

Federal Court



Cour fédérale

Date: 20220526

Docket: IMM-1100-21

Citation: 2022 FC 760

Ottawa, Ontario, May 26, 2022

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

PEDRO RODRIGUEZ PALACIOS

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, a citizen of Mexico, seeks judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board, dated January 21, 2021, in which the RAD confirmed the decision of the Refugee Protection Division [RPD] that the Applicant is not a Convention refugee or person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The Applicant asserts that the RAD erred: (a) in its assessment of the Applicant's new evidence and in failing to hold an oral hearing; (b) in concluding that the omission of an alleged assault was determinative of the Applicant's claim; and (c) in its overreliance on the Canada Border Services Agency [CBSA]'s notes from an interrogation of the Applicant.

[3] For the reasons that follow, I am satisfied that the RAD's decision was reasonable and accordingly, the application for judicial review shall be dismissed.

I. Background

[4] The Applicant is a 38-year-old citizen of Mexico, who was employed in Mexico as a heavy machine operator for a construction company and the bandleader of a musical group called "Banda la atrapadora".

[5] The Applicant entered Canada on September 23, 2017, but did not make a refugee claim upon entry.

[6] On November 22, 2017, the Applicant was arrested by the CBSA along with four other individuals following a raid of a factory where the Applicant was working in Canada without authorization. The Applicant was interviewed with the help of an interpreter and notes of the interview were recorded by two different CBSA Officers. The notes of Officer Potvin state:

[The Applicant] eluded to wanting refuge in Canada. I then asked if he had any fear of returning to Mexico, to which he replied that "no". When asked to clarify why he wanted refuge in Canada, he

explained that there is no work in Mexico and that there is general delinquency in the area where he lives. When asked if he had tried to move to a different part of Mexico, he answered that he had not due to the fact that he didn't want to leave his family. I pointed out the fact that he had left his family in Mexico to come to Canada. I proceeded to explain the definition of a refugee and to go over the refugee process. He then stated he was not in need of refugee protection.

[7] The notes of Officer Cebado state:

During the interview with Officer G. POTVIN via Spanish interpreter Elizabeth MARTINEZ which included an explanation of the reasons for arrests, rights to counsel and medical information; Mr. RODRIGUEZ PALACIOS began to elude to the requirement of protection. Specifically, refugee protection in Canada from his home country of Mexico.

When Mr. RODRIGUEZ PALACIOS was directly asked if he had any fear of returning to Mexico he emphatically stated, "no". When asked if he was being persecuted in any way shape or form by anyone in Mexico, he stated, "no". Mr. RODRIGUEZ PALACIOS was asked if he knew what the meaning of a convention refugee was as per section 97(1) of IRPA, he stated, "no". When explained via the interpreter, the definition of a convention refugee and asked if in his own opinion he met that description he stated, "no". When asked to explain why he was eluding to the requirement of Canada's protection, he stated he did not want to go back to Mexico because there was no opportunities in Mexico. Specifically, there was little to no opportunity for employment in Mexico. He wanted to remain in Canada because there was more opportunity to work and make a living. He did bring up the fact that Mexico was a dangerous place to live and that general delinquency within the country; particularly where he lived made life difficult. When asked if he had faced any specific situations which he could elaborate on with regards to above noted comment, he stated, "no".

Mr. RODRIGUEZ PALACIOS was asked directly if it was his intention to make a refugee claim he stated he did not want to make a refugee claim as he had no fear of returning to Mexico.

[8] On December 19, 2017, the Applicant made a refugee claim. In his Basis of Claim form [BOC] and accompanying narrative, the Applicant stated that he faced a serious risk to his life in Mexico as he has been targeted by members of Mexican drug cartels through extortion. He stated that after every event where his band performed, the cartel members would come to the event site and demand money. While he borrowed money from his employer to meet the initial demands, the demands escalated and he was no longer able to meet them. When the Applicant did not pay, he stated that he was threatened by the cartel members. Fearing for his safety, he left Mexico and came to Canada.

[9] On August 21, 2019, the Applicant submitted a “narrative update”, in which he stated that a few weeks before fleeing Mexico, he was severely beaten by gang members who came to collect the extortion money. He stated that he was hit with the butt of their guns on his face and his stomach, resulting in a broken nose and a fracture to the bone in his forehead between his eyes.

[10] One day later, the Applicant appeared before the RPD. The Applicant had tendered a number of documents to the RPD in the days leading up to the hearing, which the RPD rejected without providing any reasons for doing so.

[11] In its decision dated September 5, 2019, the RPD held that the determinative issues in regard to the Applicant’s claim were the credibility of the Applicant’s oral testimony, his BOC narrative and other documentary evidence. The RPD found that, on a balance of probabilities, the Applicant was not a credible witness. Specifically, the RPD found that: (a) the Applicant had fabricated his story and was not credible as to why he was seeking protection; (b) his oral testimony

was found to have contradicted his written narrative; (c) the Applicant embellished his testimony to buttress his claim; and (d) the Applicant's statements to the CBSA Officers contradicted his BOC narrative and the RPD rejected the Applicant's assertion that his tiredness and sleep deprivation at the time of his interview with the Officers were the reasons why he told the Officers that he was not in need of protection. The Applicant appealed the RPD's decision to the RAD.

II. Decision at Issue

[12] The RAD found that the RPD erred in failing to admit the evidence that was submitted by the Applicant in the days leading up to the hearing, stating that the RPD put an over-emphasis on form over substance. The RAD admitted the evidence on the basis that the documents were relevant, probative and brought new evidence, as they helped establish the Applicant's involvement in his musical band, his employment as a heavy machine operator, and were relevant to his allegations regarding the danger he alleged he faced. With the exception of one document, the RAD also accepted a number of additional new documents tendered by the Applicant on the basis that the new evidence related to the Applicant's allegations, but stressed that this did not mean the RAD would believe the Applicant's allegations or accept that the new documents ultimately proved his claim for refugee protection. The RAD noted that it would discuss the weight to be given to the new evidence in the analysis portion of its decision.

[13] The RAD rejected the Applicant's request to hold an oral hearing pursuant to section 110(6) of the *IRPA* on the basis that the new evidence did not raise an issue with respect to the Applicant's credibility and that, even if the RAD accepted the facts particularized in the new

evidence, those facts were not central to the decision with respect to his refugee claim and if accepted, would not justify allowing or rejecting the claim.

[14] The RAD found that the RPD was correct in finding that the Applicant's allegations about the fear he faced in Mexico were not credible. The RAD found that the alleged assault described in the updated narrative went to the very core of the Applicant's claim and was not simply an addition of a detail, as suggested by the Applicant. The RAD found that the failure to include this important fact and detail in his initial BOC form affected the credibility of all of the Applicant's evidence and that the important omission regarding this central allegation of the Applicant's claim was dispositive of his claim.

[15] The RAD also found that the RPD did not err in drawing an adverse inference regarding the Applicant's credibility based on his CBSA interrogation, wherein he indicated that he did not want to claim refugee protection. The RAD noted that the Applicant did not dispute that he expressed the essential notions referred to in the CBSA Officers' notes, but rather attempted on appeal to provide a reasonable explanation for making them. The RAD rejected the Applicant's assertion that being tired, afraid and hungry, or the presence of a translator by phone, would cause the Applicant to lose memory of why he found himself in Canada. While the RAD found that the Applicant should not be held to the standard of understanding the legal requirements and definition of what constitutes a refugee, the fact remained that when it came to questions that did not require any understanding of the definition of a refugee, the Applicant expressed no basis for a fear in Mexico.

[16] With respect to the new evidence accepted on appeal, the RAD stated:

[58] With respect to the evidence concerning the deaths of Pedro's nephews, I note there is a lack of evidence to support that these deaths had anything to do with Pedro's allegations of being extorted. There are statements from relatives that suggest there is a connection, but there is no evidence to support those statements that suggest the people who allegedly extorted Pedro were the ones to kill Pedro's nephews because of Pedro's situation. Indeed, with respect to the nephew who was killed on September 7, 2019, the news article indicates that six other people were killed as well. There is no suggestion those deaths had any connection to Pedro's allegations and therefore the fact that Pedro has relatives that have been killed does not support his allegations as to why he believes he needs refugee protection.

[59] The new evidence admitted with respect to confirmation of Pedro's employment and his membership in a musical band does not change my decision. Those facts can be accepted, but they do not assist Pedro with his claim for the reasons I have set out in this decision.

[60] I reviewed the news article about organized crime, and also considered the National Documentation Package for Mexico. Information about crime and cartels in Mexico is general information that does not assist Pedro in proving his specific allegations that cartels extorted and threatened harm against him.

[17] The RAD dismissed the Applicant's appeal and confirmed the decision of the RPD that the Applicant is neither a Convention refugee nor a person in need of protection.

III. Analysis

[18] While the Applicant has raised a number of issues on this application, they all go to the reasonableness of the RAD's determination. Accordingly, the issues raised by the Applicant are

reviewable on a reasonableness standard [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 25].

[19] When reviewing for reasonableness, the Court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker [see *Vavilov, supra* at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adenijj-Adele v Canada (Minister of Citizenship and Immigration)*, 2020 FC 418 at para 11].

A. The RAD did not err in its determination regarding the omission from the BOC narrative

[20] The Applicant asserts that the RAD's findings that the assault went to the very core of his claim and that the omission of the assault from his BOC narrative was dispositive of his claim were unreasonable. The Applicant asserts that he had a stand-alone claim based on being targeted for extortion and that it is the extortion and fear of harm if he did not pay that was at the core of his claim, not the assault. The Applicant asserts that the assault did not detract from, or undermine, his claim. Moreover, the Applicant asserts that it was unreasonable for the RAD to find that this single omission, in the absence of any other omissions or an accumulation of contradictions, was dispositive of his claim.

[21] I reject the Applicant's assertion. The RAD's finding that the omission of the assault was significant is entirely reasonable. The assault was not a minor detail or collateral information that could be omitted, but rather the assault (which the Applicant asserted resulted in extensive injuries) was described by the Applicant as being the basis for his decision to leave Mexico so as to avoid further punishment of this nature from the cartel. The fact that the Applicant asserted that he had other grounds on which to base his claim even without the assault does not detract from the significance of the assault, nor does it "cure" the Applicant's omission. I find that the omission of the assault provided the RAD with a reasonable basis for impugning the Applicant's credibility and finding that it was determinative of the claim [see *Ogaulu v Canada (Citizenship and Immigration)*, 2019 FC 547 at paras 18-20].

[22] Moreover, while the Applicant asserts that a single omission is an insufficient basis for the RAD's determination, I note that the Applicant has not identified any decisions of this Court or the Federal Court of Appeal in support of this assertion. In this case, the omission of the assault from both the BOC narrative and the CBSA interview was significant and therefore it was open to the RAD to find that it seriously undermined the Applicant's credibility.

B. The RAD did not err in its consideration of the new evidence and in refusing to hold a hearing

[23] The Applicant asserts that, despite finding the new evidence to be credible, relevant and probative, the RAD failed to address the weight to be given to the new evidence and in particular, to the two letters from the Applicant's cousin and the letter from the Applicant's wife. The Applicant asserts that these three documents make a clear connection between the Applicant and

the death of his nephews and are evidence of an on-going risk to the Applicant in Mexico. In the circumstances, the Applicant asserts that the RAD's finding that this evidence does not assist his claim was unreasonable.

[24] I reject the Applicant's assertion. The three letters at issue were considered by the RAD at paragraph 58 of its decision where the RAD stated that "there are statements from relatives that suggest there is a connection" between the deaths of the Applicant's nephews and the extortion of, and threats to, the Applicant. However, the RAD found that, notwithstanding these letters which the RAD acknowledged suggest a connection, there was an insufficiency of evidence to support the Applicant's assertion that the deaths had anything to do with the Applicant's allegations of being extorted. Put differently, the RAD effectively found that the unsupported statements made by the Applicant's cousin and wife were insufficient to establish the alleged facts. Moreover, while the RAD may not have used the word "weight" in considering the letters, I am satisfied that they were considered by the RAD in its determination as to whether there was sufficient evidence tendered by the Applicant to support his claim. In the circumstances, I am not satisfied that the Applicant has demonstrated any deficiency in the RAD's consideration of this evidence and the reasons for its determination.

[25] In his written submissions, the Applicant asserted that the RAD failed to assess the objective evidentiary basis of the claim and that the country condition documents make it clear that the underlying facts (extortion of band members by the cartel and threats of harm) are plausible. I reject this assertion. The RAD expressly addressed the new evidence tendered by the Applicant regarding organized crime, as well as the National Documentation Package for Mexico.

Moreover, the documentary evidence before the RAD demonstrated that extortion is generalized to the population of Mexico and, in the absence of any credible personalized risk to the Applicant, it was open to the RAD to find that such generalized risk is insufficient to ground a section 97 claim [see *Prophète v Canada (Minister of Citizenship and Immigration)*, 2008 FC 331 at paras 16-17; aff'd 2009 FCA 31].

[26] Turning to the issue of an oral hearing, pursuant to section 110(3) of the *IRPA*, the RAD must proceed without a hearing on the basis of the record of the proceeding of the RPD. However, where new evidence is admitted pursuant to *IRPA* s 110(4), the RAD "may hold a hearing" if the evidence (a) raises a serious issue with respect to credibility, (b) is central to the decision with respect to the refugee claims, and (c) if accepted, would justify allowing or rejecting the refugee claim, pursuant to s 110(6) of the *IRPA*. The RAD's decision on whether to hold an oral hearing in accordance with section 110(6) of the *IRPA* is based on an assessment of whether the criteria have been established and if so, whether the RAD should exercise its discretion to hold an oral hearing [see *Sanmugalingam v Canada (Citizenship and Immigration)*, 2016 FC 200 at para 36; *Zhou v Canada (Citizenship and Immigration)*, 2015 FC 911 at para 11; *Horvath v Canada (Citizenship and Immigration)*, 2018 FC 147 at para 18].

[27] The Applicant submits that the RAD erred in the exercise of its discretion under section 110(6) of the *IRPA* in failing to convoke a hearing and that the RAD's reasons for refusing to convoke a hearing lack both justification and transparency. Given that the new evidence specifically addressed the Applicant's allegations, the Applicant asserts that, contrary to the

finding of the RAD, the new documents did raise an issue with respect to his credibility and supported his allegations, both past and future.

[28] I reject the Applicant's assertion and see no error in the RAD's determination that the new evidence did not raise an issue (yet alone a serious issue) with respect to the Applicant's credibility and that the new evidence was not central to the decision. It is clear from a review of the RAD's decision that the central credibility issues in this case related to the Applicant's omission of the assault from his initial BOC narrative and the inconsistency between his evidence underpinning his refugee claim and the evidence the Applicant gave when interrogated by the CBSA Officers. The new evidence did not address either of those credibility issues. Even if the Applicant was correct and the new evidence raised a credibility issue (which I find it does not), raising a credibility issue on its own is not enough and the Applicant has not explained how this new evidence meets the entirety of the criteria set out in section 110(6) of the *IRPA*.

[29] I am satisfied that the RAD adequately justified its determination that the requirements set out in section 110(6) to convoke an oral hearing had not been met.

C. The RAD's consideration of the CBSA Officers' notes was reasonable

[30] The Applicant asserts that the RAD placed undue reliance on the CBSA Officers' notes of their interrogation of the Applicant and failed to consider the context in which the questioning was undertaken – namely, that the Applicant was tired, hungry and afraid at the time that he gave his answers. Moreover, the Applicant asserts that the CBSA Officers failed to properly explain “a person in need of protection” under section 97 of the *IRPA* and it was improper to ask the Applicant

to assess his own situation against a legal framework that had been misdescribed by the CBSA Officers. The Applicant therefore asserts that it was unreasonable for the RAD to impugn his credibility based on the content of the CBSA Officers' notes.

[31] I reject the Applicant's assertions. In doing so, I note that the Applicant does not deny that he told the CBSA Officers that he did not fear returning to Mexico, that he came to Canada for economic reasons or that he expressed an intention to return to Mexico. Rather, the Applicant asserts that his answers were given due to him being tired, hungry and afraid, which explanation I find was reasonably open to the RAD to reject. Moreover, a fair reading of the RAD's reasons reveal that, in making its decision, the RAD did not rely on the Applicant's understanding of the legal test required for a section 96 or 97 claim, but rather focused on the Applicant's answers to simple, factual questions about whether there was any reason whatsoever for the Applicant to fear returning to Mexico. In such circumstances, I find that the RAD's reliance on the CBSA Officers' notes was reasonable and that the inconsistencies between the statements made by the Applicant to the CBSA Officers and his BOC narrative were a reasonable basis upon which it was open to the RAD to impugn the Applicant's credibility.

IV. Conclusion

[32] As the Applicant has failed to demonstrate that the RAD's decision is unreasonable, the application for judicial review shall be dismissed.

[33] The parties have proposed no question for certification and I agree that none arises.

JUDGMENT in IMM-1100-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. The parties proposed no question for certification and none arises.

“Mandy Ayles”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1100-21

STYLE OF CAUSE: PEDRO RODRIGUEZ PALACIOS v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HEARD BY VIDEOCONFERENCE

DATE OF HEARING: MAY 24, 2022

JUDGMENT AND REASONS: AYLEN J.

DATED: MAY 26, 2022

APPEARANCES:

Timothy Wichert FOR THE APPLICANT

Idorenyin Udoh-Orok FOR THE RESPONDENT

SOLICITORS OF RECORD:

Timothy Wichert FOR THE APPLICANT
Barrister and Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario