

Federal Court



Cour fédérale

**Date: 20141009**

**Docket: IMM-6985-13**

**Citation: 2014 FC 962**

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

**Ottawa, Ontario, October 9, 2014**

**PRESENT: The Honourable Mr. Justice de Montigny**

**BETWEEN:**

**KATIA DEL ROCIO CUENTAS PERALTA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (*IRPA*), of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the tribunal) dated September 26, 2013. In that decision, the tribunal determined that Katia Del Rocio Cuentas Peralta (the applicant) was not a

Convention refugee or a person in need of protection within the meaning of sections 96 and 97 of the *IRPA*.

[2] For the reasons that follow, I am of the opinion that the applicant's application for judicial review must be dismissed.

I. Facts

[3] The applicant was born in Lima, Peru, in 1969. In addition to her paid work in business administration, she did volunteer work for a community organization in a slum near Lima. She says she witnessed corruption in the management of a food aid program in which she was involved and that she and another community leader took part in reporting this corruption.

[4] The applicant says she was raped by a taxi driver on May 1, 2010, and received several threatening calls between July and September 2010. On September 17, 2010, she went on holiday to visit a friend in Rome and then to see her mother in Montréal. It is alleged that she received threatening calls on her cellular telephone while she was in Italy, and that her uncle Javier called her on September 28 to recommend that she not return to Peru. He allegedly told her that some [TRANSLATION] "very strange people" were trying to obtain information about her and that professional hit men had killed two people who were doing social work in poor neighbourhoods. It is alleged that on September 29, the community leader she worked for also called her to tell her that police officers had come by to ask him where Katia the [TRANSLATION] "communist" was.

[5] The applicant considers herself to be a victim of political persecution by [TRANSLATION] “neighbourhood leaders and public officials at all levels of government”. She filed a claim for refugee protection on October 4, 2010.

[6] An initial hearing was held on June 26, 2012, but in light of the fragile psychological condition of the applicant, it was decided that a hearing *de novo* would be held on July 30, 2013, which hearing continued on August 7, 2013. At the later hearings, the applicant was designated as a vulnerable person under Guideline 8 on *Procedures with Respect to Vulnerable Persons Appearing Before the IRB*, and Guideline 4 on *Women Refugee Claimants Fearing Gender-Related Persecution* was applied.

## II. Impugned decision

[7] The tribunal was of the opinion that the applicant’s testimony was not credible because of numerous additions made to her original narrative and because of contradictions and inconsistencies between her testimony and her previous narratives. The tribunal’s concerns involved the following aspects of her narrative:

- The persecutor: In her Personal Information Form (PIF), the applicant stated that she feared paramilitaries, and in her addition from June 26, 2012, she indicated that the taxi driver who raped her had identified himself as an army soldier. At the hearing, she stated that she did not know the identities of the individuals who were threatening her. The tribunal found it [TRANSLATION] “surprising” that the applicant had difficulty identifying her assailants and added that the documentary evidence made no mention of any paramilitaries in Peru.

- Reporting corruption: The tribunal identified contradictions regarding the degree of the applicant's participation in reporting corruption. In her original PIF, for example, the applicant states that she had played an [TRANSLATION] "important role" in reporting the corruption, while in her addition from July 2013 and in her testimony, she stated that she herself had not made a complaint or report. According to the tribunal, these contradictions undermined her credibility.
- Connection between volunteer work and threats: The tribunal did not believe that the applicant's volunteer work was the reason for the threats. Since the applicant's role in the project was more administrative, such that her name did not appear in the reports and, as she admitted, she herself had not made accusations of corruption, the tribunal could not explain how her attackers could have identified her. On this question, the applicant was unable to explain how she had been identified but supposed that she had attracted attention because she did not live in the neighbourhood and was white. The tribunal rejected this theory and stated that this sort of speculation further undermined her credibility.
- Work period: The tribunal noted contradictions regarding the date she allegedly stopped working for pay and doubted that she was truly afraid before leaving the country because she continued working several months after the assaults she says she suffered on May 1, June 21 and July 28, 2010. At the hearing, she said she stopped working for a month after the rape, and then took a taxi to work every day until she left the country. The tribunal did not accept this explanation, taking the view that it was reasonable to stop going to work for good if she thought she was in danger. The tribunal also rejected the possibility

that she had taken taxis every day, given how much this mode of transport would have cost (the applicant herself having confirmed that her home was far from her workplace).

- Alleged rape: Finally, the tribunal rejected the allegation of rape, for three reasons. First, the applicant did not disclose it in her first PIF in December 2010 and only mentioned it in her addition from June 2012. Second, the rape was not mentioned in her third addition, in July 2013. Third, the tribunal found that the applicant contradicted herself regarding a medical examination after the alleged rape and regarding her efforts to obtain her medical file.

[8] As for the psychological assessments filed by the applicant, the tribunal gave them little or no probative value. First, the applicant waited two years before beginning a therapy that had been recommended to her before she left Peru; second, the tribunal noted that the applicant sought help just before the hearings began. A letter from a psychologist mentions persistent suicidal ideation and social and family issues, whereas no mention of such problems is made in the other reports. Another report mentions a hospital visit, but the applicant did not file any proof of this visit. As for the more detailed psychological analysis by Graciela Alladio, the tribunal gave it, too, little weight; although the applicant may have been depressed at one time or another, as the report attests, this apparently had more to do with an unhappy romantic relationship and various psychological handicaps.

### III. Issues

[9] The only issue in this case is whether the tribunal erred in its assessment of the applicant's credibility.

#### IV. Analysis

[10] It is trite law that the assessment of credibility is a question of fact and that this Court should defer to the tribunal's findings in this regard: *Aguebor v Canada (Minister of Employment and Immigration)*, 42 ACWS (3d) 886 at para 4, 160 NR 315 (CA) ; see for example *Tar v Canada (Minister of Citizenship and Immigration)*, 2014 FC 767 at para 30; *Karakaya c Canada (Minister of Citizenship and Immigration)*, 2014 FC 777 at para 9 [*Karakaya*]. Unless the tribunal's decision lacks justification, transparency and intelligibility and does not fall within a range of acceptable outcomes which are defensible in respect of the facts, the Court will not intervene upon an application for judicial review: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190. The fact that the judge who heard such an application could have arrived at a different conclusion is not relevant; as the Supreme Court noted in *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59, 61, [2009] 1 SCR 339, it is not the reviewing court's role to substitute an outcome that, in its view, would be preferable, or to reweigh the evidence.

[11] The tribunal concluded that the cumulative effect of the many contradictions and inconsistencies undermined the applicant's credibility. Having carefully re-read the record and the representations of both parties, I find that the tribunal could reasonably arrive at such a conclusion.

[12] Regarding the role she played in reporting corruption, the applicant stated at the hearing before the tribunal that she had not reported the irregularities that she had witnessed. However,

she stated in her PIF that she did not play an important role in making these reports. When asked to explain this contradiction, the applicant attributed the error to her uncle, who [TRANSLATION] “thought” that she had filed a complaint. The tribunal was entitled to reject this explanation, since her uncle supported her in her volunteer activities and was likely aware of her activities. Furthermore, there is no proof of these reports of corruption. What is more, the applicant could have filed an affidavit from her uncle to say that he had been mistaken. In light of the evidence in the record, the tribunal was entitled to take this contradiction into account, and it would be unwarranted for the Court to revisit the explanations given by the applicant and rejected by the tribunal.

[13] The same applies to the question of how her persecutors could have identified her. The applicant testified that the contentious data giving rise to the reports of corruption were not stored on the hard drive of the computer she used, that no one else was present when she worked weekends, that she did not think that the superior to whom she had given back her equipment had revealed her identity, and that she did not sign her reports. When questioned about what she said, she stated that she did not know how she could have been identified and simply assumed that she may have attracted attention because she was a white woman in a poor neighbourhood with few white people. The tribunal rejected this theory, which did not really explain the connection between her presence in this neighbourhood and her participation in reporting acts of fraud. The applicant also did not explain why someone would be after her when, by her own admission, she played a minor role in the organization that had allegedly brought the misappropriation of the food aid program’s funds to light. In these circumstances, the tribunal could reasonably doubt her credibility.

[14] Finally, the tribunal could also question the applicant's subjective fear. In addition to the alleged rape in May 2010, someone supposedly tried to run her over with a car in June 21, 2010, and to push her down the stairs at a shopping mall on July 28, 2010. Despite this, she continued to go to work until she left Peru in mid-September. In response to the tribunal's questions in this regard, the applicant explained that she travelled solely by taxi to work over those last two months. Again, the tribunal could legitimately doubt this explanation, given the distance from the applicant's home to her workplace and the high costs of such a mode of transport.

[15] In short, the tribunal's finding to the effect that the applicant is not credible is, in my view, defensible and reasonable. It is well established that the cumulative effect of multiple contradictions and inconsistencies may support an adverse credibility finding: *Karakaya*, above, at para 33; *Shah v Canada (Minister of Citizenship and Immigration)*, 2013 FC 280 at para 6 (available on CanLII).

[16] The applicant also argued that the tribunal had not considered her explanations regarding the failure to report her rape, namely, that she felt ashamed and did not want to be a burden on her mother, who was in poor health. For this reason, it is alleged that the tribunal failed to comply with Guideline 4, which expressly provides that "[w]omen from societies where the preservation of one's virginity or marital dignity is the cultural norm may be reluctant to disclose their experiences of sexual violence in order to keep their 'shame' to themselves and not dishonour their family or community" (at para D.1.).



[17] Although the tribunal explicitly mentioned Guidelines 4 and 8 in the introduction to its analysis and appears to have avoided asking any very direct questions regarding the alleged rape, it does not appear to have taken them into consideration in the analysis of the reasons raised by the applicant to explain how she could have omitted such a serious incident in her initial answer to Question 31 of her PIF. When it discounted the allegation of rape solely because it was made late, the tribunal clearly erred and did not respect the spirit (as opposed to the letter) of Guideline 4. Moreover, at the hearing, counsel for the respondent did not vigorously defend the tribunal's finding in this regard.

[18] That being said, this error is not, however, sufficient to invalidate the decision. First of all, the applicant did not file any evidence attesting to any medical treatment whatsoever following this assault and even contradicted herself regarding her reason for not having filed a medical certificate. What is more, no evidence was given regarding the connection between the persecution that the applicant claims to have suffered and the alleged rape. In the circumstances, the tribunal's general assessment of the applicant's credibility was not tainted by the undue emphasis it placed on the lateness of the rape allegation. A rigorous application of Guidelines 4 and 8 cannot make up for the numerous other contradictions and inconsistencies that the tribunal found in the applicant's narrative. As Justice Shore wrote in *Uwimana v Canada (Minister of Citizenship and Immigration)*, 2012 FC 794 (available on CanLII), the Guidelines "cannot help make credible a testimony that is deficient due to implausibilities or contradictions that cannot be directly linked to the claimant's state of vulnerability" (at para 32).

[19] For all the foregoing reasons, I am therefore of the opinion that this application for judicial review must be dismissed. The tribunal considered the applicant's narrative, and the applicant had every opportunity to be heard and to set out her fears. In a well-reasoned decision based on a thorough review of the evidence, the tribunal found that the applicant was not credible. It is not this Court's place to reconsider the arguments that the applicant has already made before the tribunal, particularly since the tribunal had the advantage of hearing the applicant's *viva voce* testimony. The question is not whether the Court would have reached the same conclusion, but rather whether the tribunal's conclusion is reasonable. There can be no doubt that the impugned decision falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and the law.

[20] Neither party proposed a question of general importance for certification, and none shall be certified by this Court.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review be dismissed. No question is certified.

“Yves de Montigny”

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Judge

Certified true translation  
Michael Palles

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-6985-13

**STYLE OF CAUSE:** KATIA DEL ROCIO CUENTAS PERALTA v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** AUGUST 20, 2014

**JUDGMENT AND REASONS:** DE MONTIGNY J.

**DATED:** OCTOBER 9, 2014

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