

Federal Court



Cour fédérale

**Date: 20170320**

**Docket: IMM-3748-16**

**Citation: 2017 FC 290**

**Ottawa, Ontario, March 20, 2017**

**PRESENT: The Honourable Mr. Justice Gleeson**

**BETWEEN:**

**FRANCOISE MIREILLE ODY ESQUIVEL  
SERGIO RODOLFO MEDINA SALAZAR  
ALEJANDRA MEDINA ODY**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS AND JUDGMENT**

**I. Overview**

[1] The applicants, Ms. Francoise Mireille Ody Esquivel, her husband, Mr. Sergio Rodolfo Medina Salazar and their 15 year-old daughter Alejandra Medina Ody are citizens of Peru. The family arrived in Canada *via* the United States. They claimed protection on the basis that they had been assaulted and threatened by a former police officer in Peru.

[2] The Refugee Protection Division [RPD] dismissed the applicants' claim finding they lacked credibility and that Ms. Ody and Alejandra are entitled to acquire citizenship in Argentina.

[3] In seeking judicial review, the applicants submit that the RPD unreasonably relied upon a single contradiction related to one element of their narrative to discount all of their evidence. They further argue that the RPD erred by: (1) concluding that Argentine citizenship was available to Ms. Ody and Alejandra; and (2) by failing to independently assess Alejandra and Mr. Salazar's situation in this regard.

[4] I am of the view that it was unreasonable for the RPD to conclude that all of the applicants' evidence in support of the claim was discredited as a result of the single contradiction. However, the RPD reasonably concluded that Ms. Ody and Alejandra were entitled to obtain Argentine citizenship by complying with mere formalities. This finding was determinative of Ms. Ody's and Alejandra's claim. For the reasons that follow, the matter will be returned for re-determination but only as it relates to Mr. Salazar's claim for protection.

## II. Standard of Review

[5] The issues raised in this application relate to the RPD's findings of fact and the application of the law to those facts. These matters are to be reviewed against a reasonableness standard (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 51 [*Dunsmuir*] and *Sangmo v Canada (Minister of Citizenship and Immigration)*, 2016 FC 17 at para 15 [*Sangmo*]).

III. Analysis

A. *Did the RPD reasonably conclude that Argentine citizenship was available to Ms. Ody and Alejandra?*

[6] The RPD found that Ms. Ody's now deceased father was a citizen of Argentina and, under Argentinian law citizenship is available to children where a parent is a citizen. On this basis, the RPD concluded that Ms. Ody and Alejandra had a right to citizenship in Argentina and they had not established a risk of persecution or a need for protection under sections 96 or 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [IRPA] in Argentina. Relying on *Williams v Canada (Minister of Citizenship and Immigration)*, [2005] 3 FCR 429 [*Williams*], the RPD noted that protection will be denied where an applicant is entitled, through mere formalities, to acquire citizenship in a country where there is no well-founded fear of persecution.

[7] The applicants do not take issue with the test adopted by the RPD but argue that it misapprehended the evidence and unreasonably relied on a Wikipedia article regarding Argentine nationality laws. The applicants further submit that the RPD erred in not conducting an independent assessment of Alejandra's right to obtain citizenship as her mother was not born in Argentina. In written submissions the applicants also argued that the RPD had erred by failing to conduct an independent assessment of Mr. Salazar's right to Argentinian citizenship. The RPD made no finding in respect of Mr. Salazar and the applicants did not pursue this argument in oral submissions.

[8] The RPD's determination was not unreasonable. In *Crast v Canada (MCI)*, 2007 FC 146 [Crast], Justice Roger Hughes summarized the principles identified in the jurisprudence where a refugee claimant may have connections with several states (*Canada (Attorney General) v Ward*, [1990] 2 FCJ No 209, *Williams* and *Katkova v Canada (MCI)*, [1997] FCJ No 549. At paragraph 20 of *Crast*, Justice Hughes states:

[20] From these authorities, the principles of law that emerge are:

1. The Board must investigate whether the claimant is unwilling to avail him or herself of the protection of each and every country of nationality (*Ward*).
2. When available, the home state protection is the claimant's sole option (*Ward*).
3. Where citizenship in another country is available, a claimant is expected to make attempts to acquire it (*Williams*).
4. A claimant is not expected to make attempts to acquire citizenship in a state with whom there is no genuine connection and physical link (*Katkova*).
5. A claimant is not expected to make attempts where he or she is unwilling to do so where the unwillingness arises from fear of persecution (*Williams*).
6. Refugee status will be refused when it is shown that it is within the claimant's power to acquire that other citizenship (*Williams*).

[9] In this case, the RPD identified the issue of Argentinian citizenship in advance of the hearing and disclosed documentation relating to the issue. That documentation did include a Wikipedia extract. However, the RPD also had other documentary evidence before it, including extracts from the webpage of the Consulate General of Argentina in Sydney, Australia and the Consulate General of Argentina in Montreal, Canada.

[10] Reliance on Wikipedia evidence has been found by this Court to be of concern. However, in this case any error was rendered of no consequence as there was other documentary evidence before the RPD establishing the process for obtaining citizenship. That evidence allowed the Panel to reasonably conclude that upon production of documentation: (1) establishing the parent as an Argentine citizen; and (2) the identity of the individual to receive citizenship, citizenship would be granted. It was not unreasonable for the RPD to conclude that Argentine citizenship was available to both Ms. Ody and Alejandra through the mere formality of producing documentation for Argentine authorities.

[11] The RPD noted the applicant's testimony and submissions relating to the obstacles to obtaining citizenship. In doing so, the RPD concluded that the applicants were conflating citizenship by descent, the basis for their right to citizenship in Argentina, with citizenship by naturalization. This conclusion was not inconsistent with the documentary evidence and was reasonably available to the RPD.

[12] The RPD also noted that Ms. Ody's attempts to acquire the documentation to apply for citizenship were minimal and the application process itself had not been pursued. In the circumstances, it was not unreasonable for the Officer to conclude that Ms. Ody's efforts were insufficient to demonstrate that it was not within her power to obtain citizenship in Argentina.

[13] The applicants now argue that Alejandra's situation differs from that of her mother. They rely on the decision of Justice Glennys McVeigh in *Murrizi v Canada (Minister of Citizenship and Immigration)*, 2016 FC 802 [*Murrizi*] to argue that where distinct claims are made in the

same proceeding, each claim must be addressed individually. While I take no issue with this statement of law, in this case, unlike in *Murrizi*, the applicants did not advance a separate and distinct claim on behalf of Alejandra. The evidence indicates that what is required to obtain citizenship is a birth certificate of “the Argentine parent”. It was reasonable for the RPD to conclude that in the case of Alejandra, Ms. Ody would satisfy this requirement upon her receipt of citizenship.

[14] The RPD reasonably concluded that Argentine citizenship was available to Ms. Ody and Alejandra.

B. *Was it reasonable for the RPD to discredit all of the applicants’ evidence?*

[15] The applicants alleged that they had experienced incidents of serious sexual and physical assault, and threats, from a retired police officer who was also their business associate. They alleged that these incidents had been reported to police but no action was taken because the agent of persecution was a retired police officer. On March 25, 2016, they allege they were attacked in a supermarket parking lot by armed individuals and threatened with death because they had sought out police assistance. They fled and hid as a result of this attack, deciding at that point to leave the country, which they did on March 29, 2016.

[16] The RPD took issue with the fact that the applicants’ travel itinerary was dated March 23, 2016, two days before the attack that triggered the decision to flee Peru. The applicants were unable to provide any explanation for this discrepancy. Counsel for the applicants suggested that it may have simply reflected a clerical error. The RPD rejected the explanation.

[17] The RPD found the inconsistency to be fatal to the applicants' credibility on the basis that the timing of the decision to flee Peru was central to the claim. The RPD noted possible explanations for the inconsistency but noted that no explanation had been provided. The RPD recognized that there was corroborative evidence of the alleged earlier assaults and threats but found the evidence to be of limited probative value in light of the negative credibility finding arising out of the unexplained discrepancy regarding the timing of the decision to flee Peru. The RPD also noted that the applicants were generally credible and consistent in all other aspects of their narrative.

[18] The respondent submits that the March 25 attack was central to the applicants' claim. Evidence indicating a decision to leave Peru prior to that date undermined the applicants' well-founded fear of persecution. The respondent argues that absent an explanation for the inconsistency, it was reasonable for the RPD to reject the claim without addressing the applicants' other evidence. I disagree.

[19] The RPD noted that there were no other inconsistencies or omissions in the applicants' testimony. The RPD acknowledged a number of documents that were corroborative of the claimed sexual assault, the existence of the agent of persecution and the reporting of the alleged incidents to the police.

[20] While it was open to the RPD to reach a negative credibility finding as a result of the inconsistency relating to the timing of the decision to leave Peru, it was not reasonable to rely on that inconsistency to discount the remainder of the narrative. This is particularly so where there

was evidence that was corroborative of other aspects of the claim. As noted by Justice Russel Zinn in *Guney v Canada (MCI)*, 2008 FC 1134 at paragraph 17 “[t]he fact that a witness has been caught in one lie, in itself, is insufficient to discredit all of his evidence, where, as here, the evidence is otherwise plausible and consistent.”

[21] Based on the foregoing, the RPD’s failure to engage and assess the remainder of the applicant’s narrative was unreasonable.

#### IV. Conclusion

[22] Having concluded that the question of Argentine citizenship is determinative in respect of Ms. Ody’s and Alejandra’s claim and that there is no basis for this Court to interfere with the RPD’s findings in this regard, the application is dismissed in respect of the female applicants.

[23] Having found that the RPD’s determination on the issue of credibility was unreasonable, the application is granted and the matter returned for redetermination of Mr. Salazar’s claim only.

[24] The parties did not identify a question of general importance and none arises.



**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The Refugee Protection Division's decision in respect of Mr. Salazar's claim is returned for redetermination by a differently constituted Board;
2. The Refugee Protection Division's decision in respect of the claims of Ms. Ody and the minor child Alejandra stands; and
3. No question is certified.

"Patrick Gleeson"

---

Judge

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

**DOCKET:** IMM-3748-16

**STYLE OF CAUSE:** FRANCOISE MIREILLE ODY ESQUIVEL, SERGIO  
RODOLFO MEDINA SALAZAR, ALEJANDRA  
MEDINA ODY v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 1, 2017

**REASONS AND JUDGMENT:** GLEESON J.

**DATED:** MARCH 20, 2017

**APPEARANCES:**

Aisling Bondy FOR THE APPLICANTS

Laura Christodoulides FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Aisling Bondy FOR THE APPLICANTS

Barrister and Solicitor

Toronto, Ontario

William F. Pentney

Deputy Attorney General of

Canada

Toronto, Ontario

FOR THE RESPONDENT