

Federal Court



Cour fédérale

Date: 20240829

Docket: IMM-3939-23

Citation: 2024 FC 1355

Ottawa, Ontario, August 29, 2024

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

ARMANDO GONZALEZ QUECHULPA

Applicant

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by a Senior Immigration Officer [Officer], dated February 11, 2022, rejecting the Applicant's Pre-Removal Risk Assessment [PRRA]. The Officer determined the Applicant would not be subject to risk of persecution, danger of torture, risk to life, or risk of cruel and unusual treatment or punishment if returned to his country of nationality, Mexico.

[2] The Application is granted for the following reasons, which, given the reconsideration ordered herein, must necessarily be brief in addition to which evidence is not detailed.

[3] The Applicant is a Mexican citizen who alleges fear of persecution based on his political activities in Mexico. He was an officer in a Mexican election and claims he is at risk from the ruling MORENA political party and its supporters, who he alleges followed him, directed death threats at him, kidnapped, tortured, attacked, and beat him because he refused to obey a supervisor's order to corruptly help certain candidates to win. His troubles started after he refused to follow his supervisor's order. He was kidnapped and tortured (water boarded) soon after his refusal. He left his job, but was kidnapped and attacked a second time and severely beaten when he returned briefly to Mexico. Police did not assist.

[4] The Applicant filed a refugee application as a self-represented claimant, but failed to indicate a change of address after a move, resulting in losing his right to a hearing and decision by the RPD. He filed his own application for a PRRA which was refused without an oral hearing.

[5] Having considered the submissions of the parties I have concluded the PRRA decision was procedurally unfair and unreasonable and must be set aside.

[6] First, I accept the PRRA decision is fatally and cumulatively flawed by three veiled credibility findings: 1) no subjective fear (a core finding inextricably related to credibility in this case), 2) a minor two-day inconsistent date on a medical note (directly contrary to evidence, possibly microscopic, and which might readily have been answered had he the chance), and 3) that there was no evidence of general corruption in the election, which was not only a most

fundamental and direct attack on the Applicant's credibility, and indeed his entire case, but is also flawed by failing to consider *contrary* country condition evidence not only of multiple killings of political candidates in the election, and also general state corruption).

[7] There should have been an oral hearing in this case, but was not, such that the duty of procedural fairness generally, and the statutory duties set out in paragraph 113(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, per section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, were breached.

[8] The second reason why judicial review is granted is because the Decision unreasonably found no forward-facing risk on return. There was no evidence, objective or otherwise, on this point. Indeed, the constraining evidence is to the contrary: even after he was out of election office, the Applicant was kidnapped and attacked on one occasion, and then violently beaten on a second. This core and central determination is also unreasonable because it relies entirely on impermissible speculation on what a reasonable agent of persecution might or might not do, and assumes that given the passage of time those agents of persecution would do nothing. Not only is that unintelligible given the continuing attacks on him, and the country condition evidence mentioned already, but if speculation is valid on this point one might equally speculate harm would be occasioned to him if he repeated his allegations on his return.

[9] The parties do not propose a question of general importance for certification, and I agree none arises.

JUDGMENT in IMM-3939-23

THIS COURT'S JUDGMENT is that the application for judicial review is granted, the Decision is set aside, and the matter is remanded for reconsideration by a different decision-maker in accordance with these reasons in respect of which the Applicant may file supplementary material. No question of general importance is certified, and there is no order as to costs.

"Henry S. Brown"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3939-23

STYLE OF CAUSE: ARMANDO GONZALEZ QUECHULPA v THE
MINISTER OF IMMIGRATION, REFUGEES AND
CITIZENSHIP

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: AUGUST 28, 2024

JUDGMENT AND REASONS: BROWN J.

DATED: AUGUST 29, 2024

APPEARANCES:

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