Federal Court  Cour fédérale

**Date: 20191119**

**Docket: IMM-2905-19**

**Citation: 2019 FC 1464**

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

**Ottawa, Ontario, November 19, 2019**

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

**BETWEEN:**

**JOSE ALEXANDRE DA GRACA**
**HELENA META DA GRACA**
**JOSE JOAO DA GRACA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## JUDGMENT AND REASONS

[1] This is an application for judicial review of a negative decision by the Refugee Appeal Division [RAD] dated April 18, 2019. The RAD dismissed the applicants' appeal and confirmed the decision of the Refugee Protection Division [RPD] that the applicants are not Convention

refugees or persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The applicants are from the Republic of Angola. The principal applicant, Jose Alexandre Da Graca, is a member of the Assemblée chrétienne de la Voix de Dieu [the voice of God Christian assembly], where he was a preacher under Pastor Francisco Alidor. He states that he was invited, with his pastor and his deacon, to attend a large conference organized by Prophet Kalupeteka, senior pastor of the Seventh Day Light of the World sect. According to the applicant, Mr. Kalupeteka made comments at the conference that caught the attention of the Angolan president, who denounced the sect as a [TRANSLATION] "threat to peace and national unity". From that moment on, Angolan security forces reportedly began their efforts to disband the group.

[3] The principal applicant submits that a few days after the conference, he was informed by his pastor's wife that the pastor had been kidnapped. The next day, a group of individuals dressed in black allegedly knocked on the applicant's door with the intention to kidnap him. He apparently managed to escape and took refuge at a friend's house. Then, the principal applicant allegedly learned that his wife, the female applicant, was raped, beaten and threatened with death by these men. The applicant's wife and their son joined the applicant at his friend's house, where he was hiding. The three left their country for the United States, where they made a claim for asylum. Without waiting for the response to the claim for asylum, the applicants left for Canada, where they filed a new claim for refugee protection on July 16, 2017.

[4] On December 6, 2017, the RPD denied the family's claim for refugee protection, and on April 12, 2019, the RAD dismissed their appeal of that decision.

[5] There is only one issue in this case: Did the RAD err in refusing to admit the applicants' new evidence? In their written submissions, the applicants raised an issue concerning the credibility findings made by the RAD, but given that this issue arises from the inadmissibility of the new evidence presented, the applicants did not raise this argument at the hearing.

[6] The RAD decision concerning the new evidence is based on the interpretation of subsection 110(4) of the IRPA. The standard of review that applies is that of reasonableness (*Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96, at para 29 (*Singh*); *Digaf v Canada (Citizenship and Immigration)*, 2019 FC 1255, at para 17).

[7] The applicants requested that the RAD admit five new pieces of evidence: (1) the Notice to Appear dated October 30, 2014; (2) the capture warrant dated November 3, 2014; (3) the letter from Pastor Da Silva dated December 20, 2017; (4) the medical report dated November 5, 2014; and (5) the letter from PRAIDA dated March 15, 2018.

[8] The RAD determined that these documents are not admissible because they do not meet the criteria set out in subsection 110(4) of the IRPA, as interpreted in the case law, and more particularly in the decisions of the Federal Court of Appeal in *Singh* and *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385.

[9] Documents 1, 2 and 4 pre-date the hearing. The RAD noted that the RPD questioned the applicant about the lack of documentation to support his claim for refugee protection. In response, the applicant explained that it is difficult to obtain evidence corroborating the case, and that access to the Internet is difficult in the country. The RAD also observed that the applicant testified that he did not do any research and that he had spoken with brothers in the country and

in the United States. Finally, the RAD noted that the applicants left their country in March 2015 and, therefore, had sufficient time to obtain the documentation to support their claim.

[10] The RAD dismissed the letter from the pastor, finding, at paragraph 22 of its decision, that it did "not add anything to the testimony given at the hearing [before the RPD]". In the same paragraph, the RAD also noted that "in the sworn statement provided with these documents, it is clear that the pastor who signed this letter is the one who took over the ministry" and who, therefore, "was not present during the alleged incident". With respect to the fifth piece of evidence, the letter from PRAIDA on the female claimant's medical condition, the RAD observed that it "repeats the facts recounted by the female appellant" and that "[t]his document does not cast new, relevant or credible light on the issue raised before the RPD" (at para 23).

[11] The applicants submit that the RAD erred in dismissing said evidence. With respect to Exhibit Numbers 1, 2 and 4, the principal applicant explained that he is not skilled at performing Internet research, and therefore had to ask people in Angola for help in obtaining the documentation. Because these people did not respond to his request prior to the hearing before the RPD, the applicant was unable to produce these three exhibits. The RAD did not take this explanation into account. With regard to Exhibit 3, the letter from the pastor, the applicant submitted that it should have been accepted because, even though the pastor was not present at the conference that is at the heart of the claim for refugee protection, he is able to confirm that the principal applicant was in attendance. Finally, Exhibit 5, the letter from PRAIDA, is a recent document, and the statements made therein by the nurse confirm the applicant's claims.

[12] I am not persuaded. The RAD applied the rules established by *Singh* for the introduction of new evidence pursuant to subsection 110(4) of the IRPD. It is necessary to reproduce here the relevant excerpt from this decision:

> [34] There is no doubt that the explicit conditions set out in subsection 110(4) have to be met. Accordingly, only the following evidence is admissible:
>
> - Evidence that arose after the rejection of the claim;
> - Evidence that was not reasonably available; or
> - Evidence that was reasonably available, but that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.
>
> [35] These conditions appear to me to be inescapable and would leave no room for discretion on the part of the RAD. In the first place, the very wording of subsection 110(4) specifies that the person who is the subject of the appeal "may present only" (« ne peut présenter ») evidence that falls into one of these three categories, thereby excluding any other evidence. Second, one should not lose sight of the fact that this provision departs from the general principle according to which the RAD proceeds without a hearing, on the basis of the RPD's record (s. 110(3)) and must for that reason be narrowly interpreted. Indeed, the judge seems to agree with this approach, insofar as she states that the respondent "was required to establish that he could not have reasonably been expected to provide the newly submitted documents at his RPD hearing" (para. 47). If she ultimately sides with him, it is because his request to file this new evidence fell squarely, in her view, within the scope of subsection 110(4), "and it met its explicit criteria" (para. 62).

[13] In the case at bar, while the RAD did consider the applicant's explanations for the difficulty he experienced with the Internet, as well as his efforts in contacting his friends, the RAD was unconvinced by these responses. There is no reason to intervene. The reviewing court cannot substitute its own views of an outcome, or reweigh the evidence (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59).

[14] I agree with the respondent that the claim for refugee protection presents a key issue related to the applicant's passport, which was allegedly not clarified by the new evidence that the applicant attempted to file before the RAD. Indeed, the principal applicant's passport refutes the heart of the claim for refugee protection, as the stamps on it indicate that he was outside of Angola when Mr. Kalupeteka's conference allegedly took place. None of the five new exhibits submitted to the RAD by the applicants provide any clarifications with respect to this major contradiction. The RAD did not err in dismissing this evidence.

[15] As for the letter from PRAIDA, the RAD concluded, at paragraph 23 of its decision, that it "indicates that the female appellant [had] abdominal pain" without however providing any "confirmation that she was raped or assaulted". At the same paragraph, the RAD notes that the letter "does not cast new, relevant or credible light on the issue raised before the RPD". The applicant submits that the RAD erred because it did not conduct an independent assessment of the female applicant's claim. The respondent however argues that the RAD did not err, because this claim is related to that of the principal applicant. Moreover, there is no evidence in the file that the attack on the female applicant in 2014 was connected to the events at the heart of her husband's, the principal applicant's, claim for refugee protection.

[16] I agree with the respondent. There is no evidence indicating a link between the acts of violence against the female applicant and the applicant's participation in the alleged conference. The letter from PRAIDA sheds no further light on this core issue. The RAD did not err in rejecting this evidence.

[17] For all these reasons, the application for judicial review is dismissed.

[18] There is no question of general importance for certification.

**JUDGMENT in Docket IMM-2905-19**

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

1. The application for judicial review is dismissed.

2. There is no question of general importance to be certified.

"William F. Pentney"
Judge

Certified true translation
This 11th day of December 2019.

Johanna Kratz, Translator

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-2905-19 |
| **STYLE OF CAUSE:** | JOSE ALEXANDRE DA GRACA ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | MONTRÉAL, QUEBEC |
| **DATE OF HEARING:** | NOVEMBER 14, 2019 |
| **JUDGMENT AND REASONS:** | PENTNEY J. |
| **DATED:** | NOVEMBER 19, 2019 |

**APPEARANCES:**

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| Mario Blanchard | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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