

Federal Court



Cour fédérale

Date: 20220524

Docket: IMM-3019-21

Citation: 2022 FC 753

Ottawa, Ontario, May 24, 2022

PRESENT: Madam Justice McDonald

BETWEEN:

**CHRISTIAN JEOVANY LOPEZ CARRILLO
VALERIA GUADALUPE GAMEZ LOPEZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision of the Refugee Appeal Division (RAD) dated March 12, 2021, finding that the Applicants were not Convention refugees nor persons in need of protection.

[2] For the reasons that follow, this judicial review is dismissed as the decision of the RAD is reasonable and no procedural fairness issues arise.

I. Background

[3] The Applicants, Christian Jeovany Lopez Carrillo (Mr. Carrillo) and his common-law partner, Valeria Guadalupe Gamez Lopez (Ms. Lopez) are citizens of Mexico.

[4] Mr. Carrillo claims he was a police officer in Sinaloa. He claims the Sinaloa Cartel asked him to collaborate with them, and when he refused, they attempted to kill both him and Ms. Lopez. He says that he was dismissed from the police force in February 2017 and fled to Canada after receiving death threats from members of the police force and the Sinaloa Cartel.

[5] Mr. Carrillo arrived in Canada on April 4, 2019. Ms. Lopez followed on July 11, 2019. They submitted a refugee claim on October 3, 2019. The Applicants claim to have been represented at the Refugee Protection Division (RPD) by a man named “Oleg”, who was not a licensed representative and who was not competent.

A. *RPD Decision*

[6] On February 11, 2020, the RPD dismissed the Applicants’ refugee claim, finding that Mr. Carrillo was not credible as a result of several inconsistencies between the Basis of Claim (BOC) form and his testimony. There were inconsistencies in the dates that Mr. Carrillo stated he was a police officer and whether he resigned from the police force or was fired. In addition, Mr. Carrillo claimed that he was fired for refusing to participate in illegal actions, but also stated that he was fired for failing an exam. Finally, Mr. Carrillo stated in his BOC that he worked for

the Federal Police in Sinaloa, but stated in his testimony that he worked for the State Police in Sinaloa.

[7] The RPD also drew a negative inference from the failure to produce any credible evidence corroborating Mr. Carrillo's claim that he was a police officer. The RPD noted that though the Applicants had produced two documents – a letter from the police force certifying that Mr. Carrillo was a member of the force, and a letter stating he was being dismissed from the force – they were in Spanish and translated with Google. The RPD gave the documents little weight, as it was difficult to determine their significance or relevance without an official translation.

[8] The RPD concluded there was insufficient credible evidence to support that Mr. Carrillo was a police officer, which undermined the entire claim.

B. *RAD Decision*

[9] The Applicants were represented by an immigration consultant on their appeal to the RAD.

[10] They sought to submit new evidence to the RAD. The RAD noted Rule 32(1) of the RPD Rules, which states that claimants must provide an English or French translation with any document that is not written in one of those languages, and a Practice Notice which confirms that untranslated documents may not be accepted by the RPD. The RAD noted the Applicants'

counsel did not explain why these translations were not provided to the RPD, and, therefore, did not accept them as new evidence.

[11] The RAD noted that one of the documents would not be helpful even if admitted as new evidence, as the document states that Mr. Carrillo served with the police from November 2013 until February 2017, while his testimony was that he served until December 2016.

[12] The employment letter from the Sinaloa Secretariat for Public Security post-dated the RPD hearing. The RAD refused to admit this document because its content was not new, stating: “A document’s newness cannot be tested solely by the date of its creation; what is important is the event sought to be proven by the evidence. Old evidence remains old evidence, even if it is in a new document with a recent date.” The RAD found that the Applicants could have provided this evidence to the RPD before it rendered its decision.

[13] The RAD also refused to admit four pay records from 2013, 2014, 2015 and 2016, as they pre-dated the RPD decision. As a result, the RAD also declined the Applicants request for an oral hearing.

[14] On the merits of the appeal, the RAD considered the Applicants’ arguments that the inconsistencies in Mr. Carrillo’s testimony and in his BOC were due to a lack of understanding of English and the fact that he was nervous. They claim that this also accounts for the inconsistencies in dates of employment; whether he resigned or was fired from the police force; and, whether he worked for the Federal or State Police.

[15] The RAD dismissed this argument, stating that these were not small discrepancies in dates, and that the Applicant was not consistent in his use of the word “Federal” and “State” in the forms. The RAD also noted Mr. Carrillo listed both words on his Schedule A and indicated that “he knew enough to understand the difference between these two jurisdictions.”

C. *Preliminary Motion*

[16] Legal counsel for the Respondent tendered an Affidavit which attached a blank BOC form with Appendices. This was offered as the Certified Tribunal Record did not contain a full copy of the BOC with the relevant Appendices.

[17] As no objection was raised to having the full BOC before the Court, the Affidavit was accepted.

II. Issues

[18] The Applicants raise the following issues:

- A. Were the Applicants denied a fair hearing at the RPD?
- B. Did the RAD err by failing to admit new evidence?
- C. Are the credibility findings reasonable?
- D. Is the finding that there was no prospective risk for the Applicants in Mexico reasonable?

III. Standard of Review

[19] The Applicants argue that the standard of review with respect to whether they were denied the right to a fair hearing at the RPD is correctness. However as this is a judicial review of the RAD decision, and not the RPD decision, in my view the appropriate standard of review on this issue is reasonableness. As noted in *Ahmad v Canada (Citizenship and Immigration)*, 2021 FC 214, “The RAD’s determination of whether there was a breach of procedural fairness before the RPD is one aspect of the merits of its decision and is presumptively subject to review for reasonableness, consistent with *Vavilov*” (at para 13).

[20] The other issues are assessed on the reasonableness standard, namely, “whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99).

IV. Analysis

A. *Were the Applicants Denied a Fair Hearing at the RPD?*

[21] The Applicants argue that they had an unfair hearing at the RPD because they had incompetent representation. In effect, they argue that they were self-represented at the RPD because their representative was ineffective and was not licensed.

[22] The focus of this argument is the RPD hearing – however this “fairness” argument was not raised with the RAD in the context of their appeal hearing. As this is a judicial review of the RAD decision, not the RPD decision, the Court should not be considering arguments on issues that were not put to the RAD.

[23] Although the Applicants cite *Cervenakova v Canada (Citizenship and Immigration)*, 2012 FC 525, in my view this case is of no assistance as the Applicants here did not put this issue to the RAD directly and have raised the issue for the first time on this judicial review.

B. *Did the RAD Err by Failing to Admit New Evidence?*

[24] The Applicants argue the RAD erred in refusing to admit the following documents: the employment letter from the Sinaloa Secretariat for Public Security, and four pay records issued by the Government of Sinaloa. They argue that these documents should have been accepted under s 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 and pursuant to the *Raza* test (*Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at para 13; applied to s 110(4) in *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96).

[25] The RPD also refused to accept these documents and the Applicants argue that this was a result of their lack of competent representation at the RPD hearing. Therefore, according to the Applicants, the RAD should have accepted the documents.

[26] The RAD applied the appropriate considerations to the request to adduce new evidence, but concluded that the evidence did not meet the requirements of s 110(4) as it was evidence that was available at the time of the RPD hearing.

[27] On judicial review, the argument that the Applicants are unsophisticated and lacked knowledge of RPD proceedings is not a sufficient basis upon which to argue that the RAD made an unreasonable decision. The documents relate to events that pre-dated the RPD hearing and relate directly to the grounds relied upon by the Applicants to support their claim for protection.

[28] The RAD reasonably assessed the evidence and concluded it was not admissible.

C. *Are the Credibility Findings Reasonable?*

[29] The Applicants argue that the RAD overstated the significance of the errors in Mr. Carrillo's BOC form, and, they argue, had the RAD accepted the new documents, the credibility issues would have been addressed. However, for the reasons noted above, I have concluded that it was reasonable for the RAD to not accept the documents sought to be introduced by the Applicants.

[30] The RAD found the RPD was correct in finding Mr. Carrillo not credible due to the inconsistencies:

- a. in the dates in which he was a police officer;
- b. on whether he worked for the state or federal police;
- c. in whether he resigned from the police force or was fired; and,

d. for what reason he was fired.

[31] Based upon the record, it was reasonable for the RAD to endorse the RPD's credibility findings.

[32] The Applicants' arguments on judicial review essentially amount to a request to have this Court re-weigh the evidence. However, on judicial review, *Vavilov* makes it clear that this Court is not to reweigh or reassess the evidence unless there are "exceptional circumstances" (para 125). No such exceptional circumstances arise here.

D. *Is the Finding that There was no Prospective Risk for the Applicants in Mexico Reasonable?*

[33] In light of the credibility concerns, and after considering country condition evidence on crime and corruption in Mexico, the RAD found there was insufficient evidence to establish the material elements of the Appellant's claim, and, likewise, that there was any forward-facing risk to the Applicants.

[34] The Applicants argue that under s 96 of *Immigration and Refugee Protection Act, SC* 2001, c 27 [IRPA] it is only necessary to demonstrate harm suffered by similarly situated persons of a group to which the Applicants belong. They argue that since Mr. Carrillo was a police officer working against organized crime, this has been established before the RAD. Further, they argue they were able to show particularized risk under s 97 of *IRPA* when Mr. Carrillo testified that he was targeted by drug cartels because of his activities as a police officer.

[35] However, the RAD concluded that the Applicants had not established with credible evidence that Mr. Carrillo was a police officer. As this was the basis of the Applicants' risk claim, it was reasonable for the RAD to conclude there was no prospective risk of harm on return to Mexico.

V. Conclusion

[36] The Applicants have not shown that the decision of the RAD was unreasonable or that there was a breach of procedural fairness. The decision is justified, transparent and intelligible. Therefore, this judicial review is dismissed.

JUDGMENT IN IMM-3019-21

THIS COURT'S JUDGMENT is that:

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

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3019-21

STYLE OF CAUSE: CARRILLO EL AL v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: APRIL 11, 2022

JUDGMENT AND REASONS: MCDONALD J.

DATED: MAY 24, 2022

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