



Date: 20210211

Docket: IMM-424-20

Citation: 2021 FC 142

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 11, 2021

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

**MIGUEL ANGEL SUJIA RODRIGUEZ,
FABIOLA MARIBEL HERNANDEZ
PALMA, ANGEL HAZIEL SUJIA
HERNANDEZ, EMMANUEL SUJIA
HERNANDEZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The principal applicant is Miguel Angel Sujia Rodriguez. Mr. Rodriguez, his wife, Fabiola Maribel Hernandez Palma, and their two minor children are citizens of Mexico.

Mr. Rodriguez alleges that he was extorted by members of a Mexican cartel.

[2] The Refugee Protection Division [RPD] found Mr. Rodriguez's testimony was not credible and rejected the applicants' refugee protection claim. The Refugee Appeal Division [RAD] confirmed the RPD's determination. The applicants are seeking judicial review of the RAD decision under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[3] On December 9, 2019, the RAD confirmed the RPD's determination, finding the principal applicant's testimony was not credible. The applicants submit that the RAD's decision was unreasonable.

[4] For the reasons that follow, I find that this application must be dismissed.

II. Background

[5] Mr. Rodriguez alleges that he was working at a family hotel in mid-December 2016 when he noticed that individuals were watching the hotel. The individuals identified themselves as

being members of a cartel and informed him that the hotel employees were going to face extortion.

[6] Mr. Rodriguez reports that the cartel members tried to obtain the extorted funds when they came to the hotel on January 6, 2017. Mr. Rodriguez claims that he was threatened by the individuals after informing them that he did not have the money they demanded. On January 10, 2017, the cartel members visited the hotel again. Mr. Rodriguez again did not have the money they had asked for. Mr. Rodriguez alleges that the cartel members physically assaulted him and increased the amount of money they were demanding.

[7] After that incident, Mr. Rodriguez bought plane tickets for his spouse and his youngest son. The two of them left Mexico for Canada on January 14, 2017. Mr. Rodriguez arrived in Canada with his other son on January 28, 2017.

[8] In February 2017, Mr. Rodriguez was informed that the Mexican police had apprehended members of a criminal group. He therefore returned to Mexico with his eldest son on February 17, 2017. Nevertheless, the extortion continued. Mr. Rodriguez lodged a complaint with the police despite believing that the cartel members had infiltrated the police service. He reports that, after complaining to the police, he and his family received death threats and fled to another town, where the cartel members were able to find them. In May 2017, Mr. Rodriguez and his eldest son left Mexico for Canada for the second time and claimed refugee protection.

III. Decision under judicial review

[9] The RAD identified credibility as the determinative issue. The RAD listed numerous inconsistencies stemming from Mr. Rodriguez's account and stated its concerns regarding those inconsistencies, including the following:

- A. The inconsistency regarding the principal applicant leaving Mexico two weeks after his wife. The RAD noted that Mr. Rodriguez's explanation at the hearing before the RPD was different from that in his Basis of Claim Form. The RAD found that the explanation given at the hearing—that he wanted to verify whether the threats were serious—was unreasonable in light of the fact that he had been beaten.
- B. The inconsistency regarding his return to Mexico on February 17, 2017, despite the fact that the members of the criminal group who had been apprehended by the police were not members of the same cartel that had threatened him. The RAD acknowledged Mr. Rodriguez's allegation that the criminal group was a cartel cell, but still noted that "the cell is not identified anywhere".
- C. The inconsistency between not complaining to the police about a serious physical assault and complaining to the police about a less serious crime despite the fact that he questioned whether those responsible had infiltrated the police service.

[10] The RAD concluded that, although several facts in the testimony matched the documentary evidence, this was insufficient to override the other contradictions identified.

IV. Issues and applicable standard of review

[11] There is only one issue to determine in this application: did the RAD render a reasonable decision in confirming the RPD's determination and dismissing the applicants' appeal?

[12] The applicable standard of review for an RAD decision regarding credibility is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 33, 53 [*Vavilov*]; *Keqaj v Canada (Citizenship and Immigration)*, 2020 FC 563 at paras 13–15).

[13] The decision is reasonable if it “is based on an internally coherent and rational chain of analysis and . . . is justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85).

V. Preliminary issue

[14] In the application for leave and the application for judicial review, the style of cause names the applicants as follows: “Miguel Angel Suija Rodriguez, Fabiola Maribel Hernandez Palma, Angel Haziell Suija Hernandez, Emmanuel Suija Hernandez”. The names stated are misspelled. The style of cause must therefore be amended so that the names of the applicants are written correctly as follows: “Miguel Angel Sujia Rodriguez, Fabiola Maribel Hernandez Palma, Angel Haziell Sujia Hernandez, Emmanuel Sujia Hernandez”.

VI. Analysis

[15] The applicants allege that the RAD unreasonably assessed their credibility in three instances.

[16] First, the applicants submit that it was unreasonable to conclude that the fact that Mr. Rodriguez left Mexico two weeks after his wife damaged the applicants' credibility because during those two weeks, he worked remotely and changed his itinerary.

[17] The applicants rely on Justice James Russell's decision in *Gebremichael v Canada (Minister of Citizenship and Immigration)*, 2006 FC 547 [*Gebremichael*] in advancing this argument. However, in this case, *Gebremichael* is of limited use. Although a delay in fleeing persecution is often justified when a refugee protection claimant goes into hiding, a decision-maker may explain why it nonetheless drew an adverse inference (*Gebremichael* at para 44). In this case, the RAD thoroughly explained its reasons for drawing an adverse inference. The RAD cited documentary evidence, which clearly showed the danger represented by the alleged agents of persecution and noted that, faced with this evidence, Mr. Rodriguez's explanation for why he remained in Mexico—to ensure that the agents of persecution seriously wanted to harm him—was incompatible with that evidence. The RAD's negative credibility finding was not unreasonable in this case.

[18] Second, the applicants argue that it was unreasonable to conclude that their return to Mexico on February 17, 2017, undermined their credibility. The applicants submit that the RAD

did not consider the fact that Mr. Rodriguez was still taking care of his business in Mexico while he was in Canada and he believed, with good reason, that the agents of persecution had been arrested by police. The applicants allege that, in those circumstances, Mr. Rodriguez's return was not inconsistent with their subjective fear.

[19] However, the law is clear: voluntarily returning to the country of origin is inconsistent with the subjective fear (*Munoz v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1273 at para 20; *Milovic v Canada (Citizenship and Immigration)*, 2015 FC 1008 at para 11). The RAD properly explained why it did not accept Mr. Rodriguez's explanation regarding his return to Mexico—believing that the agents of persecution had been arrested. Mr. Rodriguez may disagree with this conclusion, but it is not inconsistent with the evidence. The RAD's conclusion in this regard is one that was reasonably open to it.

[20] Finally, the applicants submit that the delay in lodging a complaint with the police is not incompatible with their subjective fear since the principal applicant thought that the extortion would end after the arrests.

[21] It is well established in the case law that a delay in seeking police protection gives the tribunal cause to doubt the credibility of an allegation of subjective fear (*Sanchez v Canada (Citizenship and Immigration)*, 2008 FC 134 at para 10). Without knowing why Mr. Rodriguez did not file a complaint with the police after the January 10, 2017, incident when he was physically assaulted, I see no error in the RAD's conclusion.

[22] The inconsistencies and contradictions in the evidence filed and the delay in seeking police protection are relevant factors on which a lack of credibility finding can be based. The RAD's conclusion is reasonable because it is based on a coherent and rational chain of analysis and is justified in relation to the facts and law.

VII. Conclusion

[23] The application for judicial review is dismissed. There is no question of general importance to be certified.

JUDGMENT in IMM-424-20

THE COURT’S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. The style of cause is amended to correct the following names: MIGUEL ANGEL SUJIA RODRIGUEZ, ANGEL HAZIEL SUJIA HERNANDEZ and EMMANUEL SUJIA HERNANDEZ.
3. No question is certified.

“Patrick Gleeson”

Judge

Certified true translation
this 6th day of May 2021.
Elizabeth Tan, Revisor

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-424-20

STYLE OF CAUSE: MIGUEL ANGEL SUJIA RODRIGUEZ, FABIOLA MARIBEL HERNANDEZ PALMA, ANGEL HAZIEL SUJIA HERNANDEZ, EMMANUEL SUJIA HERNANDEZ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

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

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DATED: FEBRUARY 11

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