

Federal Court



Cour fédérale

**Date: 20120920**

**Docket: IMM-2324-12**

**Citation: 2012 FC 1097**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Ottawa, Ontario, September 20, 2012**

**PRESENT: The Honourable Madam Justice Gagné**

**BETWEEN:**

**VERONICA VIRIDI  
GONZALEZ HERNANDEZ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The applicant is seeking judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board dated February 15, 2012, by which the RPD determined that she was not a Convention refugee or a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], because the evidence she submitted was not credible.

[2] The applicant challenges this decision which, she alleges, is based on erroneous findings of fact made by the RPD in a perverse or capricious manner or without regard for the evidence before it, more specifically, an addendum dated October 6, 2011, changing the narrative in her Personal Information Form [PIF] submitted with her claim for refugee protection in July 2009.

[3] For the reasons below, the Court has reached the conclusion that there is no reason to intervene and set aside the decision of the RPD.

### ***Facts***

[4] The applicant is a young, 22-year-old citizen of Mexico. She arrived in Canada on March 26, 2009, and, a few months later, claimed refugee protection because of her membership in a particular social group, namely, [TRANSLATION] “women victims of violence”, under section 96 of the IRPA. Initially, the applicant alleged that she was persecuted by a certain Victor Almaraz, a police officer who was in love with her and who started stalking her in 2007, and by whom she was harassed and sexually assaulted.

[5] On June 14, 2011, that is, two days before her hearing before the RPD, the applicant asked for a postponement of 10 to 12 weeks to allow her to undergo a psychological assessment and to receive psychotherapy in order to prepare herself for her hearing. This request was supported by a letter from her psychologist, Dr. Marta Valenzuela, dated June 13, 2011. Dr. Valenzuela expressed her concern about the applicant’s ability to testify before the RPD and wrote that the applicant had revealed to her details of past sexual abuse of which she had been a victim and which were directly

related to her fear of returning to Mexico. On June 16, 2011, the RPD granted her a 12-week postponement.

[6] On October 6, 2011, the applicant filed an addendum to her narrative of the facts provided in response to question 31 of her PIF, signed July 3, 2009. She added a new basis for her claim for refugee protection: she now alleges that she fears her brother-in-law, Fabian G., who had been sexually touching her since 2000, when she was nine years old.

[7] For a better understanding of what follows, here is a summary of the facts alleged in the first PIF and in the addendum.

***Facts alleged in the first PIF***

[8] The applicant claimed that, before leaving for Canada, she was living with her mother and sister in the city of Atlixco. She alleged that, since June 4, 2007, she had been continually harassed, threatened and physically abused by a certain Victor Almaraz. Mr Alvarez was a judicial officer working for the municipal police force whose offices were close to the school she was attending.

[9] The applicant alleged that she had attempted to report this man to the public prosecutor's office, but that the officer she met with had refused to file a complaint on her behalf given that she was a minor. She was told that she had to come accompanied by an adult.

[10] The same day, Victor Almaraz allegedly followed the applicant from her place of work and attempted to forcibly enter her family home. Fearing for her safety and that of her family, the

applicant was obliged to move to the city of Puebla in August 2008, but she regularly travelled to Atlixco for her job.

[11] The applicant alleges that, despite her moving, Victor Almaraz continued to seek her out. On the evening of March 6, 2009, he allegedly followed her to her new home, where she was living alone, forcibly entered her home and raped her. As a result of this incident, convinced that she would be unable to obtain any protection against her rapist, the applicant decided to leave Mexico for good and come to Canada.

***Facts alleged in the amended PIF***

[12] The October 2011 addendum provides the same facts as the first version, but the applicant adds that, from 1999, she lived with her mother and sister at the home of her sister's fiancé, Fabian G.

[13] She described at length how Fabian had started coming up to her as of November 1999, and, from April 2000, he had isolated her on several occasions to sexually touch her. According to this second version of the facts, Fabian's abusive behaviour and his threats against the applicant continued, unbeknownst to her mother and sister, for many years.

[14] The applicant alleges that, given this situation, she attempted by any means to avoid her brother-in-law, but her psychological health gradually deteriorated. She states, for example, that she would cut her arms, finding relief by punishing herself. She added that her sister was especially insensitive to her situation and that their relationship was conflict-ridden.

[15] The applicant explained that, for financial reasons, her mother was not willing to move to their old house. Fabian had had a second floor built at his mother's home, where they all lived together for eight years.

[16] She added that, in 2004, she started drinking, skipping school and coming home drunk. All of this harmed her relationship with her mother and sister to the point that, in August 2005, one of her aunts took her in for four months. In December 2005, the applicant returned to live at her sister's and went back to school following a discussion between her sister and aunt, the contents of which she is unaware.

[17] In January 2007, while the applicant's sister was pregnant, the applicant and her mother again moved to the house close to her sister's to avoid the constant arguments between the two sisters. The applicant alleges that, after their move, Fabian tried to visit her several times, but that the applicant did everything to avoid him.

***The RPD's decision***

[18] The RPD concluded, in light of all of the evidence analyzed, that the applicant had not met her burden of proving that there was a serious possibility that she would be persecuted on a Convention ground or that, on a balance of probabilities, she would be subject to a risk of torture or to a risk to her life or to a risk of cruel and unusual treatment or punishment should she return

to Mexico. In the RPD's opinion, the determinative issue was the credibility of the applicant's narrative, as provided in the two abovementioned versions and in her testimony before the RPD. The applicant also failed to file any credible documentary evidence that could have helped her in establishing the truth of the alleged facts. The RPD did not believe that the applicant was afraid of her brother-in-law, her sister or Victor Almaraz.

[19] The RPD's main findings regarding the applicant's credibility can be summarized as follows:

- the fact that the applicant was unable to speak of the sexual abuse committed by her brother-in-law fails to explain the many contradictions regarding dates, the applicant's and her family's places of residence, the locations where the various incidents occurred and the family situation as described;
- the fact that the first narrative makes no mention of the applicant's problems with alcohol and her arguments with her mother and sister;
- the fact that, when examined about the period during which she allegedly lived on the second floor of the building where her sister and brother-in-law resided, the applicant testified before the RPD that she had lived there with her mother from 2004 until her departure in 2009; according to the written version of her addendum, she lived there for [TRANSLATION] "almost eight years";
- the fact that, according to this second version, it was her mother's house, yet the applicant testified that it was Fabian's house and that the written version of the amendment was incorrect;

- the fact that, according to this amendment, the applicant allegedly attempted to complain to the Public Prosecutor in July 2008, that this date was not provided in the first PIF and that she changed this date to July 2007 at the start of the hearing before the RPD;
- the implausibility that the applicant did not return with her mother to file a complaint with the authorities, despite Victor Almaraz's attempts to break into their home; and,
- the implausibility that the applicant's sister and brother-in-law did nothing in this situation, given that they were all living under the same roof.

[20] In general, the RPD drew a negative inference regarding the applicant's credibility from the amendments and significant additions she made to her initial PIF. The RPD also drew a negative inference from the fact that the applicant made new changes to the second version of her narrative at the beginning of the hearing.

[21] The RPD also questioned why the applicant did not "seek redress and protection from protection agencies other than police", referring to this Court's decision in *Fuentes v Canada (Minister of Citizenship and Immigration)*, 2010 FC 457 at paragraph 14, [2010] FCJ 659 [*Fuentes*], citing *Minister of Citizenship and Immigration v. Maria Del Rosario Flores Carrillo*, 2008 FCA 94 at paragraphs 31-36.

[22] The RPD also found that it could not give any probative value to the letter from the applicant's mother (neither the original of this letter nor the envelope in which it was sent were filed in evidence) to corroborate the applicant's testimony on whether or not Victor Almaraz exists. Relying on this Court's decision in *Sosa v Canada (Minister of Citizenship and Immigration)*,

2009 FC 275 at paragraph 19, [2009] FCJ 343, the RPD was of the opinion that it could require such evidence.

[23] Lastly, the RPD found that the psychological report of Dr. Valenzuela, in which she concluded that the applicant was suffering from trauma, stress and anxiety as a result of the conduct of her brother-in-law who abused her for many years, was insufficient to establish the facts, in light of the applicant's questionable credibility.

### *Submissions of the applicant*

[24] In her memorandum, the applicant challenges the general finding that her narrative was not credible on several grounds.

[25] She first submits that her failure to disclose certain facts when she wrote her first PIF could in part be explained by the fact that she had been traumatized by what she had gone through, including the sexual assault and abuse of which she had been a victim as a child. The applicant submits that, with Dr. Valenzuela's help, she was finally able to reveal certain incidents involving her brother-in-law and that the psychological assessment must serve as evidence for the applicant's psychological scars and not to corroborate the alleged facts.

[26] Second, the applicant submits that, in its reasons, the RPD does not address the principal elements of her claim, namely, whether she had in fact been sexually abused by her brother-in-law, and whether her fear of the police officer who had abused her was reasonable. The applicant argues



that the RPD instead sought to discredit her testimony on the secondary elements of her claim for refugee protection, such as the time she lived at her brother-in-law's and the date of her move.

[27] Third, the applicant submits that, at her hearing, the RPD demonstrated a lack of sensitivity towards her, considering her claims that she had been sexually abused over a long time and at a young age.

[28] Lastly, the applicant submits that, given her age, the Mexican authorities' reaction to the complaint she had tried to file against her assailant, amounts to a complete refusal on their part to protect her.

[29] At the hearing before the Court, counsel for the applicant submitted that her client's claim for refugee protection was essentially based on her fear of her brother-in-law and of her family's reaction should she have to return to Mexico. There was no mention at all of Victor.

***Applicable standard of review***

[30] The credibility and plausibility findings regarding a claim for refugee protection essentially rely on the assessment of the facts. Further to *Aguebor v Minister of Employment and Immigration*, [1993] FCJ 732 (FCA), “[t]he jurisprudence is clear in stating that the Board’s credibility and plausibility analysis is central to its role as trier of facts and that, accordingly, its findings in this regard should be given significant deference” (*Lin v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1052 at paragraph 13, [2008] FCJ 1329).

[31] The RPD's conclusions regarding state protection are reviewable on a standard of reasonableness, and this Court must show considerable deference (*Huerta v Canada (Minister of Citizenship and Immigration)*, 2008 FC 586 at paragraph 14, [2008] FCJ 737).

### *Analysis*

[32] Question 31 of the PIF reads as follows: "On the following 2 pages, set out in chronological order all the significant events and reasons that have led you to claim refugee protection in Canada. . . . Provide details of any steps you took to obtain protection from any authorities in your country and the result." (emphasis in original). The option of correcting one's PIF is provided in subsection 6(4) of the *Refugee Protection Division Rules*, SOR/2002-228.

[33] However, the decisions of this Court that have dealt with whether the credibility of a claimant for refugee protection can reasonably be questioned because of discrepancies between the narrative in the claimant's initial PIF and any later additions or changes are more nuanced.

[34] The case law recognizes that making changes to a PIF in order to clarify things or provide additional information, without changing the facts described in it, does not undermine the presumption that, in the absence of evidence to the contrary, the facts alleged by the claimant are true. Any omission in a previous version of the facts must therefore be examined in its context and be assessed in light of all of the evidence (*Puentes v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1335 at paragraphs 17-20, [2007] FCJ 1729). When the changes made to the PIF are minimal and the applicant has provided a plausible explanation of the corrections made, or when the information added to the initial PIF has already been presented to the panel through

other means (such as port-of-entry notes), the credibility of a claimant's narrative cannot be impugned on that ground (*Ameir v Canada (Minister of Citizenship and Immigration)*, 2005 FC 876 at paragraphs 21-25, [2005] FCJ 1094).

[35] However, the impact is different when omissions have to do with the facts that directly concern the very basis of a claim for refugee protection. In *Aragon v Canada (Minister of Citizenship and Immigration)*, 2008 FC 144 at paragraph 21, [2008] FCJ 173, Justice Frenette determined as follows:

The applicant's failure to disclose in his original PIF that he "immediately" reported the firearms threat to the police was a significant omission that justified the Board's negative credibility finding. The same reasoning applies to the applicant's initial failure to account for the July 2005 telephone calls he allegedly received from the vehicle owner. Both omissions involve significant and important aspects of the applicant's refugee claim that should have been included in the original PIF. These omissions do not address minute details of the claim that the applicant was merely clarifying through amendment. Rather, they go directly to the heart of the applicant's claim.

[36] Similarly, in *Zeferino v Canada (Minister of Citizenship and Immigration)*, 2011 FC 456 at paragraphs 31-32, [2011] FCJ 644, Justice Boivin wrote as follows:

This Court has confirmed on a number of occasions that all the important facts of a claim must appear in the PIF and that failing to mention them could affect the credibility of part or all of the testimony. Furthermore, the RPD is entitled to review the contents of the PIF before and after its amendment and may draw negative inferences about credibility if matters it considers important were added to the PIF by an amendment later (*Taheri v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 886, [2001] F.C.J. No. 1252, at paragraphs 4 and 6; *Grinevich v. Canada (Minister of Citizenship and Immigration)*, (1997) 70 A.C.W.S. (3d) 1059, [1997] F.C.J. No. 444).

It was open to the panel to gauge the principal applicant's credibility and to draw negative inferences about the disparities between her statements in the original PIF, in the interview notes, in the amended narrative of the PIF and in the viva voce testimony, for which the principal applicant provided no satisfactory, plausible or credible explanation in the circumstances (*He v. Canada (Minister of Employment and Immigration)*, (1994), 49 A.C.W.S. (3d) 562, [1994] F.C.J. No. 1107). In this case, and the Court agrees with counsel for the respondent, the evidence shows that the applicants' story and narrative changed over the last two years.

[37] In the case under review, the applicant submits that the RPD's decision is unreasonable since the RPD did not consider the fact that the omissions in the applicant's first narrative were due to her psychological state and fears. In my view, this argument has no merit in the present matter, even though it might have done in another context. At paragraph 11 of its written reasons, the RPD clearly states as follows:

[E]ven if the claimant did not want to talk about the fact that her brother-in-law had been sexually touching her since 2000, there was no reason for the first narrative to be inconsistent with respect to the dates, the incident locations and the family situation that she described.

[38] On reading what follows, it must be noted that the RPD did not rely only on the complete absence of the allegation regarding the applicant's brother-in-law, but also on other, unrelated significant omissions and contradictions. Contrary to the applicant's allegation, these were not secondary facts but significant events in her life, such as the conflict-ridden relationship with her sister and the date and destination of her move with her mother. In light of the evidence on file and the RPD's reasons, the finding that the applicant was not credible remains reasonable, even if the RPD did not give any probative value to the psychologist's report filed by the applicant. It was entirely within its discretion to do so.

[39] I also dismiss the applicant's argument that the RPD lacked sensitivity towards her. Nothing in the transcript of the hearing indicates to me that the applicant had trouble answering the questions of the RPD member and that, therefore, the RPD was insensitive to the applicant's allegations or did not consider the guiding principles of the Immigration and Refugee Board's *Guideline 4: Women Refugee Claimants Fearing Gender-related Persecution*. In any event, the applicant did not bring up any specific facts in support of this argument, other than that the RPD did not accept her argument that her omissions were due to her psychological problems. The RPD's analysis in that respect, as indicated in the previous paragraphs, was well-founded and reasonable.

[40] The RPD's not finding a refugee claimant credible does not in itself show that the RPD was insensitive to the claimant's situation (*Vargas v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1347 at paragraph 15, [2008] FCJ 1706; *SI v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1662 at paragraphs 3-4, [2004] FCJ 2015).

[41] The RPD clearly explained its findings on the applicant's subjective fear: "... the claimant failed to credibly establish that she fears her brother in law and her sister. The claimant failed to credibly establish her alleged fear of Victor Alvarez" (paragraphs 17-18 of the RPD's reasons). The applicant has failed to satisfy me that the RPD's findings on the implausibility of her passivity and especially that of her relatives in regard to Victor Almaraz's conduct over a long period of time were unreasonable. In the circumstances, such findings clearly fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 47, [2008] 1 SCR 190).

[42] Lastly, given the above, the RPD's finding that the applicant did not rebut the presumption of state protection, the scope of which is clarified in *Fuentes* (above), was not unreasonable. This Court cannot intervene to substitute its own assessment of the facts for that of the RPD by concluding, as the applicant would wish it to, that her knowledge and abilities did not allow her to make further efforts to seek state protection.

[43] In that respect, I note that, at the hearing before this Court, counsel for the applicant submitted that her client's claim for refugee protection was essentially based on her fear of her brother-in-law and sister and not her fear of Victor. Yet, the applicant never reported her brother-in-law or sought state protection from him, which she should have done before applying for international protection.

[44] For all of these reasons, the present application for judicial review will be dismissed. There is no question for certification.

**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES THAT:**

1. The present application for judicial review be dismissed.
2. No question is certified.

“Jocelyne Gagné”

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Judge

Certified true translation  
Johanna Kratz, Translator

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-2324-12

**STYLE OF CAUSE:** VERONICA VIRIDI GONZALEZ HERNANDEZ  
v. MCI

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** August 27, 2012

**REASONS FOR JUDGMENT  
BY:** GAGNÉ J.

**DATED:** September 20, 2012

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