

CANADA / JUDGMENT

VC2-02686

COURT

Refugee Appeal Division

DECIDED

29 September 2022

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RAD File / Dossier de la SAR : VC2-02686

VC2-02687

Private Proceeding / Huis clos

Reasons and Decision ? Motifs et décision

Persons who are the subject of the appeal

XXXX XXXX XXXXXXXXX

Personnes en cause

Date of decision

September 29, 2022

Date de la décision

Panel

Karen McGovern

Tribunal

Counsel for the persons who are the subject of the appeal

Simon Cossette-Lachance

Conseil des personnes en cause

Designated representative

N/A

Représentant(e) désigné(e)

Counsel for the Minister

N/A

Conseil du ministre

REASONS FOR DECISION

OVERVIEW

- [1] I dismiss this appeal. XXXX XXXX (Principal Appellant / PA) and XXXX (Associate Appellant / AA) are citizens of India.
- [2] The PA and her son, the AA, fear that M, the PA's ex-husband and the AA's father, will kill the AA because the AA has a right to claim equal shares in M's family's ancestral property now that he is 18 years old. During their marriage, M was abusive to the PA, and in 2004, M threw the PA and AA out of their house. The PA obtained an official divorce from M in 2008. Since then, M and his family continued to threaten the Appellants, and unknown men tried to kidnap the AA sometime in 2012 or 2013. After the PA received legal custody of the AA, the Appellants arrived in Canada in 2015.
- [3] The Refugee Protection Division (RPD) found inconsistencies in the PA's testimony about her communication with M and with her parents, which were not reasonably explained. The determinative issue was a viable internal flight alternative (IFA) in Delhi, Mumbai or Bengaluru. The RPD found that the Appellants' testimony that M's father's political influence meant that they could be located anywhere in India was speculative and that the AA could avoid a risk of harm by not pursuing a request for his share of M's family's property. The proposed IFAs were not unduly harsh given that the PA ran a successful sewing business; the PA has maintained communication with her parents, and, as an adult male, the AA can assist the PA in renting accommodations.
- [4] The Appellants argue that the RPD erred by failing to apply the Gender Guideline¹ and also failed to consider the PA's medical condition in making findings about the PA's credibility. The Appellants also argue that the PA's testimony about her communication with M was not inconsistent nor was the Appellants' testimony about M's family. The Appellants further argue that the RPD erred by not giving the PA an opportunity to explain the inconsistency between her testimony and the psychological report about communication with her parents. The Appellants also argue that the RPD was selective in citing country documentation about the ability of divorced women to relocate to the proposed IFAs.
- [5] The determinative issue is IFA.
- [6] The RPD did not err in finding that the Appellants' evidence about the motivation and means that M and his family have to pursue them was vague and speculative. The RPD also did not err in finding that the PA's evidence about communication with her parents was inconsistent; there is no requirement to confront a claimant about information that they have provided themselves. The RPD did err in failing to apply the Gender Guideline in assessing credibility and the viability of the proposed IFAs; however, the errors are not determinative. Based on the individual circumstances of the Appellants, the proposed IFAs are not unduly harsh.

DECISION

- [7] I dismiss the appeal. The RPD was correct in finding that the Appellants are neither Convention refugees nor persons in need of protection.

ANALYSIS

- [8] My role is to look at all the evidence and decide if the RPD made the correct decision.² Having reviewed the record and the transcript of the hearing, I find that the RPD did not enjoy a meaningful advantage in assessing credibility. As a result, I am conducting my review on the standard of correctness.

Ongoing threats from M

- [9] The RPD found that the PA's testimony about the nature of the threats that M made to the Appellants between 2006 to 2015 was contradictory and evolving. The Appellants argue that the PA's testimony is not inconsistent because she did not testify that she talked to M when he assaulted her. They argue that direct communication means that two or more persons have a conversation. The Appellants also argue that the RPD incorrectly minimized the Vancouver Association for Survivors of Torture (VAST) report, failed to apply the Gender Guideline and did not consider that the PA's vulnerability and her medical conditions explain the contradictions in her testimony.

The PA's testimony was inconsistent and evolving

- [10] At the beginning of the hearing, the PA testified that she has had no communication with M since the AA was four years old; the RPD sought to clarify, and the PA confirmed that she had no direct communication with M except through her lawyer for the custody application.³ At another point in the hearing when the PA testified that M assaulted her, the RPD asked about the change from her initial testimony and the PA responded that she was speaking the truth. Later in the hearing, the RPD again asked the PA why her testimony about communication with M had changed:

MEMBER: So ma'am, just listen before answering because I am going to say a few things to the interpreter. So, ma'am, at the beginning of the hearing, you testified that you have not communicated directly with your husband since your son was 4 years of age. Further in your testimony, you testified that your husband continued to harass you and threaten you much ... up until a few months, two to three months before coming to Canada.

PRINCIPAL CLAIMANT: Yes, ma'am.

MEMBER: So I would like to understand why that your testimony changed.

PRINCIPAL CLAIMANT: I did not understand the question correctly but whatever I have told that is true. Since we have been separated, divorced and I got the custody, still the threatening and the abuse continued. I am sorry about that. I am so much in depression that sometimes I do not remember myself what I say.⁴

[11] I do not agree with the Appellants that there is no inconsistency in the PA's testimony because she stated that M physically assaulted her, not that she talked to him. In fact, the PA testified that M had also verbally abused her, which is, in my view, clearly a form of communication. I also find that the Appellants' argument that direct communication could only mean that the PA and M engaged in a conversation strains the plain meaning of the word. The PA was asked about the discrepancies on two occasions, and at no point did she explain that she understood the question to be whether she had had a conversation with M. In my view, the RPD was correct in finding the PA's testimony to be inconsistent and evolving.

The VAST report

[12] The report is authored by MMV, a registered clinical counselor who is the clinical supervisor for VAST. MMV states that VAST conducted a clinical assessment of the PA, which consisted of a semi-structured interview and the administration of three screening tools for vulnerability and XXXX assessment. MMV indicates that the PA attended a two-hour and 15-minute session with a VAST counselor named EH and an interpreter and describes her report as "a summary of the assessment results and clinical observations obtained and discussed with [EH] during clinical consultation."⁵ The report contains significant detail about MMV's education and expertise but does not provide any information about EH's education and experience, including whether she is a registered health care professional. The report concludes that the PA has suffered intimate partner violence and is a medium to high-risk vulnerable refugee claimants who have highly symptomatic levels of XXXX, XXXX and XXXX XXXX XXXX XXXX XXXX (XXXX). The PA's most prominent symptoms are reported as "problems with XXXX and XXXX, difficulty focusing and frequent XXXX."⁶ The report indicates concern about the PA's ability to testify given her symptomatology and provides recommendations for procedural accommodations at the hearing that would support a trauma-informed approach.

[13] In assessing the report, I find it concerning that there is no professional information about EH, the counselor who actually conducted the interview, administered the screening tools and provided clinical observations. In this context, I have doubts as to the reliability of the conclusions made, for example, that the PA experiences frequent dissociation. I also note that the PA has not been clinically diagnosed with XXXX, XXXX or XXXX; rather, the report indicates that she has symptoms that are consistent with those mental health disorders. The Appellants are incorrect to say that the PA has diagnosed medical conditions. In summary, I find that the report indicates that the PA is a vulnerable person who has difficulties with memory and concentration, which may have had an impact on her testimony.

Gender Guideline

- [14] I agree with the Appellant that the RPD erred by failing to apply the Gender Guideline in assessing the PA's credibility.
- [15] The Gender Guideline advises decision-makers to consider the impact of the cycle of violence and coercive control when assessing credibility.⁷ It also indicates that trauma can impact memory and that individuals who have experienced trauma may have difficulty "recalling specific times, dates, and locations, recounting events in chronological order, and recalling certain events fully" and that traumatic memories can "lack the coherence and detail that other memories have." Decision-makers should consider the potential impact of trauma on memory when conducting a contextual assessment of whether an explanation is reasonable.
- [16] I have applied this guidance in assessing whether the PA's explanation for her inconsistent and evolving testimony about her communication with M is reasonably explained. I note that the discrepancies in the PA's testimony were not regarding dates or the order of events; rather, the discrepancy was about whether there was any communication at all with M over a period of years. I also note that the RPD carefully explained the inconsistency on two occasions and invited an explanation from the PA. In the first explanation, the PA said that her testimony was not different and that she was telling the truth. Her second explanation was that she misunderstood the question and that she sometimes forgets what she has said. The explanations themselves evolve, and the PA does not indicate in any way what she misunderstood about the question and how that impacted her answer. I accept that the PA has suffered trauma that impacts her XXXXand XXXX; however, I find that does not reasonably explain the inconsistency in her testimony about communication with M, a central element of the Appellants' claims. Although the RPD did not apply the Gender Guideline, the RPD's conclusion that the inconsistency in the PA's testimony is not reasonably explained is not in error. I concur with the RPD's finding that, on a balance of probabilities, the PA has not had any direct communication with M since 2006.

Inconsistent evidence regarding M's profile

- [17] The RPD found that there was divergent information about M's profile, which the PA did not explain and that there was insufficient evidence to establish that M's family has more money than the PA's family. The Appellants argue that the RPD erred as there is no inconsistency in the fact that M is a farmer and that his family is rich and has political influence. I disagree.
- [18] In my view, the Appellants have misconstrued the RPD's finding. The PA alleges that the reason that M and his family abused her is because M's family is rich, and the PA is from a middle-class family. The RPD correctly pointed out that some evidence was not consistent with this allegation: the PA testified that M was addicted to alcohol and drugs; the PA's parents bought the house she lived in from M's father; and the custody document indicates that the PA was able to financially support the AA while M had no source of income. When

asked about this conflicting information, the PA did not provide an explanation. I find no error in the RPD's finding that, on a balance of probabilities, there is insufficient evidence to establish that M's family has more money than the PA's family. I draw a negative inference as to the PA's credibility.

The PA's communication with her parents

- [19] The RPD noted a discrepancy between the PA's testimony that her parents have disowned her and the VAST report, which indicates that she communicates with both of her parents and mainly with her father. The RPD concluded, on the basis of Ngongo,⁸ that even though the PA was not confronted with the discrepancy, notice to the Appellants and an opportunity to respond was not required. The Appellants argue that the RPD should have given them an opportunity to respond because the contradiction is not obvious; the Appellants did not submit the VAST report as evidence; the PA answered a direction question from the VAST counselor, not the Panel, and the RPD did not consider the impact of interpretation. I disagree.
- [20] In a recent case, the Federal Court found that neither the RPD nor the Refugee Appeal Division (RAD) erred when they found that there is no duty to confront a claimant about concerns identified in their own documents:
- [46] In *Moïse v Canada (Citizenship and Immigration)*, 2019 FC 93, [2019] FCJ No 72 (QL) [Moïse], Justice LeBlanc reiterated the well-established law at paras 9-10, noting the distinction between an applicant's own evidence and extrinsic evidence:
9. The case law of this Court is unambiguous: the rules of procedural fairness do not require refugee claimants to be confronted about information that they are aware of and which they have, in addition, provided themselves (*Gu v Canada (Citizenship and Immigration)*, 2017 FC 543 at para 29; *Aguilar v Canada (Citizenship and Immigration)*, 2012 FC 150 at para 31; *Mohamed Mahdoon v Canada (Citizenship and Immigration)*, 2011 FC 284 at para 22; *Lawal v Canada (Citizenship and Immigration)*, 2010 FC 558 at para 17; *Azali v Canada (Citizenship and Immigration)*, 2008 FC 517 at para 26).
10. It is an entirely different situation when extrinsic evidence is used against the refugee claimant and the claimant is not confronted about this information. That is not the case here. The medical certificate at issue was included with the documentation submitted by the applicant in support of his claim for refugee protection. Therefore, we cannot reproach the RPD for failing to confront him about the discrepancy revealed by this medical certificate, concerning the exact date on which he claims to have been attacked in January 2006.
- [47] In *Gu v Canada (Citizenship and Immigration)*, 2017 FC 543 at para 29, [2017] FCJ No 600, the Court emphasized the same well-established principle recently reiterated in *Moïse*:

The RPD was not required to confront the applicants with this discrepancy; the principles of procedural fairness do not require the Board to confront the applicant with information that they had supplied themselves: *Aguilar v Canada (Minister of Citizenship and Immigration)*, 2012 FC 150, [2012] FCJ No 146 at para 31.9

[21] Based on this case law, I find that the RPD was not required to confront the PA about the inconsistency between her testimony and the information in the VAST report. From a review of the record and contrary to the Appellants' argument, it is patently clear that the Appellants submitted the VAST report to the RPD.¹⁰ In addition, I note that, in response to two questions asked by the RPD, the PA testified that she has been cut off by her parents. In addition, in answering a question from her own counsel, the PA testified that her father has disowned her. Having submitted the VAST report to the RPD, the Appellants were aware that the report indicates that she has ongoing communication with both of her parents. I concur with the RPD's conclusion that the inconsistency diminishes the PA's credibility and the RPD's finding that, on a balance of probabilities, the PA has maintained contact with her parents in India.

The Appellants have viable IFAs in Mumbai, Delhi and Bengaluru

[22] In order for an IFA to be viable, the Appellants must not face a serious possibility of persecution, or a risk of harm, in that location. This requires an analysis of the means and motivation of the agents of persecution to locate the Appellants in the proposed IFA. Additionally, the proposed IFA must be reasonable in the Appellants' circumstances.¹¹ Once the issue of an IFA is raised, the onus is on the Appellants to show that they do not have an IFA.

[23] I find, for the reasons that follow, that the Appellants have viable IFAs in Mumbai, Delhi and Bengaluru.

The means and motivation of M to locate the Appellants

[24] The Appellants argue that the RPD erred in finding that there was insufficient evidence to establish that M and his family have the means and motivation to locate them in the proposed IFAs. They argue that the RPD was incorrect to find that the PA's testimony that the Appellants could be located because M's father has connections to the Congress Party was speculative, that there is no reason to doubt their evidence because of the presumption of truthfulness, and that the AA's right to a share of M's family's property exists, and there is nothing he can do about it. I disagree.

a. Findings that are not disputed

[25] I note that the Appellants have not disputed the following findings made by the RPD about M's means and motivation to locate them:

- (1) The AA's testimony that, despite the fact that the PA changed his name and school in order to protect him from M, M was still able to find him, does not demonstrate that M can find the Appellants in the proposed IFAs because the name change was published in a newspaper; and
- (2) The Appellants' evidence that farm workers at M's farm come from southern India and could locate them in the proposed IFAs is speculative.

I have reviewed the record and the findings and find no error.

b. M's father's political influence

[26] It is well-established that the presumption of truthfulness is that a sworn witness is telling the truth; it is not a presumption that everything the witness believes to be true is actually true.¹² I note that, in the PA's Basis of Claim form, she indicates that M and his family are politically well connected and would easily be able to locate the Appellants anywhere in India.¹³ In her statutory declaration, the PA describes M's family as wealthy and powerful and that M's father has connection in politics with the Indian National Party and that she fears that she could be found anywhere in India. I have reviewed the transcript and note that the PA testified that M "had relations with Congress party people...";¹⁴ however, she provided further details. I also note in the above findings that there is insufficient evidence to establish that M's family has more money than the PA's family and that M has not approached the PA since 2006. I find that this evidence lacks detail about the means that M and his family have to locate the Appellants, and it is speculative. The RPD did not err.

c. The AA's right to ancestral family property

- [27] The RPD found that the AA may have coparcenary rights to his paternal ancestral land; however, even if the AA has a right to request ancestral land, he could avert any risk of harm by not making a request. The Appellants argue that the RPD erred in making this finding because the AA's right exists, and there is nothing he can do about it. I disagree.
- [28] Based on my review of the article describing what coparcenary property is in Hindu law, I agree with the RPD that the AA may have coparcenary rights to his paternal ancestral land. The article describes that a coparcener has the right to jointly held family ancestral property by birth and that a coparcenary consists of "a person at the top of a line of descent and his three lineal descendants - sons, grandsons and great-grandsons."¹⁵ An example in the article of how a coparcenary has succession up to four degrees of lineal descent is that "if a newborn male is the fifth lineal descendant - that is a great-great-grandson, while the common ancestor, his son, grandson and great-grandson are alive - the right to be included in the coparcenary will ripen only when the common ancestor dies."¹⁶ Given this description, I note that there is no evidence about other lineal descendants in M's family that may have coparcener rights that are closer in lineal descent than the AA. There is also no evidence about what properties in M's family are ancestral and jointly held by his family and other properties that, for example, M's father acquired and owns on his own. This could

include, for example, whether M's grandfather is alive, or whether M has brothers or sisters who have higher status as coparceners than the AA. In my view, the lack of evidence about what properties are ancestral land and the number and status of lineal descendants makes it clear that the AA has the potential of coparcenary rights to his paternal ancestral; the evidence does not establish, on a balance of probabilities, that the AA currently has coparcenary rights. In this context, it is reasonable for the AA to avert any risk of harm by not making any request with respect to his potential coparcenary rights, The RPD's finding is not in error.

- [29] In summary, I find that the Appellants do not face a serious possibility of persecution or a risk to their lives or a risk of cruel and unusual punishment or treatment in the proposed IFAs.

The proposed IFAs are not unduly harsh

- [30] The Appellants argue that the RPD was selective in reviewing the country documentation with respect to the PA's ability to relocate as a single mother and divorced woman. They argue that the RPD erred in finding that the Appellants can reasonably re-establish themselves in the proposed IFAs. I disagree.

a. Undisputed finding

- [31] The Appellants do not dispute the RPD's finding that there is no evidence that the AA would be unable to attend post-secondary education in the proposed IFAs due to his language proficiency. The Appellants also do not dispute the RPD's conclusion that the AA would provide an adult male presence to the PA that would support her in obtaining accommodation and that the PA's parents have an ongoing presence in the Appellants' lives. I have reviewed these findings and find no error.

b. Challenges faced by single mothers and divorced women

- [32] Country documentation indicates that single women encounter significant challenges with basic life issues such as renting an apartment and that single mothers must rely on the goodwill of family members to support themselves and their children. Other sources indicate that single women working in Indian cities are less constrained by past prejudices; for example, women have started their own businesses in various sectors, and there is "an increasing number of single, working women who can support themselves with the salary they earn."¹⁷
- [33] Country documentation on the treatment of divorced women in India is limited. The Australian Department of Foreign Affairs and Trade (DFAT) Country Information Report: India, dated December 2020, indicates that there are "sociodemographic and sociocultural risk factors for various forms of violence and abuse towards women in India. These include patriarchal attitudes towards marriage and motherhood; stigmatization of unmarried, separated, or divorced women..."¹⁸ In their memorandum, the Appellants cited country

documentation about the social stigma around divorced women that the RPD failed to consider. The report the Appellants refer to is not in the current country documentation as it was removed from a previous NDP in May 2019. As a result, I find the RPD did not err in selectively considering the country documentation. I do accept that single divorced women face challenges in India, particularly with respect to obtaining rental accommodations.

The PA's individual circumstances

- [34] In my view, the Appellants' individual circumstances that are relevant to whether it would be unduly harsh for them to relocate to the proposed IFAs are as follows:
- (1) The PA lived alone with the AA in India beginning in 2006. In 2008, she became divorced and lived alone with the AA until 2015, when the Appellants came to Canada;
 - (2) The PA successfully retained lawyers and pursued the legal matters of divorce and custody of the AA on her own behalf while she was in India;
 - (3) The PA has a high school education and was able to support herself and the AA with her own XXXX business in India;
 - (4) The PA was able to relocate to Canada and obtain employment when she did not know the language and did not have family or a support network;
 - (5) The PA is in communication with her parents in India; and
 - (6) The AA is now an adult male and is completing his high school education.
- [35] I find that the PA's ability to live alone for nine years with the AA, successfully support herself and the AA with her own XXXX business and pursue legal matters on her own behalf in India is significant. In addition, the PA has since had experience in relocating to Canada and finding employment without support and without knowing the language. This history demonstrates that the PA has the education, experience, and ability to adapt to relocate to the proposed IFAs. I find that the PA is in communication with her parents, which will provide some form of support for the Appellants. In addition, as an adult male, the AA is now in a position to provide a male presence, which will assist the PA in obtaining accommodations for the Appellants.
- [36] I have considered and applied the guidance in the Gender Guideline in assessing whether an IFA is viable. I acknowledge that the PA suffered intimate partner violence during her marriage to M; however, I have found that the PA has not had contact with the PA since 2006, and this supports that the cycle of violence has ended. There are no outstanding legal issues in which the PA would not be able to prevent disclosure of her address as she is divorced, had full custody of the AA while he was a minor, and the AA is now an adult.

[37] The RPD did not err in its conclusion. I find, on a balance of probabilities, that it is objectively reasonable, in all the circumstances, including the Appellants' individual circumstances, for them to relocate to one of the proposed IFAs.

[38] As a result, I find that the Appellants do not face a serious possibility of persecution, nor do they, on a balance of probabilities, face a risk to their lives or a risk of cruel and unusual punishment or treatment in India.

CONCLUSION

[39] I dismiss the appeal and confirm the decision of the RPD that the Appellants are neither Convention refugees nor persons in need of protection.

(signed)

Karen McGovern

Karen McGovern

September 29, 2022

Date

1 Guideline 4: Gender Considerations in Proceedings Before the Immigration and Refugee Board of Canada (IRB), Guideline issued by the Chairperson pursuant to paragraph 159(1)(h) of the Immigration and Refugee Protection Act (IRPA), effective July 18, 2022.

2 M.C.I. v. Huruglica (F.C.A., no. A-470-14), Gauthier, Webb, Near, March 29, 2016, 2016 FCA 93, Rozas del Solar v. M.C.I. (F.C., no. IMM-2645-17), Diner, November 14, 2018, 2018 FC 1145.

3 Transcript of the RPD Hearing on December 14, 2021, at p. 12.

4 Transcript of the RPD Hearing on December 14, 2021, at p. 47.

5 Exhibit RPD-1, RPD Record, at p. 292.

6 Exhibit RPD-1, RPD Record, at p. 296.

7 Gender Guideline, section 7,

8 Ngongo v. M.C.I. (F.C.T.D., no. IMM-6717-98), Tremblay-Lamer, October 25, 1999.

9 Akanniolu v. M.C.I. (F.C., no. IMM-3857-18), Kane, March 14, 2019, 2019 FC 311, at para 46-47.

10 Exhibit RPD-1, RPD Record, at p. 290.

11 Rasaratnam v. M.E.I. (F.C.A., no. A-232-91), Mahoney, Stone, Linden, December 5, 1991; [1992] 1 FC 706 (CA).

12 Olusola v. M.C.I. (F.C., no. IMM-483-19), McHaffie, July 29, 2020, 2020 FC 799, at para 25.

13 Exhibit RPD-1, RPD Record, at p. 23.

14 Transcript of the RPD Hearing on December 14, 2021, at p. 39.

15 Exhibit RPD-1, RPD Record, at p. 307.

16 Ibid.

17 Exhibit RAD-1, National Documentation Package (NDP) for India (June 30, 2022), tab 5.11, IRB, Response to Information Request (RIR) IND106275.E, Situation of single women and of women who head their own households without male support, including access to employment, housing and support services, particularly in Delhi, Mumbai, Chandigarh and Bengaluru; women's housing, ..., May 3, 2019, at p. 2.

18 Exhibit RAD-1, NDP for India (June 30, 2022), tab 1.5, Australia: Department of Foreign Affairs and Trade, DFAT Country Information Report: India, December 10, 2020, at p. 41.

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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 (August 20, 2021)

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