Date: 20240126

Docket: IMM-11827-22

Citation: 2024 FC 133

Ottawa, Ontario, January 26, 2024

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

JOSE NOEL MORALES MORALES
NOEL MORALES GUERRERO

Applicants

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

Respondent

JUDGMENT AND REASONS FOR JUDGMENT

I.   **Overview**

[1]   The Applicants, Jose Noel Morales Morales [Applicant] and his son, Noel Morales Guerrero [Associate Applicant], seek judicial review of a decision by the Refugee Appeal Division [RAD] refusing their claim for refugee protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2]   For the reasons that follow, I dismiss the application. I find that the RAD did not err in refusing to admit new evidence. Further, the RAD was reasonable in their finding that there was no breach of procedural fairness by the Refugee Protection Division [RPD].

II.   Background

[3]   The Applicants, citizens of Mexico, claimed refugee protection based on a fear of harm from multiple actors in Mexico, including a cartel-affiliate individual known as RJ, a federal police officer known as OG, and the Cártel de Jalisco Nueva Generación [CJNG].

[4]   According to the Applicant, RJ and OG abducted him in Hidalgo in June 2013, demanding that he provide gasoline fuel from his store and that he pay $5,000 pesos every month. They robbed the Applicant and made his wife pay ransom for his release. The Applicant did not comply with their orders and filed two complaints with the prosecutor's office.

[5]   In July 2013, the Applicant moved to Mexico City, where the Associate Applicant resided. The Applicant alleges that he was the victim of a robbery in 2018, following which he travelled to Canada. The Associate Applicant claims that he was the victim of a kidnapping attempt in 2019. After learning about this, the Applicant travelled back to Mexico and returned to Canada with the Associate Applicant in May 2019.

[6]   The Applicants claimed refugee protection in November 2020. The Associate Applicant relied on the Applicant's narrative in support of his refugee claim.

[7]   The RPD dismissed the Applicants' refugee claims under sections 96 and 97 of the *IRPA* based on a negative credibility finding and the availability of an Internal Flight Alternative [IFA].

[8]   Before the RAD, the Applicants sought to adduce new evidence, including: (i) evidence relating to an alleged attack on the Applicant's car in Mexico in July 2022; and (ii) a letter from the Applicant's friend seeking to clear up concerns the RPD had about bank statements filed as evidence that the friend paid ransom for the Applicant's cousin's kidnapping in 2019. After reviewing the new evidence, the RAD determined that it did not meet the relevant factors for admissibility as set out by the Federal Court of Appeal in *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 [*Raza*] and *Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96 [*Singh*]. Given this determination, the RAD did not convene an oral hearing.

[9]   The RAD dismissed the Applicants' appeal on its merits, finding that the RPD's credibility assessment was correct and that the Applicants had a viable IFA in Durango, Baja California. In addition, the RAD held that there was no breach of procedural fairness by the RPD as alleged by the Applicants. Rather, the RAD found that because both the Applicants relied on the Applicant's narrative and addendum in support of their refugee claims, it was not surprising that the RPD mainly questioned the Applicant. The RAD noted, however, that the RPD had questioned the Associate Applicant about the alleged kidnapping attempt that he had experienced.

III.   Issues and Standard of Review

[10]   On judicial review, the Applicants identify three issues:

(a) Whether the RAD erred in refusing to admit the new evidence;

(b) Whether the RAD erred in finding that the RPD did not breach procedural fairness; and

(c) Whether the RAD erred in finding that the Applicants had a viable IFA.

[11]   There is no dispute that the applicable standard of review for all three issues is reasonableness. 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": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8 [*Mason*]. A decision should only be set aside if there are "sufficiently serious shortcomings" such that it does not exhibit the requisite attributes of "justification, intelligibility and transparency": *Vavilov* at para 100; *Mason* at paras 59-61. Furthermore, the reviewing court "must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable": *Vavilov* at para 100.

[12]   At the hearing, the Applicants' counsel agreed that their argument on the availability of a viable IFA, as framed in their application, "stood or fell" based on the determination of the first issue concerning the admissibility of the new evidence. Based on my determination that the RAD did not err in refusing to admit the new evidence, it was not necessary to consider the arguments relating to the IFA.

IV. **Analysis**

A. *The RAD did not err in refusing to admit new evidence*

[13] In accordance with subsection 110(4) of the *IRPA*, for new evidence to be admissible on appeal before the RAD, it must satisfy one of the following requirements: (i) it must have arisen after the rejection of the refugee claim; (ii) it was not reasonably available at the time of the rejection; or (iii) it was reasonably available, but the person could not have reasonably been expected in the circumstances to have presented it at the time of the rejection: *Singh* at para 34.

[14] If the evidence meets one of these statutory requirements, then the RAD must consider whether the evidence meets the criteria set out in *Raza* and *Singh*, including newness, relevance, and credibility: *Singh* at paras 34-38, 49; *Raza* at paras 13. On judicial review, the role of the Court is not to revisit whether the new evidence should have been accepted, but rather whether the RAD's admissibility determination is reasonable: *Khan v Canada (Citizenship and Immigration)*, 2020 FC 438 at para 28 [*Khan*]. In that vein, deference is owed to the RAD's determinations of the admissibility of evidence*: Frank v Canada (Citizenship and Immigration)*, 2023 FC 696 at para 25; *Asim v Canada (Citizenship and Immigration)*, 2022 FC 517 at para 23; *Khan* at para 32.

[15] The Applicants argue that the RAD erred in refusing to admit the new evidence related to: (i) the alleged July 2022 attack on the Applicant's car in Mexico; and (ii) the money that had been withdrawn from the bank to pay ransom money for the alleged kidnapping of the Applicant's cousin.

[16]   As set out below, I am unable to find that the RAD's refusal to admit this evidence is unreasonable based on any of the grounds advanced by the Applicants. The RAD's reasons are comprehensive and explain how the evidence does not meet the relevant admissibility criteria set out in *Raza* and *Singh*: RAD's Reasons and Decision dated October 31, 2022 at paras 6-18 [RAD's Reasons]. As such, I find the reasons are intelligible, transparent, and justified.

(1)   Evidence of the July 2022 attack

[17]   The RAD identified numerous issues concerning the source and circumstances of the evidence of the alleged July 2022 attack.

[18]   First, the RAD found that the timing of the attack was suspicious given that it occurred exactly five weeks after the RPD denied the Applicants' refugee claims: RAD's Reasons at para 11. The jurisprudence is clear that evidence can reasonably be regarded as dubious based on the suspicious timing of events: *Jiang v Canada (Citizenship and Immigration)*, 2021 FC 572 at para 44; *Idugboe v Canada (Citizenship and Immigration)*, 2020 FC 334 at paras 21-25; *Elmi v Canada (Citizenship and Immigration)*, 2020 FC 296 at paras 32-36; *Meng v Canada (Citizenship and Immigration)*, 2015 FC 365 at para 22.

[19]   Contrary to the Applicants' arguments, the RAD did not reject this evidence based solely on the fortuitous timing. Rather, the RAD also assessed the credibility of the evidence. In particular, the RAD assessed the trustworthiness of a letter from the Applicant's father, concluding that the letter contradicted the Applicant's testimony: RAD's Reasons at para 12.

[20]   The RAD further found that the photos and vehicle invoice were of little probative value because there was insufficient information to establish that the vehicle in the photos was the same one that the Applicant owned and used in Mexico. In addition, the RAD stated that there was insufficient evidence that the damage was caused by gunfire, finding that the damage could have been caused by "vandalism or random violence": RAD's Reasons at para 13.

[21]   The RAD acknowledged the threatening note on the car's windshield, but found this was insufficient to establish the credibility and trustworthiness of the evidence given all the other issues identified: RAD's Reasons at paras 13-14.

(2)   The bank statement

[22]   The Applicants sought to tender a letter from the Applicant's friend clarifying the banking issue that arose before the RPD. The RPD drew a negative credibility inference because the bank statement showed a credit card transaction and not a cash withdrawal. The friend's letter sought to explain why the bank statement showed a credit card advance rather than a cash withdrawal. For the purposes of the admissibility analysis, the RAD accepted that the bank statement showed a withdrawal of $80,000 pesos. In that respect, the RAD did not rely on the RPD's negative credibility finding.

[23]   Ultimately, however, applying the *Raza/Singh* factors, the RAD refused to admit the friend's letter on the basis that it was neither relevant nor new evidence. The RAD found that the evidence had no probative value in terms of establishing the alleged kidnapping incident because it simply indicated that the money was withdrawn, and did not reveal the purpose of the

withdrawal. In terms of newness, the RAD found that "the letter merely repeats the author's allegations in a letter disclosed to the RPD concerning the abduction of the PA's cousin": RAD's Reasons at para 16. I am not persuaded by the Applicants' argument that the RAD's reasons lack intelligibility on this issue.

[24]   Furthermore, I do not accept the Applicants' argument that the RAD could not reject the friend's letter since it addressed the RPD's concerns that the bank statement showed a credit card advance rather than a cash withdrawal. The Applicant argues that the RPD only discounted the evidence about the alleged kidnapping based on the issues with the bank statement. However, a review of the RPD's decision demonstrates otherwise.

[25]   More particularly, the RPD addressed the credibility concerns in detail, including ones related to the alleged kidnapping and ransom attempt involving the Applicant's cousin: RPD's Reasons and Decision dated May 20, 2022 at paras 15-18 [RPD's Reasons]. The RPD made a negative credibility finding given the Applicant's "evolving evidence" about the agents of persecution and specifically found that "it calls into question whether the events alleged to have been perpetrated by the CNJG [sic] against his cousin and son occurred at all" [emphasis added]: RPD's Reasons at para 18.

[26]   Following this discussion about the inconsistent evidence, the RPD then reviewed the evidence about the bank statement. The RPD finally concluded that, based on "multiple credibility concerns" and the bank statement issue, the alleged kidnapping of the Applicant's cousin did not occur:

> Given multiple credibility concerns related to evolving and inconsistent testimony already discussed and in information related to the ransom payment, <u>I find that [sic] on a balance of probabilities, this alleged kidnapping did not occur</u>: RPD's Reasons at para 20.

> [Emphasis added]

[27]   Read in this context, the RAD's conclusion that the friend's letter was neither relevant nor new evidence is entirely reasonable. The RAD therefore did not err in refusing to admit the evidence.

B.   *The RAD did not err in finding no breach of procedural fairness by the RPD*

[28]   The Applicants argue that the RAD erred in failing to find a breach of procedural fairness by the RPD. They assert that the RPD should have questioned the Associate Applicant about the 2019 kidnapping attempt before making an adverse credibility finding.

[29]   The Applicants rely on *Rasiah v Canada (Citizenship and Immigration)*, 2019 FC 408, *Un-Nisa v Canada (Citizenship and Immigration)*, 2020 FC 1033, and *Oria-Arebun v Canada (Citizenship and Immigration)*, 2019 FC 1457 for the proposition that the RPD cannot make a negative credibility finding without assessing the main incident of persecution. However, this case is distinguishable since, unlike in those cases, the RPD did assess the credibility of the alleged kidnapping attempt of the Associate Applicant.

[30]   The RPD found that the Principal Applicant's evolving and inconsistent testimony about the agents of persecution called into question whether the kidnapping attempt involving the Associate Applicant occurred at all: RPD's Reasons at para 18. In my view, the RAD reasonably

found that the RPD did not err in weighing credibility problems in the Applicant's testimony as part of its assessment of both refugee claims: RAD's Reasons at para 40. Indeed, as the RAD noted, the Associate Applicant's claim was based entirely on the Applicant's narrative.

[31]   Despite the fact that the Associate Applicant based his claim on his father's, the RPD did question the Associate Applicant about the kidnapping attempt. Further, while the RPD member questioned the Applicant about the interactions with the cartel, the Associate Applicant interjected to provide information about the CJNG's involvement in his kidnapping attempt. As found by the RAD, there is thus no evidence that the RPD disregarded the Associate Applicant's testimony: RAD's Reasons at para 39.

[32]   Notably, as pointed out by the RAD, the RPD also assessed the police report filed by the Associate Applicant after the incident, concluding that it was insufficient to overcome the credibility problems in the Applicant's testimony:

> As already noted, if this event had occurred in the manner alleged by the [Applicants], they would reasonably have mentioned the CJNG in their narrative or addendum, and the [Applicant] would have mentioned it when asked about which cartels were targeting him. Furthermore, I note that the complaint is self-reported by the [Associate Applicant] and his grandfather, and it is not an independent corroboration of the alleged events. Although the document benefits from the presumption of authenticity, and should be given some weight, I agree with the RPD that it is insufficient to establish the Applicant's allegations in the context of the credibility issues in the claim: RAD's Reasons at para 41.
>
> [Emphasis added]

[33]   Based on the foregoing, the RAD's finding that the RPD did not breach the Associate Applicant's procedural fairness rights is reasonable.

V.   **Conclusion**

[34]   For these reasons, I find no reviewable error in the RAD's decision and I dismiss this application for judicial review.

[35]   The parties did not raise a question for certification and none arises in this case.

JUDGMENT in IMM-11827-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

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"Anne M. Turley"
Judge

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FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-11827-22

STYLE OF CAUSE: JOSE NOEL MORALES MORALES, NOEL MORALES GUERRERO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

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APPEARANCES:

Richard Wazana FOR THE APPLICANTS

Asha Gafar FOR THE RESPONDENT

SOLICITORS OF RECORD:

WAZANALAW FOR THE APPLICANTS
Barrister and Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario