

Federal Court



Cour fédérale

Date: 20220221

Docket: IMM-1722-21

Citation: 2022 FC 231

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 21, 2022

PRESENT: The Honourable Madam Justice Walker

BETWEEN:

JOSE RODOLFO PEREZ AQUILA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant is a citizen of Mexico. He is seeking judicial review of a decision (“Decision”) rendered by the Refugee Protection Division (“RPD”) rejecting his claim for refugee protection. The RPD found that the applicant was not credible due to multiple contradictions and omissions in his testimony and in the evidence presented. Accordingly, the RPD determined that the applicant failed to establish, on a balance of probabilities, the central

allegations of his claim. Further, the RPD found that the applicant's claim had no credible basis under subsection 107(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("IRPA"). The applicant challenges only the finding that there is no credible basis for his claim.

[2] For the reasons that follow, the application for judicial review is allowed in part. The Decision, insofar as the RPD found that the applicant's claim for refugee protection has no credible basis, is set aside.

I. Background

[3] The applicant alleged that he fears for his life after refusing to comply with the instructions of one of Mexico's brutal cartels ("Cartel"). The applicant also claimed that he fears the Mexican authorities because of their collusion with the Cartel.

[4] The applicant owned an automobile repair shop in the city of Cabo San Lucas, Mexico. He alleged that he was forced to perform various types of mechanical work on the cars of Cartel members between October 1, 2017, and January 4, 2018. On that date, the Cartel demanded that the applicant travel to the city of Culiacán to pick up a car and bring it back to Cabo San Lucas. The applicant refused and was then threatened with death. The applicant fled to the city of Puebla but was found by his agents of persecution. After another stay in a third city with one of his nephews, the applicant left Mexico. He arrived in Canada on May 31, 2018, and claimed refugee protection the same day.

[5] On February 18, 2021, the RPD rejected the applicant's claim. It found a number of problems in the applicant's testimony that undermined his credibility as to the central allegations of his account. The RPD meticulously identified numerous contradictions and omissions, which were not reasonably explained. The problems in the applicant's evidence resulted in a lack of clarity regarding, among other things, the identity of the agents of persecution, important dates in the applicant's account, his time in hiding in Cabo San Lucas, the identity of the people living with him in Puebla, as well as his mother's move to Puebla. Based on the cumulative effect of the inconsistencies raised in its analysis, the RPD concluded that the applicant had failed to establish:

- (a) that he refused to go to Culiacán at the request of the members of the Cartel and received death threats because of his refusal to cooperate;
- (b) that he took refuge in a friend's garage in Cabo San Lucas and at his mother's home in Puebla;
- (c) that he received death threats and was the victim of an attempted break-in by the agents of persecution while he was hiding in Puebla.

[6] The applicant submitted a letter from his nephew to corroborate his stay at his home. The RPD noted that the nephew mentioned that the applicant had fled to his home directly from Cabo San Lucas and had stayed there from April 30 to May 31, 2018, which contradicted the applicant's BOC Form and testimony, which stated that he had first fled to Puebla. Therefore, the RPD gave very little probative value to the letter. The RPD also addressed the rest of the documents provided in evidence by the applicant. However, the panel found that these were general documents on the power of the Cartel and the significant corruption problems facing the Mexican authorities.

[7] The RPD found that the documentary evidence did not overcome the applicant's credibility issues or demonstrate, on a balance of probabilities, that he would face a personalized risk if he were to return to Mexico. Moreover, the RPD found that there was no credible basis for his claim.

II. Analysis

[8] The applicant argues that the RPD's finding that there is "no credible basis" for his claim is unreasonable. This finding is reviewable on a standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23 (*Vavilov*); *Aboubeck v Canada (Citizenship and Immigration)*, 2019 FC 370 at para 9 (*Aboubeck*)).

[9] In reviewing a decision on a standard of reasonableness, the Court must decide whether the decision is justified, transparent and intelligible. For this to be true, it must be "based on an internally coherent and rational chain of analysis" that is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85).

[10] Cases where there is no credible basis for a refugee protection claim are governed by subsection 107(2) of the IRPA:

No credible basis

(2) If the Refugee Protection Division is of the opinion, in rejecting a claim, that there was no credible or trustworthy evidence on which it could have made a favourable decision, it shall state in its reasons for the

Preuve

(2) Si elle estime, en cas de rejet, qu'il n'a été présenté aucun élément de preuve crédible ou digne de foi sur lequel elle aurait pu fonder une décision favorable, la section doit faire état dans sa décision de l'absence de

decision that there is no credible basis for the claim. minimum de fondement de la demande.

[11] The RPD cannot conclude that there is no credible basis unless there is no trustworthy or credible evidence that could support a recognition of the claim (*Rahaman v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89 at para 51; *Ramón Levario v Canada (Citizenship and Immigration)*, 2012 FC 314 at para 19 (*Ramón Levario*)). The case law emphasizes that the bar for finding that a claim for refugee protection has no credible basis is very high (*AB v Canada (Citizenship and Immigration)*, 2020 FC 562 at para 30). This is because such a finding precludes the usual right of appeal to the Refugee Appeal Division, as well as the statutory stay of removal pending the outcome of such an appeal and any subsequent application for leave and judicial review.

[12] The applicant argues that the RPD did not justify its finding that there is no credible basis, as it offered only a brief paragraph at the end of the Decision:

[63] The panel is of the opinion that there is no credible or trustworthy evidence on which to base a positive decision. Therefore, the panel concludes that there is no credible basis for the refugee protection claim.

[13] I agree. The RPD did not provide any reasons or analysis in the Decision to support its conclusion, other than to repeat the language of the IRPA. The paragraph quoted above is the first and last time the panel addresses this conclusion. The RPD does not refer to the principles of no credible basis, and the Court cannot determine whether the panel respected the important distinction between credibility issues and there being no credible basis. It is settled case law that a finding that there is no credible basis does not automatically result in a finding that an applicant

is not credible or that an applicant's claim has not been established on a balance of probabilities (*Ramón Levario* at para 19).

[14] The applicant also argues that the RPD gave unreasonable weight to the port of entry interviews and that the panel ignored elements of his claim that were not contradicted. In addition, the applicant points out that the RPD gave very little probative value to his nephew's letter, notwithstanding the contradictions between the letter and his testimony. According to the applicant, in light of the high threshold for finding "no credible basis" and the relevant case law, it was not open to the RPD to make such a finding.

[15] The respondent argues that there was sufficient evidence to find a lack of credibility. He points out that the problems identified by the RPD are numerous and related to the central elements of the claim. I agree with this argument. However, the RPD gave "little probative value" to the nephew's letter confirming the applicant's stay at his home. In addition, there were aspects of the applicant's account that were not contradictory as to his work as a car mechanic for the Cartel.

[16] In this case, I find that the RPD's finding that there is no credible basis for the applicant's claim is not justified in light of the relevant legal and factual constraints (*Vavilov* at para 85). The RPD devoted only one paragraph to this conclusion, in which it referred to the language of the IRPA, without any reason or explanation. In light of the serious implications of a finding that there is no credible basis and the RPD's acknowledgement that there was "little" evidence, it was

not open to the RPD to make such a determination without providing transparent reasons that demonstrate an internally coherent and rational chain of analysis.

[17] The application for judicial review will therefore be allowed in part. The Decision, insofar as the RPD found that there was no credible basis for the applicant's claim, is set aside, and the matter is referred back to a differently constituted RPD panel for reconsideration.

[18] No question of general importance was submitted for certification, and the Court is of the view that there are none.

JUDGMENT in IMM-1722-21

THIS COURT ORDERS as follows:

1. The application for judicial review is allowed in part.
2. The decision of the Refugee Protection Division (“RPD”) dated February 18, 2021, insofar as the RPD found that there was no credible basis for the applicant’s refugee protection claim, is set aside, and the matter is referred back to a differently constituted RPD panel for reconsideration.
3. No question of general importance is certified.

“Elizabeth Walker”

Judge

Certified true translation
Vincent Mar

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1722-21

STYLE OF CAUSE: JOSE RODOLFO PEREZ AQUILA v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD VIA VIDEOCONFERENCE

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**JUDGMENT AND REASONS
BY:** WALKER J

DATED: FEBRUARY 21, 2022

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