

Federal Court



Cour fédérale

**Date: 20240715**

**Docket: IMM-3303-23**

**Citation: 2024 FC 1108**

**Ottawa, Ontario, July 15, 2024**

**PRESENT: Madam Justice Azmudeh**

**BETWEEN:**

**MARTA SOFIA PORTILLO DE JURADO  
KEVIN NOE JURADO PORTILLO  
INGRID ALEJANDRA JURADO PORTILLO**

*Applicants*

**and**

**MINISTER OF CITIZENSHIP AND IMMIGRATION**

*Respondent*

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicants, Marta Sofia Portillo de Jurado [the “PA”], Kevin Noe Jurado Portillo and Ingrid Alejandra Jurado Portillo [together, the “Applicants”], have applied to this Court under s. 72(1) of the *Immigration and Refugee Protection Act* [IRPA] to judicially review the decision of the rejection of their refugee claim by the Refugee Protection Division [“RPD”] of the Immigration and Refugee Board [“IRB”].

[2] The Applicants are citizens of El Salvador and they had alleged fear of a personal risk of harm under section 97(1) of *IRPA* by the MS-13 gang. At the RPD hearing, the PA's husband and the children's father was excluded under Article 1F(a) of the *United Nations Convention relating to the Status of Refugees* [the "Convention"] and s. 98 of *IRPA* because of his role with the El Salvador police force. The Applicants are not challenging this finding. They are asking this Court to review the RPD's decision on inclusion for the rest of the family, which was on credibility.

## II. Issues and Standard of Review

[3] The standard of review applicable to refugee determination decisions is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII), [2019] 4 SCR 653 at para 23 [*Vavilov*]; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1645 at para 13; *Shah v Canada (Citizenship and Immigration)*, 2022 FC 1741 at para 15). A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). The reviewing court must ensure that the decision is justifiable, intelligible, and transparent (*Vavilov* at para 95). Justifiable and transparent decisions account for central issues and concerns raised in the parties' submissions to the decision maker (*Vavilov* at para 127).

## III. Preliminary Issue

[4] At the Judicial Review hearing, counsel for the Applicants raised a new argument not previously raised in their written materials. The new issue was that the Applicants were at risk of harm in El Salvador because PA's spouse was related to someone who had fled El Salvador, and

that the relative had reported the criminality in question to law enforcement, and was subsequently threatened. There was a mention of this in the PA's Basis of Claim [BOC] narrative and the other materials, including in the content of the police report. I therefore heard the argument and allowed counsel for the Respondent to make written submissions.

[5] Upon reading the Respondent's submissions, I follow the line of jurisprudence that stands for the proposition that the Court should not consider an issue that the applicant's counsel did not raise in their written materials (*Lukacs v Canada (MCI)*, 2011 FC 751 at paras 6-8; *Dunova v Canada (MCI)*, 2010 FC 438 at paras 18-20; *Radha v Canada (MCI)*, 2003 FC 1040 at paras 16-18). I therefore do not engage with the Applicants' counsel new issue.

#### IV. Analysis

##### A. *Legal Framework: Credibility Findings*

[6] There is generally a great degree of deference given to the credibility findings of an expert administrative tribunal. Generally, this Court will not interfere with a decision if the evidence before the Board, taken as a whole, would support its negative assessment of credibility, if its findings were reasonable in light of the evidence, and if reasonable inferences were drawn from that evidence (*Tsigehana v Canada (Citizenship and Immigration)*, 2020 FC 426, at paras 33-35).

[7] However, credibility assessment is a fact-finding exercise. The decision-maker can accept or reject the facts on a balance of probabilities. Facts that the decision-maker accepts or rejects are then linked to their rationally connected legal consequence. If the claimant's testimony

cannot be relied upon, and that there is no independent evidence to corroborate the facts relevant to the claim, the decision-maker is left with insufficient credible evidence to find that the fact is established to support the claim. Therefore, the starting point is to understand and consistently use well-defined concepts such as credibility, probative value, relevance, materiality, weight and sufficiency. My colleague, Justice Grammond, has offered guidance on this in *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 that I will not repeat here. Concisely, by understanding and using concepts related to accepting or rejecting evidence consistently, administrative decision-makers increase the likelihood of rendering reasonable decisions.

[8] When the decision-maker accepts certain material facts while they reject some others, it is important for the analysis to engage with both to explain how the evidence was weighed to support the ultimate conclusion.

[9] The formal rules of evidence, which make irrelevant or immaterial evidence inadmissible to a court proceeding, do not apply to an administrative tribunal such as the IRB. However, this does not mean that all facts, irrespective of their relevance, probative value or materiality, are created equal. Even though nearly all evidence is admitted at the RPD, and that new evidence before the RAD is subject to the restrictions in section 110(4) of the IRPA, relevance and materiality remain key to the weight of the evidence. Therefore, generally speaking, an exercise in making credibility assessment of individual facts, irrespective of how they matter in the context of the refugee case, in and of itself may not support an overall reasonable decision. This is because a decision where the member refers to all facts as equal, irrespective of their relevance

and materiality in the context of the refugee claim, could lose the logical chain of reasoning contemplated by *Vavilov*:

[85] Developing an understanding of the reasoning that led to the administrative decision enables a reviewing court to assess whether the decision as a **whole is reasonable**. As we will explain in greater detail below, a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker. The reasonableness standard requires that a reviewing court defer to such a decision.

(My emphasis)

[10] Putting it differently, likening the situation to puzzle pieces, individual credibility findings represent fragments of evidence. Each piece might be accurate on its own, but without assembling and examining the complete puzzle, the overall picture – the comprehensive credibility assessment – may fail to reflect the true nature of the case. It underscores the necessity of a holistic approach to ensure the integrity and accuracy of the decision-making process. Without it, the chain of reasoning is lost and the reasons are no longer intelligible (*Patel v Canada (MCI)*, 2024 FC 28 [*Patel*] at para 24).

B. *Was the RPD decision reasonable?*

[11] In this case, the RPD declared credibility as the determinative issue, and largely broke down its credibility findings under two main headings: “Subjective Fear” and “Credibility Generally.” I will therefore organize my reasons in the same manner.

(1) Subjective Fear

[12] In this case, the Applicants fear the MS-13 gangs. This was mainly to get information from the children about their father and to recruit the son. From the RPD reasons, it is not clear

whether the RPD found a nexus to a Convention ground. However, the member engaged in a detailed “subjective fear” analysis, a topic that merited its own heading in the RPD’s reasons. This is a relevant component only to IRPA s. 96 claims, which does not appear to exist here, and nor had the RPD identified a nexus. The RPD found that the Applicants return to El Salvador from the United States [US] in 2016 amounted to a lack of subjective fear. A major part of the member’s credibility finding was also based on their perceived omission of the US trip in 2016.

[13] First, it appears that the member had missed that the Applicants had fully disclosed their trip to the US at the first opportunity they arrived in Canada, i.e., to the Port of Entry [POE] officer. The member had commented that the US trip was not mentioned on the BOC or the immigration documents, which was simply an inaccurate finding. Because of this inaccurate belief, the member confronted the PA at the hearing and asked her why the family had not disclosed the US trip. The Applicants did not point to the detailed exchange with the POE officer that would prove the member wrong, but they rather agreed with the member on the omission, and tried to provide an explanation, which the member found unreasonable. They had explained that “we didn’t have a place to stay and we didn’t want to stay illegally. We also didn’t think the gangs were going to keep recruiting my son.” The member had missed the POE notes, so they failed to analyze this response in the context of their response at the POE, which included lack of funds.

[14] This Court has repeatedly affirmed that where a tribunal relies on a contradiction to ground a negative credibility finding, the inconsistency must be real and not illusory (*RKL v*

*Canada (MCI)*, 2003 FCT 116, at paras 18-20; *Elamin v Canada (MCI)*, 2020 FC 847, at para 26).

[15] Second, the member treated the return to from the US as a “lack of subjective fear,” which is an essential element of only s. 96 IRPA claims, when a nexus does not appear to exist in this case. First, a mechanical and decontextualized analysis of subjective fear has been rejected by this Court (*Cobian Flores v Canada (Citizenship and Immigration)*, 2010 FC 503). Second, the lack of clarity on why a strong legal concept that is only essential to s. 96 IRPA claims were applied, when there is no finding of a nexus to a Convention ground, and none seems to exist, takes away from the reasons’ transparency or intelligibility.

[16] While discrepancies of facts central to the basis of a refugee claim may support a negative credibility finding, discrepancies resulting from a failure to recall details that appear to resemble a “trivia quiz,” should not be a basis for undermining credibility (*Olusola v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 46, at paras 13-14).

(2) General credibility

[17] Credibility analysis is a fact-finding exercise. It is not a general pronouncement on one’s character. The member must be clear as to what material facts are rejected that would render the accepted facts either insufficient or unreliable (*Zarate Lopez v Canada (Citizenship and Immigration)*, 2024 FC 879, at paras 7 and 12).

[18] In this case, the member agreed that the claim was well documented. However, they found that the “cumulative effect of negative credibility inferences,” which the failure to disclose the US trip was a significant part, resulted in a claim that “generally lacked credibility” (at para 39).

[19] The Applicants’ failure to claim in the US and their return from the US in December 2016 formed a significant part of the member’s credibility finding. The member’s analysis seems to have missed the crux of the Applicants’ allegations that the MS-13 that had started in 2015 but that it had continued with different intensity, and that it increased by 2017 and 2018. The member appeared to have been fixated by an assumption, not grounded in any evidence other than the member’s own belief that there was a “fixed date” that should have triggered the Applicants’ behaviour.

[20] I agree with the Respondent, and this Court’s jurisprudence is clear, that this Court does not engage in reweighing the evidence. However, the member cannot base an entire analysis on their own unfounded assumptions. Moreover, as held in *Ibrahimov v Canada (MCI)*, 2003 FC 1185, paragraph 19, where a fear of persecution is based on cumulative events, the RPD will err by faulting the Applicants for not leaving at the first sign of trouble. The RPD’s failure to account for the cumulative nature of the risk renders their credibility finding regarding failure to claim in the US unreasonable.

[21] The RPD has also dismissed detailed police reports, with detailed facts that largely corroborated the Applicants’ allegations, because they had marked Zaragosa as their residence



when they had alleged to have moved to a different city. The RPD dismissed the explanation that they had felt unsafe to disclose their new address to the police due to a fear of police infiltration. As a result, they rejected not only the police report but also all of the Applicants' facts.

[22] Returning to the earlier puzzle analogy in *Patel* at paragraph 24, just as in *Cabrera v Canada (Citizenship and Immigration)*, 2024 FC 342, at paragraph 15, the member's approach appears to have been overly fixated on scrutinizing the individual piece of evidence without stepping back to consider the broader context or the overarching narrative. The RPD has made global credibility findings that were largely based conflated legal tests and on illusionary omissions. The reasons are therefore unreasonable.

#### V. Conclusions

[23] I find that the decision of the RPD was unreasonable. I therefore grant the judicial review.

[24] The parties did not propose a certified question and I agree that none arises.

**JUDGMENT IN IMM-3303-23**

**THIS COURT'S JUDGMENT is that:**

1. The Judicial Review is granted. This matter is sent back to the RPD to be decided by a differently constituted panel.
  
2. There are no questions to be certified.

"Negar Azmudeh"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3303-23

**STYLE OF CAUSE:** MARTA SOFIA PORTILLO DE JURADO ET AL. v.  
MCI

**PLACE OF HEARING:** VIDEO CONFERENCE

**DATE OF HEARING:** JUNE 19, 2024

**REASONS FOR JUDGMENT  
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**DATED:** JULY 15, 2024

**APPEARANCES:**

Tosin Falaiye FOR THE APPLICANTS

Michael Butterfield FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

TPM Attorneys FOR THE APPLICANTS  
Toronto (Ontario)

Department of Justice Canada FOR THE RESPONDENT  
Toronto (Ontario)