

Federal Court



Cour fédérale

Date: 20220928

Docket: IMM-7819-21

Citation: 2022 FC 1359

Ottawa, Ontario, September 28, 2022

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

**DERENEL SANTIAGO GARCIA
LUZ MARIA DIAZ RODRIGUEZ
LUZ MARIA DE LOS SANTOS SANTIAGO
ISABELLA DE LOS SANTOS SANTIAGO**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicants seek judicial review of the dismissal of their claim for refugee status. I am granting their application because the decision-maker's negative credibility findings were not reasonably grounded in the evidence.

[2] Ms. Santiago's husband, Mr. de los Santos, worked as a political advisor for the mayor of a municipality in Mexico. In April 2018, he discovered that the mayor was defrauding the municipality. He resigned from his duties shortly thereafter and received threats from the mayor. He was murdered in June 2018. Ms. Santiago believes the mayor sponsored her husband's murder. After these events, she received threatening phone calls and saw people watching her residence. In particular, nine months after the murder, she received a call from someone who wanted to recover her husband's computer. Together with her children and mother-in-law, she came to Canada and claimed refugee status.

[3] Their claim was rejected by the Refugee Protection Division [RPD] and Refugee Appeal Division [RAD] of the Immigration and Refugee Board. No one disputes that Mr. de los Santos was murdered. Both tribunals, however, found that Ms. Santiago was not credible, mainly because her testimony regarding her husband's duties was inconsistent, she amended her basis of claim [BOC] form with respect to a significant issue, and it was implausible that the agent of harm would have waited nine months to attempt to recover her husband's computer. Because of these credibility concerns, the RPD and RAD assigned no weight to evidence that the mayor was responsible for Mr. de los Santos's murder and that Ms. Santiago and her family are accordingly at risk.

[4] The applicants now seek judicial review of the decision of the RAD. I am allowing their application, as the RAD's decision is unreasonable for three main reasons.

[5] First, there is no contradiction or inconsistency with respect to the employment duties of Mr. de los Santos. While the RAD's factual findings are entitled to a high degree of deference, they must be anchored in the evidence. When one reads the transcript of the hearing before the RPD, it is obvious that Ms. Santiago has limited knowledge of her husband's duties and that accounting and the purchase of garbage trucks are examples of the tasks he was performing as a political advisor. It is also clear that she did not use the word "bookkeeping" or its equivalent in Spanish in a technical sense. Rather, she saw him "doing accounts and calculations and writing on papers" while he was working on his computer at the dinner table on what appeared to be an Excel spreadsheet. She testified that she did not understand the numbers herself.

[6] Based on this evidence, it was unreasonable for the RAD to find that Ms. Santiago's testimony was inconsistent or evolving. Quite simply, her testimony is that her husband performed a variety of tasks on behalf of the mayor. Likewise, the fact that Mr. de los Santos's main occupation was a car and real estate business and his lack of training as an accountant are not incompatible with his involvement in the municipality's financial matters.

[7] Second, given the above, it was unreasonable to find that a letter provided by a fellow worker at the municipality contradicted Ms. Santiago's account. The letter described Mr. de los Santos as a political adviser, but failed to include details regarding the purchase of garbage trucks. Its author, however, did not purport to enumerate Mr. de los Santos's tasks as a political advisor or give a job description. It is unreasonable to expect the letter to refer explicitly to the garbage trucks. It is also unreasonable to discredit the letter because its author worked "in the same area" as Mr. de los Santos, whereas Ms. Santiago testified that he worked at home at night.

The two statements are not mutually incompatible—one can work at the office during the day and at home in the evening. In fact, the letter corroborates rather than contradicts Ms. Santiago’s testimony.

[8] Third, the RAD engaged in speculation with respect to the conduct of the agent of persecution, contrary to what this Court held in cases such as *Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968 at paragraph 19, [2020] 4 FCR 617. In essence, the RAD held that the mayor would not have waited nine months to attempt to recover Mr. de los Santos’s computer from Ms. Santiago and to threaten her to that end. If the computer contained evidence incriminating the mayor, one would of course assume that the mayor would try to recover it as quickly as possible. However, we can only speculate as to when the mayor realized that the computer contained evidence against him or formed the belief that it was in Ms. Santiago’s possession. (In fact, she testified that the computer was never returned to her.) There was simply no basis in the evidence for such speculation.

[9] These errors are sufficient to render the decision as a whole unreasonable. Thus, it is not necessary to review the other grounds that Ms. Santiago put forward in support of her application for judicial review.

[10] For these reasons, the application for judicial review will be granted and the matter will be returned to a different member of the RAD.

JUDGMENT in IMM-7819-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted.
2. The decision made by the Refugee Appeal Division of the Immigration and Refugee Board in this matter on October 6, 2021 is set aside and the matter is returned to another member of the Refugee Appeal Division for redetermination.
3. No question is certified.

"Sébastien Grammond"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7819-21
STYLE OF CAUSE: DERENEL SANTIAGO GARCIA, LUZ MARIA DIAZ
RODRIGUEZ, LUZ MARIA DE LOS SANTOS
SANTIAGO, ISABELLA DE LOS SANTOS
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