

CANADA / JUDGMENT

MB9-09159

COURT

Refugee Appeal Division

DECIDED

6 August 2020

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RAD File No. / N° de dossier de la SAR : MB9-09159 Private Proceeding / Huis clos Reasons and Decision ? Motifs et décision Person who is the subject of the appeal XXXX XXXX XXXX XXXX
Personne en cause Appeal considered / heard at Montréal, Quebec Appel instruit / entendu à Date of decision August 6, 2020 Date de la décision Panel Agnes Connat Tribunal Counsel for the person who is the subject of the appeal Felipe Morales Conseil de la personne en cause Designated representative N/A Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION OVERVIEW

- [1] XXXX XXXX XXXX XXXX (the appellant) is a citizen of Mexico.
- [2] The appellant fears the mayor of XXXX (the agent of persecution), who threatened her because she witnessed bags of money being dropped off at the mayor's office and refused to take part in his money laundering activities.
- [3] The Refugee Protection Division (RPD) found that the appellant was not credible and that her testimony on the criminal activity she claims to have witnessed was confusing and implausible. It criticized her behaviour because she agreed to meet with the agent of persecution outside of work hours. The RPD was of the opinion that the onus was on the appellant to demonstrate, with clear and convincing evidence, that the Mexican state cannot or will not provide her with adequate protection.
- [4] The appellant argues that the RPD based its conclusions on its own presumptions and biases, arbitrarily disregarded her testimony, and did not base its decision on the evidence on the record or in the National Documentation Package. She is of the opinion that the RPD breached procedural fairness and failed to respect the standards of natural justice that were expected. The appellant explains that, during the hearing, the RPD displayed real animosity and a lack of openness toward her, and made arbitrary inferences that were not founded on the evidence.
- [5] The determinative issue for the Refugee Appeal Division (RAD) is whether the RPD breached the principles of procedural fairness and natural justice and whether it erred in its analysis of the appellant's credibility.

DETERMINATION

[6] The appeal is allowed. I refer the matter to the RPD.

ANALYSIS

- [7] My role is to review all the evidence and determine whether the RPD made the correct decision.¹
- [8] On June 15, 2020, the appellant received a notice regarding the status of her appeal. The notice also invited her to present all documents or submissions on the resumption of the time limits as a result of the COVID-19 pandemic to the RAD within 30 days of receiving the notice. At the time that this decision was signed, she had not presented any submissions or any new evidence.
- [9] In the excerpts, the appellant did not specify where exactly the RPD allegedly erred, remaining broad. She failed to explain at which specific point the RPD demonstrated real animosity during the hearing. It is the appellant's obligation, not the RAD's obligation, to identify the errors made by the RPD and make submissions accordingly.² Despite the lack of detailed submissions, I proceeded with an independent assessment of the evidence. The Refugee Protection Division did not breach the principles of natural justice and procedural fairness
- [10] The appellant argues that the RPD breached procedural fairness and did not respect the standards of natural justice that she might have expected. She explains that, during the hearing, the RPD showed [translation] "real animosity and a lack of openness" toward her, alleging that the RPD showed bias.
- [11] The RPD decision does not demonstrate a breach of procedural fairness or natural justice. In terms of the principles of natural justice, the RPD had two duties, namely the duty of procedural fairness, which includes giving the appellant the opportunity to fully present her position and to be heard, along with the duty of being impartial.
- [12] The RPD's duty of impartiality includes the duty to not have preconceived notions as to how the case will be decided. According to Committee for Justice and Liberty, the proper test for assessing decision-maker bias is to determine "what reasonable and right-minded persons would conclude, applying themselves to the question and obtaining thereon the required information, viewing the matter realistically and practically."³
- [13] The RPD's tone was inappropriate at certain points during the hearing as it was too harsh, which could have led the appellant to believe that there was some animosity from the RPD. In terms of the RPD's remarks, I also noted an inappropriate question that sounded as though the appellant was being criticized. While the appellant was explaining that the agent of persecution was misappropriating funds and that she told him she was going to inform the other teachers, the RPD asked her: [translation] "You have no evidence to spread such a story?" The use of the word "spread" in this case has a negative connotation and could have

unsettled the appellant. Furthermore, this question was not relevant in assessing her fear.

- [14] Despite these remarks, the problems identified throughout the hearing are not sufficient to conclude that the appellant was not heard in an impartial and objective manner. The appellant was not prejudiced and I noted that she was able to tell her full story before the RPD, as analyzed in the question below. Moreover, at the hearing, the appellant's lawyer did not signal any potential bias from the RPD. A reasonable and right-minded person would conclude that the RPD did not show bias.
- [15] The RPD asked in-depth questions in accordance with its role of determining the merits of the refugee protection claim through an inquisitorial-type hearing. The appellant did not always appear to understand the questions and was hesitant at times. I also noted that there was hesitation with the interpretation on several occasions, which could explain the appellant's behaviour. For example, the appellant's lawyer intervened a number of times to suggest a different word for the interpreter to use to help the appellant better understand, as it appeared that the word being used by the interpreter was not adequate (diriger or departamento).⁴ Furthermore, I noted that on several occasions there was some confusion from the RPD and the interpreter regarding the agent of persecution's name-XXXXor XXXXor XXXX-which could have added to the appellant's hesitation. Despite these problems, the appellant made herself heard. As a practical matter, after the appellant was questioned by the RPD, her lawyer also questioned her. At the end of the hearing, she was able to submit her evidence and present her submissions. The appellant had many opportunities to explain the facts supporting her claim. There was therefore no breach of procedural fairness in the conduct of the hearing.
- [16] After reviewing the evidence and listening to the hearing, I am of the view that a reasonable and right-minded person would conclude that the RPD did not show bias, or a lack of procedural fairness or natural justice at the hearing. The Refugee Protection Division erred by failing to apply the principle of truthfulness to the appellant's testimony
- [17] The RPD was of the opinion that the appellant's testimony was confusing with regard to the criminal activity that she claims to have witnessed.
- [18] I listened to the hearing carefully. I am of the opinion that the appellant's testimony was spontaneous, consistent, and coherent throughout, despite the difficulties encountered during the hearing and analyzed above. The appellant provided details in her story and specified the dates of incidents, and her story remained consistent throughout the hearing. The RPD made several errors in its analysis of the appellant's credibility. The men with bags
- [19] The RPD erred by concluding that the portion of the appellant's testimony regarding the statements about the men carrying two bags was implausible. In its reasons, it failed to indicate that it applied the principle in Maldonado,⁵ and it also failed to apply it when writing its reasons. According to this principle, since the appellant confirmed that her allegations are true, they are presumed to be truthful, unless there are reasons to question their veracity. However, in order to rebut the presumption of the appellant's truthfulness,

the RPD identified implausibilities that do not exist and substituted its own version of the facts without using evidence or documentary evidence to justify its conclusions.

- [20] Plausibility can relate to the refugee protection claimant's behaviour, as it has in this case. Nevertheless, an implausibility finding should only be made in the clearest of cases,⁶ which is not the case in the RPD's reasons.
- [21] The RPD erred in drawing an implausibility finding based on the fact that the city hall is busy at 8:00 a.m. because that is when all of the public servants arrive at work. Though this may be true in Canada, there is nothing in the documentary evidence confirming that this is the case in XXXX. I do not have information about the size of this city, the number of public servants it has, or how busy the city hall is at 8:00 a.m. Furthermore, the RPD never asked the appellant to explain how busy XXXX city hall normally is at 8:00 a.m.
- [22] The RPD erred by drawing an implausibility finding on the grounds that someone who witnessed an incident deemed criminal would simply go into hiding without sounding any kind of alarm. This implausibility finding depends on one's idea of what sensible behaviour would be in such a situation. The appellant is a young 25-year-old woman who is afraid. The fact that she decided to go into hiding and then flee without sounding an alarm is not implausible, but rather an acceptable explanation. I understand why a young woman, afraid of two men, would go into hiding and then run for her life, without sounding an alarm since, according to her, the agents of persecution were connected to the city's mayor.
- [23] Moreover, the RPD drew its negative inference on the appellant's credibility based on these implausibility findings without mentioning the relevant evidence or reasons why it made this decision. I do not draw a negative inference on the appellant's credibility from her behaviour regarding the two men with bags. The evaluation report
- [24] The RPD erred in finding that the appellant was not credible because she declared that she left without submitting her evaluation report while [translation] "the panel would have expected her to check whether the person who was supposed to receive the report had already arrived at their office before leaving the city hall." Once again, the RPD drew a conclusion on the appellant's behaviour by comparing her to what it would have expected of someone, without considering the appellant's profile or cultural circumstances.
- [25] The appellant is young 25-year-old woman who lives in a country with a high number of femicides,⁷ where corruption⁸ is common and problematic. Fear could have certainly led her to leaving the city hall without thinking to file her report. Based on her profile, it was likely that she would act differently than a man who lives in Canada, who might not have been as scared, and who would have thought to file his report. The RPD substituted its own interpretation of the situation, without relying on the evidence. For these reasons, I do not draw a negative inference from the fact that the appellant did not file her report once the men had left. The agent of persecution

- [26] The RPD erred when it found that the appellant was not credible because she [translation] "did not hesitate to see him (the agent of persecution) twice outside of work hours." The appellant explained that on one occasion, she went to the agent of persecution's home and on the other occasion, she saw him on her way to the city hall. By criticizing the appellant for not hesitating to accept the agent of persecution's invitation, the RPD blamed the alleged victim of a crime and drew a negative inference on her credibility, which is not right. A refugee protection claimant's behaviour alone is not a determinative factor that would affect credibility. In terms of the second meeting, the appellant clearly explained that this meeting was a coincidence. For these reasons, I do not draw a negative inference on the appellant's credibility from the fact that she accepted a dinner invitation from her agent of persecution. The men following the appellant
- [27] The RPD was of the view that the appellant merely presumed that men were watching her while she was running errands, and it drew a negative inference on her credibility.
- [28] I agree with the RPD that the fact that men were following her was simply an assumption. Regardless, this does not undermine her credibility.
- [29] The appellant's testimony was consistent, specific, and did not contain any contradictions, implausibilities or omissions compared with her Basis of Claim Form. For this reason, and given the principle of truthfulness of her testimony, the appellant credibly established that she faced a serious possibility of persecution or a danger of torture, a risk to her life or a risk of cruel and unusual treatment or punishment at the hands of the mayor of XXXX while she was in Mexico. INSTRUCTIONS TO THE REFUGEE PROTECTION DIVISION
- [30] The legislation allows the RAD to substitute its decision for the decision that should have been rendered. In this case, I cannot do this without holding an oral hearing since several issues have not been addressed, namely prospective risk, whether the appellant could receive state protection or whether she could relocate safely elsewhere in Mexico, if she were to return. These issues need to be given particular attention and analyzed in-depth as they are at the basis of the refugee protection claim analysis.
- [31] In the circumstances, I can only refer the matter to the RPD for further analysis by a differently constituted panel.

CONCLUSION

- [32] The appeal is allowed. I refer the matter to a differently constituted panel of the RPD. (signed) Agnès CONNAT Agnes Connat Thursday, August 6, 2020 Date IRB translation Original language: French 1 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93; Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145. 2 Paragraph 3(3) (g) of the Refugee Appeal Division Rules. 3 Committee for Justice and Liberty v. Canada (National Energy Board), [1978] 1 S.C.R. 369, and R v. S (RD), [1997] 3 S.C.R. 484 at page 394. 4 Hearing before the Refugee Protection Division on March 29, 2019, at 00:14:55. 5 Maldonado v. Canada (M.E.I.), [1980] 2 C.F. (C.A.), at paragraphs 302 to 305. 6 Valtchev v. Canada

(Minister of Citizenship and Immigration), 2001 FCT 776 (CanLII). 7 SAR-1, National Documentation Package (NDP), Mexico, March 31, 2020, Tab 2.5: Compilation on Mexico. United Nations. Human Rights Council. September 3, 2018. A/HRC/WG.6/31/MEX/2. 8 SAR-1, NDP, Mexico, March 31, 2020, Tab 2.8: Mexico. Freedom in the World 2019. Freedom House. 2019.

RAD File No. / N° de dossier de la SAR : MB9-09159 RAD.25.02 (January 2020) Disponible en français 6 Immigration and Refugee Board of Canada Refugee Appeal Division Commission de l'immigration et du statut de réfugié du Canada Section d'appel des réfugiés RAD.25.02 (January 2020) Disponible en français

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