

Federal Court



Cour fédérale

Date: 20230613

Docket: IMM-5046-22

Citation: 2023 FC 836

[ENGLISH TRANSLATION]

Ottawa, Ontario, June 13, 2023

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

FRANCISCO ANDRES LINARES GARAVITO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Garavito is a young man from Colombia who sought refugee protection on his arrival in Canada at the Saint-Bernard-de-Lacolle border crossing between New York state and the province of Quebec. He was not deported back to the United States under the Safe Third Country Agreement, but was able to enter Canada because he has family members legally living in Canada with valid study permits.

[2] The applicant was therefore able to claim refugee protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act or IRPA]. However, the Act provides that no appeal may be made to the Refugee Appeal Division [RAD] of a decision rendered in this context by the Refugee Protection Division [RPD] (para 110(2)(d) of the Act).

[3] This is an application for judicial review of the RPD's decision rejecting Mr. Garavito's refugee protection claim. Leave to make the application for judicial review was given pursuant to section 72 of the Act. For the reasons that follow, the application for judicial review must be dismissed.

I. Facts

[4] The facts are simple. Mr. Garavito alleges that he fears death threats in his country of citizenship, Colombia. According to his Basis of Claim Form [BOC Form], the threats began because of his political activism. He used social media to denounce police abuses in his country.

[5] While studying law at the Catholic University of Colombia, the applicant and a friend used their Facebook and Twitter accounts to denounce police abuses. The applicant and his friend began receiving anonymous threats in February 2020; they did not take them seriously.

[6] On March 9, 2020, the applicant and his friend went their separate ways after their evening class. According to the applicant, his friend was killed by police that evening. Scared, the applicant left Bogotá to take refuge at his grandmother's home in Girardot, a town located 150 km from Bogotá. He stayed there for six months. He claims that, despite his paranoia and

fear, he continued denouncing the police during that time. He returned to Bogotá to start a government job. He states that he took [TRANSLATION] “precautions, which were to delete all [his] social media accounts except the Twitter account as [he] felt that [he] couldn’t not let people know what the police were doing in abusing their power” (BOC Form at para 13).

[7] The applicant states in his BOC Form that the threats began anew in December 2020. The applicant alleges that, despite the threats, he continued his activities until April 20, 2021, when he claims to have been brutally attacked when he was leaving work. The applicant states in his BOC Form that his attackers were the same ones who killed his friend in March 2020. He did not provide any evidence to support this belief. He filed a complaint on May 10, 2021.

[8] The applicant left Colombia for Newark, New Jersey, on May 18, 2021. He arrived at the border crossing on May 21, and was interviewed by an officer with the Canada Border Services Agency [CBSA]. He claimed refugee protection on the same day.

II. Decision under review

[9] The RPD considered the refugee protection claim under section 96 of the Act, given the alleged ground of political opinion. The determinative issue was the credibility of the applicant, who is now 25 years old.

[10] The RPD found that the applicant was not credible with regard to the central elements of his claim on the basis of the inconsistencies and contradictions it noted. In addition, the RPD

identified behaviour that was inconsistent with the alleged fear, which led it to draw a negative credibility inference.

[11] First, the RPD addressed what it considered to be inconsistencies related to the applicant's political profile. Although the applicant alleged that he had posted videos and articles on his Facebook and Twitter accounts, no evidence of this was provided. The explanation given to the RPD was that he had decided to delete the posts for his own protection. The RPD noted that the interview with the CBSA officer on May 21, 2021, did not quite match the version of the facts given at the hearing. He told the CBSA officer that he had "deleted [his] post", but before the RPD he stated that he had deleted his Facebook page and his Twitter profile. The RPD wrote the following:

[22] However, it is clear from the above that the version given by the claimant to the immigration officer is markedly different from the one given to the panel: first he told the immigration officer that he had deleted the politically motivated posts that led to the murder of his friend Diego and his own persecution, and then he told the panel that he had deleted his social media accounts and that the ones viewed by the immigration officer were not his.

[23] In the panel's view, this adjustment of testimony and the resulting contradiction does not seem reasonable. The panel considers that it would have been reasonable to expect the claimant to tell the immigration officer that his accounts had been closed and that the accounts he had viewed could not therefore be his own.

Therefore, the RPD was not persuaded, on a balance of probabilities, that the applicant had been persecuted because of the articles and videos posted on social media.

[12] The RPD focused specifically on the issue of his stay in Girardot, which seems much more noteworthy to me.

[13] At the start of the hearing before the RPD, the applicant changed the date of his friend's murder, which he learned about on May 10, 2020. The BOC Form mentioned a murder on March 8, and the victim's mother apparently told the applicant about it on March 9. He stated that he had left for Girardot on that day and had not returned to Bogotá until September 26, 2020. The changes moved the murder up by a day. The applicant then confirmed that those were the only changes.

[14] However, Schedule A to his BOC Form provides a list of the applicant's addresses in Colombia without mentioning the six months he claims to have spent in Girardot. This led the RPD to conclude as follows:

[30] In the panel's view, the claimant took care to fill out the address section of the Schedule A with precision, in particular by giving the four different addresses where he lived in Bogotá. Moreover, the panel considers this to be important information in the context of his refugee protection claim, in that, first of all, the length of stay in Girardot is not minor, as the claimant stayed there for six months, and second, the claimant alleges that he sought refuge there after the murder of his friend Diego. Therefore, the panel considers that it would have been reasonable to expect this period of time to be indicated in the claimant's Schedule A, along with the other details regarding his changes of address in Bogotá.

According to the RPD, this meant that it was not established that the applicant had sought refuge with his grandmother after his friend's murder.

[15] The applicant's behaviour was also deemed to be inconsistent with the alleged fear. The applicant said that he was so terrified after his friend's murder that he fled Bogotá to take refuge 150 km away. Despite this, he continued to post on social media, and the threats continued according to him. In fact, the threats were allegedly specific.

[16] He stated that, on his return to Bogotá, he went back to living with his uncle, which is where he had lived before fleeing Bogotá for Girardot. He was then asked whether he had taken precautionary measures. According to the RPD, the applicant first stated that he had simply reduced the number of posts and then adjusted his testimony by stating that he had [TRANSLATION] “closed” his Facebook account on September 26, 2020 (when he returned to Bogotá), and his Twitter profile in January 2021. In the RPD’s view, not taking any precautions other than posting less regularly because of his faith and his hope of becoming a lawyer in Colombia was not a reasonable explanation:

[38] While the claimant continued to criticize the police on social media, it is the panel’s opinion that this voluntary return to Bogotá is inconsistent with the alleged fear of persecution, considering that he personally received death threats—including throughout his stay in Girardot, and after his friend Diego, with whom he spoke out about police abuse, was murdered by them while leaving the university in Bogotá—without taking any measures to protect himself, living in the same place and going to work every day.

[17] Finally, the RPD identified a contradiction regarding the threats received after the applicant’s return to Bogotá.

[18] This time, the problem was revealed by comparing the applicant’s written account and the complaint filed in Colombia on May 10, 2021, following the attack on the applicant, with his testimony at the hearing before the RPD. The written account and the complaint indicated that the threats received by the applicant in December 2020 escalated until May 2021, when he left for the United States and then Canada. At the hearing, the applicant stated that he had closed his accounts in September and December 2020, and that the threats had stopped because there were no longer any accounts to send them to. The applicant was never able to explain how he could

have received the death threats if his accounts had been [TRANSLATION] “closed”. The RPD saw this as another significant problem, which led it to conclude that no threats were received between December 2020 and May 2021:

[42] However, the panel pointed out to the claimant that according to his own statements, the messages contained death threats, leading him to believe that he would suffer the same fate as his friend Diego. The claimant responded that he could not remember when he received these messages. The panel then read him a passage from his written account, the chronology of which suggests that he received the messages after December 2020 and that they had not stopped when he filed his complaint in May 2021. The claimant was unable to provide the panel with any additional response.

[19] The RPD therefore concluded that the applicant had been unable to establish the central elements of his refugee protection claim. The claim was rejected.

III. Arguments and analysis

[20] Everyone agrees that the reasonableness standard of review applies to this application for judicial review. This means that the applicant, who bears the burden of proof, must persuade the reviewing court that there are sufficiently serious shortcomings in the decision under review “such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*] at para 100).

[21] Essentially, in both his memorandum of fact and law and his oral arguments before the Court, the applicant is asking the Court to be cautious with respect to how point-of-entry statements are used.

[22] There does exist some case law of this Court that supports the applicant's claims that caution must be exercised. Caution is indeed a good thing. But it must be noted that the case law cited (*Guven v Canada (Citizenship and Immigration)*, 2028 FC 38, citing *Cetinkaya v Canada (Citizenship and Immigration)*, 2012 FC 8, 403 FTR 46) does highlight that, when there are discrepancies between the hearing and port-of-entry notes, credibility findings are valid when they are related to the crucial elements of a claim.

[23] This point was helpfully summarized in *Avrelus v Canada (Citizenship and Immigration)*, 2019 FC 357:

[14] The Court recognizes that the notes at the port of entry must be interpreted with caution (*Cetinkaya v Canada (Citizenship and Immigration)*, 2012 FC 8 at paras 50-51). However, it is clear from the case law that inconsistencies between an applicant's statements made at the port of entry and those made to the RPD may support a negative credibility finding (*Kusmez v Canada (Citizenship and Immigration)*, 2015 FC 948 at para 22 [*Kusmez*]; *Arokkiyanathan v Canada (Citizenship and Immigration)*, 2014 FC 289 at para 35; *Bozsolik v Canada (Citizenship and Immigration)*, 2012 FC 432 at para 20; *Navaratnam v Canada (Citizenship and Immigration)*, 2011 FC 856 at paras 14-15). In addition, although minor discrepancies between port of entry statements and oral testimony are not sufficient to determine whether an applicant is not credible, the RPD may conclude that an applicant lacks credibility if an omission concerns a central element of the refugee protection claim (*Kusmez* at para 22; *Jamil v Canada (Minister of Citizenship and Immigration)*, 2006 FC 792 at para 25).

This appears to be common sense. One shouldn't look for the smallest inconsistencies, which can be trivial, to cast doubt on testimony. Anyone can make a mistake when it comes to the details. It is a different story, though, when changes are made to a central element of a claim. Needless to say, when inconsistencies and contradictions add up, credibility findings are more likely to lead to a negative decision against the claimant, and the hallmarks of reasonableness—justification, transparency and intelligibility—are easily met. Simply put, peripheral inconsistencies may not

make a decision reasonable. But inconsistencies and contradictions that add up change the perspective. When those inconsistencies and contradictions affect the central elements of the written account, it becomes very difficult for a refugee protection claimant to discharge the burden of showing that the decision is unreasonable.

[24] I have no doubt that the inconsistencies or contradictions between the two versions given by the applicant are more than merely superficial or peripheral. They go straight to the heart of the applicant's allegation that he received serious threats. First, we have no evidence that the applicant used social media in the way that he suggests, as noted by the RPD. However, in my view, this fact alone does not justify the RPD's decision. The fact that someone who claimed to be very afraid after the murder of his friend failed to mention his six-month stay in Girardot is much more probative. The applicant provided no explanation other than that he believed that this information was in the Schedule, which contained various addresses in Bogotá. The flight to Girardot adds weight to a visceral fear following the tragic death of a friend he had seen just that evening. Furthermore, the confusion surrounding the date of such a tragedy stood out to the RPD, with good reason in my opinion. Not only is the confusion surrounding the date of an event as tragic as the murder of a friend somewhat troubling, but the failure to mention a six-month stay in such exceptional circumstances does nothing but undermine the applicant's credibility.

[25] The applicant's behaviour following the murder of his friend, consisting in fleeing for six months but then returning to Bogotá a few months later to resume his activities without taking any precautions at the height of the alleged risk, led the RPD to conclude that the alleged fear could not exist. It has not been established that such a conclusion was unreasonable.

[26] The same goes for the conclusions regarding the threats that allegedly continued from the end of 2020 until May 2021. It is difficult to reconcile that the Facebook and Twitter accounts were closed in September and December 2020, but that the threats continued until May 2021. An explanation was needed. The RPD concluded that no explanation had been provided.

[27] All these components of the applicant's story are central elements of the claim. They were not peripheral elements, and there was certainly no microscopic examination in search of something to undermine the refugee protection claim. It was open to the RPD to make these negative findings given the inconsistencies and contradictions that it noted in the evidence.

IV. Conclusions

[28] The applicant was unable to establish that the RPD's findings were unreasonable because they were not justified, transparent or intelligible. The applicant did not discharge his burden. Accordingly, the application for judicial review must be dismissed. There is no serious question of general importance arising from this matter.

JUDGMENT in IMM-5046-22

THE COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. No question is certified.

“Yvan Roy”

Judge

Certified true translation
Margarita Gorbounova

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5046-22

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