Federal Court Cour fédérale

Date: 20240424

Docket: IMM-5086-22

Citation: 2024 FC 611

[ENGLISH TRANSLATION]

Ottawa, Ontario, April 24, 2024

PRESENT: Mr. Justice Pentney

BETWEEN:

ROSIDALIA BARRIENTOS GARCIA
JOSE LUIS URRUTIA JR
JEFFERSON GEOVANNY URRUTIA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision of the Refugee Appeal Division ("RAD") affirming the decision of the Refugee Protection Division ("RPD") to the effect that the applicants are neither Convention refugees nor persons in need of protection.

[2] Rosidalia Barrios Garcia ("principal applicant" or "PA") is a citizen of Guatemala. The other two applicants ("associated applicants") are her two children, born in September 2000 and April 2003 respectively in the United States; both are citizens of that country. They argue that the RAD's decision was unreasonable because the RAD made errors of fact in assessing the risk they would face if they were to return to Guatemala.

[3] For the following reasons, the application for judicial review will be dismissed. The RAD's decision was reasonable. The RAD took into account the factual background and the applicable legal framework. Even though the applicants do not agree with the RAD's assessment of the evidence, that is not in itself sufficient to render the decision unreasonable.

II. Background

[4] In 1999, the principal applicant left Guatemala for the United States. She got married and had two children. In 2005, she returned to Guatemala with her sons to visit her daughter (from a previous relationship). Her husband remained in the United States.

[5] While the applicants were in Guatemala, her youngest son Jefferson was abducted, and she feared he had been taken by people involved in organ trafficking. She organized a search with the assistance of friends and neighbours, then reported the incident to the police. She noted

that the police had dragged their feet, citing a lack of staff, until she told them that her son was a U.S. citizen. Two hours later, her son was found at home resting. As a result of that incident, the applicants returned to the United States, where they remained until February 2018. Fearing deportation, they came to Canada and sought refugee protection.

[6] The RPD rejected the associated applicants' claim on the ground that they had not alleged any risk should they return to the United States. The RPD noted that the associated applicants were two young adults, aged 18 and 20, and that they were citizens of the United States. With respect to the PA's claim, the RPD noted that on several occasions she had the opportunity to explain her personal fear, but that she had only expressed fear with regard to the associated applicants and not to herself. The RPD also noted that the risk of being a victim of organ trafficking was pure speculation, and that the risk of violence in Guatemala was a generalized risk. For all of those reasons, the RPD rejected the claims for refugee protection.

[7] The RAD dismissed the applicants' appeal on the ground that there was no prospective risk. To reach this determination, the Member analyzed three issues: (A) the risk of returning, (B) family reunification, and (C) trauma. Given the overlap between the analysis conducted by the RAD and the applicants' arguments in this application, it is not necessary to examine the decision in detail. That will be done below in the analysis of the issues raised on judicial review.

[8] On the issue of the risk of returning for the associated applicants, the RAD agreed with the RPD's conclusion. On appeal, the applicants argued that, should they return to Guatemala, the associated applicants would face the risk of being victims of human trafficking, given their profile as foreign nationals. In addition, Jefferson's prior kidnapping resulted in his facing a personalized risk. The RAD did not share this view. Indeed, citing the age of the associated

applicants (20 and 18 at the time of the hearing), their U.S. citizenship, as well as the fact that they had expressed no fear in respect of the U.S., the RAD concluded that the associated applicants could still return to the U.S. In the Member's view, this meant that the applicants did not meet the requirements of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[9] The RAD rejected the PA's claim because she had not demonstrated that she would be exposed to a risk different from that faced by the entire population of Guatemala. The RAD rejected the PA's argument that she shared the associated applicants' fear of abduction. First, the RAD reiterated its earlier finding that the associated applicants could return to the United States, and that they had no fear of doing so. Moreover, the RAD found that the evidence in the record indicated that everyone in Guatemala was exposed to a generalized risk of being kidnapped or trafficked. Consequently, the RAD determined that the PA had not established that she would be exposed to a personalized risk.

[10] In addition, the RAD dismissed the applicants' argument with respect to the concept of family reunification. The RAD cited case law to the effect that family unity is not a concept that exists in Canadian refugee law: *Casetellanos v Canada (Solicitor General)*, 1994 CanLII 3546 (FC), [1995] 2 FC 190 and *Canada (Minister of Citizenship and Immigration) v Khan*, 2005 FC 398 at paragraph 11.

[11] The RAD rejected the PA's contention that a return to Guatemala would force her to relive the trauma of her son's abduction. In support of her rejection, the Member first cited the inadequacy of the evidence adduced by the applicants. In particular, the evidence submitted addressed the trauma suffered by kidnap victims, not the trauma that would be suffered by their

families. The applicants also failed to provide a psychological assessment showing that trauma could potentially result from a return to Guatemala. Thus, the Member was of the opinion that, even though the PA might have bad memories of her son's abduction, such difficulty would not amount to persecution or serious harm.

[12] For those reasons, the RAD dismissed the appeal. The applicants are seeking judicial review of that decision.

III. Issues and standard of review

[13] There is only one issue in this case: was the RAD's decision unreasonable?

[14] The applicable analytical framework was set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], and recently affirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21.

[15] A decision is considered to be unreasonable when the Court is satisfied that there are sufficiently serious shortcomings "in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100). Under the principle of justification, where the impact of a decision on the individual's rights and interests is particularly severe, the reasons must proportionally reflect the stakes (*Vavilov* at para 133).

IV. Analysis

[16] In view of the arguments put forward in the written and oral submissions, the analysis will focus on three issues: (A) the risk of returning, (B) family reunification and (C) trauma. At the hearing, the applicants placed more emphasis on the last two issues.

A. *Risk of returning*

[17] The applicants argue that the Member failed to properly assess the risk of their returning to Guatemala. Indeed, they contend that it did not matter that the associated applicants are U.S. citizens [TRANSLATION] "because the principal applicant is not". They also argue that their allegations with respect to the risk of kidnapping (should they return) were credible.

[18] This argument must be rejected. First of all, the RAD pointed out that sections 96 and 97 of the IRPA set out that a claim for refugee protection must be made with regard to "[the claimants'] country of nationality". The Member then cited case law confirming the application of this principle. There was therefore no error of law in applying the principle that the claim for refugee protection had to be analyzed with regard to the country of nationality—in this case, the United States. As a result, given that no fears had been raised with regard to that country, the associated applicants simply did not meet the requirements of the IRPA.

[19] In addition, the evidence in the record does not support the PA's contention that the associated applicants would have to return to Guatemala simply because she herself was not a U.S. citizen. The RAD correctly noted that the associated applicants were 18 and 20 years old. There is no indication in the record as to why the associated applicants would be forced to return to Guatemala.

[20] In sum, there is no reason to set aside the RAD's decision on this point considering the applicable law and the absence of evidence supporting the contention that the applicants would have to return to Guatemala with the PA.

[21] With respect to the PA's risk of returning, the applicants claim that the RAD erred in its assessment of the evidence because it improperly assessed the fact that the PA had already been a victim of human trafficking in Guatemala. They argue that the risk of being abducted was not only established, but personalized.

[22] The problem for the applicants is that the RAD noted that, despite several opportunities to clarify her own personalized fear, the PA always responded in the negative and her only fear was related to the associated applicants. Even in their appeal memorandum before the Member, the applicants described the PA's fear as being related to the risk of the associated applicants' being kidnapped.

[23] Notwithstanding this, the Member engaged in an analysis of the PA's potential personal fear given her allegations of human trafficking in Guatemala. The RAD noted that the PA would not personally be exposed to the alleged risk. In addition, the PA had not explained how or why her profile would expose her to a higher risk of "endemic" violence than that faced by the general population in Guatemala.

[24] I agree that the applicants submitted the same arguments on this issue on judicial review as they did before the RAD. This is therefore a mere disagreement with the RAD's assessment. It is well established that mere disagreement with a decision is not sufficient for it to be set aside on judicial review.

[25] For these reasons, the RAD's analysis of the risk of returning was reasonable.

B. *Family reunification*

[26] The applicants argue that it is essential to consider the principle of family reunification in this case, notwithstanding the fact that the case law states that it is not a principle that exists in Canadian refugee law. In support of that argument, the applicants submit that a separation would result in prejudice for the family, in the particular circumstances of this case.

[27] In my opinion, that argument cannot succeed. First, the applicants' argument amounts to a mere disagreement with the RAD. Second, the case law clearly establishes that family reunification does not apply in assessing claims for refugee protection: see *Weche v Canada (Citizenship and Immigration)*, 2021 FC 649; *Ekema v Canada (Citizenship and Immigration)*, 2022 FC 1556 at paragraph 14. Even accepting that there are some exceptions to this rule (see *Soto v Canada (Citizenship and Immigration)*, 2022 FC 665 at para 23), I agree that none apply here.

[28] While I recognize that separation from the family will be a source of distress, this does not make the decision under review unreasonable.

C. *Trauma*

[29] With respect to the issue of the trauma of returning to Guatemala, the applicants argue that the RAD erred in fact. In particular, they point out that trauma is not only reflected in the objective evidence (tab 5.2 of the National Documentation Package), but was also demonstrated in the PA's testimony. Thus, contrary to what the RAD asserted, evidence of trauma had in fact

been reported. In addition, the applicants criticize the Member's use of the term [TRANSLATION] "bad memories" as an unreasonable minimization of the [TRANSLATION] "indelible trauma" suffered by the PA.

[30] While I understand why the applicants criticize the use of the term "bad memories" in light of what they experienced, I am not persuaded by their arguments on this point. The RAD's analysis was reasonable given the evidence in the record.

[31] First, the subject of trauma was addressed only in the applicants' appeal memorandum before the RAD. The RAD emphasized this fact when it stated that the issue of trauma had never been raised before the RPD. In addition, the RAD did not err with respect to the objective evidence, which addressed the trauma of kidnap victims and not that of their families. To establish this, the applicants could and should have provided evidence of the PA's personal trauma, such as a psychological report outlining the alleged trauma or the deterioration of her mental health. However, the applicants provided no such evidence.

[32] In sum, I am of the opinion that the applicants' position on this issue is one of merely disagreeing with the RAD on the assessment of the evidence. It should be noted that a reviewing court will not interfere with a decision maker's factual findings "absent exceptional circumstances " and that reviewing courts must also refrain from "reweighing and reassessing the evidence considered by the decision maker" *(Vavilov* at para 125, citations omitted).

[33] Considering the RAD's finding regarding the lack of evidence and the fact that the analysis of this point in the decision was clear and consistent, there is no reason to intervene.

V. Conclusion

[34] For the reasons set out above, the application for judicial review will be dismissed.

[35] No question of general importance arises in this case.

JUDGMENT in IMM-5086-22

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. No question of general importance arises in this case.

"William F. Pentney"
Judge

Certified true translation
Margarita Gorbounova

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5086-22
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APPEARANCES:

Laurent Gryner	FOR THE APPLICANTS
Annie Flamand	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Immigrer Maintenant Inc. Montreal, Quebec	FOR THE APPLICANTS
Attorney General of Canada Montreal, Quebec	FOR THE RESPONDENT