

**Date: 20050822**

**Docket: IMM-10148-04**

**Citation: 2005 FC 1115**

**Ottawa, Ontario, August 22, 2005**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**DEDIS JOSEFINA CAMACHO DE GUEVARA,  
MANUEL OSWALDO GUEVARA,  
JUAN MANUEL GUEVARA CAMACHO,  
MATEO GUEVARA CAMACHO and  
KARELIS ALEJANDRA GUEVARA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP & IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The de Guevara family sought refugee protection in Canada based on the mistreatment they allegedly suffered in Venezuela because of their Mormon faith. A panel of the

Immigration and Refugee Board dismissed their claim. They then requested a pre-removal risk assessment and an exemption based on humanitarian and compassionate grounds. The same officer performed both the risk assessment and the analysis of humanitarian and compassionate considerations. Both decisions were unfavourable to the applicants. Before me, they challenged the decision not to grant them a humanitarian and compassionate exemption on the grounds that the officer failed to give adequate consideration to the best interests of the de Guevara children, and also failed to determine whether the family would suffer hardship if returned to Venezuela.

[2] I can find no basis to overturn the officer=s decision and must, therefore, dismiss this application for judicial review.

#### I. Issues

1. Did the officer fail to consider the best interests of the children?
2. Did the officer fail to address the issue of hardship?

#### II. Analysis

[3] Both the applicants and the respondent agree that I can overturn the officer=s decision only if I find that it was unreasonable.

A. *Did the officer fail to consider the best interests of the children?*

[4] The applicants presented evidence to the officer suggesting that the family, including the children, had been subjected to harassment and threats in Venezuela because of their religion. The applicants argue that the officer failed to give adequate attention to that evidence specifically as it related to the children=s psychological well-being and ability to attend school. Further, they argue that the officer wrongly determined whether the children would suffer hardship, rather than simply considering whether their best interests lay in allowing them to remain in Canada.

[5] The applicants have pointed to a number of facts not cited by the officer in the section of her decision entitled "Best interests of the children". However, all of the facts are set out elsewhere in her decision under the heading "In consideration". I see no evidence that the officer ignored any facts relevant to the children=s best interests. True, not every fact is repeated in the analysis section, but I cannot conclude from this that the officer ignored the evidence before her. Indeed, she specifically addressed the evidence relating to the children=s psychological well-being and educational opportunities in Venezuela.

[6] As for the test the officer applied, again I can see no error. The officer concluded the following regarding the children=s best interests:

I have considered the best interests of these children along with the personal circumstances of this family and find the applicants have not established that the general consequences of relocating and resettling back to their home country would have a significant negative impact to their children that would amount to unusual, undeserved or disproportionate hardship.

[7] The applicants argue that the officer erred by measuring the evidence relating to the children against a threshold of Ahardship@ rather than the proper standard of Abest interests@. Having reviewed the case law, I conclude that the officer did not apply the wrong test. As Justice Robert Décary has stated:

[ ...] For all practical purposes, the officer=s task is to determine, in the circumstances of each case, the likely degree of hardship to the child caused by the removal of the parent and to weigh this degree of hardship together with other factors, including public policy considerations, that militate in favour of or against the removal of the parent: *Hawthorne v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 475; [2003] 2 F.C.555 (C.A.), at para.6.)

B. *Did the officer fail to determine the issue of hardship?*

[8] The applicants argue that the officer wrongly determined whether the applicants would be at risk of mistreatment if returned to Venezuela instead of deciding whether they would suffer unusual, undeserved or disproportionate hardship.

[9] The applicants point to a table in the officer=s decision as evidence of the officer=s misguided approach to the issue before her. The table sets out factors ASupporting a Positive Decision@ and factors ANot supporting a Positive Decision@. Three of the factors in the latter category relate to whether the family would face a risk of personal harm if returned to Venezuela. The officer noted that the applicants had been unsuccessful in their refugee claim and in their risk assessment, and had presented no additional risk factors in their application for humanitarian and compassionate relief.

[10] I see nothing suspect in the officer=s brief summary of the factors she considered.

The table contains no analysis and does not disclose the weight each factor was to be given. A list of supporting and non-supporting considerations is not the Aheart of the decision@ (*Vasquez v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 91, [2005] F.C.J. No. 96 (F.C.) (QL)).

[11] As mentioned, the officer had already conducted a pre-removal risk assessment for the de Guevara family and found an absence of significant risk based on the evidence before her. The applicants suggest that in respect of their parallel application for humanitarian and compassionate consideration, the officer failed to conduct a proper assessment of the issue of hardship, relying simply on her prior analysis of risk. The two issues are clearly separate: *Melchor v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1327, [2004] F.C.J. No. 1600 (F.C.) (QL).

[12] Again, I can find no error on the officer=s part. She clearly considered all of the relevant factors and specifically asked herself whether hardship had been shown. Further, at the end of her decision, she again asked, and answered, the ultimate question that was before her: had the applicants satisfied her that they would suffer unusual, undeserved or disproportionate hardship if they were not exempted from the usual requirement to apply for a visa from outside Canada? From my review of the officer=s reasons, she neither ignored the evidence before her nor misunderstood the issue she had to decide. Accordingly, I must dismiss this application for judicial review.

[13] Neither party proposed a question of general importance for me to certify and none is stated.

**JUDGMENT**

**THIS COURT=S JUDGMENT IS that:**

1. The application for judicial review is dismissed;
2. No question of general importance is stated.

AJames W. O=Reilly@

---

JUDGE

**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** IMM-10148-04

**STYLE OF CAUSE:** DEDIS JOSEFINA CAMACHO DE GUEVARA ET  
AL v. MCI

**PLACE OF HEARING:** Whitehorse, N.W.T.

**DATE OF HEARING:** July 21, 2005

**REASONS FOR JUDGMENT  
AND JUDGMENT:** The Honourable Mr. Justice O'Reilly

**DATED:** August 22, 2005

**APPEARANCES:**

Ms. Sheri M. Hogeboom FOR THE APPLICANTS

Mr. R. Keith Reimer FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

NEIGHBOURHOOD LAW CENTRE  
Whitehorse, Yukon FOR THE APPLICANTS

JOHN H. SIMS, Q.C.  
Deputy Attorney General of Canada  
Toronto, ONTARIO FOR THE RESPONDENT