

Federal Court



Cour fédérale

Date: 20210202

Docket: IMM-150-20

Citation: 2021 FC 110

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 2, 2021

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

**MIGUEL CAMPOS CALIXTO
MIGUEL ANGEL CAMPOS NUNEZ
MAIRA NANCI GODINEZ SOLIS
ARMANDO CAMPOS GODINEZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Miguel Campos Calixto [Mr. Campos], his spouse [Ms. Godinez], their minor son and Mr. Campos's adult son [collectively, the applicants] are seeking judicial review of a decision rendered by the Refugee Appeal Division [RAD] on December 17, 2019, confirming under

paragraph 111(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], the decision of the Refugee Protection Division [RPD] of November 26, 2018, that the applicants were not Convention refugees or persons in need of protection under sections 96 and 97 of the IRPA.

[2] The applicants contend that the RAD should have admitted the new evidence submitted to it and that the RAD unreasonably found Mr. Campos's account not to be credible.

[3] For the reasons that follow, I am dismissing the application for judicial review.

II. Facts and proceedings

[4] The applicants are citizens of Mexico. They base their refugee protection claim on the account of the father, Mr. Campos.

[5] The problems alleged by the applicants began in August 2002, when Mr. Campos's brother was kidnapped and killed for his involvement as a social leader in the neighbourhood of Estrella de Mar and as an activist in the political party Partido de la Revolución Democrática [PRD]. The applicants, who at the time were living near Acapulco, in the southwestern Mexican state of Guerrero, claim that the perpetrators were members of a cartel. Mr. Campos's family pressed the authorities to bring those responsible to justice and allegedly received death threats as a result.

[6] Throughout 2003, the family continued to press the police and government authorities in Guerrero for answers regarding the death of Mr. Campos's brother, but without much success or assistance. On October 29, 2004, Mr. Campos's mother was killed in her restaurant. The mother's killer was later arrested by the police and sentenced to 45 years in prison.

[7] In December 2006, Mr. Campos stated he was kidnapped and tortured by police officers. Allegedly, he was released after paying a bribe but was told during the ordeal that, if he continued to make inquiries about the death of his brother and mother, he and his family would be killed.

[8] Later that month, Mr. Campos moved his family from Guerrero to northern Mexico, specifically to Puerto Peñasco, in the state of Sonora, some 2,500 km away, where he allegedly worked at various jobs for six years, until 2012. Ms. Godinez, who had graduated from the Universidad Autónoma de Guerrero in June 2005 with a degree in tourism, found a job at a local seaside resort.

[9] The family lived in Puerto Peñasco peacefully, safely and without incident for six years, with one exception: another of Mr. Campos's brothers apparently moved to Jalisco in 2007 and the family never heard from him again.

[10] In 2012, two individuals in a vehicle with Guerrero licence plates allegedly went to the applicants' home in Puerto Peñasco and asked Mr. Campos's spouse about him. The applicants

fled Puerto Peñasco the same day for Cancún, in the state of Quintana Roo, approximately 3,900 km away.

[11] The applicants stayed in Cancún for four years, until early 2016, without any trouble. Mr. Campos worked in home construction, and Ms. Godinez found a job as an executive assistant at Corporativo Gubalsa, a private security company in Cancún.

[12] In early 2016, a colleague of Mr. Campos's who was still living in Acapulco allegedly told him to be careful because news was circulating locally that Mr. Campos had been spotted with his family in Cancún. He asked Mr. Campos to return to Acapulco so that he could provide more details.

[13] Although Mr. Campos admits that he knew it would be dangerous, he returned to Acapulco in February 2016, a month before the meeting with his colleague, to deal with administrative matters that required his signature. On March 4, 2016, the day the colleague was to meet with Mr. Campos, the colleague was allegedly murdered by the Galeana family, a member of a drug cartel, as a result of personal disputes he had with the cartel.

[14] Following the murder, Mr. Campos and his family allegedly moved to Chetumal, the capital of Quintana Roo, five hours from Cancún, to stay with Mr. Campos's relatives.

[15] Mr. Campos stated that he learned later in 2016 that Canada would be lifting the visa requirement for Mexicans. The family allegedly saved up money, and Mr. Campos and his older

son travelled to Canada in January 2017, with his wife and younger son arriving two weeks later. They all claimed refugee protection.

[16] On November 26, 2018, the RPD rejected the applicants' claim for refugee protection because it lacked credibility.

[17] The RPD's finding was based on the following:

- Mr. Campos alleges that the Guerrero authorities refused his family's requests for protection. However, he was unable to produce any details or evidence to corroborate the steps he allegedly took to obtain state protection in the wake of the alleged threats.
- The arrest and the sentencing of the mother's murderer to a long prison term by the authorities contradict the applicants' allegation that the authorities were inept and failed to intervene.
- Mr. Campos alleges that, when he was being detained and tortured by the police in December 2006, an officer stated that he could not kill Mr. Campos because that would mean three family members would be killed, which would be [TRANSLATION] "too much pressure". However, Mr. Campos could not explain how the murders of his brother and mother could be attributed to the police.
- The police officer also allegedly stated that he could not kill Mr. Campos because Ms. Godinez knew someone in the police department. The applicants testified that they sought advice from their lawyer friend who worked for the police and that

she told them to flee. However, they failed to include this allegation in their Basis of Claim Form [BOC Form].

- They were unable to provide the name of the medical clinic where Mr. Campos was allegedly treated after being tortured and severely injured by the police following his arrest in December 2006. They also failed to produce any evidence to corroborate this visit.
- The applicants lived in the state of Sonora for six years without being bothered by the police or by members of the cartel. They failed to explain in their BOC Form why the cartel members would still be interested in them, eight years after the murder of the mother. Mr. Campos was found to be adjusting his answers on the basis of the question being asked, which undermined his credibility.
- Despite alleged threats against him in Acapulco, Mr. Campos returned to that city in February 2016, a month before his scheduled appointment with his colleague. He failed to explain why he could not have taken care of the administrative details or obtained the necessary information from his colleague remotely. His behaviour was found to be inconsistent with his alleged fear.

[18] On appeal, the applicants chose to challenge only certain aspects of the RPD's decision.

Their arguments are summarized as follows:

- The RPD allegedly erred in noting that some of the evidence was newspaper article clippings with no date and in concluding that the applicants failed to

demonstrate that they had made the necessary efforts to seek state protection.

They argued that the newspaper articles did have dates.

- The RPD allegedly erred in noting that Mr. Campos had not retained counsel to represent them in their dealings with the authorities. They argued that they should not have to put their lives at risk to demonstrate the ineffectiveness of state protection.
- The RPD allegedly erred in noting that the threats were received one year after the death of Mr. Campos's father in 2002. They pointed out that this was an error: it was the brother, not the father.
- The RPD allegedly erred in noting that the conviction of the mother's murderer contradicted their claim that the authorities were inept and unwilling to intervene to protect them. They raised the murderer's parole order, which they wished to file as new evidence in their appeal.
- The RPD allegedly erred in noting that they failed to produce medical evidence to corroborate the visit to the medical clinic following the police arrest in December 2006. They pointed out the medical note that they wished to file as new evidence in their appeal.

[19] In short, the applicants argued on appeal as follows:

[TRANSLATION]

The Board erred by failing to consider the nature of the Campos family's problem. The claimant's brother was killed, and his

mother loudly denounced the murder of her son and demanded justice. On November 9, 2004, the claimant's mother was killed. How can the judge, after two deaths of two family members, ask the claimant if he had done nothing in order to file a complaint with the police and have a copy of the complaint in his possession? This analysis is senseless in light of the tragic events.

[20] On December 17, 2019, the RAD dismissed the applicants' appeal and confirmed the RPD's decision. The RAD refused to admit new evidence and found that numerous aspects of the applicants' allegations lacked credibility.

[21] The RAD's finding that the applicants lacked credibility is based on the following:

- Mr. Campos stated that he had been threatened for making complaints about the deaths of his brother and mother, but he was unable to produce any evidence of complaints made to the authorities.
- Although they allegedly have a contact in the Public Ministry, the claimants did not take any further steps to obtain assistance after the authorities allegedly refused to intervene.
- It is implausible that, having been repeatedly turned down, the claimants would one year later take the same action (of complaining to the authorities) that had previously failed.
- The conclusion that the claimants failed to approach the state in the wake of the incidents they claim to have suffered is correct. The claimants' credibility is undermined.

- The document showing that the murderer of the principal claimant's mother was paroled after serving part of his prison sentence is not admissible. Indeed, an inmate's parole cannot be used to draw conclusions regarding the effectiveness of existing protections.
- The RPD's credibility findings are based, among other things, on the principal claimant's behaviour that was inconsistent with his alleged fear and on the prolonged periods of calm.
- The arguments raised on appeal are insufficient to overturn the RPD's correct conclusions.

III. Issues

[22] Is the RAD's decision reasonable?

IV. Discussion

A. *Preliminary issue*

[23] By consent of the parties, the name of the respondent in the style of cause is to be amended to "The Minister of Citizenship and Immigration", pursuant to subsection 4(1) of the IRPA.

[24] In addition, by consent of the parties, the applicant's name "Maira Nanci Godines Solis" is to be amended by replacing the "s" in "Godines" with a "z" so that the name appears in the style of cause as "Maira Nanci Godinez Solis".

B. *Standard of review*

[25] The standard of review for the RAD decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25 [*Vavilov*]; see also *Limonés Muñoz v Canada (Immigration, Refugees and Citizenship)*, 2020 FC 1051 at para 23; *Elusme v Canada (Citizenship and Immigration)*, 2020 FC 225 at paras 9–19).

C. *Whether RAD decision reasonable*

[26] Mr. Campos raises two main grounds in his application: that the RAD should not have rejected the new evidence on appeal and that the credibility finding was unreasonable in this case.

(1) Whether refusal to admit new evidence unreasonable

[27] The RAD reviewed the documents that the applicants submitted as new evidence:

- a document dated January 8, 2019, from a medical clinic named Santa Fe, showing that the applicant visited the clinic on December 1, 2006, seeking treatment; and
- a parole order for a person named Francisco Carreon Sosa, dated January 17, 2018.

[28] The RAD refused to admit the documents for the following reasons:

[9] The evidence submitted by Mr. Calixto did not arise after November 26, 2018, the date on which the refugee protection claim was rejected. His medical report dates back to December 2006, and the parole order, to January 17, 2018. They were reasonably available. Given the nature of the documents, it is not inconceivable to expect these documents to have been submitted when the claim was made. I cannot accept them.

[29] Subsection 110(4) of the IRPA sets out the following conditions with respect to the admissibility of evidence before the RAD:

Evidence that may be presented

(4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.

Éléments de preuve admissibles

(4) Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.

[30] The burden of establishing the admissibility of new evidence lies on the party submitting that evidence (*Thorne v Canada (Citizenship and Immigration)*, 2020 FC 790 at para 8).

[31] Mr. Campos seems to be arguing primarily that the reasons for rejecting the new evidence are not sufficiently explicit, making it impossible to understand the RAD's reasoning on this issue. I find that the RAD's reasons are sufficient: the court took into account the dates and the nature of the documents produced, and this led the RAD to conclude that both documents were

reasonably available and that the RPD could reasonably have expected the applicant to present them.

[32] Mr. Campos fails to explain why the documents meet the criteria of subsection 110(4) of the IRPA, much less why the RAD's determination on this issue is unreasonable.

[33] The RAD's conclusion that the documents were readily available prior to the RPD hearing is therefore not unreasonable.

(2) Whether credibility finding reasonable

[34] To the RAD, the determinative issue was the applicants' credibility.

[35] The applicants raise three concerns about the RAD's conclusion that the RPD was correct in finding the applicants not to be credible:

- (a) The RAD failed to address all the arguments raised by the applicants regarding the RPD's findings and failed to consider all the evidence.
- (b) The RAD's remarks regarding the family's fruitless attempts to obtain police assistance were confusing.
- (c) The RAD's conclusion regarding state protection was unreasonable.

[36] I will discuss each issue separately.

(a) *Applicants' arguments not addressed*

[37] The RAD began by noting that a number of elements at the heart of the RPD's determination were not being disputed on appeal and that it would consider only the elements that were submitted as part of the appeal memorandum; it concluded that the other elements were correct.

[38] The applicants complain that the RAD failed to consider the evidence in its entirety, failed to identify elements that were not in dispute, and failed to set out its decision-making process for understanding how the RPD determined that the other elements forming the basis of the claim were correct.

[39] I note that the onus was on the applicants to identify disputed elements in the RPD's decision. It was not the RAD's responsibility to identify or provide reasons for unchallenged findings (*Akintola v Canada (Citizenship and Immigration)*, 2020 FC 971 at para 21; *Amadi v Canada (Citizenship and Immigration)*, 2019 FC 1166 [*Amadi*]).

[40] Moreover, the applicants emphasize the arguments they made before the RAD and submit that the RAD failed to consider all their arguments. However, having read the RAD's decision, I find that it addressed the arguments at issue appropriately to determine whether the RPD was correct in finding the applicants not to be credible.

[41] For example, another argument raised by the applicants is that the RPD referred to the death of Mr. Campos's father rather than his brother in 2002, which reveals the RPD's lack of

attention to the issues raised by the applicants. I reject this argument. It is clear that the reference to the father in the passage of the RPD decision in question was incorrect, but the RPD refers to the brother's death in other parts of the decision. The RAD clearly refers to the death of the brother. Consequently, there is no reason to believe that the mistake was anything other than a simple typographical error.

[42] In any event, the RAD is presumed to have considered all the evidence, unless the contrary can be shown. It is not required to refer to every piece of evidence, as the applicants seem to claim (*Jones v Canada (Citizenship and Immigration)*, 2020 FC 1172 at para 13; *Amadi* at paras 50, 52; *Florea v Canada (Minister of Employment and Immigration)* (FCA), [1993] FCJ No 598 at para 1; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 at para 16), nor is it required to respond explicitly to each argument made by the parties.

[43] Moreover, I see nothing in the arguments that were not specifically discussed that would have affected the RAD's credibility finding; therefore, there is no reason to believe that the RAD overlooked contradictory evidence in making its finding of fact (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC), 157 FTR 35 at para 17).

[44] In particular, the applicants' submissions do not challenge the RAD's conclusion that there was a lack of credibility and evidence to corroborate their allegation that cartel members were still interested in them in 2012, eight years after the murder of Mr. Campos's mother. Moreover, I note that the applicants also did not challenge the RPD's conclusion that

Mr. Campos's voluntary return to Acapulco in 2016, a month before his meeting with his colleague, when Mr. Campos was aware of the danger involved, was behaviour inconsistent with his alleged fear.

[45] Coherence in the evidence and behaviour that is incompatible with a claimant's alleged subjective fear are relevant considerations that help the decision maker analyze the credibility of a claimant (*Noël v Canada (Citizenship and Immigration)*, 2020 FC 281 at para 20).

(b) *Fruitless attempts to obtain police assistance*

[46] As stated above, the determinative issue for the RAD was the applicants' credibility.

[47] First, it is surprising that counsel for the applicants asserts before me that the applicants' fear of persecution results not from their having pressed the authorities for answers regarding the deaths of Mr. Campos's brother and mother, but rather from the death of the brother himself.

This assertion is inconsistent with the evidence.

[48] Mr. Campos's account makes it clear that the reason the criminal gang was threatening Mr. Campos's family was because the family continued to put pressure on the authorities, including through the media, to obtain answers about the deaths of their family members. In fact, while Mr. Campos was being tortured by police officers in December 2006, they allegedly told him [TRANSLATION] "that if he continued to ask questions about the death of his brother and mother, he and his family would be killed".

[49] To say now that this was not the source of the risk to which they would be subjected if they were to return to Mexico makes no sense.

[50] The applicants argue that there was confusion on the part of the RAD as to whether the family had sought help from the authorities. The applicants had filed a number of newspaper clippings and translations with the RPD in support of their allegations regarding the murders of Mr. Campos's brother and mother and the requests to the authorities by the family, including Mr. Campos's sister and sister-in-law, to bring to justice those responsible for the 2002 and 2004 murders. They had also filed an article on the murder of one of Mr. Campos's colleagues in 2016.

[51] However, the applicants failed to explain how the newspaper articles supported their allegations that they sought help from the authorities and were refused. Perhaps Mr. Campos's family was denied state assistance following complaints, but this seems too far removed from Mr. Campos's personal situation for me to conclude that the RAD's decision was unreasonable simply because it failed to explicitly point out this issue, especially considering the lack of evidence in the record.

[52] Specifically, the defendants complain that the RAD requested a copy of the complaint to the authorities that is alleged to have caused the cartel members' retaliation. The RAD found it odd that Mr. Campos's family was threatened for filing a complaint but did not have a copy of the complaint.

[53] However, it was only logical for the RAD to request such documents, since a copy of the complaint made to the authorities, which is the alleged cause of the danger the applicants would face if they were to return to Mexico, is something the applicants should reasonably have had in their possession.

(c) *RAD's conclusion regarding state protection unreasonable*

[54] The applicants argue that the RAD erred in concluding, as did the RPD, that the arrest and conviction of the murderer of the principal applicant's mother contradicted their allegation that the authorities were incapable of protecting the public. According to the applicants, the general documentary evidence regarding conditions in Mexico and the evidence they attempted to file regarding the parole of the mother's murderer show otherwise.

[55] I fail to see how this argument is helpful to the applicants.

[56] General documentary evidence about Mexico's ability to protect its citizens does not establish Mr. Campos's credibility. It is well established that a "refugee protection claim cannot rely solely on the evidence found in the National Documentation Package of the country about which the fear is being raised" (*Jean v Canada (Citizenship and Immigration)*, 2019 FC 242 at para 19).

[57] On the issue of the parole of the person charged with the murder of Mr. Campos's mother, I do not believe that parole in itself proves that the state is unequipped to protect its citizens.

[58] Rather, the question is whether the applicants themselves were facing persecution and were unable to obtain state protection in their home country. Thus, it was the lack of evidence that the state was incapable of assisting Mr. Campos, the fact that the murderer of Mr. Campos's mother was indeed arrested, and the inconsistencies in Mr. Campos's account and between his account and his statements and his past behaviour that led the RAD and the RPD to question his credibility.

[59] All these considerations are at the core of the RAD's expertise and are entitled to deference. Mr. Campos has failed to show why these conclusions are unreasonable and require the intervention of this Court.

[60] The main flaw in Mr. Campos's arguments regarding the credibility finding is that they fail to address critical elements that led the RPD and then the RAD to conclude that Mr. Campos was not credible. For this reason, even if Mr. Campos were correct in all his arguments before the Court regarding the new evidence (which he is not), it would still not be enough to enable me to conclude that the RAD's decision was unreasonable.

[61] The presumption that refugee protection claimants are truthful is not absolute. Indeed, "[w]hen an applicant swears to the truth of certain allegations, this creates a presumption that those allegations are true unless there be reason to doubt their truthfulness" (*Pedro Enrique Juarez Maldonado (Applicant) v Minister of Employment and Immigration (Respondent)*, [1980] 2 FC 302 at para 5).

[62] In this case, the reasons of the RAD and the RPD clearly explain why they did not find Mr. Campos's account to be credible. Mr. Campos failed to show that the Court's intervention is warranted in this case. In essence, he is asking this Court to reweigh the evidence, which it cannot do (*Vavilov* at paras 83, 128).

V. Conclusion

[63] I am therefore dismissing this application for judicial review.

JUDGMENT in IMM-150-20

THIS COURT’S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. The name of the respondent in the style of cause is to be amended to “The Minister of Citizenship and Immigration”.
3. The applicant’s name “Maira Nanci Godines Solis” is to be amended by replacing the “s” in “Godines” with a “z” so that the name appears in the style of cause as “Maira Nanci Godinez Solis”.
4. There is no question to be certified.

“Peter G. Pamel”

Judge

Certified true translation
Johanna Kratz, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-150-20

STYLE OF CAUSE: MIGUEL CAMPOS CALIXTO, MIGUEL ANGEL CAMPOS NUNEZ, MAIRA Nanci GODINEZ SOLIS, ARMANDO CAMPOS GODINEZ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MATTER HEARD BY VIDEOCONFERENCE AT MONTRÉAL, QUEBEC

DATE OF HEARING: DECEMBER 9, 2020

JUDGMENT AND REASONS: PAMEL J.

DATED: FEBRUARY 2, 2021

APPEARANCES:

Alfredo Garcia FOR THE APPLICANTS

Suzanne Trudel FOR THE RESPONDENT

SOLICITORS OF RECORD:

Avocats Semperlex, LLP FOR THE APPLICANTS
Montréal, Quebec

Attorney General of Canada FOR THE RESPONDENT
Montréal, Quebec