Federal Court



# Cour fédérale

Date: 20170301

**Docket: IMM-2853-15** 

**Citation: 2017 FC 247** 

Ottawa, Ontario, March 1, 2017

PRESENT: The Honourable Madam Justice Mactavish

**BETWEEN:** 

#### LIGIA MERCEDES ROSALES STEVES

**Applicant** 

and

# THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

#### **JUDGMENT AND REASONS**

[1] Ligia Mercedes Rosales Steves is a Convention refugee from Nicaragua. After she was granted refugee protection, an immigration officer determined that she was inadmissible to Canada on security grounds because of her past membership in the Frente Sandanista de Liberacion Nacional (FSLN), an organization for which there are reasonable grounds to believe has engaged in terrorism.

- [2] In June of 2002, Ms. Rosales Steves filed an application seeking Ministerial relief from the inadmissibility finding, in accordance with then-section 19(1)(f)(iii)(B) of the *Immigration Act*, R.S.C. 1985, c. I-2. As a result of the coming into force of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 in 2003, Ms. Rosales Steves' application for Ministerial relief was ultimately determined under subsection 34(2) of *IRPA*.
- [3] Subsection 34(2) of *IRPA* empowers the Minister of Public Safety and Emergency Preparedness to grant relief from a finding of inadmissibility under subsection 34(1) of the Act where an applicant can satisfy the Minister "that their presence in Canada would not be detrimental to the national interest".
- [4] For reasons that have not been fully explained, no decision was made in relation to Ms. Rosales Steves' application for approximately 13 years. However, in a decision dated May 27, 2015, her request for Ministerial relief was denied by the Honourable Steven Blaney, who was then the Minister of Public Safety and Emergency Preparedness.
- [5] Ms. Rosales Steves submits that she was treated unfairly in the Ministerial relief process, as she was denied an extension of time to allow her to obtain the results of requests that she had made under the *Privacy Act*, R.S.C. 1985, c. P-21, before she had to make submissions with respect to a draft briefing note that had been prepared for the Minister. She also submits that the Minister's decision was unreasonable, as he failed to properly assess whether she presented a threat to national security and public safety.
- [6] For the reasons that follow, I have concluded that Ms. Rosales Steves has not established that she was treated unfairly in the Ministerial relief process, nor has she demonstrated that the

Minister's decision was unreasonable. Consequently, her application for judicial review will be dismissed.

### I. Background

- [7] Ms. Rosales Steves is a citizen of Nicaragua. In 1978 or 1979, she volunteered to join the youth wing of the FSLN. She has stated that she was prompted to join because of her support for the FSLN's political positions. During the time that she was a member of the FSLN's youth wing, Ms. Rosales Steves attended meetings, distributed pamphlets and other communications about the group, and learned about Marxist-Leninism. She also received military and weapons training.
- [8] In 1979, Ms. Rosales Steves was involved in a confrontation between the FSLN and members of the Somoza regime in the course of which she fired shots at members of the National Guard. The soldiers returned fire, injuring Ms. Rosales Steves in the eye.
- [9] After the overthrow of the Somoza regime in 1979, Ms. Rosales Steves became an official with the traffic police in the new FSLN government. During this time, she witnessed an incident in which a member of the FSLN police murdered a former Somoza official in the street.
- [10] In 1980 or 1981, Ms. Rosales Steves joined the FSLN's armed force, the Ejercito Popular Sandinista (EPS). Mr. Rosales Steves has variously stated that she was conscripted into the EPS, that she joined the force in order to be able to attend university, and that she joined voluntarily.
- [11] While part of the EPS, Ms. Rosales Steves received additional weapons training, including learning how to operate anti-aircraft artillery. Her duties with the EPS included performing agricultural work, working as a radio operator, and working as a nurse.

- [12] Ms. Rosales Steves also performed activities in conjunction with the Military Police Special Forces Branch, in which she assisted in forcibly displacing various indigenous peoples from their territory. However, in an interview with the Canadian Security Intelligence Service, Ms. Rosales Steves indicated that she objected to this assignment, for which she was reprimanded by the EPS.
- [13] In 1985, Ms. Rosales Steves was tasked with analysing the materials that were to be used in a construction project. She eventually realized that she was assisting with an illegal deforestation project and attempted to leave the military area in which she was working.

  Ms. Rosales Steves was eventually caught and imprisoned for several months, during which time she says that she was sexually assaulted repeatedly by the base commander.
- [14] In 1987 or 1988, Ms. Rosales Steves was assigned to design a secret military base that she believed was to be used for the interrogation and torture of prisoners. She states that she sought several re-assignments from this project, and that she also made several requests to be discharged from her military service. Her requests were denied, however, because she "knew too much".
- [15] In 1988 and 1989, Ms. Rosales Steves left Nicaragua on two occasions. In 1988, she came to Canada to visit her parents, returning to Nicaragua at the end of her visit. In 1989, she says that she resigned from the EPS and moved to Italy to work as an artist. According to Ms. Rosales Steves, her travels abroad were an attempt to disassociate herself from the EPS, as she had become disillusioned with the organization because of its use of violence.

- [16] Ms. Rosales Steves returned to Nicaragua in 1990, after the FSLN had lost power, whereupon she rejoined the EPS. Ms. Rosales Steves has variously stated that she was coerced into doing so, that she was kidnapped and forced to do so, and that she did so because of her belief that the EPS may have changed with the FSLN's loss of power.
- [17] During the years between 1990 and 1993, Ms. Rosales Steves states that she was subjected to several threats and assassination attempts because of her knowledge of the EPS' activities. In 1992, she was sent to El Salvador to collect arms for the EPS. However, she says that she refused to complete the transaction because she no longer wanted to be involved in the EPS. As a result, she fled El Salvador, returned to Nicaragua, and went into hiding.
- [18] In May of 1993, Ms. Rosales Steves travelled to Costa Rica to obtain a visitor's visa to come to Canada. She then returned to Nicaragua. On May 30, 1993, Ms. Rosales Steves left Nicaragua for Canada.

#### II. Ms. Rosales Steves' Immigration History

- [19] Several months after her arrival in Canada, Ms. Rosales Steves claimed refugee protection. She was determined to be a Convention refugee in 1994. One week later, Ms. Rosales Steves applied for Permanent Residence in Canada. Her application was approved in principle on October of 1994.
- [20] Ms. Rosales Steves was interviewed by CSIS regarding her involvement with the FSLN and EPS in 1995, and was interviewed again, this time by Citizenship and Immigration Canada in January of 2002.

- [21] On May 30, 2002, Ms. Rosales Steves was advised by CIC that it was of the opinion that she was inadmissible to Canada for being a member of a terrorist organization, pursuant to section 19(1)(f)(iii)(B) of the *Immigration Act*. She was further advised that no further consideration would be given to her application for Permanent Residence. CIC also advised Ms. Rosales Steves that she could apply for Ministerial relief pursuant to paragraph 19(1)(f) of the *Immigration Act*. Ms. Rosales Steves applied for Ministerial relief from her inadmissibility on June 10, 2002.
- In February of 2006, Ms. Rosales Steves was interviewed by the Canada Border Services Agency with respect to her involvement with the FSLN and the EPS. Some seven years later, in March of 2013, she was provided with a briefing note from the President of the CBSA recommending that the Minister deny her request for relief from her inadmissibility. Ms. Rosales Steves provided submissions in response to this draft in May of 2013.
- [23] The draft recommendation prepared for consideration by the Minister was reviewed in light of the decision of the Supreme Court of Canada in *Agraira v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559. A revised draft recommendation was then provided to Ms. Rosales Steves by the CBSA on September 17, 2014. This revised recommendation once again recommended that she be denied Ministerial relief. Ms. Rosales Steves was given 60 days to respond to the draft recommendation.
- [24] On October 10, 2014, Ms. Rosales Steves' then-counsel requested that she be provided with an extension of time until December 10, 2014 to provide her submissions with respect to the draft recommendation. The reason given for this request was to allow Ms. Rosales Steves to

retain counsel with more experience in this type of matter. This request was granted by the CBSA.

- [25] Ms. Rosales Steves retained the Refugee Law Office in early December, 2014, and Access to Information and Privacy (ATIP) applications were filed on her behalf with CSIS, the CBSA, and CIC on December 3, 2014. Counsel says that these requests were made so that they could become more fully familiar with the lengthy and complex history of the case. That same day, Ms. Rosales Steves' new counsel asked for a further extension of 90 days in which to provide her submissions so that counsel could become familiar with the file, and to allow for the receipt of responses to the ATIP requests that had just been filed on her behalf. This time, the CBSA was only willing to provide Ms. Rosales Steves with an additional 60 days to provide submissions.
- [26] By early February 2015, Ms. Rosales Steves had received a response to her ATIP request from CSIS. She had not, however, received a response from the CBSA or CIC. Consequently, she asked for a further extension of time. In response, the CBSA noted that it was not obliged to hold off submitting its recommendation to the Minister until the ATIP requests had been complied with. Nevertheless, the CBSA gave Ms. Rosales Steves a further extension until February 23, 2015 to provide her submissions. She was also told that she could provide additional submissions right up until the time that the Minister made his decision regarding her application for Ministerial relief.
- [27] On February 23, 2015, Ms. Rosales Steves provided what she referred to as "preliminary submissions" in response to the draft recommendation. No further documents or submissions were provided to the CBSA by Ms. Rosales Steves, and on May 12, 2015, the President of the

CBSA provided his report to the Minister, recommending that she be denied Ministerial relief. On May 27, 2015 the Minister denied Ms. Rosales Steves' request for Ministerial relief, stating that he was "not satisfied that the presence of Ms. Ligia Rosales Steves in Canada would not be detrimental to the national interest."

#### III. Was Ms. Rosales Steves Treated Unfairly in the Ministerial Relief Process?

- [28] As was noted in the introduction to these reasons, Ms. Rosales Steves submits that she was denied procedural fairness in the Ministerial relief process as a result of the refusal of the CBSA to provide her with a further extension of time in which to provide her submissions in response to the draft briefing note. Because she was required to make her submissions prior to receiving responses to some of her ATIP requests, Ms. Rosales Steves says that her counsel was prevented from reviewing her entire immigration history, rather than just the documentation that the CBSA was relying upon in support of its recommendation to deny her application for Ministerial relief.
- [29] I do not accept this argument.
- [30] Where an issue of procedural fairness arises, the Court's task is to determine whether the process followed by the decision-maker satisfied the level of fairness required in all of the circumstances: see *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at para. 43, [2009] 1 S.C.R. 339.
- [31] The Supreme Court held in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at paras. 30-34, 174 D.L.R. (4th) 193, that the principles of procedural fairness require that that a party be given a meaningful opportunity to participate in a proceeding

and present their case fully and fairly. This principle is to be applied flexibly, depending on the nature of the proceeding, with a focus on the overriding question of whether the party was afforded a meaningful opportunity to participate in the proceeding.

- [32] It is clear that Ms. Rosales Steves was given a meaningful opportunity to participate in the Minister's decision making process: she was provided with an earlier draft of the briefing note in March of 2013, and the revised briefing note was provided to her on September 17, 2014. Ms. Rosales Steves then took some two-and-a-half months to retain new counsel. She was provided with multiple extensions of time in which to respond to the draft recommendation of the President of the CBSA. Even when the CBSA stated that she would have to get her submissions in by February 23, 2015, she was also told that she would be able to make additional submissions right up until the time that the Minister made his decision regarding her application. The Minister made his decision on May 27, 2015, and to that point, no further submissions had been provided by Ms. Rosales Steves.
- [33] Ms. Rosales Steves had obtained a quick response from CSIS with respect to her ATIP request, and she had CSIS' documents by early February of 2015. It would, therefore, have been open to Ms. Rosales Steves to address these documents in her February 23, 2015 submissions, if she was of the view that anything in the documents would be helpful to her. She evidently received a response to her ATIP request from CIC on May 20, 2015. She could thus have made submissions with respect to the CIC documents if she thought that they would help her in some way, as no decision had been rendered by the Minister at that point in time.

- [34] According to her counsel, Ms. Rosales Steves did not want to make any submissions in relation to the documents that she obtained through the ATIP process until she had received responses to all three of her requests.
- The CBSA did not respond to Ms. Rosales Steves' ATIP request until December 8, 2015 just over a year after her request had been filed. As Ms. Rosales Steves points out, it was the CBSA that was being dilatory in responding to her ATIP request, while it was, at the same time, pressing her to respond to the draft recommendation. She further submits that it ill-behooved the CBSA to push her for a speedy response to the draft recommendation when it had taken the Agency over a decade to process her application for Ministerial relief.
- [36] The difficulty with Ms. Rosales Steves' argument is that even if I were to accept that she should have been granted a further extension of time in which to make her submissions, there is no evidence before me that she was prejudiced in any way by being forced to provide a response to the draft recommendation of the CBSA President before she had been received a response from the CBSA with respect to her ATIP request.
- [37] Ms. Rosales Steves provided detailed and thorough submissions in February of 2015 in response to the draft recommendation of the President of the CBSA, and she has not explained what else she might have said that could have helped her case, had she been given additional time to make submissions.
- [38] While it is true that applications for judicial review ordinarily proceed on the basis of the record that was before the original decision-maker, additional evidence may be admitted in limited circumstances. One such circumstance is where an issue of procedural fairness arises: see

Ontario Assn. of Architects v. Assn. of Architectural Technologists of Ontario, 2002 FCA 218 at para. 30, [2003] 1 F.C.R. 331.

- [39] Ms. Rosales Steves has now received a response to all three of her ATIP requests. It would, therefore, have been open to her to provide the Court with an affidavit in support of her application for judicial review that included copies of the documents that she says would have helped her case, had she been afforded the opportunity to put them before the Minister. She could also have explained the significance of the documents, and how she had been prejudiced by her inability to put them before the Minister. However, she chose not to provide any such affidavit.
- [40] As Justice Evans observed in *Lin v. Canada* (*Minister of Citizenship and Immigration*) (1999), 171 F.T.R. 289, [1999] F.C.J. No. 1148, not every procedural deficiency requires that there be a new hearing. Adducing evidence that could have changed the outcome of the hearing will assist the Court in deciding whether a denial of procedural fairness was sufficiently serious as to require a new hearing: at para. 23.
- [41] Ms. Rosales Steves has not provided any evidence to show that there was anything in the files of CSIS, CIC or the CBSA that could have assisted her in any way, nor has she identified any information that was obtained through her ATIP requests that was previously unknown to her. In the absence of any evidence of prejudice to Ms. Rosales Steves that resulted from the denial of a further extension of time, I am not persuaded that there has been a procedural unfairness that would justify the quashing of the Minister's decision with respect to her application for Ministerial relief.

#### **IV.** Was the Minister's Decision Reasonable?

- [42] A decision to grant or withhold Ministerial relief is discretionary in nature, and is, therefore, entitled to deference from a reviewing Court: *Agraira* above at paras. 49-50. The standard of review applicable to the Minister's decision in this case is therefore that of reasonableness.
- [43] Before addressing Ms. Rosales Steves' arguments, it is important to start by noting that it is the applicant for Ministerial relief who bears the onus of satisfying the Minister that his or her presence in Canada would not be detrimental to the national interest: *Al Yamani v. Canada* (*Minister of Public Safety and Emergency Preparedness*), 2007 FC 381 at para. 69, 311 F.T.R. 193.
- [44] Where, as here, the Minister adopts the recommendation contained in a CBSA briefing note, the briefing note will be taken to be the Minister's reasons: *Al Yamani*, above at para. 52; *Haj Khalil v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2014 FCA 213 at para. 29, [2014] F.C.J. No. 964.
- [45] The test to be applied by the Minister in deciding whether Ministerial relief should be granted in a given case was identified by the Supreme Court in *Agraira*, above. There, the Court held that "a broad range of factors may be relevant to the determination of what is in the "national interest", for the purposes of s. 34(2)": at para. 87. In general, the Minister should be guided by the factors articulated in CIC's Guidelines regarding "National Interest", which include:
  - 1. Will the applicant's presence in Canada be offensive to the Canadian public?

- 2. Have all ties with the regime/organization been completely severed?
- 3. Is there any indication that the applicant might be benefiting from assets obtained while a member of the organization?
- 4. Is there any indication that the applicant may be benefiting from previous membership in the regime/organization?
- 5. Has the person adopted the democratic values of Canadian society?

Agraira, above at para. 87 & Appendix D

- [46] An interpretation of the national interest that relates primarily to national security and public safety, but which does not exclude the other considerations is reasonable: *Agraira*, above, at para. 88.
- [47] Ms. Rosales Steves does not dispute that she was a "member" of the FSLN, nor does she dispute that the FSLN engaged in terrorism. She submits, however, that there were several reasons why the Minister's decision was not reasonable.
- [48] In assessing the national interest in this case, Ms. Rosales Steves submits that the Minister erred by focusing exclusively on the FSLN's past use of violence. The Minister failed to consider and weigh the present nature of the FSLN, including the fact that it had become the democratically-elected government of Nicaragua, and that the Government of Canada maintains diplomatic relations with the FSLN government. The Minister also failed to consider and weigh the fact that the FSLN has not been listed as a proscribed terrorist entity by the Government of Canada, or in any other country for that matter.

- [49] However, a review of the Minister's reasons discloses that he specifically addressed the fact that the FSLN was not a listed entity, noting that this was not a required element of either the inadmissibility or Ministerial relief provisions of *IRPA*. The Minister also made reference to the FSLN's use of terrorism to achieve political goals before, during and after the organization's assumption of power in Nicaragua as running contrary to Canada's national interest and Canadian values.
- [50] The Minister also noted the improvement in bilateral relations between Canada and Nicaragua. However, he observed that the activities of organizations that can give rise to an individual's inadmissibility are not limited to the organization's current activities, but also include the past activities of the organization.
- [51] Ms. Rosales Steves argues that while the Minister's assessment of the national interest will focus primarily on considerations of national security and public safety, he was also required to consider a wide variety of other factors, as set out in Appendix D to Chapter 10 of CIC's Inland Processing Operational Manual. In basing his decision on her past involvement with the FSLN, Ms. Rosales Steves says that the Minister failed to consider that she has not been associated with the organization for more than 20 years, and that she has no criminal record in Canada.
- [52] It is, however, clear from a review of the Minister's reasons that consideration was given to all of the evidence and arguments that had been presented by Ms. Rosales Steves. While he clearly placed great weight on concerns regarding the impact that Ms. Rosales Steves' continued presence in Canada would have on national security and public safety, the Minister specifically stated that he had also considered other factors, including her lack of a criminal record and the

fact that she had had no association or involvement with the FSLN for more than 20 years. The Minister also had regard to Ms. Rosales Steves' status as a Convention refugee, her establishment in Canada, her involvement in her community, and the assistance she provides her family.

- [53] Ms. Rosales Steves says that the Minister also erred by failing to squarely assess whether she presents a threat to national security or the public safety. She submits that in finding that her past membership in a terrorist organization was determinative of her request for relief, the Minister conflated the issues of inadmissibility and Ministerial relief. Ms. Rosales Steves notes that this Court has consistently held that it is an error for the Minister to deny relief simply because of an applicant's past membership in a terrorist organization. That is because the very purpose of subsection 34(2) of *IRPA* is to provide relief from a determination that a person is a past member of a terrorist organization: *Kanann v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FC 241 at para. 7, [2008] F.C.J. No. 301.
- I am not persuaded that the Minister erred by finding Ms. Rosales Steves' past membership in the FSLN to be determinative of her application for Ministerial relief. A careful review of the decision reveals that the Minister did not deny relief solely because Ms. Rosales Steves had been a member of a terrorist organization. The Minister also had regard to the nature and duration of her involvement in the organization (including the fact that her involvement was voluntary), and the fact that it had continued over a long period of time. The Minister also considered the fact that Ms. Rosales Steves had not attempted to disassociate herself from the organization once she witnessed the FSLN employ terrorism and violence in order to achieve its

political goals. Indeed, it was on this basis that the Minister determined that her application did not warrant relief.

- [55] Ms. Rosales Steves' argument that the Minister failed to adhere to the factors set out in Appendix D of *Agraira* should also be rejected. The Minister is not required to consider each factor set out in Appendix D, but is only required to consider the factors the Minister considers relevant to the specific facts of the case. The Minister clearly did so here, and, as such, his decision falls within the range of reasonable, acceptable outcomes given the facts and the law: *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 47, [2008] 1 S.C.R. 190.
- [56] I agree with the Minister that, at the end of the day, what Ms. Rosales Steves seeks is to have me re-weigh the evidence that was before the Minister and come to a different result. That is not the role of this Court sitting in review of a Ministerial decision.

#### V. Conclusion

- [57] For these reasons, Ms. Rosales Steves has not established that she was treated unfairly in the Ministerial relief process. I am, moreover, satisfied that the Minister's decision falls within the range of possible, acceptable outcomes given the facts and the law. Consequently, her application for judicial review is dismissed.
- [58] I agree with the parties that the case is fact-specific, and does not raise a question for certification.

# **JUDGMENT**

"Anne L. Mactavish"
Judge

#### **FEDERAL COURT**

## **SOLICITORS OF RECORD**

**DOCKET:** IMM-2853-15

STYLE OF CAUSE: LIGIA MERCEDES ROSALES STEVES v THE

MINISTER OF PUBLIC SAFETY AND EMERGENCY

**PREPAREDNESS** 

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 20, 2017

JUDGMENT AND REASONS: MACTAVISH J.

**DATED:** MARCH 1, 2017

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