

Federal Court



Cour fédérale

Date: 20230417

Docket: IMM-2282-22

Citation: 2023 FC 561

[ENGLISH TRANSLATION]

Ottawa, Ontario, April 17, 2023

PRESENT: Mr. Justice Diner

BETWEEN:

EDUARDO INFANTE RODRIGUEZ

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This application for judicial review concerns the decision of the Refugee Protection Division [RPD] to reject the applicant's claim for refugee protection under subsection 107(2) of *the Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] because it is manifestly unfounded. I delivered the following oral judgment at the conclusion of the hearing: the RPD

decision is not reasonable and the application for judicial review is allowed. My reasons for judgment follow.

I. Background and Facts

[2] The applicant is a citizen of Cuba. He alleges the following.

[3] In October 2011, the applicant was dismissed from his employment at a hotel where he worked as the security supervisor. The head of security fired him because of a theft that took place at the hotel while the applicant was in charge of security. However, the applicant is convinced that he was fired because he told the head of security that communism was a lie and that he did not agree with Cuban policies or the government's actions with respect to human rights.

[4] In December 2011, police officers searched the applicant's house and confiscated jewellery that was for his business. The police took the applicant to the police station to interrogate him. During that interrogation, the applicant was beaten, mistreated and threatened by the police and was fined 50 pesos, which he had to pay before being released.

[5] The police searched the applicant's house several times in 2012 and 2013. The applicant was also arrested for demonstrating against the government and against police abuses. The applicant and his family were threatened with imprisonment. His daughter was mistreated at school for refusing to sing the national anthem and salute the flag, and because she was seen as the daughter of a government opponent.

[6] As a result of this harassment, the applicant moved his family to the countryside to live with his brothers, who were farmers. However, the local police threatened him once they learned from the police in his old municipality about the problems he had encountered. The applicant and his family therefore left the countryside and returned to live in the municipality.

[7] In 2014, the applicant was arrested for attending an opposition meeting. He was released after paying a fine of 50 pesos.

[8] From 2015 to 2018, the applicant's house was under surveillance and police officers and agents from the technical search division inspected and searched his home several times without a search warrant. During those searches, the police and agents confiscated sugar, flour and oil that the applicant had for his cafeteria business. The applicant was again arrested, interrogated and threatened, and then released after paying another fine of 50 pesos.

[9] In January 2019, the applicant's house was searched pursuant to a search warrant. The police seized several items that the applicant was holding for sale, including clothing and shoes. The applicant was arrested and had to pay a fine of 50 pesos.

[10] In March 2019, the applicant was arrested by the political police and isolated in a room for questioning. A police officer and a state security agent warned the applicant that this was the final warning and that if he were arrested again, he would be [TRANSLATION] "eliminated".

[11] Fearing that death threat, the applicant left Cuba. He claimed refugee protection in Canada on December 19, 2019. The RPD held a hearing on December 7, 2021, and rendered its decision on February 4, 2022. The RPD rejected the applicant's claim for refugee protection under subsection 107(2) of the IRPA. It found the claim to be manifestly unfounded, thereby barring the applicant from appealing to the Refugee Appeal Division [RAD].

II. Analysis

[12] I find that the RPD decision in this case is not reasonable (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 85).

[13] The applicant relies on *Rahaman v Canada (Minister of Citizenship and Immigration)* (CA), 2002 FCA 89, at para 51 to argue that to find that a claim has no credible basis, the RPD is required to “examine all the evidence and to conclude that there is no credible basis only when there is no trustworthy or credible evidence that could support a recognition of the claim.” In this case, the applicant argues that the RPD failed to consider all the evidence, including evidence that was trustworthy and credible, in concluding that the claim was manifestly not credible.

[14] The applicant submits that the RPD did not justify why it is satisfied that the applicant was dismissed because of the theft rather than because of his political opinion. The applicant submits that the RPD member relied on a personal assessment of the hotel business in Cuba to reach this conclusion, without citing or referring to the objective evidence in the National Documentation Package [NDP]. The applicant argues that a flawed analysis of the evidence on

the record led the RPD to ignore the substance of his allegations, namely that he was persecuted by the authorities because of his opposition to the government.

[15] The respondent argues that the finding of lack of credibility was reasonable and was based on the applicant's testimony, in which he contradicted himself on the central element of his refugee claim, namely the reason he was dismissed. The respondent maintains that the story the applicant gave the RPD was implausible, and that the panel did not believe him with regard to the connection he attempted to establish between his criticism of the government, the theft and the visits from the police. The respondent argues that all of the deficiencies in the evidence submitted reasonably sustain the negative finding as to the applicant's credibility.

[16] I cannot agree with the respondent's arguments. It appears from the RPD's reasons that the panel's finding that the applicant lacked credibility relied primarily on the fact that he contradicted himself as to why he was dismissed. However, the applicant did not contradict himself in his testimony given that he had mentioned the theft earlier, at paragraph 5 of his written account:

[TRANSLATION]

In October 2011, I was working as security team leader at the Playa Pesquero (fisherman's beach) hotel. A robbery took place while I was on duty and afterwards the head of security, Julio Silva Feria, called me into his office and told me that I was entirely to blame for the theft. That is when I told him that it was not my responsibility, that it was the fault of the socialist system with which I do not agree.

[17] This element was therefore NOT [TRANSLATION] "revealed" during the applicant's testimony, as the RPD stated in its reasons. It was therefore not reasonable for the panel to rely

on this contradiction—which is not actually a contradiction—to doubt all of the applicant’s other allegations, without relying on any of the evidence on the record or on the objective evidence.

[18] The RPD considered that it was more likely that the applicant was fired because of a theft for which he was responsible, and that the police subsequently conducted surveillance and searches because the applicant was in possession of illegal goods. While it was open to the RPD to reach such a conclusion, in light of the serious implications of a finding that there is no credible basis, it could not do so without providing transparent reasons that demonstrate an internally coherent and rational chain of analysis (*Aquila v Canada (Citizenship and Immigration)*, 2022 FC 231 at para 16).

[19] For example, the RPD claims that it is more likely that the applicant was fired because of the theft that occurred under his watch given that Cuba depends on tourism and it is therefore imperative that hotels ensure tourists’ safety. The RPD did not rely on any objective evidence to reach this conclusion. The RPD further claims that it is more likely that the applicant’s person and home were searched several times as a result of illegal goods in his possession because [TRANSLATION] “Cuba is a state where everything is regulated, even food, which requires ration coupons”. I note once again, that the RPD does not cite any objective evidence to support this conclusion.

[20] Moreover, the RPD did not consider several pieces of evidence on record that could corroborate the applicant’s allegations, including:

- the permits to sell jewellery and to operate a cafeteria, filed in support of the assertion that the applicant had the necessary authorizations to possess the goods that were confiscated;
- the objective evidence at Tab 2.1 of the NDP showing that political opponents are not tolerated by the government and are mistreated if they express a dissenting opinion in public or demonstrate, which the applicant claimed to have done; and
- screenshots of the applicant's social media posts filed in support of the allegation that the applicant continued to express his dissenting opinions on social media after leaving Cuba.

[21] The RPD did not reasonably analyze this evidence before concluding that the applicant was manifestly not credible. In addition, and as mentioned at the hearing, I note from the recording of the hearing before the RPD that the applicant was questioned in a manner that was aggressive and confusing, and this conduct casts doubt on whether the panel was open to considering the applicant's testimony.

[22] In short, the RPD did not in any way justify how the facts in this case meet the high threshold required for a finding of no credible basis (*Joseph v Canada (Citizenship and Immigration)*, 2018 FC 638 at para 13).

III. Conclusion

[23] For the reasons above, the RPD decision is not reasonable. Accordingly, this application for judicial review is allowed. No question for certification was raised by the parties.

JUDGMENT in IMM-2282-22

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is allowed.
2. There is no question to be certified.
3. There is no award as to costs.

“Alan S. Diner”

Judge

Certified true translation
Norah Mulvihill

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2282-22

STYLE OF CAUSE: EDUARDO INFANTE RODRIGUEZ v MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: APRIL 5, 2023

JUDGMENT AND REASONS: DINER J.

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