

Federal Court



Cour fédérale

Date: 20220207

Docket: IMM-526-21

Citation: 2022 FC 153

Ottawa, Ontario, February 7, 2022

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

**MARIA MONSERRAT GARCIA SERRANO
GUADALUPE SERRANO RAMIREZ
DIEGO MOISES GARCIA SERRANO
EDUARDO GUADALUPE MENDOZA GARCIA
CESAR RONALDO MENDOZA GARCIA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, five family members, are citizens of Mexico. They seek judicial review of a decision by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada made on January 11, 2021 [Decision] confirming the Refugee Protection Division

[RPD]'s decision that the Applicants are neither Convention refugees nor persons in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act, SC* 2001, c 27 [IRPA]. The determinative issue before both the RAD and the RPD was credibility.

[2] The Applicants claim that they fear persecution by the Cartel Jalisco Nueva Generacion [CJNG], a criminal organization in Mexico, on the basis that they refused to smuggle drugs across the border between the United States and Mexico.

II. Background

[3] On September 13, 2018, the Applicants filed claims for refugee protection. The allegations were set out in a joint narrative attached to the Basis of Claim forms. Maria Monserrat Garcia Serrano is the Principal Applicant. Guadalupe Serrano Ramirez is her mother. Diego Moises Garcia Serrano is her brother. Eduardo Guadalupe Mendoza Garcia and Cesar Ronaldo Mendoza Garcia are Ms. Garcia Serrano's minor sons.

[4] The Applicants claim that in January 2015, members of a criminal organization began to approach Mr. Garcia Serrano, the Principal Applicant's brother, about trafficking drugs to the United States' border. They invited him for dinner on several occasions, during which they explained to him what he would have to do. The Applicant maintains that during these dinners he consistently refused to traffic drugs. The Applicants claim that for the first few months, the cartel members were friendly and polite, however on May 5, 2015, it is alleged that they kidnapped him and beat him. The Applicants claim that upon being released he was hospitalized for three months.

[5] The Applicants allege that in May 2017, two years later, Ms. Serrano Ramirez, the Principal Applicant's mother, was kidnapped and tortured by the CJNG. She was told that she (a) would have to transport drugs to Tijuana and (b) recruit elderly women to assist in the smuggling operation. Following the incident, on May 9, 2017, Ms. Serrano Ramirez fled to Canada.

[6] In September 2017, Mr. Garcia Serrano claims that the CJNG located him and again threatened to kill him if he did not go to Tijuana and traffic drugs into the United States. He fled to Canada in 2017, following this alleged incident.

[7] The Principal Applicant, Ms. Garcia Serrano, alleges that once the CJNG was unable to locate her mother and her brother, they kidnapped her, assaulted her, and demanded that she organize women and children to traffic drugs for them. She claims that they also told her they would extract and sell her childrens' organs.

[8] The Applicants also allege that, at the end of September 2017, following Ms. Garcia Serrano's alleged abduction, two men tried to kidnap her eldest son, but the attempt was thwarted by bystanders.

[9] Ms. Garcia Serrano claims that following the kidnapping attempt on her eldest son, she was located, kidnapped and assaulted again by the CJNG. In November 2017, she fled with her husband and two sons to Canada. Her husband has since been returned to Mexico.

[10] In September 2018, the Applicants lodged a claim for refugee protection. The RPD heard the Applicants' claim on November 1, 2019, and rejected it on January 10, 2020. The RPD permitted post-hearing submissions and disclosure because, during the hearing, the Applicants mentioned a text message and other evidence that was not in the record. The messages referred to were ultimately not provided by the Applicants. Letters that were submitted, however, were all dated post-hearing and did not evidence, as alleged during the hearing, that a member of the family was killed by the CJNG. Consequently, the RPD did not admit the post-hearing documents.

[11] The RPD did not find the testimony of the three adult Applicants, Ms. Garcia Serrano, her brother and her mother, to be credible on a balance of probabilities due to "material omissions, inconsistencies and a lack of reasonable efforts to procure supporting documentation".

[12] The RPD determined that the presumption of truth was "thoroughly rebutted". The RPD found that the documentary evidence was insufficient to support the Applicants' claim. Furthermore, the RPD found that the country condition documentation did not support the Applicants' allegations that the CJNG traffics in organs and/or organizes the elderly to smuggle drugs from Tijuana into the United States.

[13] The Applicants filed an appeal of the decision of the RPD to the RAD on January 24, 2020, which was dismissed on January 4, 2021.

III. The Decision

[14] The RAD found the determinative issue to be credibility. In total, the RAD drew ten adverse credibility inferences based on various inconsistencies, implausibilities and omissions in the Applicants' evidence. The adverse credibility inferences will be discussed further in the analysis section of this judgment, below.

[15] The RAD found that the Applicants' claims collectively hinge on the allegation that members of the CJNG pressured Mr. Garcia Serrano to traffic drugs, and assaulted and threatened him when he refused to do so. The RAD determined that Mr. Garcia Serrano had not credibly established his allegations. Given that it is alleged that the CJNG only turned to Mr. Garcia Serrano's mother and sister because Mr. Garcia Serrano fled Mexico, the RAD found that the basis for the claims of Mr. Garcia Serrano's sister and mother were also not credible.

[16] The RAD agreed with the RPD that the adult Applicants were not credible witnesses on the basis of the numerous credibility issues on the record. The RAD also noted that both Mr. Garcia Serrano and Ms. Garcia Serrano claimed to have additional relevant evidence during the RPD hearing, but failed to submit it when provided with the opportunity to do so after the hearing.

[17] The RAD concluded that the RPD did not err, and dismissed the appeal finding that the Applicants were neither Convention refugees nor persons in need of protection.

IV. Issues and Standard of Review

[18] The issue on this judicial review is whether the Decision is reasonable. The parties submit, and I agree, that the applicable standard of review is the reasonableness standard as per the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[19] It is the Applicants, the parties challenging the Decision, who bear the onus of demonstrating that the Decision is unreasonable (*Vavilov* at para 100). For the reviewing court to intervene, the challenging party must satisfy the court that “there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency”, and that such alleged shortcomings or flaws “must be more than merely superficial or peripheral to the merits of the decision” (*Vavilov* at para 100).

[20] *Vavilov* instructs that the reviewing court should not approach the underlying decision with the intention of conducting a “line-by-line treasure hunt for error” (at para 102), but rather concern itself with whether “the decision as a whole is transparent, intelligible and justified” (at para 15).

[21] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). As such, the approach is one of deference, especially with respect to findings of fact and the weighing of evidence. A reviewing court should not interfere with factual findings, absent exceptional circumstances, and it is not the function of this Court on an application for judicial

review to reweigh or reassess the evidence considered by the decision maker (*Vavilov* at para 125).

V. Analysis

[22] As noted above in paragraph 14, the RAD drew numerous adverse credibility findings. The Respondent submits that ten adverse inferences were drawn, of which only four are contested by the Applicants in this judicial review. The Respondent submits that the six unchallenged findings alone constituted a sufficient basis for the RAD to reasonably conclude that the Applicants were not credible.

[23] The Applicants submit that the uncontested adverse credibility findings relate to minor inconsistencies and omissions. The Applicants submit that should one or more of the challenged adverse credibility findings be found to be unreasonable, then the matter must be sent back to the RAD for redetermination. The Applicants plead that it is not for this Court to assess what the RAD would have done if the number of adverse credibility findings was reduced. Furthermore, the Applicants submit that a number of the challenged and unchallenged adverse credibility findings are based on “microscopic” issues.

[24] I am mindful of the defence owed by this Court sitting in judicial review of decisions of the RAD, particularly with respect to credibility findings, being findings of fact (*Vavilov* at para 125; *Benavides v Canada (Citizenship and Immigration)*, 2021 FC 43 at para 60).

[25] Taking into consideration the record before the RAD, and the submissions of the parties, I am not persuaded that the Decision is unreasonable.

[26] With respect to the six unchallenged adverse credibility findings, both the RPD and the RAD found inconsistencies, implausibilities and omissions in the Applicants' evidence that undermined their credibility. I do not agree that the unchallenged findings are minor, secondary or peripheral. Rather, most, if not all, relate to core elements of the Applicants' claim. The credibility findings included inconsistencies between the Basis of Claim form and the testimonies of the adult Applicants, along with implausibilities and omissions. Notably, the RAD found implausible Mr. Garcia Serrano's explanation for why he continued to dine with the CJNG if he thought they were "evil" and why he waited two years before leaving Mexico following the alleged abduction and beating. The RAD found that the Applicants' failure to submit documentary evidence mentioned during their testimony, when they were provided with an opportunity to do so by the RPD, undermined their credibility.

[27] As to the challenged credibility findings, the Applicants plead that the RAD erred in its finding that Mr. Garcia Serrano gave inconsistent evidence about what the CJNG asked him to do. The RAD noted that at first Mr. Garcia Serrano did not identify the border that he was instructed to cross, then he mentioned Tijuana, and finally he stated that the CJNG did not specify a border. The Applicants submit that the only ambiguity in Mr. Garcia Serrano's testimony was the border he was asked to cross. The Applicants highlight the following exchange between the RPD Member and Mr. Garcia Serrano:

MEMBER: Okay. And eventually, actually I should ask, so you said that they wanted you to take drugs across the US-Mexico border.

CLAIMANT 3: Yes.

MEMBER: Which border crossing did they discuss?

CLAIMANT 3: They did specify exactly which one, but they just mentioned that it was the US-Mexican border.

MEMBER: So you were in Mexico City at the time.

CLAIMANT 3: Yes.

MEMBER: So I guess probably the closest border would be with Texas.

CLAIMANT 3: I think so.

MEMBER: I think probably Laredo, Texas.

CLAIMANT 3: Yes. Tijuana.

MEMBER: Well, from you Tijuana would be a 31-hour drive or 3000 kilometres. Laredo, Texas would be 13 hours or 1124 kilometres. Okay, so they didn't specify which border?

CLAIMANT 3: No.

MEMBER: Just a moment please. Did you have a passport at the time?

CLAIMANT 3: No.

MEMBER: The passport you came here to Canada was issued in 2017.

CLAIMANT 3: Yes.

MEMBER: Okay, so how were you going to get across the border without a passport?

CLAIMANT 3: They said close to the border, not cross the border, but just get up to the border.

[28] The Applicants submit that Mr. Garcia Serrano clearly indicated that he did not know which border he was asked to cross, and it was the RPD's comment that caused him to mention Tijuana. The Applicants submit that the RPD and the RAD unreasonably found fault with his answer.

[29] Having considered the record, I disagree with the Applicants. In the Basis of Claim form narrative, the Applicants claim that on several occasions the CJNG told them that the drugs would be trafficked to Tijuana. Both Ms. Garcia Serrano and her mother testified that they were each told that they would have to travel to Tijuana. Later in his testimony, Mr. Garcia Serrano testified: "As I mentioned, they found me. They indicated that they had a mission for me or a task, that I had to take drugs to Tijuana." The RAD found Mr. Garcia Serrano's credibility to be undermined by inconsistent and unspecific details about what CJNG asked him to do. This finding does not warrant this Court's intervention.

[30] I now turn to a second adverse credibility finding that is challenged by the Applicants. They contest the RAD's finding that there was a clear inconsistency in the timeline of Mr. Garcia Serrano's visit to the hospital. The RAD found that Mr. Garcia Serrano testified that he was admitted to the hospital on May 19, 2015 following his assault, however, the hospital record states he was admitted on June 22, 2015. The RPD and the RAD found that his pancreas surgery in June was not related to the alleged kidnapping and assault by the CJNG.

[31] The Applicants point to an entry in the hospital record that refers to an earlier date in June 2015, thus, in the Applicants' submission, the medical record from the hospital should not have been relied upon by the RAD given the inconsistency in the document itself. The Respondent submits that an earlier admission date in June 2015 does not rehabilitate Mr. Garcia Serrano's credibility given the inconsistencies in his testimony concerning his stay in the hospital, namely that he was admitted to hospital on May 19, 2015.

[32] I find that the Applicants are engaging in a "line-by-line treasure hunt for error" (*Vavilov* at para 125). While the RAD did mention June 22, 2015 in the context of its analysis, I do not find this to be a fatal flaw. The RAD considered the issue and found insufficient evidence that Mr. Garcia Serrano's admission to the hospital in June 2015 for a pancreas surgery was linked to the alleged assault in May 2015. Furthermore, the RPD dealt with this issue in detail, addressing various dates in June 2015 that the Applicants now raise. The RPD noted Mr. Garcia Serrano's testimony, and a letter, both referring to an alleged assault in May 2015. The narrative in the Basis of Claim form stated that the assault took place on May 5, 2015, while Mr. Garcia

Serrano's testimony is that he was held, released on May 19, 2015, and went to the hospital that day. Ultimately, after considering the RPD's findings, the RAD agreed with the RPD.

[33] The third contested adverse credibility finding is that the RAD drew adverse credibility inferences from the failure of the Applicants to identify the agents of persecution until the oral hearing before the RPD. Both the RPD and the RAD noted that the Basis of Claim form narrative did not name the CJNG but did refer to a "powerful criminal organization". The RPD and the RAD both found that the Applicants' explanation for this omission was not satisfactory. The Applicants submit that this was a peripheral detail and that in any event, the explanation provided was adequate. The Respondent disagrees.

[34] In the context of judicial review, an administrative decision maker has the primary responsibility for findings of fact, and such findings command deference (*Garces Canga v Canada (Citizenship and Immigration)*, 2020 FC 749 at para 58). The RAD explained why it did not consider Mr. Garcia Serrano's explanation for the omission to be sufficient, and why it drew a negative inference from the omission to include CJNG in the Basis of Claim form narrative. This finding is owed deference, and I find no serious flaw in the RAD's reasoning that warrants this Court's intervention.

[35] The final ground raised by the Applicants is the RAD's finding that consistent elements of the Applicants' stories did not overcome the credibility concerns. The RAD noted that the Applicants "recounted some elements of their story consistently" but that this consistency did not overcome the "material inconsistencies and credibility issues on the record." The RAD noted,

“for-example”, that Ms. Garcia Serrano provided “consistent details about her abduction and sexual assault”.

[36] During the hearing, counsel for the Applicants and the Respondent debated whether the RAD had believed that Ms. Garcia Serrano had been in fact abducted or whether the RAD simply found that her testimony was consistent, as opposed to inconsistent. Counsel also debated whether it was reasonable for the RAD to find that the incident was not connected to the CJNG.

[37] I find that, based on the record before it, it was open to the RAD to make a global credibility finding. An accumulation of contradictions, inconsistencies, and omissions regarding crucial elements of a claim can support a negative conclusion about an applicant’s credibility (*Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 [*Lawani*] at para 22). Moreover, a lack of credibility concerning central elements of a claim can extend to other elements of the claim (*Lawani* at para 24), as was the case here. Ultimately, the RAD found the Applicants were not credible and that certain consistent elements in their story were not sufficient to overcome the credibility issues.

[38] Taking the Decision as a whole, and the record upon which it is based, I am not persuaded that the entire decision is unreasonable given the adverse negative credibility findings, including those that went unchallenged.

VI. Conclusion

[39] For the above reasons, this application for judicial review is dismissed. Neither party proposed a question of general importance for certification, and none arises.

JUDGMENT IN IMM-526-21

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review is dismissed;
2. There is no question for certification arising.

"Vanessa Rochester"

Judge

FEDERAL COURT

SOLICITORS ON RECORD

DOCKET: IMM-526-21

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V THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: HEARD BY ZOOM VIDEOCONFERENCE –
TORONTO, ONTARIO

DATE OF HEARING: JANUARY 27, 2022

JUDGMENT AND REASONS: ROCHESTER J.

DATED: FEBRUARY 7, 2022

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