Federal Court Cour fédérale

Date: 20240606

Docket: IMM-5005-23

Citation: 2024 FC 864

Toronto, Ontario, June 6, 2024

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

DANIEL FELIPE GARCIA PEDRAZA

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is a judicial review of a decision by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board dated March 30, 2023 [Decision], dismissing an appeal from the Refugee Protection Division [RPD] rejecting the Applicant's claim for refugee protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The RAD held that the RPD was correct in finding that the Applicant was neither a Convention

refugee nor a person in need of protection and that the Applicant has a viable Internal Flight Alternative [IFA].

II. Facts

[2] The Applicant ran a business in Colombia. It should be noted that the Court has removed many identifiers from these reasons because they are not material.

[3] The Applicant came to believe one of his customers was using his services for illegal purposes, and that the customer was a leader of a paramilitary organization [agent of harm]. The Applicant alleges that the customer instructed him to continue to provide service, ignore what he had seen and threatened to harm a relative if he went to police. Notwithstanding these threats, the Applicant reported to a police officer, who told him privately to remain silent.

[4] A few days later, the Applicant alleges that he was threatened by two men on motorcycles who said he was a snitch. Later, the Applicant went to live with a relative in a different city, but a co-worker informed him the customer was looking for him.

[5] Several weeks later, the Applicant's relative received a call from the customer accusing the Applicant of being a snitch. The Applicant returned to his home city where he stayed until leaving for Canada where he claimed refugee protection.

[6] The RPD held that a viable IFA existed and therefore that the Applicant is neither a Convention refugee nor a person in need of protection. The Applicant appealed to the RAD.

III. Decision under review

[7] The RAD dismissed the Applicant's appeal and confirmed the RPD's decision that the Applicant was neither a Convention refugee, nor a person in need of protection, because he had a viable IFA.

[8] There is no dispute that the RAD set out the correct two prong test for assessing an IFA, both of which must be satisfied to find that the Applicant has an IFA:

> (1) The Immigration and Refugee Board of Canada must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimants being persecuted in the part of the country to which it finds an IFA exists and/or the claimants would not be personally subject to a risk to life or risk of cruel and unusual punishment or danger, believed on substantial grounds to exist, of torture in the IFA.
>
> (2) The conditions in the part of the country considered to be an IFA must be such that it would not be unreasonable in all the circumstances, including those particular to the claim, for the claimants to seek refuge there.

[9] As the RAD noted, once the RPD identifies a potential IFA, the Applicant bears the onus of showing he does not have an IFA.

[10] With respect to the first prong of the test, the RAD held that the alleged agent of harm did not have either the means or motivation to pursue the Applicant at the identified IFA.

[11] With respect to means, the RAD found that the Applicant had not established that the agent of harm had a presence that would pose a threat to him if he were to relocate to the IFA,

referring to considerable objective country condition evidence in the National Documentation Package [NDP].

[12] The RAD also found that the Applicant failed to establish that the customer (as a self-identified leader of the agent of harm) had the means to pursue him to the IFA. Specifically, the RAD found the Applicant did not provide evidence to substantiate a finding that the customer is a part of, or affiliated with, either a paramilitary or guerilla group, or a criminal organization with influence beyond his home city. The RAD assessed the evidence of the Applicant and country conditions and concluded there was insufficient evidence to support a finding the customer was anything more than an isolated operator, or has the capacity to learn about or pursue the Applicant in the IFA.

[13] Having found that the agent of harm lacked the means to pursue the Applicant, the RAD was not required to consider whether it had the motivation to pursue the Applicant. Nevertheless, the RAD concluded there was insufficient evidence to support that the agent of harm had the motivation to pursue the Applicant.

[14] With respect to the second prong, the RAD set out the applicable test, in respect of which the Applicant did not take issue:

> [22] Every relocation entails hardship. The threshold is whether it is objectively reasonable to expect the claimant to relocate, or stated another way, whether a claimant will encounter undue hardship in travelling or staying in the proposed IFA. 12 The Federal Court of Appeal, in *Ranganathan*, found that hardship associated with dislocation and relocation is not generally in itself sufficient to render an IFA unreasonable. The Court in that decision set out:

> "[A] very high threshold for the unreasonableness test. It requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions. The absence of relatives in a safe place, whether taken alone or in conjunction with other factors, can only amount to such condition if it meets that threshold, that is to say if it establishes that, as a result, a claimant's life or safety would be jeopardized."

[15] The RAD held the Applicant had not shown the IFA fails on the second prong. The RAD held that the RPD did not err in its findings that the Applicant, with his background and skills, would likely be able to find a job in the IFA along with accommodation and meet his other needs.

[16] For these reasons, the RAD concluded there was no serious possibility that the Applicant faces persecution or that on a balance of probabilities he faces danger of torture, a risk to his life, or a risk of cruel and unusual treatment or punishment should he relocate to the IFA.

IV. Issues

[17] Respectfully, the sole issue for determination by the Court is whether the RAD's Decision is reasonable.

V. Standard of Review

[18] The parties both submit that the standard of review is reasonableness, and I agree. With regard to reasonableness, in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC

67 [*Canada Post Corp*] the majority per Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard. Justice Rowe concludes at paragraph 32 that the reviewing court "must ask 'whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision.'"

[19] In addition, as Justice Rowe states in *Canada Post Corp*:

> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100).

[20] Furthermore, *Canada (Minister of Citizenship and Immigration) v Vavilov,* 2019 SCC 65 makes it clear the role of this Court is not to reweigh and reassess the evidence unless there are "exceptional circumstances." The Supreme Court of Canada instructs:

> [125] It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, <u>a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker"</u>: *CHRC*, at para. 55; see also *Khosa*, at para. 64; *Dr. Q*, at paras. 41-42. Indeed, many of the same reasons that support an appellate court's deferring to a lower court's factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial review: see *Housen*, at paras. 15-18; *Dr. Q*, at para. 38; *Dunsmuir*, at para. 53.
>
> [Emphasis added]

[21] The Federal Court of Appeal reiterated in *Doyle v Canada (Attorney General),* 2021 FCA 237 that the role of this Court is generally not to reweigh and reassess evidence unless there is fundamental error:

> [3] In doing that, the Federal Court was quite right. Under this legislative scheme, the administrative decision-maker, here the Director, alone considers the evidence, decides on issues of admissibility and weight, assesses whether inferences should be drawn, and makes a decision. In conducting reasonableness review of the Director's decision, the reviewing court, here the Federal Court, can interfere only where the Director has committed fundamental errors in fact-finding that undermine the acceptability of the decision. Reweighing and second-guessing the evidence is no part of its role. Sticking to its role, the Federal Court did not find any fundamental errors.
>
> [4] On appeal, in essence, the appellant invites us in his written and oral submissions to reweigh and second-guess the evidence. We decline the invitation.

[22] This Court has also determined that a review of the RAD's determination of the availability of an IFA is entitled to deference and there is a high onus to demonstrate unreasonableness: *Pidhorna v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1 at paragraph 39 per Kane J: "[t]he test for an IFA is well established. There is a high onus on the applicant to demonstrate that a proposed IFA is unreasonable (*Ranganathan v Canada (Minister of Citizenship and Immigration*), 2000 CanLII 16789 (FCA), [2001] 2 FC 164, [2000] FCJ No 2118 (FCA)) [*Ranganathan*]."

VI. <u>Submissions</u>

[23] The Applicant submits the Decision is unreasonable because:

a. The RAD fettered its discretion;

b. The RAD failed to consider, or misconstrued the evidence, and did not address contradictory evidence; and

c. The RAD made veiled credibility findings.

[24] The Respondent submits the Decision is reasonable and that the Applicant's arguments amount to a mere disagreement with how the RAD weighed the evidence. In particular, the Respondent argues that the Applicant failed to establish that the agent of harm had the means to pursue him outside his hometown, and cannot point to any evidence contradicting the RAD's finding that it was not objectively unreasonable for the Applicant to relocate to the IFA.

VII. Analysis

A. *The RAD did not fetter its discretion*

[25] The Applicant submits it was unreasonable for the RAD to find the evidence did not support a finding that the customer was part of-or that the Applicant had been threatened by-an organized paramilitary group. He also argues he does not have to prove the agent of harm is organized with a particular network to establish he would be harmed if he returned to Colombia. The Applicant argues that the RAD fettered its discretion by establishing a "false threshold."

[26] The Applicant cites the Federal Court of Appeal decision in *Stemijon Investments Ltd v Canada (Attorney General)*, 2011 FCA 299 at paragraphs 23-24 to assert that although fettering discretion was at one time reviewable on a correctness standard, a decision that is the product of fettered discretion is *per se* unreasonable. I agree this accurately reflects the law. Here, see also *Guo v Canada (Citizenship and Immigration)*, 2018 FC 15 at paragraph 14:

> [14] On issues of fettering discretion, the Federal Court of Appeal has held that while fettering of discretion used to be reviewable on a correctness standard, a decision which is the product of fettered discretion is *per se* unreasonable (*Stemijon Investments Ltd. v Canada (Attorney General),* 2011 FCA 299 at paras 23-24 [*Stemijon*]; *Gordon v Canada (Attorney General)*, 2016 FC 643 at paras 25-28).

[27] However, I find no merit in the Applicant's submission on fettered discretion. The RAD did not fetter its discretion but instead considered arguments made by the Applicant and found he failed to make his case on the evidence. The burden, as noted above, was on the Applicant to rebut the IFA. In particular, the RAD was entitled to consider and rely on objective country condition evidence in the NDP and to prefer it, as it did, to the Applicant's speculative evidence.

B. *No veiled credibility finding*

[28] The Applicant gave evidence of what a relative told him an agent of harm said about the Applicant. I accept that he put that evidence into the record, but in this respect the Applicant confuses evidence with the weight given to it. It was for the RAD to determine what, if any, weight would be given to his evidence. The RAD assessed the Applicant's evidence against the objective country condition information available to the tribunals (and the parties), and in my view the RAD reasonably found the Applicant's profile did not accord with the profiles of comparator groups that are typically targeted by the agent of harm. This is not a veiled credibility finding, but simply a matter of weighing the evidence.

[29] The Applicant also argues that credibility findings may not be made based on the implausibility of the Applicant's story, citing to *Valtchev v Canada (Minister of Citizenship and*

Immigration), 2001 FCT 776 at paragraphs 6-7. In this respect again, the impugned finding was not a plausibility finding but a determination grounded in the country condition and other evidence.

C. *The RAD did not fail to consider or misconstrue the evidence, nor does the evidence contradict the RAD's findings*

[30] The Applicant submits the RAD failed to consider the totality of the evidence and, in certain places, misconstrued the evidence. The Applicant also argues that certain evidence contradicts the RAD's findings. In this respect, the Applicant invites the Court to reweigh and reassess the evidence. However, the RPD—which had the inestimable benefit of hearing the Applicant testify — chose to reject the Applicant's submissions after weighing and assessing it. This weighing and assessing of the factual record was repeated by the RAD on its independent review for correctness. It came to the same result and dismissed the Applicant's claim. The Applicant faces concurrent findings of fact, which I am not persuaded to set aside on judicial review.

[31] I am not satisfied the Applicant has established any fundamental error or exceptional circumstances to set aside to the rule established by both the Supreme Court of Canada and Federal Court of Appeal against reweighing and reassessing evidence. Therefore I respectfully decline the Applicant's invitation to do that.

[32] I come to the same conclusion with respect to the Applicant's arguments pertaining to the IFA. The correct law was cited and applied to the facts found by the RAD. The Applicant disagrees with the result. The IFA findings are factually-infused and in my view are grounded to

a large extent in country condition evidence. The Applicant has failed to persuade me that he meets any of the exceptions such that this Court should engage in reweighing or reassessing the record. He has not met the high bar required to warrant judicial intervention.

[33] Moreover, as the Respondent points out, the burden is on the Applicant to adduce evidence demonstrating the proposed IFA is not viable—the first prong requires him to show a serious possibility of being persecuted in the IFA, and the second requires that the Applicant show he could not reasonably seek refuge in the IFA location when considering all the circumstances, including those particular to him.

[34] In my view, it was reasonable for the RAD to conclude the Applicant failed to meet the high evidentiary burden in this case. In addition the RAD is entitled to a high degree of deference in cases such as this given its expertise. The high bar has not been met in this respect either.

[35] The Applicant also submits one item in the NDP contradicts “multiple findings” (which the Applicant does not specify) made by the RAD. There is no merit to this argument. The RAD is presumed to have considered all the relevant evidence and is not required to specifically point to each passage of the NDP, as this Court explained in *Amadi v Canada (Citizenship and Immigration)*, 2019 FC 1166 at paragraph 50:

> [50] The Applicants acknowledge that the RAD was not required to refer to every piece of evidence that was before it. They acknowledge that the RAD is presumed to have considered all the evidence presented to it unless the contrary can be shown. The Applicants have not shown that the RAD did not consider all the evidence, only that it did not expressly mention particular passages or interpret the country condition documents in the same manner as the Applicants.

[36] In fact, the portion of the NDP item in question relates to matters arising 10 or 15 years before the Applicant left for Canada. Although the name of the paramilitary group was recently found in a media article, the RAD reasonably concluded the alleged agent of persecution is no longer active and lacks members, structure and leadership and therefore did not have the means or motive to pursue the Applicant in the IFA. The RAD's finding the customer lacked influence in the IFA is also evidence-based and reasonable. The Applicant is once again impermissibly asking this Court to reweigh record below.

VIII. Conclusion

[37] For the foregoing reasons, the application for judicial review will be dismissed.

IX. Certified Question

[38] The parties do not raise a question of general importance and I agree none arise.

JUDGMENT in IMM-5005-23

THIS COURT'S JUDGMENT is that this application is dismissed, no question of general importance is certified and there is no order as to costs.

"Henry S. Brown"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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