

Federal Court



Cour fédérale

Date: 20130712

Docket: IMM-8631-12

Citation: 2013 FC 786

Ottawa, Ontario, July 12, 2013

PRESENT: THE HONOURABLE MR. JUSTICE PHELAN

BETWEEN:

**BRAULIA GUADALUPE RANGEL GOMEZ
OMAR ROBERTO QUEVEDO CRUZ
LORENA GEORGETTE CARDENAS RANGEL
KARLA YORDANA CARDENAS RANGEL**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] This judicial review concerns the negative PRRA decision by the PRRA Officer [Officer] regarding the Applicants. The judicial review of the adverse deferral of removal decision (IMM-10846-12) has been adjourned pending the results of this judicial review.

II. BACKGROUND

[2] The Applicants are citizens of Mexico. Omar Quevedo Cruz is the younger brother of Brenda Quevedo Cruz (who is not an Applicant). Brenda is awaiting trial in Mexico for the kidnapping and murder of Hugo de Wallace.

[3] Braulia Guadalupe Rangel Gomez is Brenda's maternal aunt. Lorena Rangel and Karla Rangel are Braulia's daughters and Omar's cousins.

[4] In 2008 Omar, his aunt and her two daughters fled to Canada fearing persecution from Isabel de Wallace, the mother of the murdered Hugo de Wallace (Isabel is sometimes referred to as Isabella or Isabelle as well as Isabel). Isabel de Wallace is alleged to be a person of influence in the higher echelons of Mexico society.

[5] Brenda and others have been accused of the kidnapping and murder of Hugo de Wallace. Brenda had to be extradited from the United States to Mexico. All of the accused have, it is alleged, been tortured to extract confessions; all except Brenda have confessed to the kidnapping and murder. Brenda's lawyer is said to have been harassed, imprisoned on bogus charges for 50 days and removed herself from Brenda's case upon release due to continued threats.

[6] The Applicants' claim is a multi-layered, confusing narrative, the central thesis of which is that Isabel de Wallace is "pulling" the Mexican authorities' and courts' "strings" to frighten the accused and their families with the intent of extracting confessions for the murder of her son.

[7] The Applicants are failed refugee claimants. One of the findings of the Refugee Protection Division [RPD] was that state protection was available to them. The Officer found that there were no new or forward-looking personalized risks that were not previously considered by the RPD.

This state protection finding was not challenged in this judicial review until after the Respondent made their submissions – an issue to be addressed later.

[8] In assessing the Applicants' risk, the Officer noted that the RPD had refused the claim in part because of a lack of clear and convincing evidence. The risks asserted in the PRRA were based on the same assertions as were before the RPD.

[9] The Officer found that none of the Applicants are wanted in Mexico for their suspected involvement in the murder of Isabel de Wallace's son. The Officer examined the issue of "similarly situated" persons and the evidence that the Applicants were threatened through letters – a low probative value was placed on these vague threats.

[10] The Officer concluded, with respect to events related to Brenda's Mexican lawyer, that there is no objective documentary evidence corroborating this story and moreover, as a criminal lawyer, she is not similarly situated to the Applicants.

[11] As to several other allegations, the Officer found that the absence of objective documentary evidence undermined these allegations.

[12] The Officer was not persuaded, because of an absence of sufficient documentary evidence, that Isabel de Wallace enjoys the impunity she is alleged to have nor is there sufficient support for the implications of a connection between her and the alleged torture of the imprisoned suspects.

[13] The most telling conclusion is that in respect of similarly situated persons. The Applicants alleged that the families of suspects have been threatened. However, the Officer notes that the Applicants' family members who remain in Mexico, including four of Braulia's sisters and Omar's parents and grandparents, have not been threatened. The Officer observes that it would be reasonable to assume, if these risks were credible, that in the four years the Applicants were in Canada, these family members would have been similarly threatened. They were not.

III. ANALYSIS

A. *Standard of Review*

[14] The standard of review of a PRRA officer's decision is reasonableness as held in *Da Moto v Canada*, 2008 FC 386 at paras 13, 15, 166 ACWS (3d) 552.

B. *New Issues*

[15] As to the issue of state protection, the Applicants filed a Further Memorandum of Argument in which they raise the new issue – the reasonableness of the Officer's state protection finding.

[16] The Respondent objects to the raising of this new issue after submissions were closed and claims prejudice in having to deal with a subject matter not previously raised.

[17] Whether to allow a new issue to be raised is a matter of the exercise of the Court's discretion (*Al Mansuri v Canada (Minister of Public Safety and Emergency Preparedness)* 2007 FC 22, 60 Admin LR (4th) 228). This is not a circumstance where the Court should exercise its discretion in favour of the Applicants.

[18] All the facts and matters relevant to the state protection analysis were known to the Applicants. In fact, the issue of state protection and the essential facts raised in the PRRA had already been alive to and dealt with in the RPD determination. The Applicants' submissions smack of an attempt to re-open state protection back to the RPD decision – an improper effort to bootstrap this case.

[19] The Applicants' excuse for trying to raise state protection at this later date is that the Respondent referred to "country condition" in their Written Submissions. Having considered those submissions, they did not open up the state protection issue. Even if they had, the proper procedure was to deal with the matter in Reply. The Applicants did not do so but proceeded to file their Reply and then to file a Further Memorandum of Argument.

[20] The Further Memorandum is struck and the issue of state protection is not part of this judicial review.

C. *Reasonableness of Decision*

[21] I find no merit in the argument that the Officer ignored evidence. The Officer considered the issue of similarly situated persons, including the criminal lawyer, but found the circumstances of the

lawyer to be different from that of the Applicants (and their family). This was a matter which was open to the Officer.

[22] The Officer's concerns for uncorroborated evidence were reasonable in those circumstances. The narrative is complex and confusing with allegations flung hither and thither. What the Officer sought was objective evidence from reliable sources – a reasonable requirement. In the weighing of evidence, the Officer can reasonably favour certain evidence, as was done.

[23] The Officer did not disregard evidence and allegations of other persons being threatened, and of accused being tortured. However, the Officer preferred the established fact that, in the face of this alleged risk to various families' members, the Applicants' family has been left essentially untouched for four years.

[24] Considering the decision as a whole, I can find nothing unreasonable in the Officer's assessment of evidence or in the conclusions reached, individually or cumulatively.

IV. CONCLUSION

[25] This judicial review will be dismissed. There is no question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8631-12

STYLE OF CAUSE: BRAULIA GUADALUPE RANGEL GOMEZ ET AL v
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JULY 4, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT:** PHELAN J.

DATED: JULY 12, 2013

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