



Date: 20230331

Docket: IMM-3619-22

Citation: 2023 FC 457

[ENGLISH TRANSLATION]

Ottawa, Ontario, March 31, 2023

PRESENT: The Honourable Madam Justice Walker

BETWEEN:

SANDRA MARLENE RAMIREZ DE CASTANEDA

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant, Sandra Ramirez de Castaneda, is applying for judicial review of a decision made on March 25, 2022 by the Refugee Protection Division (RPD). The RPD found that some of the essential allegations supporting her refugee protection claim were not credible and therefore rejected the claim.

[2] For the reasons that follow, the application is allowed.

I. **Background**

[3] The applicant is a citizen of El Salvador. She fears violence from both her husband's former spouse and an ophthalmologist who sexually assaulted her. The applicant also fears ill treatment by gangs and a male-dominated society due to her profile as a single woman in El Salvador.

[4] In 2013, the applicant received threats from her husband's ex-spouse, and she then obtained protection measures against her. In 2016, the applicant's husband informed her that his ex-spouse had threatened to attack her if the applicant continued with her attempts to obtain legal custody of her husband's daughter.

[5] The applicant was also touched in a sexual manner by an ophthalmologist in November 2015. In addition, she was threatened by him not to report him for what he had done to her. Following that incident, the applicant's husband filed an administrative complaint. The applicant did not file a criminal complaint against the physician, but he was convicted of other sex offences against a minor and sentenced to eight years in prison.

[6] The applicant alleges that she left El Salvador after a series of troubling events in 2017. In her Basis of Claim Form (BOC Form), the applicant stated that she had been followed by a young man on a bicycle who circled her car before cycling away. She alleges that she also received a threatening phone call two weeks later. The applicant sent the court a letter of complaint dated October 16, 2017, regarding the threatening call and a request for follow-up to this complaint dated January 1, 2018.

[7] In December 2017, the applicant felt that she was being watched, because she noticed a suspicious car without plates close to her sister's residence, where she had taken refuge. She alleges that she received subsequent calls from the same area code (502) as the one for which she filed a complaint in October 2017.

[8] On January 11, 2018, the applicant left El Salvador for the United States. A few days later, she arrived at the Canadian border and claimed refugee protection. She was allowed to enter the country because her husband is a permanent resident of Canada.

II. **Decision under review**

[9] The RPD rejected the refugee protection claim, finding that the applicant was credible about several aspects of the incidents in support of her claim, except with respect to some speculative aspects and some allegations of specific threatening incidents that caused her to leave El Salvador.

[10] The RPD's relevant findings are as follows:

1. Since 2016, the applicant's only fears are linked to the fact that her husband's daughter has been seeking news about her. According to the RPD, the applicant speculated on the basis of this information that her husband's ex-wife still wanted to attack her out of vengeance. The RPD found that the daughter's questions did not demonstrate that the applicant was currently being threatened by the ex-wife.
2. The applicant's allegation that the ophthalmologist was released after only one year of imprisonment was not convincing because the RPD could not rely on a blog and an undated excerpt from an Internet site for a clinic where the physician's information appears. The RPD also noted that the applicant had not had contact with the physician or received any other threats from him since 2015. The RPD therefore finds that the applicant did not discharge her burden of proof to demonstrate that he was still angry with her.

3. With respect to the events of 2017 (the young man on a bicycle; an initial threatening call; the suspicious car without plates close to her sister's house; the subsequent threatening calls), the RPD stated that the applicant's testimony during the hearing, according to which the calls, the young man and the car were all related to one or another of her agents of harm, was not supported by any facts other than circumstantial speculation.
4. In addition, the applicant did not exhibit the behaviour that can be reasonably expected of a person who says that they fear being persecuted.

[11] With respect to her alleged fear of being persecuted due to her status as a single woman, the RPD notes that violence is widespread in El Salvador and that some groups of women are more susceptible to persecution. However, the applicant did not establish any facts demonstrating that her personal situation matches those of women with a well-founded fear of gender-based persecution. In addition, her delay in leaving her country of origin and her decision not to go to the United States, in spite of the fact that she possesses a multiple-entry visa that is valid until 2024, shows an absence of subjective fear and undermines her overall credibility. The RPD found that the applicant did not discharge her burden of establishing a serious possibility of gender-based persecution in El Salvador.

III. Analysis

[12] The applicant criticizes the RPD for failing in its duty of procedural fairness by committing five errors by which it denied the applicant her right to fully present her case. However, only one of those errors allows me to dispose of this application: the allegation that numerous significant errors in the interpretation of the applicant's testimony were made during the hearing, one of which irrevocably undermined her credibility.

[13] Procedural fairness issues are not truly decided based on a particular standard of review. The role of a reviewing court is instead to determine whether the procedure was fair having regard to all of the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 (*CPR*)). As noted in *CPR* at paragraph 56: “the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond.”

[14] The threatening calls are an important factor that caused the applicant to leave El Salvador in 2017. In this regard, the RPD noted that the applicant testified that she saw the full telephone number of the threatening speaker and reported it to the police authorities in her official complaint. However, in the complaint filed by the applicant, it only states the area code, 502. In response to the question asked by the RPD regarding this contradiction, the applicant said that she told the authorities only the area code associated with the first call and that there were other numbers (not specified) afterwards. In addition, she said that she had not attempted to note the full numbers of the subsequent calls because she was not going to call them and the number was sometimes blocked.

[15] The RPD found that the explanations provided by the applicant were not reasonable and that if the applicant “had reported the full telephone number to police authorities, it would be in the complaint she filed”.

[16] In the written account that she submitted in support of this application for judicial review, the applicant included an excerpt of the transcript of her testimony. The excerpt shows that her

counsel interrupted the RPD panel member during the hearing and explained to him that there were problems with the interpretation:

[TRANSLATION]

Counsel for the claimant: **And she never said the information that you understood.**

Panel: So what have I not understood?

Counsel for the claimant: “During the point-of-entry interview, the 2017 complaint, Exhibit C-24, you referred to calls to 502 numbers, **and today you testified that you had the full number**, which you gave to the police and yet you communicated outside of the court”, **which is not what she said. And now you have asked whether she tried to record the numbers** and the interpreter said

Panel: No, I asked whether her telephone had recorded them, I asked whether she had tried to take down the numbers.

Counsel for the claimant: Yes, OK, but the interpreter said, “if you have, if you have called this number”, so she answered a completely different question.

Panel: All right, I understand. We will clarify it.

Counsel for the claimant: Yes.

...

Panel: There is no problem; I will take that into account.

(Emphasis in original.)

[17] It is well established that refugee protection claimants appearing before the RPD are entitled to interpretation that is continuous, precise, competent, impartial and contemporaneous. In addition, they do not require proof of actual prejudice to demonstrate a breach of this right (*Mohammadian v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 191 at para 4 (*Mohammadian*); *Muamba v Canada (Citizenship and Immigration)*, 2021 FC 388 at para 12 (*Muamba*)).

[18] However, it is not necessary for the interpretation to be perfect (*Mohammadian* at para 6). For an error of interpretation to amount to a breach of procedural fairness, it must be sufficiently serious, material and non-trivial (*Muamba* at para 13).

[19] The applicant argues that she made an allegation of a breach of the rules of procedural fairness at the first opportunity, during the hearing before the RPD. She stresses that the error made by the interpreter misrepresented her testimony and gave rise to a negative finding of her credibility, causing her actual prejudice.

[20] I agree. Having read the excerpt of the transcript of the hearing before the RPD, I find that the erroneous interpretation of the question asked of the applicant by the RPD is serious and material. In fact, the applicant answered a question that was fundamentally different from the one asked by the panel. Her answer led the RPD to its finding that the applicant had not received threatening calls in 2017, an important factor in its final finding.

[21] I recognize that the RPD stated that even if it considered the allegation of inadequate interpretation, it considered that if the applicant had received a call threatening her with rape or death, she would have tried to take down the telephone number to then give this number to the authorities. However, the RPD did not intelligibly explain whether it understood that the applicant had replied to a different question than what it had asked regarding the telephone number or numbers of the threatening callers. Its statement regarding interpretation is only vague and does not answer the specific objection from counsel for the applicant.

[22] In these circumstances, I find that there was a breach of procedural fairness that considerably harmed the applicant's right to a fair hearing before the RPD. The application for judicial review is therefore allowed and the decision is set aside. The outcome may very well be the same when the matter is reconsidered, but it is essential that the applicant have the opportunity to fully present her case to the RPD with accuracy.

[23] Because of this finding, it is not necessary to consider the applicant's other arguments.

JUDGMENT in IMM-3619-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.
2. The decision of the Refugee Protection Division dated March 25, 2022, is set aside.
3. The matter is returned to the Refugee Protection Division for redetermination by a differently constituted panel.
4. No question of general importance is certified.

“Elizabeth Walker”

Judge

Certified true translation
Francie Gow

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3619-22

STYLE OF CAUSE: SANDRA MARLENE RAMIREZ DE CASTANEDA
v MINISTER OF CITIZENSHIP AND
IMMIGRATION

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