

Federal Court



Cour fédérale

**Date: 20171030**

**Docket: IMM-1595-17**

**Citation: 2017 FC 967**

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

**Ottawa, Ontario, October 30, 2017**

**PRESENT: The Honourable Mr. Justice Martineau**

**BETWEEN:**

**VICTORINA BENITEZ VARELA VDA DE  
DELGADO  
LILISARA IXCHEL GUINEA DELGADO  
AMALIA EUNICE DELGADO BENITEZ**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicants, Victorina Benitez Varela Vda De Delgado [principal applicant], Amalia Eunice Delgado Benitez [Amalia] and Lilisara Ixchel Guinea Delgado [Lilisara], are challenging the reasonableness of a decision by the Refugee Protection Division [RPD] finding that they are not Convention refugees or persons in need of protection within the meaning of sections 96 and

97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. At the hearing, the Court ordered that the style of cause be changed to now list the Minister of Citizenship and Immigration as respondent.

[2] Although the applicants alleged persecution for reasons of membership in a social group as set out in section 96 of the IRPA, the RPD decided to limit its review of the claims to personalized risk under section 97 of the IRPA. This conclusion is not being challenged today by the applicants. For the reasons that follow, this application for judicial review is dismissed. The RPD could reasonably conclude that the applicants did not meet the burden of credibly proving the merits of their fear of persecution, or that their lives would be in danger if they returned to their country.

[3] The applicants are citizens of the Republic of El Salvador [El Salvador]. They fear the former governor of San Miguel, Sergio Benavides [Benavides], since one of the principal applicant's daughters, Albertina Delgado de Barrera [Albertina], filed a sexual complaint against him in 2013. We note that Albertina was already granted refugee status in Canada in 2016. Moreover, since Albertina left for Canada, the applicants state that they were victims of violence and threats in El Salvador in 2016. Two individuals allegedly stopped the principal applicant near her home to ask her for Albertina's exact address. They allegedly pushed her against a wall and hit her hard on the shoulder and other parts of her body. The principal applicant suspects that Benavides ordered the assault. Her daughter Amalia is a doctor and treated her injuries. Lilisara, the granddaughter of the principal applicant's husband, came to stay with her to help her in the following days. The applicants left El Salvador in October 2016. That said, a widely publicized

trial against Benavides is still ongoing in El Salvador. The principal applicant was even summoned by Benavides to appear as a witness. Benavides also apparently asked Amalia's husband, the lawyer representing Albertina, to withdraw from the case. He even allegedly threatened Amalia and her husband with a firearm, and tried to obtain information about Albertina.

[4] The determining factor in this case is the applicants' lack of credibility. The RPD's reasoning and the reasons for the refusal are presented transparently and intelligibly.

[5] The RPD does not question the fact that a complaint of sexual assault was filed by Albertina against Benavides. Nonetheless, the RPD does not believe that Benavides threatened the applicants to obtain Albertina's address in Canada. The principal applicant was deemed not to be credible because of inconsistencies in her testimony regarding the assault of which she claims to have been a victim. In particular, on her Basis of Claim [BOC] form, she stated that she had been beaten. However, she testified at the hearing that she had not been kicked, punched or slapped (see transcripts of the hearing on December 14, 2016, at page 578 of the certified record). The RPD confronted her about this at the second hearing (see transcripts of the hearing on February 24, 2017, at page 539 of the certified record). The RPD did not find it credible that she would say that she had only been shoved and then change her testimony to say that it was the equivalent of a beating (see transcripts of the hearing on February 24, 2017, at page 540 of the certified record). Moreover, although Amalia stated in her testimony that she had seen bruises on the applicant's shoulder, the RPD cannot believe that they were injuries, as it does not believe

her account, when the documentary evidence instead indicates problems related to osteoarthritis (see certified record at page 506).

[6] Amalia was also deemed not credible by the RPD due to inconsistencies in her testimony and the documentary evidence submitted. She first testified that her husband had received death threats in late August or early September 2016 to get him to withdraw as the lawyer in Albertina's case (see transcripts of the hearing on December 14, 2016, at pages 582–583 of the certified record). By all accounts, he did in fact withdraw from the case on September 8, 2016 (see Exhibit C-40 at page 435 of the certified record). She stated that he again received threats after withdrawing. Asked about the reasons for those threats, she claimed that it was to obtain Albertina's address. However, in the complaint filed with the police on September 22, 2016, the husband mentioned that he had been threatened to withdraw, but made no reference to threats to find out where Albertina was (see Exhibit C-48 at page 501 of the certified record). The RPD found it inconsistent that the husband did not report that threat, particularly if several members of the family had been targeted since August 2016. The RPD therefore gave no probative value to the complaint. Finally, Amalia also mentioned in her testimony that she was present when Benavides allegedly demanded that her husband withdraw on September 19, 2016, which seems inconsistent with the evidence that her husband withdrew on September 8, 2016. She could not answer when the RPD asked her about this (see transcripts of the hearing on February 24, 2017, at page 542 of the certified record).

[7] The RPD also concluded that there was nothing to demonstrate that Lilisara's life was threatened or that she was at risk of cruel or unusual treatment. When the RPD asked her why

she was claiming refugee status, Lilisara vaguely replied that she had believed that things would calm down after Albertina left, but that the opposite happened (see transcripts of the hearing on December 14, 2016, at page 570 of the certified record). She acknowledged, however, that she had never received any direct threats from Benavides or his associates. The only alleged risk is that Benavides apparently told Amalia and her husband that he could easily find personal information about Lilisara.

[8] Finally, the RPD examined all personalized risks that the applicants could objectively face if they were to return to El Salvador. The applicants stated that they would be in danger because Benavides would seek revenge against Albertina's family for harming his career as governor. However, he lost his position in 2013 and no threats were alleged prior to 2016. Moreover, there is no documentary evidence in that regard on record. The RPD noted that the other members of the family have not had problems with Benavides. It did not give any probative value to a Facebook conversation between Albertina's daughter and a friend who mentioned a request from Benavides to obtain Albertina's address.

[9] Today, the applicants essentially argue that the RPD erred in its assessment of their credibility and the personalized risk. The RPD minimized the importance of the proceedings against Benavides, where the principal applicant was summoned as a witness. The RPD examined secondary aspects and otherwise ignored or set aside conclusive evidence of direct and indirect threats. The principal applicant's testimony was clear: she gave the same version of the facts and made no adjustments. In the case of Amalia, the RPD attached too much importance to the complaint filed with the police by her husband and was mistaken about the number and

nature of the threats. That said, Amalia could not put herself in her husband's place; he was not even at the hearing. The conclusion regarding Lilisara is also speculative: the RPD inferred that she was not in danger because she was not directly threatened. The RPD also did not give any probative value to the Facebook message, although the message showed that other family members were still receiving threats in 2016.

[10] In short, the respondent replied that the disputed decision was based on the evidence on record and that the findings of non-credibility were reasonable. The presumption of truthfulness cited by the applicants is not irrebuttable and claimants can only be given the benefit of the doubt once their credibility has been established. In the case at hand, according to the respondent, the applicants must credibly establish the allegations that they are citing in support of their fear of persecution or risk to their life. The respondent submitted that the RPD can draw negative inferences from major omissions, contradictions, and disparities noted in various statements by a claimant and his or her testimony, when they are related to key elements of the refugee claim, which is the case here. In conclusion, the respondent argued that the applicants are only substituting their own assessment of the evidence for that of the decision-maker. They are simply reiterating the same explanations that were submitted before the RPD and that were reasonably dismissed by the RPD.

[11] After having considered the submissions from counsel in light of the reasons given by the RPD, the evidence on record, and the testimonies heard by the RPD, I am of the opinion that the findings of non-credibility are reasonable in this case. This Court must show deference to the assessment of the applicant's credibility by the specialized tribunal that is the RPD (see *Canada*

*(Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at paragraph 89). The applicants relied on the presumption set out in *Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302, 1 ACWS (2d) 167 (CA) that the testimony of an applicant must be presumed to be true. However, that is a rebuttable presumption that can be overturned when the decision-maker finds that the claimant is not credible. It is well established that the RPD can consider that a claimant is not credible due to various implausibilities, omissions, contradictions, or inconsistencies. Obviously, it can consider the manner in which the person testified. It must also be noted that the RPD has a clear advantage over the Court in reaching such conclusions, as it has the opportunity to see and hear the claimant (see *Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 NR 315, 42 ACWS (3d) 886, at paragraph 4 (FCA)).

[12] In the case at hand, the negative findings of credibility are based on the evidence on record and inconsistencies or implausibilities regarding important elements of the applicants' claims. Regarding the credibility of the principal applicant, the RPD did not focus on irrelevant details in a microscopic examination of her testimony, as was claimed before me by her counsel. The assault that the principal applicant claims she experienced in 2016 is a fundamental element of the claims. However, the RPD found a contradiction in the testimony by the principal applicant, who claimed that she had been beaten, and also stated that she had not been punched, but rather pushed, while freely alternating between the expressions [TRANSLATION] "shoved" and "beaten". The RPD has the advantage of having questioned the principal applicant and was in a very good position to assess her credibility. The RPD could also conclude that the principal applicant's testimony was vague and imprecise. The RPD also identified several inconsistencies

in the account by Amalia, particularly regarding dates. Those inconsistencies are based on the documentary evidence and Amalia's testimony.

[13] The applicants also generally allege that the disputed decision is not based on the evidence. In particular, the RPD did not attach enough importance to the circumstances surrounding Benavides' trial. That is simply a disagreement on the interpretation of the evidence. There is no cause to intervene in this case. That said, the RPD did not need to mention all the arguments raised or refer to all documents on record. It could very well have decided to not place much weight on the fact that the principal applicant had been summoned to appear in the Benavides trial. However, the decision briefly refers to the trial, which indicates that that element was considered despite everything. The RPD could also have found it strange that Benavides waited until 2016 to accuse the applicants of ruining his career, when he had lost his position in 2013. Regarding the Facebook conversation, I do not agree with the applicants that that evidence was ignored. Rather, the RPD considered it and chose to attribute little probative value to it. That conclusion was entirely reasonable.

[14] Finally, regarding Lilisara, it was reasonable for the RPD to consider that the evidence of an objective fear of risk was insufficient in her case as well, even though it accepted her testimony. In fact, Lilisara acknowledged that she was never directly targeted by Benavides' actions or those of his associates. The only allegation was that Benavides apparently told Amalia and her husband that they could easily obtain information about her. That does seem insufficient to me to conclude that there is a risk of torture or cruel and unusual treatment within the meaning of section 97 of the IRPA.



[15] For these reasons, the application for judicial review is dismissed. The parties did not raise any questions of general importance.

**JUDGMENT in IMM-1595-17**

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

No question is certified.

“Luc Martineau”

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Judge

Certified true translation  
This 9<sup>th</sup> day of October 2019

Lionbridge

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

**DOCKET:** IMM-1595-17

**STYLE OF CAUSE:** VICTORINA BENITEZ VARELA VDA DE  
DELGADO, LILISARA IXCHEL GUINEA  
DELGADO, AMALIA EUNICE DELGADO BENITEZ  
v. THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** OCTOBER 25, 2017

**JUDGMENT AND REASONS:** MARTINEAU J.

**DATED:** OCTOBER 30, 2017

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