

Federal Court



Cour fédérale

Date: 20231122

Docket: IMM-10697-22

Citation: 2023 FC 1549

Toronto, Ontario, November 22, 2023

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

**CARLOS FRANCISCO AHUMADA
SANCHEZ**

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of the Refugee Appeal Division [RAD], dated October 4, 2022 [the Decision], in which the RAD upheld the decision of the Refugee Protection Division [RPD] finding that the Applicant is neither a Convention refugee

nor a person in need of protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] As explained in greater detail below, this application is dismissed, because the Applicant's arguments do not undermine the reasonableness of the Decision.

II. Background

[3] The Applicant is a citizen of Mexico who asserts fear of harm at the hands of the Los Zetas cartel, as they have allegedly threatened him in an effort to obtain information about their opponents, the Jaslico Cartel New Generation [CJNG].

[4] The Applicant practiced as a commercial lawyer in Mexico. In January 2018, he began sharing his office with a criminal defence lawyer, referenced in the Decision as "R". The Applicant claims that R's clients are members of the CJNG and that, as a result, the Applicant began receiving threats in April 2018 from members of Los Zetas who wanted information about the CJNG. He claims that in March of 2019 someone put a gun to his head after he failed to provide the information they were looking for.

[5] After that incident, the Applicant called a friend, referenced in the Decision as "E", who picked him up and let him stay with him for a few days. Shortly thereafter, E and the Applicant travelled to Canada together. The Applicant arrived in Canada in April 2019, where he says he continued to receive threatening text messages. After his visitor permit expired, the Applicant made a refugee claim in February 2021.

[6] The RPD heard the Applicant's claim and rejected it on the basis of credibility, finding that he had not credibly established the allegations set out in his Basis of Claim [BOC] narrative. The Applicant appealed to the RAD, which dismissed his appeal in the Decision now under review by the Court.

III. Decision under Review

[7] As before the RPD, the determinative issue before the RAD was credibility. The RAD observed that the RPD had identified the following issues with the Applicant's evidence:

- A. The Applicant omitted the identity of the agent of harm in his BOC narrative;
- B. The Applicant testified that he received threatening text messages in April 2018, but his BOC narrative stated he received threatening telephone calls in April 2018;
- C. The Applicant omitted in his BOC narrative that efforts to prevent his access to his office increased in November 2018;
- D. The Applicant omitted in his BOC narrative that, in November 2018, R took on a higher profile CJNG client, and that the Applicant believes this is why efforts to bar him from his office increased in this time period; and
- E. The Applicant initially testified that one of two high-ranking cartel members who had been present in his office was a boss of Los Zetas, but he later testified that this individual was a boss of the CJNG.

[8] The RAD considered the Applicant's explanation for the omissions, that they were attributable to incompetent advice from former counsel. The RPD had rejected this explanation based on the fact that the Applicant had not taken any steps to correct his BOC after retaining his current counsel, even though the Applicant admitted that he understood the instructions on the BOC form and the advice attributed to his former counsel was inconsistent with the BOC

instructions and the Applicant's own understanding of how legal proceedings are initiated in Mexico.

[9] The RAD found the RPD was correct to reject the Applicant's explanation for the omission, finding that the explanation was unreasonable given the Applicant's education and training as a lawyer in Mexico. The RAD commented that the Applicant was not being held to a different or higher standard because he is a lawyer, but rather that he was well suited to understand the importance of truthful evidence.

[10] The RAD also rejected the Applicant's argument that the details omitted were minor and that the late inclusion of details was merely amplification or particularization. The RAD found the identity of the agent of harm and the nature and frequency of the threats received were significant details and that their omission was not reasonably explained by reliance on incompetent former counsel, especially given that the applicant is a lawyer by training and had an opportunity to correct the omissions with new counsel or when he was asked at the outset of the RPD hearing whether the contents of his BOC were complete and true.

[11] The RAD did not address arguments relating to the cartel affiliation of the boss who visited his office, because the Applicant was not given a chance to explain the inconsistent testimony before the RPD. However, the RAD was satisfied the presumption of truthfulness had been rebutted based on the other omissions.

[12] Having found the Applicant to be lacking in credibility, the RAD next examined the documentary evidence in support of the Applicant's claim and found it did not establish the Applicant's allegations.

[13] First, the RAD considered a letter from E, but it found the letter did not confirm that it was common knowledge within the Mexican legal community that R represented cartels. Rather, the RAD found it was not clear from the letter whether E knew information about R's clients independently, or if his knowledge was based on what the Applicant had told him. Ultimately, the RAD found the letter merely established that the Applicant told E he was being threatened by R's clients and that they travelled to Canada together.

[14] In considering this letter, the RAD also found that, given the concerns about the Applicant's credibility, the RPD was correct to reject the Applicant's testimony that it was widely known in the legal community that R represented members of the CJNG. The Applicant had explained that there was no objective evidence to corroborate R's clientele, because it would have hurt him emotionally to seek out this information. The RAD rejected the Applicant's explanation, because it was internally inconsistent with his own testimony that he had indeed made some efforts to obtain corroboration, which showed he was aware that evidence of efforts, even failed efforts, could be useful to his claim.

[15] The RAD considered threatening text messages that the Applicant introduced into evidence. In considering the first two messages, the RAD found they did not establish that the Applicant was being threatened by Los Zetas, because the messages did not link the threats to the Applicant's relationship with R or with Los Zetas. The third text message did link the threat to

the Applicant's relationship with R, but the RAD found that piece of evidence was not on its own sufficient to establish the Applicant's allegation.

[16] Finally, the RAD considered news articles offered by the Applicant but found that, in the absence of other credible evidence, they did not establish the facts necessary for a successful claim.

[17] The RAD concluded that the RPD was correct in finding that the Applicant was neither a Convention refugee nor a person in need of protection.

IV. Issues

[18] This matter raises the following issues for the Court's consideration:

- A. Whether the RAD erred in assessing the credibility of the Applicant; and
- B. Whether the RAD erred in assessing the Applicant's corroborative documentary evidence.

[19] The parties agree (and I concur) that the standard of review applicable to these issues is reasonableness (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

V. Analysis

A. *Whether the RAD erred in assessing the credibility of the Applicant*

[20] In support of his position that the RAD erred in assessing his credibility, the Applicant largely repeats the arguments that were advanced before the RAD in his appeal of the RPD's

decision. He submits that the inconsistencies between his BOC and his testimony, as identified by the RAD, represent microscopic differences of the sort that this Court has held should not form the basis of an adverse credibility analysis (see, e.g., *Feradov v Canada (Citizenship and Immigration)*, 2007 FC 101). However, the RAD reasoned that the identity of the agent of harm and the nature and intensity/frequency of the threats were not minor matters but rather represented significant details of the Applicant's allegations. That analysis is intelligible and rational, and I find nothing unreasonable therein.

[21] The Applicant also submits that, in relying on the fact that the Applicant is a lawyer, the RAD held him to an unreasonable standard, because he is not trained in Canadian law, particularly in the context of immigration and refugee proceedings. However, as the Respondent notes, the RAD's credibility assessment may take to an account an applicant's level of education and sophistication (see *Suleman v Canada (Citizenship and Immigration)*, 2020 FC 654 at paras 4 and 25).

[22] Moreover, the RAD's analysis, in rejecting the Applicant's explanation that his omissions were attributable to the advice of his former counsel, relied not only upon the fact that the Applicant is a lawyer by training but also upon his testimony as to his own understanding and the fact he had an opportunity to correct the omissions either when he retained new counsel or when he was asked at the outset of the RPD hearing whether the contents of his BOC were complete. Again, I find nothing unreasonable in the RAD's analysis.

B. *Whether the RAD erred in assessing the Applicant's corroborative documentary evidence*

[23] In connection with the RAD's assessment of the Applicant's corroborative documentary evidence, the Applicant submits that the RAD erred in failing to give weight to E's letter in establishing his claim. The Applicant relies on *Nagarasa v Canada (Citizenship and Immigration)*, 2018 FC 313 [*Nagarasa*], in which the Court held that a pre-removal risk assessment officer was obliged to explain the basis for their negative assessment of corroborative letters (at para 23). However, as the Respondent notes, the RAD in the case at hand explained why the evidence was insufficient, as it was unclear whether E had any personal knowledge of the facts stated in his letter. This distinguishes the present analysis from *Nagarasa*, which references the applicant's submission that the corroborative letters in that case contained elements within the authors' personal knowledge (at para 17).

[24] The Applicant also relies on *Mahmud v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No. 729, 167 FTR 309, for the principle that documents that corroborate some aspects of an applicant's narrative cannot be discounted merely because they do not corroborate other aspects. I find no basis to conclude that the RAD engaged in an analysis of that nature. As explained above, the value of E's letter was discounted because it was not clear whether he had any personal knowledge of the relevant facts.

[25] The Applicant submits that the RAD also erred by expecting him to adduce objective evidence to confirm R's clientele. He argues that it was unreasonable to expect that he could access information related to another lawyer's client base, particularly if that client base included

members of a cartel. The Applicant relies on *Ndjavera v Canada (Citizenship and Immigration)*, 2013 FC 452 [*Ndjavera*], where the Court held that it was an error for the RAD to make an adverse credibility finding based on the absence of corroborative evidence (at para 6).

[26] In the case at hand, the RAD questioned the Applicant's credibility, as canvassed above, for reasons independent of the absence of corroborative evidence. Its analysis of the Applicant's corroborative evidence represented an effort to determine whether that evidence established the Applicant's allegations and thereby overcame the credibility concerns. However, the RAD found that the documentary evidence was insufficient for this purpose, it provided reasons for those findings, and I find no basis to conclude that the RAD's analysis is unreasonable.

[27] Finally, the Applicant seeks to impugn the RAD's analysis of the articles he submitted. However, this argument appears to be linked to his submission that the RAD's credibility findings were unreasonable. As explained above, I have found no error in the RAD's credibility analysis.

VI. Conclusion

[28] Having considered the Applicant's arguments and finding that they do not undermine the reasonableness of the Decision, this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-10697-22

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

No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10697-22

STYLE OF CAUSE: CARLOS FRANCISCO AHUMADA SANCHEZ v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 21, 2023

JUDGMENT AND REASONS: SOUTHCOTT J.

DATED: NOVEMBER 22, 2023

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