

Date: 20080403

Docket: IMM-3090-07

Citation: 2008 FC 432

Toronto, Ontario, April 3, 2008

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

PATRICIA GONZALEZ PEREA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The Pre-Removal Risk Assessment (PRRA) decision presently under review concerns an Applicant whose claim for protection was rejected by the Refugee and Protection Division (RPD) in 1993, but who produced new evidence for consideration before the PRRA Officer.

[2] The Applicant's new evidence claim is as follows:

She is someone who is targeted by her boyfriend for deserting him, she is a long term victim of spousal abuse of a severe and life-threatening nature. Her boyfriend has also targeted her because she has seen evidence that he is a "madrina" who kidnaps, tortures and

does various acts of violence for the Mexican governmental system or the judicial police. She tried to denounce him with the office of the Attorney-General which has made her return to her country impossible because of the threat to her life.

(PRRA decision, p. 3)

[3] The Applicant's new evidence is that, in April 2005, her uncle in Mexico was murdered. The Applicant's argument to the PRRA Officer was that the murder was directly connected to her prospective fear of risk, and in making this argument she relied on the evidence of her uncle's partner, Mr. Morales. Mr. Morales had offered evidence to the RPD, but again offered new evidence before the PRRA Officer that some 10 days before the uncle's murder he was attacked and threatened by who he considered to be judicial or ministerial police in an effort to have him reveal the whereabouts of the Applicant. Mr. Morales reported this incident to the Attorney General of Justice in Mexico by a letter dated April 8, 2005. In addition, in support of the Applicant's application for protection on the new evidence, Mr. Flores, a member of a political party who helped her escaped from Mexico, wrote a letter to confirm that the Applicant's uncle was shot by the judicial police for not revealing the Applicant's whereabouts, and he predicts that the Applicant will face the same fate as her uncle if she returns to Mexico.

[4] With respect to the evidence of Mr. Morales and Mr. Flores the PRRA Officer said this:

Further, I have considered the RPD finding that the partner of the applicant's uncle is not a disinterested party to her claim. In view of that, I do not find this report to be objective evidence as it only cites Mr. Morales' account of the incident. With consideration to above factors, I assign the Report of Facts to the Attorney General little weight in establishing that the applicant faces personal risk in Mexico.

[...]

Mr. Flores provides no further details about the applicant's risk or her uncle's death. Mr. Flores does not explain how he can certify that the applicant's uncle was murdered by the judicial police. I have further considered that there is insufficient information before me to confirm that Mr. Flores is a disinterested party in the applicant's claim. I do not find the new paragraph on Mr. Flores' affidavit to be convincing evidence of a risk to the applicant in Mexico.

[Emphasis added]

(PRRA Decision, pp. 4-5)

[5] With respect to Mr. Morales' evidence, Counsel for the Applicant argues that the PRRA Officer decided its value by applying an extraneous consideration. That is, from the words used, the PRRA Officer did not make an independent evaluation of the evidence but simply relied on an opinion expressed by the RPD. I agree with this argument.

[6] With respect to Mr. Flores' evidence, Counsel for the Applicant argues that it is unfair to establish the criterion that he must be found to be a disinterested party to the Applicant's claim before his evidence will be given due consideration. I also agree with this argument.

[7] It seems that the PRRA Officer approached the Applicant's evidence with a degree of suspicion and, as a result, relied upon a criterion that is almost impossible for any applicant to meet. That is, the evidence produced by the Applicant came from persons who are not government officials or operating in a governmental capacity, but are certainly persons who have evidence to offer from their own observations. It is my opinion, that to glibly say that because they are not

persons disinterested in the Applicant's claim their evidence should be given no value, is a remarkably unfair approach to take.

[8] As a result, I find that the decision under review is made in reviewable error.

ORDER

Accordingly, I set aside the decision under review and refer the matter back for a re-determination before another PRRA officer.

“Douglas R. Campbell”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-3090-07

STYLE OF CAUSE: PATRICIA GONZALEZ PEREA v. THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 31, 2008

**REASONS FOR ORDER
AND ORDER BY:** CAMPBELL J.

DATED: APRIL 3, 2008

APPEARANCES:

ROBERT I. BLANSHAY FOR THE APPLICANT

LORNE McCLENAGHAN FOR THE RESPONDENT

SOLICITORS OF RECORD:

ROBERT I. BLANSHAY
BARRISTER AND SOLICITOR
TORONTO, ONTARIO FOR THE APPLICANT

JOHN H. SIMS, Q.C.
DEPUTY ATTORNEY GENERAL OF CANADA FOR THE RESPONDENT