Federal Court  Cour fédérale

Date: 20240605

Docket: IMM-4662-23

Citation: 2024 FC 844

Ottawa, Ontario, June 5, 2024

PRESENT: Mr. Justice Pentney

BETWEEN:

RONY ENELDO RAMIREZ MACHADO
EVELYN MARISELA LEMUS AREVALO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants seek judicial review of the negative decision on their applications for a Pre-Removal Risk Assessment ("PRRA"). The Primary Applicant ("PA") is Rony Eneldo Ramirez Machado; the Co-Applicant ("CA") is his spouse Evelyn Marisela Lemus Arevalo. They are citizens of Guatemala.

[2] The Applicants have three children: one is a citizen of the United States (aged 12 at the time of the decision); two were born in Canada and are therefore Canadian citizens (aged 4 and 2 at the time of the decision).

[3] The Applicants have lived outside of Guatemala for many years. They crossed the border into Canada at an irregular crossing around October 2012, and made a refugee claim based on risks to the PA because of an ongoing dispute with his cousin, and the CA claimed that she faced risks of violence in Guatemala as well as a threat to her life from her ex-partner. The RPD dismissed their claims, finding that they had a viable Internal Flight Alternative ("IFA").

[4] The Applicants then submitted a PRRA application, based on the risks to the PA from his cousin, as well as the risks to the CA from widespread gender-based violence in Guatemala. Their PRRA submissions also outlined the risks their eldest child would face because he would be a target of gang recruitment.

[5] The PRRA Officer denied their application. The Officer made three key findings: on the risks from the cousin, the Applicants had failed to overcome the IFA finding because there was no new probative evidence on that question; regarding the risks to the CA from gangs and gender violence, these were generalized risks in Guatemala and the Applicants had failed to demonstrate any personalized risk to the CA; regarding the risk of recruitment of the eldest son, the Officer

stated the following: “I note that counsel has raised a risk for the applicants’ eldest son […]. I note that [the son’s] application is not included and therefore his risk has not been assessed in this application.”

[6] Based on these findings, the Officer concluded that the Applicants had failed to establish that they faced risks if returned to Guatemala and therefore refused their PRRA application.

[7] The Applicants seek judicial review of the decision, claiming it is unreasonable in several respects.

[8] It is not necessary to address all of the issues raised by the Applicants because I find that the Officers’ treatment of the risks to the Applicants’ son is a determinative fatal flaw in the decision. As noted above, the Officer did not address the substance of the risks to the eldest son because his application “was not included.”

[9] At the hearing, the Respondent took the position that although the Applicants’ son could have been included in their PRRA applications, he was not. The Respondent observed that the PRRA forms list only the PA and CA as applicants, and simply lists their children as members of the family. The Respondent noted that the Applicants were represented by counsel, and the instructions on the PRRA form specify that they are to include anyone whose risks were included

in their application. The Applicants' failure to include their eldest son on the application means that the PRRA officer was barred from considering his claim, as set out in the Federal Court of Appeal decision in *Varga v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 394 [*Varga*].

[10] While it is true that the Applicants' PRRA forms did not include their eldest son as a PRRA applicant, the application included specific and detailed submissions about the son's risks. The Applicants' submissions set out their risks under four bold and underlined headings. The second of these is titled: "Gang Recruitment of Minor Child". The Applicants stated their fear that if their eldest son is removed to Guatemala with the family "he will be at acute risk of being recruited by Guatemala's volatile gangs, such as the MS-13". They cited objective country condition evidence relating to this specific risk.

[11] In this respect, the *Varga* decision has no application because the substance of the risks faced by the eldest son were included in the submissions made in support of the PRRA application, even if the PRRA form box was not completed correctly. If the Officer had any doubt about the Applicants' intentions in this regard, the point could easily have been confirmed.

[12] The Officer had a clear indication from the forms that the Applicant's eldest son was aged 12 at the time of the decision, and would therefore be returning to Guatemala if his parents were removed. Although he was a citizen of the United States, there was no indication that he or

his siblings had any other family or support network to look after them either in Canada or the United States if their parents (the Applicants) were removed. In the face of the clear and specific submissions about the risks to the son, the Officer favoured form over substance when failing to deal with the claims about the son's risks because the Applicants did not fill out the form correctly.

[13] In my view, the Officer's decision is unreasonable because it does not meet the standard of "responsive justification" required by the framework for reasonableness review set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], and recently confirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 2.

[14] I note here that *Vavilov* clearly endorses the idea that the burden of justification rises in proportion to the impact of the decision on those who are affected (*Vavilov* at para 133; *Layug v Canada (Citizenship and Immigration)*, 2023 FC 1545 at 10-11). It is difficult to imagine higher stakes than the risk of child recruitment into a gang in Guatemala, based on the ample country condition evidence cited by the Applicants in their PRRA submission. It was not reasonable for the Officer to fail to address the risks faced by the Applicants' eldest son, and the potential impact on them of any gang recruitment efforts.

[15] Choosing not to assess the risks to their oldest child was a serious error that goes to the heart of the Applicants' PRRA claim; it is sufficient to cast doubt over the entire decision (*Vavilov* at para 100). I will therefore grant the application for judicial review.

[16] In light of this finding, it is not necessary to address all of the other arguments put forward by the Applicants. I would simply note that I am not persuaded that the Officer erred by relying on the RPD's IFA assessment, in the absence of any evidence to call it into question or to indicate that the PA's cousin had the means to track them to the IFA location. It has long been accepted that a PRRA is not a disguised appeal of an RPD decision. The focus of a PRRA is on evidence of new risks, or new evidence of prior risks that has never been considered.

[17] Based on the reasons set out above, the application for judicial review will be granted. The PRRA decision will be quashed and set aside. The matter is returned to a different officer for reconsideration. I note that the PRRA decision was made on December 16, 2022. In light of the passage of time, the Applicants shall be granted the opportunity to file new submissions should they wish to do so.

[18] There is no question of general importance for certification.

JUDGMENT in IMM-4662-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The Pre-Removal Risk Assessment decision is hereby quashed and set aside.

3. The matter is remitted to a different officer for reconsideration. The Applicants shall have the opportunity to make new submissions should they wish to do so.

4. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4662-23
STYLE OF CAUSE:	RONY ENELDO RAMIREZ MACHADO AND EVELYN MARISELA LEMUS AREVALO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JUNE 3, 2024
JUDGMENT AND REASONS:	PENTNEY J.
DATED:	JUNE 5, 2024

APPEARANCES:

Robert Gertler	FOR THE APPLICANTS
Joseph Granton	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Gertler Law Office Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT