

Federal Court



Cour fédérale

Date: 20230330

Docket: IMM-1319-22

Citation: 2023 FC 450

Ottawa, Ontario, March 30, 2023

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

ANN-MARIE JUANITA CHEN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ann-Marie Juanita Chen is a citizen of Jamaica. She seeks judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB]. The RPD determined that she is neither a Convention refugee nor a person in need of protection pursuant to ss 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

The RPD also determined that her claim had no credible basis pursuant to s 107(2) of the IRPA, depriving her of an appeal to the Refugee Appeal Division of the IRB.

[2] Ms. Chen claims to fear domestic violence at the hands of her former boyfriend. The RPD found her allegations not to be credible. Ms. Chen could not explain her delay in seeking protection, nor her failure to provide any corroborating documentary evidence to support her claim. The RPD held that Ms. Chen had made a refugee claim in order to circumvent the ordinary immigration process for regularizing her status in Canada.

[3] For the reasons that follow, the RPD's decision was reasonable. The application for judicial review is dismissed.

II. Background

[4] Ms. Chen says that she met her former boyfriend in 2014. He began to abuse her physically and emotionally in 2017. The abuse worsened in 2018, causing her "mental trauma and deep depression". She did not report the abuse to the police because she feared retaliation: "women who had done so before, got killed without the police being able to protect them".

[5] Ms. Chen visited Canada three times in 2019, in February, June, and November. She made no claim for protection during her first or second visit, and returned to Jamaica at the end of both trips. She eventually sought refugee protection in February 2020.

[6] On October 4, 2021, the RPD asked Ms. Chen to provide evidence to support the allegations contained in her Basis of Claim [BOC] form, including, but not limited to, “any evidence of harm or threats against [her]”. She did not respond to the request, although she admitted during the hearing before the RPD that she had received it.

[7] The RPD heard Ms. Chen’s claim on November 5, 2021 and rejected it on January 28, 2022.

III. Decision under Review

[8] The RPD found that Ms. Chen’s delay in making a refugee claim evinced a lack of subjective fear. The RPD rejected her explanations that she did not at first realize she could seek protection, that she needed to settle financial matters in Jamaica, or that she had to arrange living accommodation for her three children in Jamaica. The RPD found that Ms. Chen “would not have returned to Jamaica if she was genuinely fearful of persecution”.

[9] Ms. Chen failed to provide any evidence to corroborate her allegedly abusive relationship with her former boyfriend. There was no evidence to confirm the existence of the relationship, no records of medical treatment arising from the abuse, and no supporting letters from family or friends. The RPD found that Ms. Chen was unable to provide a reasonable explanation for the lack of corroborating evidence.

[10] The RPD gave no weight to a report by Dr. Judith Pilowsky, a clinical and rehabilitation psychologist. Dr. Pilowsky reviewed the allegations contained in Ms. Chen's BOC and met with her only once. She expressed the view that Ms. Chen was suffering from Post-Traumatic Stress Disorder [PTSD] and symptoms of depression.

[11] The RPD accepted that Ms. Chen may be suffering from depression. However, the RPD found no evidence that this was caused by her former boyfriend's abuse. There was simply no "documentary evidence of her relationship with her alleged abuser".

[12] The RPD concluded that Ms. Chen had not provided any credible or trustworthy evidence to establish her claim. Nor was there any objective country condition evidence that could establish her claim independently. The RPD therefore held that her claim had no credible basis.

IV. Issues

[13] This application for judicial review raises the following issues:

- A. Were the RPD's adverse credibility findings reasonable?
- B. Did the RPD reasonably conclude that Ms. Chen's claim had no credible basis?

V. Analysis

[14] The RPD's decision is subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 10). The Court will intervene only where “there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100).

[15] The criteria of “justification, intelligibility and transparency” are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

A. *Were the RPD's adverse credibility findings reasonable?*

[16] Ms. Chen says the RPD made unreasonable findings regarding (1) her well-founded fear of persecution, (2) the absence of corroborating evidence, and (3) the weight to be given to Dr. Pilowsky's report.

(1) Well-Founded Fear

[17] To establish a well-founded fear of persecution, a claimant must demonstrate a subjective fear and also that the fear is objectively well-founded (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 (SCC) at 723).

[18] Ms. Chen says she provided a reasonable explanation for her delay in making a refugee claim. She maintains that she did not know she could seek protection until her second trip to Canada, after which she needed to return to Jamaica to protect her children from her abusive boyfriend, end her home rental, and place her children in the care of her sister. She argues that the RPD failed to properly consider the totality of her circumstances, or provide an adequate justification for rejecting her explanations (citing *El-Naem v Canada (Citizenship and Immigration)*, [1997] FCJ No 185 (FCTD) at 9).

[19] While delay may not be determinative, it is a relevant consideration when assessing a claimant's subjective fear (*Duarte v Canada (Minister of Citizenship and Immigration)*, 2003 FC 988 at para 14). As Justice Robert Barnes remarked in *Ortiz Garcia v Canada (Citizenship and Immigration)*, 2011 FC 1346, “[a]bsent compelling reasons, people do not abandon safe havens to return to places where their personal safety is in jeopardy” (at para 8).

[20] Ms. Chen failed to seek protection during two separate visits to Canada, and twice returned to Jamaica despite the alleged persecution by her former boyfriend. The RPD reasonably found that “the onus was on her to inquire about the refugee protection program”.

[21] Ms. Chen emphasizes the importance of returning to Jamaica to ensure the safety of her children. However, it is not the role of this Court to re-weigh the evidence and substitute its view for that of the RPD (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 25, 59). Ms. Chen must demonstrate that the RPD's rejection of her explanations was unreasonable, and fell outside the range of acceptable outcomes. I am not persuaded she has done so.

[22] Having found no evidence that Ms. Chen was in an abusive relationship with her former boyfriend, the RPD reasonably concluded that none of the country condition evidence could serve to verify her claim. It was incumbent on Ms. Chen to establish a link between the general documentary evidence and her personal circumstances, which she failed to do (*Iskandar v Canada (Citizenship and Immigration)*, 2019 FC 1372 at para 27, citing *Ayikeze v Canada (Citizenship and Immigration)*, 2012 FC 1395 at para 22). For the same reason, the RPD's assessment of Ms. Chen's personalized risk of harm under s 97 of the IRPA was adequate.

(2) Corroborating Evidence

[23] Ms. Chen says there is no general requirement to provide corroborating evidence, and it was wrong of the RPD to base its adverse credibility findings on this alone (citing *Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968 at para 27). She relies on *Canadian Association of Refugee Lawyers v Canada (Citizenship and Immigration)*, 2019 FC 1126 as follows (at para 183):

The rationale underlying this presumption of truthfulness is that claimants for refugee protection who have come from certain types of exigent circumstances cannot reasonably be expected to have

documentation or other evidence to corroborate their claims: see, for example, *Chunza Garcia v Canada (Citizenship and Immigration)*, 2014 FC 832 at para 17 [*Chunza Garcia*]. Such circumstances can include refugee camps, conditions in war-torn countries or situations in which the claimant only had a brief window of opportunity in which to escape their persecutor(s) and cannot subsequently access documents or other evidence from Canada.

[24] Ms. Chen argues that the RPD failed to recognize the difficulties she faced in obtaining documents while she was in Canada. In particular, she disputes the RPD's finding that she should have provided supporting letters from all three of her children, given that she is estranged from one of them.

[25] A claimant's credibility may be negatively affected if he or she does not produce reasonably expected documents or provide a reasonable explanation for their absence (*Ruszo v Canada (Citizenship and Immigration)*, 2018 FC 943 at para 21). The RPD did not require Ms. Chen to produce letters of support from each of her three children. The RPD reasonably expected corroborating evidence from at least some of her family members.

[26] Ms. Chen has a sister who lives in the United States. She testified before the RPD that she asked her sister many times to provide a letter of support. However, despite living in a different country, the sister allegedly feared retaliation by Ms. Chen's former boyfriend. The RPD asked Ms. Chen how her former boyfriend would know that her sister had provided a letter of support, but she declined to answer. Instead, she said that her sister was busy and did not have time to write a letter, or even send an e-mail message.

[27] The RPD reasonably found that the absence of any corroborating evidence undermined the credibility of Ms. Chen's claim.

(3) Dr. Pilowsky's Report

[28] The RPD said the following regarding Dr. Pilowsky's report (at para 13):

[...] While I do not doubt that the claimant may be suffering from symptoms of depression, I do not give this piece of evidence any weight as the claimant has not provided any documentary evidence of her relationship with her alleged abuser. There is no evidence before me to find, on a balance of probabilities, that the claimant's depressive symptoms have been caused due to her abusive relationship [...].

[29] Ms. Chen argues that the RPD failed to properly assess the psychological report, or consider whether her symptoms of depression might account for her lack of credibility. There was nothing in Dr. Pilowsky's report to suggest that Ms. Chen's symptoms interfered with her capacity to provide credible explanations or produce corroborating evidence. Nor does it appear that this argument was ever advanced before the RPD.

[30] A psychological report cannot serve as a cure-all for credibility deficiencies in a claimant's evidence (*Dag v Canada (Citizenship and Immigration)*, 2017 FC 960 at para 20). This is particularly true where the psychological report is based on self-reported allegations that are found not to be credible: "a psychological report based on a discredited story cannot rehabilitate that story" (*Boyce v Canada (Citizenship and Immigration)*, 2016 FC 922 at paras 60-62).

[31] Dr. Pilowsky's report was largely based on Ms. Chen's self-reported allegations. The RPD reasonably determined that these had not been established with credible or reliable evidence. The RPD's decision to ascribe no weight to the psychological report was reasonable.

B. *Did the RPD reasonably conclude that Ms. Chen's claim had no credible basis?*

[32] Ms. Chen submits that the RPD conflated its adverse credibility findings with its determination that her claim had no credible basis. She relies on *Rahaman v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89 as follows (at para 51):

Finally, while I have not been able to accept the position advanced by counsel for Mr. Rahaman in this appeal, I would agree that the Board should not routinely state that a claim has "no credible basis" whenever it concludes that the claimant is not a credible witness. As I have attempted to demonstrate, subsection 69.1(9.1) requires the Board to examine all the evidence and to conclude that the claim has no credible basis only when there is no trustworthy or credible evidence that could support a recognition of the claim.

[33] The test for a finding of "no credible basis" is high. The finding is not available if there is any credible or trustworthy evidence that could support a positive determination. Ms. Chen says that the psychological report and the objective country condition evidence for gender-based violence in Jamaica could potentially support a successful claim for protection. I disagree.

[34] The RPD acknowledged that, in order to support a finding of "no credible basis", there must be a lack of any probative evidence whatsoever to ground a claim. There was nothing in the

psychological report or country condition evidence that was independently capable of establishing Ms. Chen's claim of persecution.

[35] The RPD reasonably found there was no evidence to support Ms. Chen's allegation of domestic violence, or even the existence of a relationship with her alleged abuser. Neither the country condition evidence nor the psychological report could serve to fill that gap. It was therefore open to the RPD to conclude that Ms. Chen's claim had no credible basis (see *Opee v Canada (Citizenship and Immigration)*, 2022 FC 1636; *Puebla v Canada (Citizenship and Immigration)*, 2022 FC 879; *Martinez v Canada (Citizenship and Immigration)*, 2022 FC 326).

VI. Conclusion

[36] The application for judicial review is dismissed. Neither party proposed that a question be certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

“Simon Fothergill”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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