

Federal Court



Cour fédérale

**Date: 20130710**

**Docket: IMM-8547-12**

**Citation: 2013 FC 760**

**Ottawa, Ontario, July 10, 2013**

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

**BETWEEN:**

**XIOMARA ERNESTINA GUERRERRO  
BUEZO (A.K.A. XIOMARA ERNESTI  
GUERRERO BUEZO) YUNIOR ALEXIS  
LEZAMA GUERRERO**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

I. Overview

[1] Ms Guerrero Buezo and her son, Yunior, sought refugee protection in Canada based primarily on their fear of Yunior's father, Marvin, in Honduras. In 1994, Marvin kidnapped and sexually assaulted Ms Guerrero Buezo when she was 15 years old. He held her captive for nearly two years, during which she gave birth to Yunior. In 1996, Ms Guerrero Buezo briefly escaped with

Yunior, but Marvin managed to find them and retrieve his son. Ms Guerrero Buezo, who fled to the United States in 2006, did not see Yunior for 13 years, during which he lived with his paternal grandparents.

[2] In 2007, Yunior witnessed a murder committed by a man known as “Big Mama”. As a result, he feared that Big Mama would try to kill him, too. He also feared gangs who had tried to recruit him. In 2009, Yunior fled to the US where he reunited with his mother. They arrived in Canada in 2011.

[3] A panel of the Immigration and Refugee Board considered the applicants’ claims and dismissed them on the basis that Yunior’s claim had no nexus to a Convention ground; their fear of Marvin was no longer well-founded; the fact that they had not sought asylum in the US showed a lack of fear of returning to Honduras; and they faced, at most, a generalized risk of harm in Honduras.

[4] The applicants argue that the Board’s decision was unreasonable because it failed to recognize their unique circumstances. Given the nature and long duration of Marvin’s persecution, the Board should have recognized that he will likely seek out and harm the applicants if they return to Honduras, especially now that the applicants have reunited. Further, Yunior still has a well-founded fear of persecution by Big Mama. Finally, the Board failed to appreciate that Ms Guerrero Buezo suffers from post-traumatic stress disorder, which explained why she did not claim asylum in the US. The applicants ask me to quash the Board’s decision and order a new hearing.

[5] I can find no basis for overturning the Board's decision. Its conclusion that the applicants have not presented sufficient evidence to establish more than a mere possibility of harm if they return to Honduras was not unreasonable.

II. Was the Board's decision unreasonable?

[6] In my view, the Board's decision was not unreasonable. While it is clear that the applicants endured serious physical and psychological harm, the Board reasonably found that the evidence did not show that their fear of persecution on return to Honduras was objectively well-founded.

[7] Ms Guerrero Buezo has not had any contact with Marvin since 1996; Yunion saw his father rarely during his life. At this point, their fear of Marvin is speculative.

[8] The same is true of Yunion's fear of "Big Mama". There were two occasions when this man could have harmed Yunion, yet he did nothing. Further, Yunion fears being harmed by a criminal. That fear has no nexus to a ground of persecution recognized by the Refugee Convention.

[9] While I agree with the applicants that the Board should have considered the evidence relating to their psychological well-being before concluding that their failure to claim asylum in the US showed a lack of subjective fear, that finding was not essential to the Board's decision. Its main conclusion was that the evidence did not show that their fear was objectively well-founded.

[10] Finally, the Board reasonably concluded that Yuniór's fear of gangs was based on a generalized risk. The gangs had not singled Yuniór out for any particular attention – many young men are pressured to join gangs in Honduras.

[11] Therefore, I cannot conclude that the Board's decision was unreasonable.

### III. Conclusion and Disposition

[12] The Board's decision represented a defensible outcome based on the facts and the law. I must, therefore, dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

[13] I would point out, however, that the applicants' circumstances appear to support a strong claim for humanitarian and compassionate relief, and I urge them to apply for it.

**JUDGMENT**

**THIS COURT’S JUDGMENT is that:**

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

“James W. O’Reilly”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-8597-12

**STYLE OF CAUSE:** XIOMARA ERNESTINA GUERRERO BUEZO, ET  
AL  
v  
MCI

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 12, 2013

**REASONS FOR JUDGMENT  
AND JUDGMENT:** O'REILLY J.

**DATED:** JULY 10, 2013

**APPEARANCES:**

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Michael Butterfield FOR THE RESPONDENT

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