Federal Court  Cour fédérale

Date: 20111031

Docket: IMM-7695-10

Citation: 2011 FC 1237

Ottawa, Ontario, October 31, 2011

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

MARIA ALEJANDRA GALINDO RIVERA
ANDRES FELIPE ROJAS RODRIGUEZ

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of the decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated 1 December 2010 (Decision), which refused the Applicants' applications to be deemed convention refugees or persons in need of protection under sections 96 and 97 of the Act.

BACKGROUND

[2] The Applicants are both citizens of Colombia. They entered Canada on 2 March 2008 and made their claim for protection on 13 March 2008. The claims were joined under Rule 49(1) of the *Refugee Protection Division Rules*. The claim of Andres Felipe Rojas Rodriguez, the husband, is entirely dependent on that of his wife, Maria Alejandra Galindo Rivera (Principal Applicant).

[3] In Colombia, the Principal Applicant's family ran a farm near Cali, where they provided food, medicine, and other services to people in the local area. The Principal Applicant was involved in the running of the farm. She arranged sporting events for children and engaged in other community activities.

[4] In 2002, FARC guerrillas began operating in the area where the farm was situated. FARC approached the Principal Applicant's family and asked that FARC be given credit for the work that the family was doing. The family refused. A family friend, the caretaker of the farm, was killed in 2002 and the family was told by FARC that it was a warning to the rest of them. At the refugee hearing, the Principal Applicant testified that she began to fear FARC after the murder of the caretaker. Because of the threat made by FARC, the family abandoned the farm. Also in 2002, the Principal Applicant left Colombia for the US.

[5] From 2002 to 2004, the Principal Applicant travelled five times between the US and Colombia. Her practice was to stay in the US for the duration of her visa, return to Colombia for a

few months, apply for another visa, and then return to the US. In 2004, the Principal Applicant contacted a lawyer while she was in the US to assist her in extending her visa. She says that the lawyer absconded with her money. By the time the Principal Applicant realized that she would not receive an extension of her visa through the lawyer, her visa had expired and she was living in the US illegally. Because she did not want to lose the possibility of obtaining another visa to stay in the US, she did not return to Colombia. Having been advised by another lawyer in the US that applying for asylum could result in a deportation order returning her to Colombia, the Principal Applicant did not pursue an asylum claim in the US. After marrying her husband in the US in 2006, she stayed there until 2008, when she and her husband travelled to Canada and made their claim for protection.

[6] After leaving the farm in Colombia in 2002, the Principal Applicant's father returned in 2007 to the area where the farm was located because he wanted to find out if FARC was still active there. The father's return to the area attracted the attention of FARC, who threatened to kill him. In 2008, members of FARC approached the father, threatened him, and gave him a note demanding he meet them at a time and place he would be told later. They told her father that his daughter should stay where she was or they would harm her. The father thought FARC must know that the Principal Applicant was living in the US. The FARC members gave her father a note telling him to meet with them; if he did not, they said that he and his family would be at risk. He contacted Colombian authorities, but was told that, though they could dispatch extra policemen to the area where he was staying, they could not provide 24-hour protection. At this point, the Principal Applicant's father told her that she must not to return to Colombia under any circumstances.

[7] Also in 2008, the father and his wife resigned from their jobs, collected severance pay and when he returned to Colombia after his unsuccessful claim, the father allegedly moved from house to house in Colombia to hide from FARC. In 2009, the house where he was staying was the subject of some interest by strange people and in 2010 the father received a phone call from a man he suspected was connected to FARC.

THE DECISION

[8] The RPD denied the Principal Applicant's claim. Andres Felipe Rojas Rodriguez's claim was dependent on the Principal Applicant's so his claim was also denied. The RPD found that the Applicants' identities were established based on their passports but denied their claims on the basis that the Principal Applicant did not have a well-founded fear of persecution in her country of nationality.

[9] The RPD found that the Principal Applicant's actions were inconsistent with someone who had a well-founded fear of persecution. In particular, the RPD was concerned that she did not make a claim for asylum while she was in the US, either during the period when she was there intermittently between 2002 and 2004 or during the period when she was in the US illegally from 2004 to 2008. The RPD rejected the Principal Applicant's explanation that she had returned to Colombia between 2002 and 2004 to continue her studies and to seek psychiatric care, as the RPD found that the US has both educational facilities and psychiatrists that could fulfill the needs of the Principal Applicant.

[10] The RPD cited the decision of Justice David Near in *Caicedo v Canada (The Minister of Citizenship and Immigration)* 2010 FC 1092, at paragraph 21:

> There is recent jurisprudence to support the well established position that absent a satisfactory explanation for the delay, "the delay can be fatal to the PA's claim, even where there is no other reason to doubt the PA's credibility" (*Velez v. Canada (Minister of Citizenship and Immigration*), 2010 FC 923 at para. 28). While the delay itself is not determinative, "delay may, in the right circumstances, constitute sufficient grounds upon which to dismiss a claim. It will ultimately depend upon the facts of each claim." (*Duarte v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 988, 125 A.C.W.S. (3d) 137 at para. 14).

[11] The RPD noted that, although the Principal Applicant alleged fear of persecution, she delayed making a claim for protection until 2008, nearly six years after she initially left Colombia. The RPD found that, if she truly feared persecution, she would not have delayed in making her claim. As such, the RPD found that her claim was not credible and that the Principal Applicant had not established a well-founded fear of persecution.

[12] The RPD also examined the situation of the Principal Applicant's father. She testified that her father was in hiding. The RPD, however, found that he continued to work until he lost his job, and said that "the [Principal Applicant] is not credible." The RPD also found that FARC only wanted the Principal Applicant's father removed from the farm because "if they wanted to harm him, they would have easily done so."

[13] Finally, the RPD found that the Principal Applicant's profile in the community was not of the same kind as those who are targeted by FARC. The usual targets are politicians, military or law-enforcement officials, human-rights activists, and high-profile members of the judiciary. The RPD

found that the Principal Applicant was not a community leader of any sort and would not be of interest to FARC because the activities at the farm were not sponsored by any entity (political party, charity, or other organization).

[14] Based on these findings, the RPD found that the Principal Applicant had not established a well-founded fear of persecution. The dependent claim of Andres Felipe Rojas Rodriguez was also denied.

ISSUES

[15] The Applicants raise the following issues in their argument:

a. The RPD's analysis of the Principal Applicant's explanation of the delay in filing a claim was unreasonable;

b. The RPD erred in basing its Decision solely on the Principal Applicant's delay in making a claim for protection;

c. The RPD's finding as to the Principal Applicant's credibility was unreasonable;

d. The RPD did not base its Decision on all the evidence that was before it;

e. The RPD failed to provide adequate reasons for its credibility findings.

STATUTORY PROVISIONS

[16] The following provisions of the Act are applicable in these proceedings:

Convention refugee **Définition de « réfugié »**

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or

(*b*) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in Need of Protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(*b*) to a risk to their life or to a risk of cruel and unusual

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou

treatment or punishment if	peines cruels et inusités dans le cas suivant :
(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,	(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,	(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.
(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection	(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

STANDARD OF REVIEW

[17] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9, held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the

reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[18] Findings of credibility and assessment of the evidence such as those attacked by the Applicants are within the RPD's areas of expertise and, therefore, deserving of deference. They are reviewable on a standard of reasonableness. See *Aguebor v Canada (Minister of Citizenship and Immigration)*, [1993] FCJ No 732 at paragraph 4; and *Ched v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1338 at paragraph 11.

[19] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency, and intelligibility within the decision making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at paragraph 47; and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside "the range of possible, acceptable outcomes which are defensible in respect of the facts and law."

[20] In *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paragraph 43, the Supreme Court of Canada held that the provision of reasons may be required as a part of the duty of fairness. In *Clifford v Ontario Municipal Employees Retirement System*, 2009 ONCA 670, the Ontario Court of Appeal held that where a tribunal is under a duty to give reasons,

the adequacy of those reasons is an issue of procedural fairness to be evaluated on the correctness standard. This approach was followed by Justice Judith Snider in *Ghirmatsion v Canada (Minister of Citizenship and Immigration)* 2011 FC 519 at paragraph 50. The adequacy of the RPD's reasons in this case is subject to the standard of correctness. As the Supreme Court of Canada held in *Dunsmuir*, above, at paragraph 50, "When applying the correctness standard, a reviewing court will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question."

ARGUMENTS

The Applicants

The RPD's Analysis of the Delay in Making a Claim for Protection Was Unreasonable

[21] The Applicants argue that the RPD was unreasonable in its assessment of the Principal Applicant's delay, because it based its analysis on the re-availment that occurred during the period from 2002 to 2004. The Principal Applicant says that the source of her fear was not the events surrounding the initial departure of the family from the farm in 2002. Rather, she submits that the source of her fear was the events surrounding her father's return to the family's farm in 2007 and his continued persecution in Colombia. Up until 2008, she wanted to return to Colombia. The statement to her father by FARC in 2007 that they knew she was in the US and that she should stay there if she wanted to stay alive was the source of the Principal Applicant's fear. Because it was the events of 2007 that gave rise to her fear, the events of 2002 to 2004 were irrelevant evidence in assessing her delay in making a claim for protection.

The RPD's Decision Was Not Based on The Evidence Before it

[22] The Principal Applicant says that the RPD considered only the delay in making her claim, in violation of its duty to assess all the evidence it had before it. In *Huerta v Canada (Minister of Citizenship and Immigration)*, [1993] FCJ No 271, (1993) 157 NR 225 (FCA) at paragraph 4, the Federal Court of Appeal held that "the delay in making a claim to refugee status is not a decisive factor in itself. It is, however, a relevant element which the tribunal may take into account in assessing both the statements and the actions and the actions and deeds of a claimant." Further, following *Gonzalez v Canada (Minister of Citizenship and Immigration)* 2010 FC 1297, she says that a failure to file in the first safe country cannot be the sole factor in a refugee decision. The Principal Applicant argues that the RPD unreasonably treated her delay in filing a claim for protection as the decisive factor in its Decision.

[23] In addition to basing its Decision solely on the delay, the Principal Applicant says that the RPD did not consider the documentary evidence before it that supported her claim, notably the threatening notes received by her father, the request to the authorities for protection from her father, and her parent's declarations. The Principal Applicant also argues that the RPD did not consider the country documents that were before it, specifically the reports provided by Professor Brittain, Assistant Professor in the Department of Sociology of Acadia University, and Professor Chernick, Associate Professor of Government and Latin American Studies at Georgetown University in Washington, DC. Because the RPD did not base its findings on all the evidence before it, the Principal Applicant argues that the Decision was unreasonable.

[24] The Principal Applicant also says that the RPD did not adequately consider the evidence of risk to her father in Colombia. At the hearing and in her PIF she testified that in 2009 there was suspicious activity around the house where her father was staying and that, in 2010, her father received a strange phone call. Since her fear is grounded partially in FARC's continued targeting of her father in Colombia, and the Principal Applicant argues that the RPD did not take this evidence into account when analyzing her fear of persecution so that the Decision is unreasonable.

[25] Further, the Principal Applicant says that the RPD erred in its assessment of her profile in Colombia. The RPD found that because the family's activities at the farm were not sponsored by any entity, the family would not have a sufficiently high profile in the community to be targeted. The Principal Applicant argues that, although their activities were not sponsored by any group, they could still ground persecution on the basis of imputed political opinions. Further, because of her involvement in community activities through the farm, her profile in the community is similar to that of the family friend who was killed by FARC in 2002. Because the friend was targeted and killed by FARC, she is also at risk of death at the hands of FARC. The RPD's conclusion that she does not have the profile to be targeted by FARC was unreasonable.

The RPD's Finding on Credibility was Unreasonable

[26] The Principal Applicant further says that the RPD's finding on her credibility was based on speculation or conjecture. The RPD noted that findings of credibility can be based on delay in filing a claim for protection, following *Caicedo*, above. The RPD found that the father continued to work

until he lost his job, which conflicted with the Principal Applicant's testimony that he was in hiding. The Principal Applicant says this finding on credibility is based on speculation or conjecture and not on the evidence that was before the RPD.

[27] The Principal Applicant says that the RPD misstated her evidence with respect to her father's situation in Colombia. Contrary to the RPD's finding that her father worked until he lost his job, her testimony at the hearing and in her PIF establishes that her father quit his job in 2008 in order to collect severance pay to come to Canada.

[28] Finally, the Principal Applicant argues that the RPD failed to provide adequate reasons for its finding as to credibility.

The Respondent

The RPD's Conclusions were Reasonable

[29] The Respondent says that that it was open to the RPD to conclude as it did on the question of the Principal Applicant's fear of persecution. First, given that the first contact between FARC and the Principal Applicant's family was in 2002 and that she returned to Colombia several times after that, it was open to the RPD to conclude that she had no subjective fear of persecution. These actions, the Respondent argues, are the evidentiary basis for the RPD's conclusion that the subjective element for a well-founded fear of persecution did not exist. This conclusion was within the range of possible outcomes open to the RPD.

[30] Second, the Respondent argues that it was open to the RPD to reject the Principal Applicant's explanation that she returned to Colombia for psychiatric treatment and to visit her family. It was reasonable for the RPD to conclude that the Principal Applicant had no subjective fear of persecution when adequate facilities to meet her needs were available in the US.

[31] Third, against the Principal Applicant's argument that the RPD should not have considered her re-availment to Colombia between 2002 and 2004, the Respondent argues that this time period is relevant to the analysis of the Principal Applicant's fear of persecution. It was at the time of the 2002 murder of her family member that she was told she would be killed. The time period from 2002 to 2004, when the Principal Applicant did not make a claim for asylum in the US, is relevant because the 2002 murder was the source of her fear.

[32] Although the Principal Applicant left Colombia in 2002 and hoped she would not have to stay away for ever, the Respondent argues that this hope is not a sufficient explanation for her failure to claim protection during that period. Based on this delay, it was reasonably open to the RPD to find her actions inconsistent with those of someone with a well-founded fear of persecution.

[33] The Respondent also submits in written argument that the RPD's findings regarding state protection were reasonable.

[34] Finally, the Respondent argues that, as the Decision turns entirely on the lack of subjective fear and not on the Principal Applicant's credibility, her arguments with respect to credibility are

without merit. The RPD considered all of the materials that were before it and the Decision was reasonable.

Lack of Subjective Fear is Sufficient to Reject a Claim

[35] The Respondent points out that both the subjective and objective elements of fear of persecution must be found by the RPD in order ground a claim. Following the Supreme Court of Canada's decision in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, the Respondent notes that a lack of subjective fear is sufficient to reject a claim.

State Protection Findings were Reasonable

[36] The Respondent says that the RPD made findings on state protection that were based on the evidence before it. He points to the fact that the father notified the authorities of the threats against him and they said they could send policemen to watch the area. Though the protection provided was not 24 hours a day, the Applicants have not rebutted the general presumption that a state is able to protect its citizens.

The Applicants' Reply

An Objective Basis may Ground Subjective Fear

[37] In their reply, the Applicants note that, according to the decision of the Federal Court of Appeal in *Yusuf v Canada (Minister of Employment and Immigration)*, [1991] FCJ No 1049, 133

NR 391 (FCA), where an objective basis for a claimant's fear is found, it is unlikely that there will not be a finding of subjective fear. However, the RPD made no findings with respect to the objective basis for the Principal Applicant's fear.

The RPD Made No Finding as to State Protection

[38] The Applicants also note that the RPD made no determination as to the availability of state protection. They argue that this should not be an issue on judicial review of the Decision.

ANALYSIS

[39] The Decision is somewhat difficult to follow for various reasons. To begin with, the RPD says that the "determinative issue in this claim is a lack of well-founded fear persecution (*sic*) and state protection." State protection, however, is never mentioned again and there is no analysis or rationale offered in the Decision that could reasonably support a finding of adequate state protection.

[40] Secondly, the RPD directs most of its attention to the Principal Applicant's activities in the US between 2002 and 2004, her failure to seek protection in the US during that time, and her re-availment to Colombia during the same period.

[41] This focus misses the real basis of the claim. The Principal Applicant testified that she did not wish to leave Colombia permanently during the 2002-2004 period and that this remained her

position up to 2008. It was only when the FARC began to target her father in 2007 and later that she decided she could not return to Colombia because of the systematic persecution of her family by the FARC. In particular, she says that the FARC continues to target her father and has threatened to harm her if she returns. The RPD was not obliged to accept the Principal Applicant's account of these later events, or of what they signify in terms of risk to her, but the difficulty with the Decision is that the RPD's treatment of the recent events is somewhat brief and muddled. What is also unclear and problematic is the extent to which the RPD's focus and conclusions on the 2002-2004 period underpin and influence its later brief treatment of the current situation and future risk.

[42] In paragraph 19, the RPD has the following to say about the Principal Applicant's father:

> Similarly Situated Person: The claimant's father was deported by the US authorities and he continues to live in Colombia. The claimant testified that he is in hiding, yet he continued to work until he lost his job. I find the claimant is not credible.

[43] It is unclear whether the RPD is here making a general negative credibility finding against the Principal Applicant or whether it just does not find her account that her father is in hiding believable.

[44] In any event, the RPD appears to have misstated the evidence on this point. The evidence is that, after the father's encounter with the FARC on 14 January 2008, he and his wife contacted their respective employers and asked for permission to resign and collect severance pay so that they could leave the country. On 28 January 2008 both parents came to Canada and sought refugee protection. When they were determined to be ineligible they returned to Colombia. However, since

their return the evidence is that the father has been moving from place to place to avoid another confrontation with FARC.

[45] The RPD appears not to have understood what this evidence was. It simply rejects the Principal Applicant's evidence about her father on the basis that he cannot be in hiding because he continues to work. This is a fundamental and highly material misreading of the evidence by the RPD which, in my view, renders its conclusions considering the Principal Applicant's credibility unreasonable.

[46] A similar problem lies behind the RPD's conclusions in paragraph 20 of the Decision that the FARC only wanted to remove the father from the farm because "if they wanted to harm him he could easily have done so." The evidence was that the FARC requested that the father attend a meeting in 2008. He failed to attend that meeting. After that, the father made sure that the FARC could not find him or contact him. Hence, there is no evidence to support the RPD's conclusions on this point. The RPD is engaging in speculation when it says that the FARC merely wanted to remove the father from the farm. It is at this point that the influence of the RPD's focus upon the 2002-2004 period becomes a concern. It would appear that the RPD's conclusions that the Principal Applicant has no subjective fear because she failed to make a claim in the US between 2002-2004 has disposed the RPD to misconstrue the evidence related to the later period when the Applicant decided she could not return to Colombia, and that the RPD, instead of assessing the evidence, is engaging in negative speculation. In my view, this results in an unreasonable Decision that is just not safe and must be returned for reconsideration. See *Hassan v Canada (Minister of Citizenship and Immigration)*, [1996] FCJ No 250 at paragraph 7, *Smith v Canada (Minister of Citizenship and*

Immigration) 2009 FC 1194 at paragraph 49 and *Bains v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1144.

[47] The same predisposition is evident in the RPD's treatment of the Principal Applicant's profile in paragraph 21 of the Decision. Once again, the RPD ignored relevant evidence that the Principal Applicant fears the FARC because it is targeting her father in Colombia and has issued threats against her. This alleged persecution is based on the family's involvement in community activities. The FARC want - or have in the past wanted - the family to credit FARC for the community work and the family has refused. The family has a leadership profile in the community. The Principal Applicant's friend/cousin by marriage has already been killed by the FARC. The actual situation and profile of the Principal Applicant are ignored by the RPD on the basis that the "people that are targeted by the FARC are high-profile politicians, senior military or law enforcement officers, human rights activists and members of the judiciary." The Principal Applicant does not, according to the RPD, have the profile of someone who would be of interest to the FARC because

> The PC was a student in a different city and was taking on a heavy workload of eight courses per semester. She occasionally got involved in her family's ad hoc work with the locals. This work was not sponsored by any political party or any other organization. The alleged human rights work was not registered as a charity and was not a formal program.

[48] As I read this conclusion, the RPD does not decline to believe the facts attested to by the Principal Applicant concerning her family's activities in the community, or the FARC's attempt to take credit for them, and her cousin's death. The reasoning appears to be that the FARC will only target someone engaged in human rights work if that work is sponsored by a political party or any

other organization, or if the human rights work is registered as a charity. I do not think there is any evidentiary basis to support this conclusion. It is certainly counter-intuitive to say that a community profile that would interest the FARC can only be achieved through political or “other organization” sponsorship, whatever “other organization” might mean in the circumstances, which is not explained. See *Almrei v Canada (minister of Citizenship and Immigration)* 2005 FC 355 at paragraphs 90 and 93; *Hristova v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 132 at paragraph 22; and *Boucher v Morgan (FCA)*, [1989] FCJ No 554.

[49] All in all, I think the Applicants have made their case for judicial review. The Decision is out-of-focus, in some ways incomprehensible, and does not examine some of the actual evidence adduced or provide a reasonable justification for disbelieving that evidence. I think it has to be returned for reconsideration.

[50] Both sides agree there is no question for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is allowed. The decision is quashed and the matter is returned for reconsideration by a differently constituted RPD.

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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STYLE OF CAUSE:	**MARIA ALEJANDRA GALINDO RIVERA** **ANDRES FELIPE ROJAS RODRIGUEZ** - and - **THE MINISTER OF CITIZENSHIP AND IMMIGRATION**
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