of the company you work for because we know you are very close with them”.

[8] The members of this criminal group concluded the conversation by telling Mr. Conde that he should [TRANSLATION] “keep quiet about the conversation”, that he should [TRANSLATION] “not even think about alerting the authorities”, and that they would be contacting him [TRANSLATION] “in the coming days” to give him [TRANSLATION] “instructions” on what he had to do for them.

[9] Mr. Conde claims that a few weeks later, on July 28, 2017, he was brutalized by members of the same group. Three men in a van approached him on his way home and forced him into the vehicle. Inside the van, they beat him and asked him why he was not answering his cell phone. Mr. Conde replied that he had no information to give them, which only made them more angry and more violent. After covering his mouth and putting a gun to his head, the members of Los Pelusos finally let Mr. Conde go, telling him that they would contact him again on his cell phone.

[10] The day after the incident, Mr. Conde contacted one of the owners of the company to inform him of the situation. The owner advised him to leave the town of Gramalote and report the incident to the authorities.

[11] On July 30, 2017, Mr. Conde and his family reportedly left for Bogota, the capital of Colombia, about 595 kilometres southwest of Gramalote—he apparently had annual leave to take anyways—but he did not report his attackers to the authorities, fearing they were infiltrated by members of Los Pelusos.

[12] In Bogota, Mr. Conde contacted family members in Canada who advised him to leave Colombia and claim refugee protection in Canada. On July 31, Mr. Conde went to the Canadian Embassy to enquire about humanitarian refuge. Following his visit to the embassy, Mr. Conde applied for a visitor visa to Canada for himself and his family.

[13] On October 2, 2017, at the end of his extended vacation, Mr. Conde returned to Gramalote to resume his activities and his work, having been assured by his boss that additional security measures had been put in place at the facility. It appears that his wife and children stayed in Bogota for a few days.

[14] However, members of Los Pelusos reportedly continued their harassment. On November 8, 2017, Mr. Conde apparently received a call from a masked number; the caller insulted him and told him that he should not have alerted his bosses. Nearly two weeks later, on November 20, 2017, two men accosted him at a restaurant, showed him the address in Bogota

where his wife and children were staying, and urged him [TRANSLATION] “to collaborate, [adding] that if [he] didn’t stop ratting on them, they would make [him] eat [his] tongue piece by piece.”

[15] An incident in Cúcuta, 46 kilometres from Gramalote, on November 28, 2017, worried Mr. Conde. He had gone out to eat with his wife and was approached by an unidentified man who told him he had to [TRANSLATION] “leave town, because [Mr. Conde] was no longer worthy of staying there.” Mr. Conde and Ms. Ramirez therefore decided to go live with Ms. Ramirez’s mother in Ocana, approximately 175 kilometres northwest of Gramalote, which they did towards the end of the year.

[16] On January 2, 2018, while travelling with his wife to the neighbourhood of El Penon by motorbike, Mr. Conde noticed another vehicle following them; he accelerated and lost the vehicle.

[17] After talking to their respective parents, Mr. Conde and Ms. Ramirez allegedly decided to report what had been happening to the authorities, which they did on January 3, 2018. They also decided to follow their families’ advice [TRANSLATION] “to leave the country to see if things would calm down”.

[18] The applicants arrived in Canada on January 17, 2018.

[19] On February 28, 2019, the applicants had their hearing before the RPD with the assistance of an interpreter. At the end of the hearing, counsel for the applicants filed written submissions on some preliminary matters, issues involving the applicants' credibility and the question of an internal flight alternative.

[20] On April 3, 2019, the RPD, which focused its analysis on whether or not there was a risk under paragraph 97(1)(b) of the IRPA, specifically whether there was a threat to the applicants' lives if they returned to Colombia, rejected the applicants' claim for refugee protection.

[21] The RPD expressed many concerns about Mr. Conde's credibility; in the end, it found that he lacked credibility on key elements of his written narrative. As for his oral evidence, it noted omissions, contradictions and inconsistencies for which he had not provided reasonable explanations.

[22] The applicants argued that the risk of return to Colombia stemmed from the desire for revenge of the Los Pelusos members, who would continue to persecute them because Mr. Conde had not cooperated with them and because he had reported their threats to his superiors. After further analysis, the RPD also concluded that the applicants had an IFA in the city of Barranquilla.

[23] On April 17, 2019, the applicants appealed the RPD's decision. They submitted new evidence in support of their appeal before the RAD and requested a hearing.

[24] The new documents were as follows:

1. Letter from Dr. Alicia Valenzuela Perez, psychologist, dated May 1, 2019;
2. Letter from Myriam Vargas Luna, psychologist, dated May 15, 2019; and
3. Newspaper articles on the presence of “Los Pelusos/EPL” in the city of Barranquilla.

[25] The RAD refused to admit the letters from the two psychologists under subsection 110(4) of the IRPA, but admitted the newspaper articles.

[26] The psychologists who wrote the letters had been following Mr. Conde and his wife for several months as part of their claim for refugee protection, and it is apparent from the letters that Mr. Conde and his wife had experienced trauma that caused them to leave their home country.

[27] The applicants sought to have this new evidence admitted by arguing before the RAD that

- i. the documents demonstrated the applicants’ fragility and anguish, and that they could not have guessed that the RPD would not consider their profile, i.e. their weakness and distress, when assessing their credibility; and that
- ii. this evidence was central to their claim, as it corroborated their answers and clarified certain events that the applicants experienced in Colombia.

[28] The RAD stated that “[a]lthough subsection 110(4) provides the RAD with the factors that must be taken into consideration to assess a document’s ‘newness,’ . . . if a document lacks

credibility or is irrelevant to the issues that must be examined by the RAD, it would be illogical to allow such a document, even if it meets the requirements of subsection 110(4) of the IRPA” (citing *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96, at para 64 [*Singh*]; see also *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385, [2007] FCJ No 1632 [*Raza*]).

[29] The determinative issue for the RAD was the applicants’ credibility, and the two letters from the psychologists were neither relevant nor able to refute the RPD’s finding regarding the applicants’ credibility. The RAD noted that, in any event, these two letters explaining the applicants’ psychological state were readily available prior to the RPD hearing since the psychologists had been following the applicants for months prior to the RPD hearing. The applicants did not satisfy the RAD that they could not have expected the RPD’s decision.

[30] The RAD then turned to the issue of the RPD’s assessment of the applicants’ credibility.

[31] The applicants alleged that the RPD did not follow the principle of the presumption of truthfulness with regard to their sworn statements, as enshrined in *Pedro Enrique Juarez Maldonado (Applicant) v Minister of Employment and Immigration (Respondent)*, [1980] 2 FC 302 [*Maldonado*]. The RAD noted, however, that this decision recognizes an exception to this principle, when there are reasons to doubt allegations made under oath.

[32] In this case, the RAD noted that “[d]uring the appellant’s testimony, the RPD noted several omissions and inconsistencies”, and his answers were “vague, evasive, imprecise and sometimes contradictory regarding the persecution he was facing”.

[33] The RAD was therefore of the view that the RPD had, on a balance of probabilities, concluded correctly that the appellant had not adduced sufficient credible and trustworthy evidence.

[34] On the issue of procedural fairness, the applicants argued before the RAD that the RPD had failed “to make explicit reference in its reasons for decision to the written submissions of their counsel”, and that the quality of interpretation at the RPD hearing had been inadequate, which constituted a breach of procedural fairness.

[35] The RAD, after setting out the principles applicable in such matters, concluded that the RPD had “considered all of the evidence, and [that] the appellant [had] understood the proceedings, submitted evidence in support of his claim and [had] had the chance to persuade the RPD that his claim was well-founded”.

[36] The RAD found that the RPD had complied with this principle of procedural fairness.

[37] With respect to the quality of the interpretation, the RAD “noted that each time the interpreter could not hear or understand something, she arranged to ask for clarifications to ensure good and correct communication between the appellants and panel”. The RAD therefore found that the “RPD gave the appellant and his counsel several opportunities to express their concerns and responded favourably to all their requests”. It therefore rejected the procedural fairness argument.

[38] The RAD agreed with the appellants on the IFA, but found that this was not determinative, as the RPD had correctly determined that the applicants were not credible on the issues central to their refugee protection claim, including the risks of persecution if they returned to Colombia.

[39] The RAD therefore dismissed the appeal.

III. Issues and standard of review

[40] While the applicants have raised numerous issues, I find that I can easily reformulate them under the following overarching theme: was the RAD's decision reasonable?

[41] Indeed, the applicants are basically challenging the RAD's assessment of the facts and its application of the legal principles and statutory provisions. In short, the applicants are attacking the RAD's reasoning, not the process the RAD followed.

[42] This also holds true with respect to the issue of procedural fairness. Indeed, the applicants are not arguing that the RAD itself breached procedural fairness. Rather, they are disputing the RAD's finding that the RPD complied with the principles of procedural fairness.

[43] The standard of reasonableness must apply in this case (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]; *Singh* at para 23; *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35).

IV. Discussion

A. *Was the refusal to admit the new evidence unreasonable?*

[44] Subsection 110(4) of the IRPA sets out the conditions for evidence that may be presented before the RAD:

Evidence that may be presented	Éléments de preuve admissibles
(4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.	(4) Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.

[45] As I noted earlier, the RAD admitted the newspaper articles, but refused to admit the two letters from the psychologists.

[46] The applicants specifically attack the paragraph of the decision in which the RAD found that, in addition to the requirements of subsection 110(4) of the IRPA with respect to whether new evidence may be presented on appeal, other factors, such as credibility and the relevance of the documents to the issues before the RAD (*Singh; Raza*), must also be considered.

[47] The RAD did not question the credibility of the two psychologists' letters, but rather their relevance.

[48] The applicants argue that the refusal to admit the psychologists' letters was unreasonable because the RAD ignored the fact that the documents demonstrate the applicants' fragility and anguish, and are therefore relevant to understanding the applicants' behaviour and responses in relation to the RPD's adverse finding regarding the applicants' credibility, particularly with respect to the findings of omissions, contradictions and inconsistencies in Mr. Conde's testimony. The applicants argue that these [TRANSLATION] "documents clearly depict the applicants' psychological difficulties related to the events they experienced in Colombia. This is a relevant factor when analyzing credibility" (citing *Cooper v Canada (Citizenship and Immigration)*, 2012 FC 118 at para 4 [*Cooper*]).

[49] I fail to see how *Cooper* is helpful to the applicants in this case. In that decision, Justice Rennie confined himself to identifying the principles applicable when assessing the credibility of applicants in immigration matters. The only principle that appears to be relevant in this case, although not specifically raised by Mr. Conde, is the following: "[a]ssessment of testimony should take into account [the applicant's] lack of coherence in testimony where the psychological condition of [the applicant] has been medically established" [*Cooper* at para 4].

[50] I believe that in *Cooper* Justice Rennie was referring to a psychological disorder that might specifically affect an applicant's coherence. In this case, the applicants have not shown that it was unreasonable to conclude that the psychologists' letters do not establish that the psychological disorder experienced by Mr. Conde and his wife is likely to affect their coherence, or that there is any form of incapacity or unfitness to testify to. In any event, none of these concerns were raised before the RPD when the applicants testified.

[51] Given that the RAD had found that the determinative issue was the applicants' credibility, it concluded that the two documents in question were "neither relevant nor able to refute the RPD's finding regarding the appellants' credibility".

[52] Having reviewed the two psychologists' reports, I cannot say this conclusion is unreasonable. In any event, the RAD primarily based its refusal to admit these psychologists' letters on the simple reason that they could easily have been produced by the applicants before the RPD hearing.

[53] Mr. Conde argues that the argument that the applicants could have obtained the letters because they were seeing the psychologists prior to the hearing is [TRANSLATION] "mere speculation to deny admission".

[54] However, the applicants offer no evidence that they were unable to obtain the letters prior to the RPD hearing. They simply state that they could not have expected the RPD to disregard their profile, specifically their weakness and distress, in assessing their credibility.

[55] This argument is not persuasive. Credibility is always an issue before the RPD, and applicants must be aware that their credibility may be challenged during the hearing.

[56] I am therefore of the view that this conclusion by the RAD was not unreasonable and that this is sufficient to dispose of the issue of the refusal to admit the new evidence.

B. *Was the RAD's conclusion confirming the assessment of the applicants' credibility unreasonable?*

[57] The applicants argue that the RAD merely reiterated the presumption of truthfulness enjoyed by anyone claiming refugee protection, without really considering the applicants' arguments. The RAD merely made [TRANSLATION] "superficial remarks" and reiterated the RPD's reasons. Thus, the RAD's reasons on this issue were [TRANSLATION] "not clear or thoroughly explained".

[58] Going back to the issue of the psychologists' letters, the applicants also argue that, in accordance with *Cooper*, their psychological profile is an important aspect to consider in the assessment of their credibility. Thus, according to the applicants, given their nervousness at the RPD hearing and the psychologists' letters, their profile confirms their credibility.

[59] Finally, the applicants also contest the RAD's decision insofar as it allegedly misapplied *Peter v Canada (Citizenship and Immigration)*, 2015 FC 619 [*Peter*], leading to the RAD's finding that the RPD had not found that the applicants had lied. For the applicants, the RPD's finding with respect to the applicants' lack of credibility amounts to a finding that the applicants lied.

[60] I am mindful of the deference owed by the Court on judicial review of a RAD decision, particularly with respect to findings concerning the applicants' credibility, which are purely factual findings. As was observed by the Honourable Mr. Justice LeBlanc in *Koita v Canada (Citizenship and Immigration)*, 2016 FC 774 at paragraph 7, the Court

. . . must avoid substituting its own interpretation of the facts for that of the RAD—an administrative tribunal that specializes in appeals—and must show deference to the RAD’s findings, especially since they confirm the findings made by the RPD, whose mandate and expertise centre on assessing refugee claimants’ testimonies and credibility[.]

[61] As noted above, *Cooper* identifies 10 principles to be considered in assessing applicants’ credibility. Some of these principles relate to an applicant’s profile, but there are a number of other factors to consider, such as “[t]he cumulative effect of minor inconsistencies and contradictions” that can “support an overall finding that an applicant is not credible” (*Cooper* at para 4, citing *Feng v Canada (Citizen and Immigration)*, 2010 FC 476).

[62] I cannot conclude that the RAD did not adequately explain its reasoning regarding the applicants’ credibility. Indeed, to conclude that Mr. Conde was not credible, the RAD relied on the fact that Mr. Conde “did not have satisfactory answers for several of the RPD’s concerns . . . , the contradictions between [Mr. Conde’s story] in his Basis of Claim Form (BOC Form) and his statements before the RPD, or between his BOC Form and the complaints to the police presented in support of his allegations” and the fact that Mr. Conde’s answers “were evasive and inconsistent and his explanations were unreasonable and unsatisfactory”.

[63] The applicants do not make any argument or point to any evidence to attack this conclusion, other than making very general allegations. They prefer attacking the paragraph of the decision where, as we have just seen, the RAD allegedly misapplied *Peter*.

[64] I see no reason to intervene in this case. Both the RPD and the RAD found inconsistencies in the applicants' story and testimony that undermined their credibility, and I cannot conclude that these findings are unreasonable.

C. *Was the RAD's finding that the RPD did not breach procedural fairness unreasonable?*

[65] The applicants argued before the RAD that it appears from the RPD's reasons that the RPD did not consider their written submissions and new evidence filed after the hearing, particularly the submissions and evidence clarifying the issue of credibility and the dates of certain events, which led to some confusion at the hearing, as well as those dealing with interpretation issues at the hearing.

[66] The applicants argue before me that the RAD's conclusion that the RPD considered their written submissions even though it did not explicitly mention them in its decision was unreasonable. One of the arguments that was not considered by the RPD and that, according to the applicants, allegedly led it to make an adverse inference about their credibility, involved [TRANSLATION] "explanations as to how the complaints system works in Colombia and how errors in the documents [were] caused by clerical errors".

[67] In the Minister's view, the written submissions were nothing more than an attempt to explain the inconsistencies in the documents and the applicants' testimony, and attempting to explain these does not make them credible.

[68] The RAD found that the RPD considered all the evidence and did not err in its credibility findings. I was not persuaded that any argument made in the written submissions or based on the new evidence produced after the hearing by the applicants that was not specifically raised by the RPD and readdressed by the RAD could have affected the overall assessment of the applicants' credibility. Decision-makers are not required to explicitly respond to each argument raised by the parties (*Vavilov* at para 128). As observed by the Honourable Mr. Justice Gascon in *Singh v Canada (Citizenship and Immigration)*, 2020 FC 350 at paragraph 37,

“[r]easons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis”
(*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board) [Newfoundland Nurses]*, 2011 SCC 62 at para 16). An administrative decision maker need not make an explicit finding on each constituent element leading to its final conclusion.

[69] With respect to the issue of interpretation, Mr. Conde alleges that, at the hearing, counsel for the applicants intervened on numerous occasions with the RPD member to express his disagreement with the translation, which was not faithful to the applicants' statements. Mr. Conde argues that the RAD misinterpreted the interventions of counsel for the applicants at the hearing, who described the translation as poor.

[70] The Minister submits that the RAD noted that counsel for the applicants signalled a single imprecise translation during the RPD hearing, which lasted more than three hours.

[71] On the issue of the quality of the interpretation and more specifically the interventions of counsel for the applicants at the RPD hearing, it is difficult to fully understand what happened

without the transcripts of the testimony before the RPD (the excerpts from the RAD decision alone do not shed much light), but they are not part of the parties' record or the certified record.

[72] Issues regarding the interpretation provided at the hearing before the RPD were certainly raised. After listening to the tapes of the hearing, the RAD noted that following a problem with the translation of a certain word at the beginning of the hearing, the RPD had suspended the hearing to discuss the matter with counsel for the applicants. Counsel for the applicants had allegedly stated that [TRANSLATION] "it was imprecise but without blame" and that the interpreter [TRANSLATION] "[was] very good". In response, the RPD had stated that [TRANSLATION] "if we see problems, we can stop"; and the hearing then continued for over two hours without any interpretation issues.

[73] I have no way of determining whether interpretation issues had any impact on the RPD's understanding of the events as a whole or on the credibility findings. However, I also note the following in the written submissions of counsel for the applicants following the RPD hearing:

[TRANSLATION]

Although the imprecise interpretation is not sufficient to explain all of the implausibilities or contradictions in the applicants' testimony, it is a factor to be considered in assessing the credibility of the allegations.

[74] In this case, there is no reason for me to believe that, whatever the difficulties posed by the issue of interpretation, this issue was not taken into account by the RPD and the RAD in their assessment of the applicants' credibility.

[75] I am therefore of the view that the RAD's conclusion that the RPD did not breach its procedural fairness obligations towards the applicants was not unreasonable.

V. Conclusions

[76] I would therefore dismiss the application for judicial review.

JUDGMENT in IMM-7207-19

THE COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

“Peter G. Pamel”

Judge

Certified true translation
Johanna Kratz, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7207-19

STYLE OF CAUSE: NIXON CONDE BENAVIDES, ANGELA
MARCELA RAMIREZ MEZA, JUAN PABLO
CONDE RAMIREZ, ANA MARIA CONDE
RAMIREZ v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: MATTER HEARD BY VIDEOCONFERENCE IN
MONTRÉAL, QUEBEC

DATE OF HEARING: DECEMBER 7, 2020

JUDGMENT AND REASONS: PAMEL J.

DATED: JANUARY 12, 2021

APPEARANCES:

Alfredo Garcia FOR THE APPLICANTS

Édith Savard FOR THE RESPONDENT

SOLICITORS OF RECORD:

Avocats Semperlex, LLP FOR THE APPLICANTS
Montréal, Quebec

Attorney General of Canada FOR THE RESPONDENT
Montréal, Quebec