

Federal Court



Cour fédérale

**Date: 20240709**

**Docket: IMM-7833-23**

**Citation: 2024 FC 1069**

**Ottawa, Ontario, July 9, 2024**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**LUIS ALBERTO RODRIGUEZ PICADO  
MIRIAM CHAVARRIA GUTIERREZ  
LUZ FABIANA RODRIGUEZ CHAVARRIA  
SHELSEY MARIAM RODRIGUEZ CHAVARRIA**

**Applicants**

**and**

**THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Respondent**

**REASONS AND JUDGMENT**

[1] Mr. Luis Alberto Rodriguez Picado (the “Principal Applicant”), his wife Miriam Chavarria Gutierrez, and their children Luz Fabiana Rodriguez Chavarria and Shelsey Mariam Rodriguez Chavarria (collectively “the Applicants”) seek judicial review of the decision of an

officer (the “Officer”) of the Canada Border Services Agency, refusing their request to defer their removal from Canada.

[2] The Applicants are citizens of Costa Rica. They entered Canada in 2018 and claimed refugee protection. Their claim was ultimately dismissed by the Immigration and Refugee Board, Refugee Appeal Division on the grounds that an internal flight alternative (“IFA”) was available to them in Costa Rica. An application for leave and judicial review of that decision was dismissed.

[3] The Applicants argue that the Officer failed to consider the evidence they submitted, including evidence about the Principal Applicant’s wife’s health.

[4] The Minister of Public Safety and Emergency Preparedness (the “Respondent”) submits that the Officer reasonably considered the evidence and reasonably refused to defer removal.

[5] Following the decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.), the Officer’s decision is reviewable on the standard of reasonableness.

[6] In considering reasonableness, the Court is to ask if the decision under review “bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision”; see *Vavilov, supra* at paragraph 99.

[7] I am not satisfied that the Officer reasonably addressed the evidence submitted, including the evidence about the health condition of the Principal Applicant's wife who suffers from an autoimmune disease. The Officer merely observed that there was no evidence about her ability to take a flight.

[8] In the result, this application for judicial review will be allowed and the decision set aside. The departure date has passed, there is no point in remitting the matter to another officer. There is no question for certification.

**JUDGMENT IN IMM-7833-23**

**THIS COURT'S JUDGMENT is that** the application for judicial review is allowed, the decision is set aside. There is no question for certification.

"E. Heneghan"

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Judge

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

**DOCKET:** IMM-7833-23

**STYLE OF CAUSE:** LUIS ALBERTO RODRIGUEZ PICADO ET AL. v.  
THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 19, 2024

**REASONS AND JUDGMENT:** HENEGHAN J.

**DATED:** JULY 9, 2024

**APPEARANCES:**

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Jazmeen Fix FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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