Date: 20082212

Docket: IMM-1786-08

Citation: 2008 FC 1386

Ottawa, Ontario, December 22, 2008

PRESENT: The Honourable Mr. Justice Pinard

BETWEEN:

NELLIE LUGO ADUNA
ASHLEY ANDRADE LUGO
ANGEL RODRIGO ANDRADE LUGO
ALEJJANDRO ANDRADE LUGO

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, of a decision dated February 27, 2008, by the pre-removal risk assessment officer (the PRRA officer).

[2] Nellie Lugo Aduna (the principal applicant) and her three children—Ashley, Alejandro and Angel Rodrigo Andrade Lugo—are Mexican citizens.

[3] In a letter dated February 27, 2008, the PRRA officer stated that the pre-removal risk assessment application was rejected on the following ground:

> [TRANSLATION]
> It has been established that you would not be subject to a risk of torture or persecution or face cruel or unusual treatment or punishment or a risk to your life should you return to your native country or habitual place of residence.

[4] In her analysis of the risks alleged by the principal applicant, the PRRA officer observed that the principal applicant reiterated substantially the same allegations that she had made to the Refugee Protection Division (RPD). The officer also considered the new evidence that was presented to her, i.e., the arrest of the principal applicant's father and his death in prison. She concluded as follows:

> [TRANSLATION]
> Despite the sympathy that I feel for the applicant because of her father's violent death, the new evidence does not establish a link between this tragedy and the applicant's allegations.

[5] Specifically, the officer found that

- there was no indication that the principal applicant's father had requested asylum in Canada;
- the information submitted by the principal applicant showed that her mother and father are separated; one lives in Telamac and the other in Mexico City, F.D.;

- there is no probative evidence that her father was arrested arbitrarily. On the contrary, the newspaper article filed in evidence states that he was imprisoned following his arrest for extortion; and
- the same newspaper article reported that her father was strangled by another inmate.

[6] The officer added: [TRANSLATION] “There was no indication that this man [the alleged murderer] was acting under Senator Anaya’s orders. Also, these facts occurred in the State of Mexico, whereas Senator Anaya’s seat is in Tlaxcala state.”

[7] On the issue of state protection, the officer indicated that the RPD noted that the principal applicant had never filed a complaint with the Mexican authorities. Furthermore, the RPD determined that the Mexican state was capable of protecting the principal applicant and her children. Noting that the situation in Mexico had not changed significantly since the date of the RPD decision, the PRRA officer determined: [TRANSLATION] “Although state protection in Mexico is not perfect, I am nonetheless satisfied from the documentary evidence that it exists and is available to the principal applicant and her family.”

[8] The appropriate standard of review of a PRRA officer’s decision is reasonableness (see, *inter alia*, *Demirovic v. Minister of Citizenship and Immigration*, 2005 FC 1284, at paragraph 23, and *Kandiah v. Solicitor General*, 2005 FC 1057, at paragraph 6).

[9] According to the principal applicant, the PRRA officer did not pay enough attention to the newspaper article reporting her father’s death or to the letter from her Mexican lawyer, which

makes the connection between her father's imprisonment and his death, on the one hand, and the principal applicant's persecution, on the other hand. In fact, the PRRA officer read the letter but found as follows:

> [TRANSLATION]
> Again, there is no evidence that the applicant's father was arrested unlawfully. It is reasonable to think that if that were the case, the applicant's lawyer would have started legal proceedings to expose this. I also note that the lawyer did not mention the name or names of the alleged agents of persecution, particularly, Senator Ayala [*sic*]. For all these reasons I am not assigning any weight to this letter from an interested party.

[10] It therefore appears that the applicant simply disagrees with the weight the officer gave to various parts of the evidence. Administrative tribunals are granted broad discretion on questions of fact (see *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, at paragraph 51 and *Aguebor v. Minister of Employment and Immigration* (1993), 160 N.R. 315). It is not the Court's role to substitute its reasoning for the officer's. In *Augusto v. Solicitor General*, 2005 FC 673, Madam Justice Layden-Stevenson wrote:

> [9] . . . In the absence of having failed to consider relevant factors or having relied upon irrelevant ones, the weighing of the evidence lies within the purview of the officer conducting the assessment and does not normally give rise to judicial review. Here, the reasons reveal that the PRRA officer did consider the evidence tendered by Ms. Augusto, but gave it little weight. There was nothing unreasonable about the officer having done so.

[11] Furthermore, subsection 10.4 of the Citizenship and Immigration Canada manual regarding evidence to be considered on a pre-removal risk assessment, points out that

> Having obtained information on the facts of the case, the PRRA officer has to weigh any conflicting evidence. The decision-maker has to determine which facts have been established on

> a balance of probabilities and which statements are supported by the evidence. It is not a simple task to decide which fact or collection of facts is more reasonable or more likely, given the circumstances of the case.

[12] Here, it is clear that the PRRA officer properly considered the relevant written evidence. The Court must defer to her decision, especially on the issue of weighing the evidence. In my view, her findings constitute an "acceptable and rational solution", as set out in *Dunsmuir*, above, at paragraph 47. The intervention of this Court is therefore not warranted.

[13] For all these reasons, the application for judicial review is dismissed.

JUDGMENT

The application for judicial review of the decision dated February 27, 2008, by the pre-removal risk assessment officer is dismissed.

"Yvon Pinard"
Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1786-08
STYLE OF CAUSE:	NELLIE LUGO ADUNA, ASHLEY ANDRADE LUGO, ANGEL RODRIGO ANDRADE LUGO, ALEJJANDRO ANDRADE LUGO v. MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal,Quebec
DATE OF HEARING:	November 20, 2008
REASONS FOR JUDGMENT AND JUDGMENT BY:	Mr. Justice Pinard
DATED:	December 22, 2008

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