Federal Court  Cour fédérale

Date: 20151029

Docket: IMM-978-15

Citation: 2015 FC 1224

BETWEEN:

JONATHAN BENJAMIN HERNANDEZ MORENO
GABRIELA CRAVIOTO FERNANDEZ
VALERIA HERNANDEZ CRAVIOTO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION AND THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

JUDGMENT AND REASONS

ANNIS J.

[1] This is an application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA or the Act] challenging a decision by a Pre-Removal Risk Assessment officer [the Officer] rejecting the Applicants' Pre-Removal Risk

Assessment [PRRA] application. The Applicants are seeking to have the decision set aside and have the matter referred back for redetermination by a different officer.

[2] For the reasons that follow, the application is allowed.

I. Background

[3] The Principal Applicant [PA], Jonathan Benjamin Moreno, and his common-law spouse, Gabriela Cravioto Fernandez and their daughter, Valeria Hernandez Cravioto are all citizens of Mexico.

[4] The PA's common-law spouse and daughter entered Canada on October 9, 2010. The PA entered Canada on November 29, 2010.

[5] The Applicants made a refugee claim on January 13, 2011 which was rejected by the Refugee Protection Board [RPD] for lack of credibility. Leave for judicial review of the RPD's decision was granted on February 28, 2012, but the claim was ultimately denied on May 14, 2012.

[6] On July 3, 2012, the Applicants' Humanitarian and Compassionate grounds application was received by Citizenship and Immigration Canada [CIC], but it was denied on July 30, 2013.

[7] On September 18, 2012, the Applicants initiated their first PRRA application, which was rejected on March 6, 2013. The Applicants applied for leave to have this decision judicially

reviewed, but withdrew their application when the Minister's Delegate waived the Applicants' PRRA waiting period.

[8] As a result, the second PRRA was initiated on January 31, 2014 and subsequently denied on January 30, 2015. The Applicants' second PRRA is the decision currently under judicial review.

II. Impugned Decision

[9] The Officer concluded that the Applicants would not face a risk of persecution, a danger of torture, a risk to life or a risk of cruel and unusual treatment or punishment in the event of their return to Mexico.

[10] The Officer found the Applicants' medical evidence to have low probative value in addition to offering little to show a nexus between the medical conditions and any of the five Convention grounds of section 96 of the Act.

[11] Moreover, the Officer found that several of the articles submitted by the Applicants were irrelevant as they pertained to the risks associated with journalism in Mexico and did not address the risk particular to the Applicants.

[12] The Officer further found that the Applicants provided insufficient evidence to demonstrate the La Familia Michoacana [LFM] drug trafficking organisation's threats towards the PA's father since relocating to Cancun. In addition, the fact that the LFM threatened the PA's

father-in-law in order to obtain information on the whereabouts of the PA and his family was an indication that the LFM did not have the capabilities to locate individuals outside the boundaries of their influence.

[13] Lastly, the Applicants' country condition documents indicated that although the LFM operated in parts of Central Mexico almost half a dozen states were relatively free of violence. The Officer found that the Applicants could have therefore relocated as there was little evidence to demonstrate that the LFM's influence extended outside the boundaries of the aforementioned region. Based on this finding, the Officer found the Yucantan and Baja California Sur areas to be suitable Internal Flight Alternative [IFA] for the Applicants.

I. Issue

[14] I find that this application raises the single issue of whether the PRRA Officer denied the Applicants procedural fairness by failing to provide them with an opportunity to respond to the issue of an IFA in Mexico?

II. Standard of Review

[15] Procedural fairness issues are reviewed on a standard of correctness, with some deference owed the decision-maker in the discretionary elements of their application. As stated in *Re: Sound v Fitness Industry Council of Canada*, 2014 FCA 48 at paragraph 39, "administrative discretion ends where procedural unfairness begins … [and] a reviewing court must determine for itself on the correctness standard whether that line has been crossed." In this matter, where

the issue is whether any procedural fairness was required, the standard of review is that of correctness.

III. Analysis

Did the PRRA Officer err by failing to provide the Applicants with notice of the IFA issue?

[16] The Applicants submit that the Officer erred by failing to properly raise the question of IFA before the Applicants and by failing to afford the Applicants the opportunity to address the question of an IFA with evidence and argument.

[17] In *Palaguru v Canada (Minister of Citizenship and Immigration)*, 2009 FC 371 [*Palaguru*] Justice Russell concluded that the obligation to provide notice of an IFA analysis depends on the proceedings prior to the PRRA process. Where a PRRA officer examines an IFA in new or previously unconsidered locations without providing reasonable notice to an applicant, the Court determined that this constitutes a breach of natural justice.

[18] I am in agreement with this principle inasmuch as by failing to raise an IFA in previous procedures, an expectation or reliance interest arises, such that an applicant may conclude that it is not necessary to consider an IFA when submitting the application. *Palaguru* obviously takes precedence over CIC's Pre-removal Risk Assessment guidelines that indicate the Officer should consider the issue of an IFA without the requirement to provide notice to the applicant.

[19] The facts before me indicate that an IFA was not considered in previous proceedings. Accordingly, notification should have been provided so as to provide the Applicants an opportunity to submit evidence on the issue before the Officer ruled on it.

[20] I disagree with the Respondent that based on the Applicant's submitted evidence an IFA issue was "obviously" in play. The documents referred to by the Respondent, including the United States Congressional Research document, do not describe anything "obvious" regarding an IFA in the Applicant's case. Very little mention is made in the Applicants' documents referring to the two areas flagged by the Officer as possible IFAs. Moreover, the documents bring forth a secondary consideration that the Applicant is still at risk.

[21] I also disagree with the Respondent's submission that the decision in *Navaratnam v Canada (S.G.)*, 2005 FC 3 applies to this matter. The Court found in that matter that the Officer's "reasons indicate that she found that the applicants were simply not at risk in Sri Lanka." In this matter the Officer did not conclude that the Applicants were not at risk in Mexico, which is why she identified an IFA.

IV. Conclusion and Certified Question

[22] The application is allowed and the matter is directed to be sent back for redetermination by another officer. No questions are certified for appeal.

[23] The Applicants' suggested a question for certification essentially reprising the *Palaguru* decision. Given my decision accepting the principle expressed in this case, there is no basis for a certified question.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is allowed, the matter is directed to be sent back for redetermination by another Officer and no questions are certified for appeal.

"Peter Annis"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-978-15
STYLE OF CAUSE:	JONATHAN BENJAMIN HERNANDEZ MORENO GABRIELA CRAVIOTO FERNANDEZ VALERIA HERNANDEZ CRAVIOTO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION AND THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
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