CANADA / JUDGMENT

JCMG v. Canada (Citizenship and Immigration)

2025 FC 177

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Decision Content

Date: 20250128

Docket: IMM-3383-24

Citation: 2025 FC 177

Ottawa, Ontario, January 28, 2025

PRESENT: The Honourable Madam Justice Saint-Fleur

BETWEEN:

JCMG

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview [1] Upon the Applicant's previous application for judicial review, the Minister settled the matter and this Court remitted the case back to the Refugee Appeal Division [RAD] for redetermination in June 2023.

[2] By a decision dated January 29, 2024, the RAD reconsidered and once again dismissed the Applicant's appeal of her refugee claim.

[3] The Applicant now seeks judicial review of the RAD's redetermination decision. She alleges the following errors in the RAD's redetermination decision:

a)The RAD erred in failing to find that the Refugee Protection Division's [RPD] analysis of her claim under section 96 of the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA] was flawed;

b)The RAD failed to consider the Applicant's section 96 claim with respect to two nexus grounds (gender-based risk and imputed political opinion);

c)The RAD erred in finding that the RPD did not fail to follow the Chairperson's Guideline 4: Gender Considerations in Proceedings Before the Immigration and Refugee Protection Board [Gender Guideline]; and

d)The RAD failed to engage with the Applicant's submissions regarding the genuineness of a threatening note from a group called the Black Eagles.

[4] The Minister argues that the redetermination decision is reasonable because the RAD considered the Applicant's claim under both sections 96 and 97 in detail, reasonably concluded that the Applicant had failed to identify any part of the Gender Guideline which the RPD ignored, and reasonably agreed with the RPD's decision to give no weight to the note from the Black Eagles.

[5] For the reasons that follow, this application for judicial review is dismissed.

II. Background Facts [6] The Applicant is a citizen of Colombia who seeks refugee protection because she fears the Black Eagles, a terrorist organization that she alleges persecuted her and her family. She says her father and brother were murdered in 2002 by a predecessor group of the Black Eagles called the Autodefensas Unidas de Colombia, because they were mistakenly believed to be supporters of the left-wing guerilla group, Fuerzas Armadas Revolucionarias de Colombia [FARC]. In 2013, members of the Black Eagles allegedly forced her grandmother to sign over her farm to them.

[7] Furthermore, the Applicant was physically and sexually assaulted by two members of the Black Eagles in 2017. In addition to being kidnapped, tortured and gang raped, they accused her of working with the FARC, as well as having a relationship with a FARC member, a man whom she had never heard of.

[8] Fearful for her life, the Applicant applied for a student visa and arrived in Canada in January 2018. She applied for refugee protection in 2020.

[9] Before the RAD, the Applicant testified that a threatening note from the Black Eagles was left in her mother's house in Colombia, sometime during the second half of 2020. The Applicant said the note declared the Black Eagles' intention to assassinate her because of her FARC association, and declared her and her family to be military targets.

[10] On December 29, 2021, the RPD determined that the Applicant is not a Convention refugee or Person in Need of Protection. On appeal, the RAD confirmed the RPD's refusal by a decision dated January 17, 2023. The Applicant sought judicial review of the RAD's decision. Upon the parties' settlement of the matter, this Court ordered the Applicant's case to be remitted to the RAD for redetermination by a different member.

III. Decision Under Review A. Grounds for Protection – IRPA ss. 96 and 97 [11] In its reasons, the RAD stated that its analysis applied to the Applicant's claim under both sections 96 (Convention Refugee) and 97 (person in need of protection) of the IRPA. The RAD concluded that, because the Applicant's claim that she faces a risk of persecution or harm from the Black Eagles is neither credible nor supported by sufficient evidence, it must fail under both grounds of protection.

[12] Specifically, the RAD found that the Applicant failed to provide a satisfactory explanation for her delay in claiming refugee protection; she arrived in Canada in 2018 and applied for protection in 2020. This, the RAD said, contributed to the finding that her allegation of a risk of harm in Colombia was not credible, pursuant to section 97(1) of the IRPA. It also contributed to a finding that she lacks subjective fear, which is a requirement under section 96 of the IRPA.

[13] The RAD noted that, based on the Applicant's allegations, her fear of harm in Colombia would have already crystallized before she arrived in Canada in 2018, as the purpose of her travel using a visa was to escape the Black Eagles. Furthermore, the RAD found that the Applicant had an opportunity to make a refugee claim when she first arrived in Canada, which she failed to do. The RAD concluded that there was no satisfactory explanation given by the Applicant for her delay in seeking protection. It did not accept her explanation that she delayed because she was told by others that it was hard to obtain refugee status as a Colombian, as Canada had closed the refugee spots for Colombians. The RAD found that as an educated woman who had experience in immigration matters, such as obtaining and extending her visa, she had not made a serious effort to seek protection by relying on what others had told her instead of making her own inquiries, including consulting the paralegal who had assisted her in maintaining her visa.

[14] Ultimately, the RAD found that the Applicant's temporary status under her student visa was not a sufficient answer to account for her delay in seeking protection, contributing to a determination that she lacked subjective fear and, relatedly, lacked credibility. It noted that, in waiting almost three years to file for protection, the Applicant risked her student visa extensions being refused and her being returned to Colombia. This was inconsistent with her claim of being a person exposed to the risks she alleged if returned.

[15] Furthermore, the RAD relied on the decision of Justice Diner in Dowansingh v Canada (Citizenship and Immigration), 2015 FC 933, where he held at paragraph 18 that negative credibility findings made under section 96 may also affect the validity of a claim under section 97, even though subjective fear is not a part of the assessment for the latter.

B. RPD's Consideration of the Gender Guideline [16] The RAD found that the RPD had not erred in failing to consider the Gender Guideline. The RAD noted that the Gender Guideline did not alter the legal test for establishing a refugee claim, and that the Applicant had not identified parts of the Gender Guideline that the RPD ignored and which would have had an impact on the analysis of her claim.

C. Weight Given to 2020 Black Eagles Note [17] Finally, the RAD concluded that the RPD did not err when it gave no weight to the threatening note left by the Black Eagles in the home of the Applicant's mother in 2020. The RAD explained that it was appropriate to assign lesser weight to evidence based on its source and existing corroboration. It noted that there was no information from the mother about how or when the note was received – this corroborative information was necessary, in the RAD's view, given the credibility concerns in the Applicant's case.

[18] The RAD further stated that the presumption of truthfulness did not apply to the Black Eagles note, as it was a note received by the Applicant's mother, and so the Applicant could not have sworn to the truth of how or when it was received. The RAD concluded that the principle did not apply to statements from third parties.

[19] Therefore, in spite of the note, the RAD concluded that there was insufficient evidence to show that the Black Eagles have a continued interest in the Applicant. It noted that her family had not been a target from 2002, when her father and brother were killed, until 2013, when her grandmother's farm was seized, and in 2017, when she was assaulted. The RAD found these to be isolated events not connected to one another, nor establishing a pattern of the Applicant's family being pursued. It concluded that it was permissible to draw inferences about the Black Eagles' motivation based on the passage of time between the alleged events.

[20] Furthermore, the RAD noted that the letter from the Applicant's mother, suggesting that the group who killed her husband and son are the same as the Black Eagles, and that this group continues to pursue the Applicant and her family, was inconsistent with the evidence in the National Document Package [NDP]. According to the NDP, there is insufficient objective evidence showing that the Black Eagles continue to exist – instead, the evidence indicates that the Black Eagles are a defunct paramilitary group whose name is used by many other groups or individuals in order to make blind threats. Additionally, the NDP indicates that the

Police Intelligence Directorate in Colombia has guaranteed the non-existence of the Black Eagles for years.

[21] Finally, the RAD noted that the Black Eagles note identified both the Applicant and her family as military targets or objectives, yet her family, who continue to reside in Colombia, have not been approached or harmed since the note was received. This, according to the RAD, suggests that the note is either falsified or that the unknown group behind the note is not motivated to pursue the Applicant or her family.

IV. Issues and Standard of Review [22] The only issue on this application is whether the RAD's redetermination decision was unreasonable.

[23] The parties agree and I concur that the merits of the RAD's decision are to be reviewed on the standard of reasonableness: Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 [Vavilov].

[24] While the Applicant makes submissions regarding the standard of review for issues of procedural fairness, she makes no particular allegations of unfairness before the RAD. It is therefore unnecessary to discuss the applicable standard on this nature of the issue.

V. Analysis A. Grounds for Protection [25] The Applicant argues that the RAD erred in finding that the RPD had not failed to consider her claim under section 96 of the IRPA. She says that the RPD did not undertake any section 96 analysis. However, the Applicant also notes that it was open to the RAD to find that the RPD had failed to consider this ground and to undertake the analysis itself.

[26] I agree with the Applicant that it was open to the RAD to conduct its own analysis of her claim for refugee protection, and I find that this is precisely what the RAD did. The RAD noted at paragraph 27 of its reasons that its analysis to follow applied "to both section 96 (a Convention refugee) and section 97(1) (a person in need of protection)" and that its analysis would lead it to conclude that the Applicant "is neither a convention refugee nor a person in need of protection."

[27] In my view, it is unnecessary to decide whether the RAD properly found that the RPD correctly considered section 96 of the IRPA. If the RAD had in fact found that the RPD erred in assessing this ground, as the Applicant asserts it must have, it would have done exactly what it in fact proceeded to do – consider the Applicant's section 96 claim itself.

[28] Assuming, without deciding, that the RAD erred in failing to find that the RPD did not correctly consider the Applicant's section 96 claim, it would have been a superficial or minor misstep remedied by the RAD's own ensuing analysis of the same ground. Overturning the RAD's decision in such circumstances is unwarranted, and would be improper per Vavilov at paragraph 100.

[29] The Applicant argued in oral submissions that, although the RAD stated that its reasons applied equally to the section 96 claim, it did not substantively undertake the required analysis to dispose of that ground. I disagree. The RAD found that the Applicant's delay in seeking protection in Canada undermined her assertion of a subjective fear of persecution. It was open to the RAD to conclude that delay without satisfactory explanation was fatal to the claim (Licao v Canada (Minister of Citizenship and Immigration), 2014 FC 89 at paras 53, 60).

[30] Furthermore, I cannot accept the Applicant's submission that the RAD erred in assessing her gender-based or political opinion risks.

[31] In both written and oral submissions, the Applicant argued that the RAD should have independently assessed her future risk based on gender and political opinion, separate and apart from any allegations of persecution by the Black Eagles. However, this is at odds with the Applicant's basis of claim and submissions before the tribunals. The Applicant specifically stated that men she believed were members of the Black Eagles, who targeted her due to her association with FARC members, assaulted her in 2017. The RAD considered the risks she faced with reference to the Black Eagles because they were the agents of persecution the Applicant said it was targeting her family, and the group from whom she feared future harm.

[32] In any case, the RAD's finding that the Applicant's claim was undermined by her delay in seeking protection upon arrival to Canada applied to all her allegations of risk, whether based on her gender, imputed political opinion, or other nexus to a Convention ground. The RAD's conclusion was that, whatever risks the Applicant alleged, she lacked credibility and her delay demonstrated a lack of subjective fear of those risks.

[33] Contrary to the Applicant's contention, I do not believe that the RAD erred in considering whether there was a common thread between the alleged incidents. The RAD's reasons, supported by jurisprudence from this Court, explained that it is permissible to draw inferences about an agent's interest in an applicant based on the passage of time between incidents. Given the amount of time that passed between the incidents cited by the Applicant, which took place in 2002, 2013, and 2017, the RAD found that they did not represent a pattern of the Black Eagles pursuing her and her family.

[34] The Applicant argues that a common thread between the incidents is not necessary for her claim to succeed, and while this may be the case, it does not render the RAD's observations and conclusions on this issue unreasonable. It was open to the RAD to undertake this analysis to assess the Applicant's claim that the Black Eagles continue to demonstrate an interest in her.

B. Gender Guideline [35] The Applicant says that the RAD unreasonably found she had not identified the portions of the Gender Guideline that the RPD ignored. She argues that her submission before the RAD was clear: the RPD failed to undertake a gender persecution analysis, pursuant to the Gender Guideline's instruction that sexual assault is a gender-based crime. She submits that both the RPD and the RAD failed to undertake this required analysis. I cannot agree.

[36] To begin, the RAD did not simply disregard the Applicant's submission on the Gender Guideline – it stated that she failed to identify portions of the Guideline which the RPD ignored and which would have impacted the analysis. Therefore, the RAD found that, to the extent the Applicant made an argument with reference to the Gender Guideline, that argument failed to show how the RPD's analysis ought to have changed.

[37] The Applicant has not shown that either the RAD or RPD considered sexual assault not to be a gender-based crime due to its prevalence in society, contrary to the portion of the Gender Guideline she relies upon. Nor has she shown that either tribunal failed to assess the risk of gender-based persecution she raised. The tribunals acknowledged her allegation of this risk, among others, and found there were credibility and other concerns undermining her claim.

[38] The RAD did not refuse to consider the Applicant's claim of gender-based violence. Rather, the RAD focussed on the Applicant's conduct once she arrived in Canada and found that it undermined her allegations of persecution and fear upon her return to Colombia; this would include her allegation of a gender-based risk.

[39] The Applicant says that the RAD's reasons should have included the details of the sexual assault she suffered in order to properly assess her gender-based risk. However, she also acknowledges that the RAD never challenged her allegation of being assaulted. In my view, it was open to the RAD to reference the attack in the level of detail that it did, given that it was not challenging the Applicant's account of the sexual assault.

[40] Furthermore, the RAD never found that the attack she described could not ground a claim of gender-based persecution. What the RAD did conclude, however, is that the Applicant's delay undermined her credibility and allegation of a subjective fear of future persecution; the delay was not used to detract from her account of being sexually assaulted in the past.

[41] The Applicant also maintains that the RAD's analysis of the 2020 Black Eagles note was itself contrary to the Gender Guideline, because the RAD was required to consider the Gender Guideline before impugning the Applicant's credibility regarding the note. This argument cannot stand in the face of the RAD's explicit statement that the presumption of the Applicant's truthfulness was not at issue – the evidence regarding the note was her mother's and not the Applicant's.

[42] The RPD's assessment of the Applicant's 2017 assault was that there was insufficient evidence to connect it to the Black Eagles. The RPD had credibility concerns because the Applicant could not explain why she believed the attack was perpetrated by the Black Eagles, given her profile as someone who was not politically active. The RPD considered the alleged

attack, and explained why it was not persuaded by the Applicant's assertion that it was connected to a history of persecution by a specific group. It did not, however, take issue with her claim of being sexually assaulted due to any missing details that could be explained by the trauma of enduring such an assault, as the Applicant suggests.

[43] Although I agree with the Applicant that, pursuant to the Gender Guideline, sexual assault is a gender-based crime and gender risk ought to be assessed even if not explicitly raised, these propositions are unhelpful to her case. The RAD and RPD's reasons do not disclose any violation or disregard for these important principles, and so this argument must fail.

C. Weight Given to 2020 Black Eagles Note

[44] In my view, the RAD did not fail to engage with the Applicant's submissions regarding the genuineness of the note. The RAD listed the Applicant's submissions concerning the RPD's treatment of the note at paragraph 50 of its reasons, including that: (a) the NDP supports the validity of the letter given its typical contents; (b) the fact that the letter was delivered from the Capital Block to the Applicant's mother home is consistent with the balance of the evidence; (c) the manner in which the note was delivered is consistent with the balance of the evidence; and (d) the fact the rest of the Applicant's family, also named in the letter, have not been approached or harmed, is not a reason to reject the evidence of a threat. The RAD stated that it disagreed with these submissions and spoke to each one in turn.

[45] The RAD found that the NDP evidence actually militated against the suggestion that the Black Eagles are an active group, and suggested that threatening notes purporting to be from this group tended to be blind threats made by various groups or individuals.

[46] It further found that the evidence of the Applicant's mother regarding the circumstances in which the note was received was lacking in important details that could have been provided, but were not. It was open to the RAD to assess the evidence and find it lacking; that the Applicant disagrees with this evaluation of the evidence is not a reversible error, and it is not the Court's role to re-weigh the evidence (Vavilov at para 125).

[47] The RAD also addressed the Applicant's final submission regarding the note, that the lack of harm to her family, also identified as targets, should not serve as a reason to reject the evidence. The RAD considered this argument and found it was inconsistent with the NDP, which suggests that, where threats contained in such "pamphlets" do not come to fruition, it is indicative of the pamphlet being falsified.

[48] The RAD engaged with the Applicant's submissions on the genuineness of the note, and explained its reasons for rejecting her arguments.

[49] The Applicant further argues that the RAD and RPD erred by failing to make a clear finding that the note was inauthentic before assigning it no weight.

[50] The following principle is set out in Sitnikova v Canada (Citizenship and Immigration), 2017 FC 1082 at paragraph 20:

If a decision-maker is not convinced of the authenticity of a document, then they should say so and give the document no weight whatsoever. Decision-makers should not cast aspersions on the authenticity of a document, and then endeavour to hedge their bets by giving the document "little weight". As Justice Nadon observed in Warsame, "[i]t is all or nothing": at para. 10.

[51] Allegations that a tribunal or officer improperly assigned evidence little weight as a "guise" for adverse credibility findings are not uncommon, and this Court has held that fact finders cannot mask authenticity findings by deeming evidence to be of little probative value (Arsu v Canada (Citizenship and Immigration), 2020 FC 617 at para 39, citing Oranye v Canada (Citizenship and Immigration), 2018 FC 390 at para 27). However, I do not believe this was an error the RAD committed in the instant case.

[52] The RAD was clear that it was questioning the genuineness of the letter based on the lack of corroborative evidence concerning its source, relying on this Court's decision in Shah v Canada (Citizenship and Immigration), 2013 FC 280 at paragraph 21. It did not avoid making a credibility finding and hide its concerns in the weight it accorded the evidence (Nti v Canada (Citizenship and Immigration), 2020 FC 595 at para 3). Rather, the RAD was clear that it had credibility concerns with the Applicant's claim, and that corroboration of the circumstances in which the letter was received was required in light of these concerns. This, combined with the NDP evidence regarding the current existence of the Black Eagles, led the RAD to conclude that the "note is either falsified or that the unknown group behind the note is not motivated to pursue the [Applicant]." Accordingly, it agreed with the RPD that the note should be granted no weight at all, rather than "little weight."

[53] There was no covert or implicit findings on authenticity or credibility, which were masked in the weight assigned to the note. The RAD was forthright with its concerns and conclusions.

VI. Conclusion [54] The Applicant has not identified a reversible error in the RAD's redetermination decision, which would render it unreasonable. Accordingly, this application for judicial review is dismissed.

[55] In a decision of this Court dated June 27, 2023, Justice Tsimberis ordered the anonymization of all published records in matter IMM-1886-23, which was the prior judicial review brought by this Applicant with respect to her refugee claim. Accordingly, this judgment refers to her as "the Applicant," and the style of cause bears only her initials.

JUDGMENT in IMM-3383-24

THIS COURT'S JUDGMENT is that:

The application for judicial review is dismissed.

There is no question for certification.

"L. Saint-Fleur"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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SAINT-FLEUR J.

DATED:

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