

**Date: 20060214**

**Docket: IMM-491-06**

**Citation: 2006 FC 201**

**Vancouver, British Columbia, Tuesday, the 14<sup>th</sup> day of February, 2006**

**Present: THE HONOURABLE MR. JUSTICE LEMIEUX**

**BETWEEN:**

**MILTON IVAN PROVEDOR MENDOZA**

**Applicant**

**- and -**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] Milton Ivan Provedor Mendoza (the “Applicant”) seeks a stay of his removal to Nicaragua, the country of his citizenship, pending the determination of his application for leave and judicial review from the December 19, 2005 decision of Pre-Removal Risk Assessment Officer Hidalgo’s (the “PRRA Officer”) determination the Applicant would not face persecution and that there were not substantial grounds to indicate he is more likely than not to be at risk of torture, risk to life, or risk of cruel and unusual punishment if returned there.

[2] The Applicant arrived in Canada from Nicaragua in December 2001; two weeks later he claimed refugee status which was denied on March 3, 2003.

[3] Prior to March 3, 2003, he met in July 2002 Lisa Snyder, a Canadian citizen. They were married on June 22, 2003. Their daughter was born on September 24, 2004. Lisa is now pregnant a second time.

[4] Although the couple recently made a spousal H&C application, humanitarian and compassionate considerations are not before me in this stay application. The H&C application will continue to be processed regardless whether Mr. Provedor Mendoza is removed or not.

[5] In submissions to the PRRA Officer, the Applicant expressed two fears if returned:

- 1) He fears he is at risk because of his family's former links to the Somoza side of Sandinista revolution in 1979. The applicant states the Sandinista elements in the Government are continuing to target people who might be regarded as having been earlier connected with the Somoza regime.
- 2) He fears his cousin's former husband, whom he believes is now in charge of the Special Forces in Managua, will harm him. The applicant explains because he left Nicaragua in 2001 and because his cousin came in 2002 he fears the cousin's former husband blames him for his cousin and the children leaving Nicaragua.

[6] The PRRA Officer dismissed the first fear expressed by the Applicant after examining recent country reports (US DOS 2004) on Nicaragua. She was of the view the Applicant had failed to establish the general country conditions in that country personally related to him. She said that "country documents continue not to indicate former non-political ties or supporters to

the former President Somoza are at risk from Sandinista elements within the security forces or within the Government in general.” The PRRA Officer determined the Applicant had failed to provide persuasive new evidence for her to arrive at a different conclusion than the Refugee Board had reached.

[7] Concerning his new fear, the PRRA Officer wrote:

With respect to his new allegation of risk relating to the former husband of his cousin, Mr Membreno Morales, the applicant provides submissions which accompanied his cousin’s PRRA application. The applicant’s cousin and her children were found to be in need of protection from her former husband on the basis that she was beaten and sexually abused. The applicant states that he fears Mr Membreno Morales blames him for his cousin and children leaving Nicaragua. The applicant states that he fears Mr Membreno Morales continues to work in the military and is now in charge of Special Forces in the city of Managua. Within his cousin’s submissions, there were documents evidencing Mr Membreno Morales held a position in the military, but there was no specific mention of his current position in the military within the objective evidence.

In review of the evidence provided, I find it is speculation on the applicant’s part that his cousin’s former husband blames him for his family leaving Nicaragua. I note there was no mention of any risk allegation regarding Mr Membreno Morales at the time of his refugee hearing. I note his cousin was in Canada for almost 1 year at the time of his refugee hearing. She served as a witness at his hearing and made no mention that she was aware that the applicant had been personally threatened from Mr Membreno Morales. From the evidence before me, I find there is no corroborative evidence demonstrating the applicant was and is currently being pursued or personally threatened by either Mr Membreno Morales or from any of his associates in Nicaragua.

[8] In any event, she went on to find the Applicant would benefit from adequate state protection in Nicaragua.

[9] In my view, this stay application must be dismissed for the reason that the Applicant has not met any part of the tri-partite test necessary to obtain a stay.

[10] On serious issue, counsel for the Applicant argued the PRRA Officer erred, in a patently unreasonable manner, in her assessment of the new evidence concerning Lt. Colonel Morales. She stressed that as part of the submissions before her, the PRRA Officer had the materials related to the PRRA application of the Applicant's cousin, Nora Urroz, whose ex-husband was Lt. Colonel Morales. Based on those submissions, Nora Urroz was granted protection under section 97 of the *Immigration and Refugee Protection Act* (the "Act").

[11] Counsel for the Applicant also stressed that the evidence before the PRRA Officer showed Lt. Colonel Morales was an officer in the military (which the PRRA Officer acknowledged) and that this was sufficient to ground the applicant's need for protection.

[12] She also argued the PRRA Officer failed to appreciate that Lt. Colonel Morales' anger against the Applicant for having helped his cousin and her children to come to Canada greatly increased after she was granted protection.

[13] Finally, she argued the PRRA Officer did not properly evaluate the country reports pointing to passages which showed the security forces had committed human rights abuses; corruption was rampant and the Sandinistas were still active.

[14] In my view, counsel for the Applicant's arguments do not raise a serious issue for several reasons. First, these arguments do not address the heart of the PRRA Officer's finding, namely

the lack of objective evidence on the part of the Applicant evidencing he was and is currently being pursued or personally threatened by Mr. Morales or his associates.

[15] It is important to note the PRRA Officer did not find Lt. Colonel Morales was not a member of the Nicaraguan military. She found he was. What the PRRA Officer found was a lack of objective evidence that the Applicant was at risk from his cousin's ex-husband.

[16] Second, the Applicant's criticism of the US DOS report is misplaced. I find no fault in the PRRA Officer's assessment of it nor her evaluation in the circumstances of state protection. There was no objective or sufficient evidence before the PRRA Officer that Mr. Morales was threatening the Applicant nor was he a state agent of persecution.

[17] The Applicant added two letters purporting to corroborate the Applicant's fears. These letters were not before the PRRA Officer and were essentially hearsay. They have no weight.

[18] The Applicant has not satisfied me of irreparable harm. The assessment of the Applicant's fear of return to Nicaragua on the evidence before the PRRA Officer was insufficient to demonstrate, on a balance of probabilities, that the Applicant was at risk.

[19] In terms of irreparable harm to the family unit, I agree with counsel for the Minister that the Applicant's removal will cause hardship, but that hardship does not amount to irreparable harm (see *Selliah v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 1200).

[20] Finally, the balance of convenience favours the Minister in the execution of the removal order as stated in section 48 of the Act.

**ORDER**

**THIS COURT ORDERS** that, for these reasons, this stay application is dismissed.

(Sgd.) "F. Lemieux"  
Judge

**FEDERAL COURT**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** IMM-491-06

**STYLE OF CAUSE:** MILTON IVAN PROVADOR MENDOZA

- and -

THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Vancouver, BC

**DATE OF HEARING:** February 13, 2006

**REASONS FOR ORDER AND ORDER:** LEMIEUX J.

**DATED:** February 14, 2006

**APPEARANCES:**

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