

DECIDED
13 March 2020

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[1] I dismiss the appeal. XXXX XXXX XXXX XXXX (principal appellant) and XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX (associated appellants) are citizens of Mexico. They are appealing from the decision of the Refugee Protection Division (RPD) rejecting their refugee protection claims because of a lack of credibility.

a. The principal appellant alleges that he was pursued by someone named XXXX and his associates, who suspected him of reporting them to the police because he had witnessed an abduction near his place of work. The associated appellants allege that they were also threatened by the same individuals after the principal appellant left the country.

b. The appellants argue that the RPD's analysis is erroneous and that the omission raised was not significant and is insufficient for an unfavourable decision regarding their credibility. For its part, the RPD found the appellants not to be credible because of inconsistencies, contradictions and omissions that were not satisfactorily explained.

c. The determinative issue for the Refugee Appeal Division (RAD) is whether the RPD erred in assessing the appellants' credibility.

d. I find that the appellants are not credible, that the RPD's decision is correct and that the appeal is dismissed.

DETERMINATION

- [2] I dismiss the appeal. The RPD did not err in determining that the appellants are not Convention refugees or persons in need of protection. ORAL HEARING REQUEST
- [3] In support of their appeal memorandum, the appellants requested an oral hearing. I note that the appellants did not submit any new evidence under subsection 110(4) of the Immigration and Refugee Protection Act (IRPA). Accordingly, an oral hearing cannot be held under subsection 110(6) of the IRPA. The request is denied.

ANALYSIS

Standard of review

- [4] In their appeal memorandum, the appellants submit that the RPD's errors are unreasonable, and they appear to request the RAD's intervention on the reasonableness standard, referring to the Supreme Court of Canada decision in *Dunsmuir*.¹
- [5] For questions of fact, mixed questions of fact and law and questions of law, The RAD applies the correctness standard. The exception to this rule is in situations where the RPD enjoys a meaningful advantage in assessing credibility or weight to be given to oral testimony provided before it. My role is to examine all of the evidence and to establish whether the RPD made the correct decision.² In accordance with *Huruglica* and *Rozas del Solar*, I conducted my own review of all of the evidence, including the audio recording of the hearing, and I applied the correctness standard of review. Profile of the agent of harm
- [6] At the hearing, the principal appellant stated that, on XXXX XXXX XXXX 2018, he saw three men step out of a pickup truck with a fourth person whose head was covered. They headed to the house neighbouring the one he was XXXX. He saw and heard nothing else and did not see the men leave the house. The next day, the three men returned to his work site to threaten him because the neighbouring house was under police investigation and they suspected him of reporting them. The principal appellant stated that he did not know these men and that they did not tell him who they were. When he spoke to his friends about the situation, he started to hear about a person named XXXX who operated in the area. He stated that he did not know why his friends speculated that this was XXXX or whether he was part of a specific group of criminals or a cartel. He stated, however, that he was part of a gang and that he was a drug trafficker.³
- [7] The RPD was of the opinion that the identity and profile of the agent of harm were unclear and based on speculation on the part of the principal appellant's friends. The RPD concluded that the appellants did not show on a balance of probabilities that they were victims of a person named XXXX, a drug trafficker operating in the area. The RPD considered that this issue was not determinative on its own, but that it undermined the appellants' credibility when added to other factors.

- [8] Although it was not challenged by the appellants, I still analyzed that finding and consider it correct. Principal appellant's job
- [9] At the hearing, the principal appellant stated that he worked for a company called "XXXX XXXX" from 2014 to XXXX 2018. At another point during the hearing, he stated that, before his departure from Mexico, he had moved back to Aguascalientes around XXXX 2018 and that he did not work during that time. The principal appellant's immigration form⁴ indicates that he had worked for that company from XXXX 2013 to XXXX 2018. When asked about his testimony regarding how the alleged events of XXXX 2018 could have taken place after his job had ended (XXXX 2018), the principal appellant responded that he was not working for XXXX at the time of the incidents, but for a XXXX company. When asked why that job was not listed in the personal history section of his immigration form and why he had told the RPD about XXXX when he was asked about his employment, he replied that he was not legally employed by the XXXX company. He was unable to answer the RPD's request for more details about the company, including its name.⁵
- [10] The RPD rejected the principal appellant's explanation and noted that he included being a refugee protection claimant in his list of jobs on the immigration form. Therefore, he could not have understood that he should have listed only his official jobs. It noted that he was represented by counsel, who could have helped him review his forms to see if there were any errors. The RPD considered that the principal appellant's job at the time of the incidents was an important factor for validating his credibility given that he witnessed an abduction at his work site. It concluded that the principal appellant's evasive answers and the omission in his immigration form made it impossible to establish on a balance of probabilities that he worked for a XXXX company when the alleged events took place. The RPD drew a negative inference from that omission with respect to the appellants' general credibility.
- [11] In their appeal memorandum, the appellants acknowledge that they provided more information at the hearing than was included in their written accounts in their Basis of Claim Forms (BOC Forms), but submit that it is not equivalent to sworn testimony. They maintain that the BOC Form is only a form in which a refugee protection claimant answers a few relevant questions regarding the Canadian immigration process. They submit that the BOC Form may contain a story that can help explain the questions in the BOC Form, but it is not mandatory and a refugee protection claimant cannot be blamed if he or she decides not to produce one. They argue that the fact that the RPD drew a negative inference from an omission without taking into account the explanations as a whole is unreasonable and renders the entire natural justice process and the right to be heard useless and moot. The appellants submit that the RPD was not guided by the case law in its reasoning and that it clung to prejudiced details instead of assessing the file as a whole. They argue that an omission does not always have to lead to a finding of no credibility. They also submit that the omissions raised cannot be described as significant. They maintain that their explanations were ignored by the RPD, which neglected to analyze consistent and credible facts, preferring instead to focus on apparent contradictions at the risk of seeming overzealous.

- [12] First, I must point out that the written account has to contain all the important facts of a refugee protection claim. In this appeal, although the job question is not on the BOC Form, but on the above-mentioned immigration form, IMM5669, and although the principal appellant was questioned by the RPD about his jobs in Mexico, he did not declare his job with the XXXX company until after he was confronted with the inconsistency between his testimony and the information in his immigration form regarding his jobs. Indeed, the principal appellant's alleged job with the XXXX company is determinative and significant given that it is the key element of his refugee protection claim since he alleges that he witnessed an abduction and was threatened at that work site. Although the principal appellant could not amend his immigration form since it was filled out before an immigration officer, I am of the opinion that he could have notified the RPD before or on the day of the hearing that he intended to explain the errors on that form, including his failure to include his job with the XXXX company, so that the RPD could take it into account and question him about it, if needed. I consider the principal appellant's explanation that he failed to include this job in his immigration form because the job was not legal or official to be unsatisfactory. In fact, question 6 on the immigration form regarding personal history does not state that only official jobs should be included. In that section, the principal appellant stated that he was a refugee protection claimant in the following sections: [translation] "job title" (he stated that he was a refugee protection claimant) and "Name of company" (he also stated that he was a refugee protection claimant).⁶ The principal appellant should therefore have also included his job with the XXXX company. I am of the opinion that the RPD took the principal appellant's explanations about this into account and correctly concluded that he had not established on a balance of probabilities that he worked for the XXXX company at the time of the alleged events. The principal appellant's inconsistent testimony regarding this does not justify the omission noted.
- [13] I note that an omission does not always lead to an unfavourable credibility finding, and I agree with the appellants on this point. However, when the omission concerns a significant and determinative factor in the refugee protection claim and no satisfactory explanation is provided, the omission can be considered major and undermine credibility. In light of all of the above, I consider the RPD's finding to be correct.
- [14] I note that, except for some jurisprudential principles relied on in support of their appeal memorandum, the appellants do not concretely dispute the RPD's unfavourable conclusions regarding the various topics raised at the hearing and do not show a connection between this jurisprudence and the allegations in the appeal memorandum. Principal appellant's passport
- [15] At the hearing, the principal appellant stated that he had fled from Aguascalientes to hide in Zacatecas, from XXXX XXXX to XXXX XXXX XXXX 2018. When the RPD asked him when he had obtained his passport, he answered that he had it before because he had planned to travel with his family and had started saving money, but, when this problem arose, he had to change plans.⁷ When confronted about his passport's date of issue, XXXX XXXX XXXX 2018,

in Aguascalientes, the principal appellant stated that he had made a mistake and explained that he had submitted documents to get a passport at the beginning of XXXX, before the alleged incidents, but that the passport was only issued on XXXX XXXX, 2018.⁸

- [16] The RPD did not accept the principal appellant's explanation and was of the opinion that he did not merely provide the wrong date but an entire explanation regarding the fact that he already had the document in his possession for some time with the very specific goal of travelling with his family. Because of that contradiction, the RPD concluded that the principal appellant did not show on a balance of probabilities that he was in Zacatecas from XXXX XXXX to XXXX XXXX XXXX XXXX 2018.
- [17] Although this was not disputed by the appellants, I find no errors in the RPD's conclusion and consider it correct. Associate appellant's place of residence
- [18] In her account and at the hearing, the associate appellant stated that, after her spouse left Mexico, she lived in the same family home in Aguascalientes.⁹ She stated that she left only once to see her husband sometime after he went to Zacatecas.¹⁰ When confronted about her BOC Form, which states that she hid with her children at her parents' home in Zacatecas before leaving Mexico, she replied that she had stayed with her parents for a week in XXXX or XXXX XXXX 2018, since the house where her spouse was staying at the time was too small. She added that, a week before she left for Canada, she stayed for a few days at her parents' home to tell them what was happening and that she had to leave.¹¹
- [19] The RPD was of the view that her explanations were insufficient. The answers provided in the BOC Form are categorical regarding the fact that she was hiding at her parents' home, and in her testimony, she stated that she had stayed in Aguascalientes. When confronted with this contradiction, she minimized the importance of her stay with her parents and stated that it was just a farewell visit of only a few days. The RPD considered that the associate appellant did not show on a balance of probabilities that she had hidden elsewhere in the country, as stated in her BOC Form, to flee the men who were looking for her husband. The RPD concluded that, together, these inconsistencies, omissions and contradictions seriously undermined the appellants' overall credibility.
- [20] Although this was not disputed by the appellants except by citing jurisprudential principles concerning credibility, I note no errors in the RPD's conclusion and consider it correct. Issues raised in the appeal memorandum
- [21] In their appeal memorandum, the appellants raised the following issues:
- [22] Did the RPD assess and interpret all of the evidence in accordance with the IRPA? I note that the appellants' BOC Forms are the only documents filed in evidence.¹² No other evidence was filed by the appellants in support of their refugee protection claims. I am of the opinion that the RPD analyzed the appellants' refugee protection claims taking into account all of the evidence, including their testimony. In light of the above, I conclude that the RPD did not err in its conclusions, and I consider them correct.

- [23] Did the RPD apply the presumption of truthfulness to their allegations? In *Maldonado*, it was established that, when a refugee claimant swears to the truth of certain allegations, this creates a presumption that those allegations are true. However, *Maldonado* goes on to state that the presumption applies unless there is reason to doubt the truthfulness of the statements in question.¹³ Thus, for example, the presumption is rebuttable where the evidence is inconsistent with the claimant's sworn testimony or where the decision-maker is unsatisfied with the claimant's explanation for those inconsistencies.¹⁴ I am of the view that the RPD correctly applied the *Maldonado* presumption.
- [24] Did the RPD apply the benefit of the doubt in its assessment of their testimony? In its Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status, the United Nations High Commissioner for Refugees states the following regarding benefit of the doubt:
203. After the applicant has made a genuine effort to substantiate his story there may still be a lack of evidence for some of his statements. As explained above (paragraph 196), it is hardly possible for a refugee to "prove" every part of his case and, indeed, if this were a requirement the majority of refugees would not be recognized. It is therefore frequently necessary to give the applicant the benefit of the doubt.
204. The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts.¹⁵
- [25] The benefit of the doubt rule applies if the refugee protection claimant has truly made an effort to corroborate sworn testimony that is otherwise considered credible. Given that the appellants' testimony was not credible, I am of the opinion that the benefit of the doubt cannot apply here.

CONCLUSION

- [26] I dismiss the appeal and confirm the RPD's decision that the appellants are neither "Convention refugees" nor "persons in need of protection". Toni Jedid Me Toni Jedid March 13, 2020 Date IRB Translation Original language: French 1 *Dunsmuir v. New Brunswick*, 2008 SCC 9, para.47. 2 *Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93; *Rozas del Solar v. Canada (Citizenship and Immigration)*, 2018 FC 1145. 3 Audio recording of the hearing, 00.34.41 to 00.26.20. 4 RPD record, list of documents, No.1: Information package provided by the Canada Border Service Agency, IMM5669 form (Schedule A), q. 6. 5 *Supra*, note 3, 01.10.09. 6 *Supra*, note 4. 7 *Supra*, note 3, 00.47.35. 8 *Ibid*, 00.17.05. 9 *Ibid*, 00.48.21. 10 *Ibid*, 00.52.50. 11 *Ibid*, 01.14.24. 12 RPD record, general list of documents, page 87 13 *Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (CA), para. 5. *Adebayo v. Canada (Immigration, Refugees and Citizenship)*, 2019 FC 330, para. 37. 14 *Lawani v. Canada (Citizenship and Immigration)*, 2018 FC 924, para. 21 15 United Nations,

United Nations High Commissioner for Refugees, Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status, Geneva: 1979.

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