Date: 20081222

Docket: IMM-2333-08

Citation: 2008 FC 1407

BETWEEN:

JUAN CARLOS VELAZQUEZ ORTEGA
NORMA ANGELICA PECH BARRERA
JOSE CARLOS VELAZQUEZ PECH
JUAN ANGEL VELAZQUEZ PECH
AXEL ALEJANDRO VELAZQUEZ PECH

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION and THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

REASONS FOR JUDGMENT

PHELAN J.

I. INTRODUCTION

[1] These are the reasons for my Order given orally on December 15, 2008, in which I granted this judicial review of a negative Pre-Removal Risk Assessment (PRRA).

[2] The issue in this matter is the failure of the PRRA Officer to consider evidence filed by the Applicants. A stay of removal had been granted by Justice Hansen.

II. BACKGROUND

[3] The principal Applicant is a male citizen of Mexico. The co-Applicants are Mr. Velazquez's wife and three minor children, all of whom are also citizens of Mexico.

[4] Mr. Velazquez claimed that he had been employed as an organizer for the *Partido de la Revolucion Democratica* (PRD) and had been involved in demonstrations in his home city of Cancun. He also claimed that he had been photographed in newspaper articles reporting on recent demonstrations; however, he had been wearing a mask of former President Fox.

[5] Mr. Velazquez based his refugee claim on his fear for his life in Mexico. He alleged that he had been kidnapped, detained, threatened and forced to falsely confess to being a drug addict.

[6] In Mr. Velazquez's refugee hearing, he alleged that some members of his political party wanted to get rid of him and therefore colluded with police to have him arrested and threatened. He also relied on letters of good character written by other party members.

[7] The Immigration and Refugee Board (IRB) member, in deciding against Mr. Velazquez, put little weight on newspaper articles about the demonstrations because they did not mention him by name or show his face.

[8] Subsequent to the IRB decision, Mr. Velazquez learned that there were other newspaper articles which named him and corroborated his drugs story.

[9] In filing his PRRA application, the Applicant, acting on his own, listed the various newspaper articles upon which he was relying. The application was sent to the Respondent's office via UPS courier.

[10] In advance of the filing date for submission of documentary evidence, the Applicant sent via UPS the listed newspaper articles but did not, this time, keep a copy of the evidence.

[11] The PRRA application was denied. There was no mention in the decision of the articles. Further, upon examination of the file at the PRRA office, there were no articles or reference to them.

[12] The Applicant has subsequently obtained what appear to be copies of the articles and the translations thereof.

III. ANALYSIS

[13] The issue is whether the Applicants were denied natural justice or fairness under these circumstances. The standard of review on this type of issue has been held consistently to be correctness (*Dunsmuir v. New Brunswick*, 2008 SCC 9).

[14] The preponderance of evidence is that the Applicants intended to rely on these articles, that the PRRA Officer had notice of such reliance in the application form, that the articles were sent by a method which had been proven reliable, and that the articles were never put in the appropriate file nor considered by the PRRA Officer.

[15] In the absence of any evidence to the contrary, it appears that the original articles were lost through no fault of the Applicant.

[16] The articles are evidence that directly address a key finding by the IRB. It is not for the Court to assess the veracity or weight of this evidence. The Court need only concern itself with determining whether such missing evidence is potentially relevant to the ultimate decision. The Court must ensure that there is nothing frivolous or insignificant about the missing evidence.

[17] Having considered that the evidence is potentially relevant, it is simple to conclude that this evidence is properly receivable by the PRRA Officer even though it pre-dates the IRB decision.

[18] As held in *Raza v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 385, evidence may be considered “new” for purposes of a PRRA where it is evidence that can contradict a finding of fact by the Refugee Protection Division. The missing evidence has that quality to it.

[19] The Applicants' right to have their case decided on the evidence was undermined through no fault of their own. The very purpose of a PRRA – to ensure that persons are not sent back to countries where they may be subject to real risk to life and safety – is undermined when a decision is made on an incomplete record on material matters.

[20] This is not a case where the Court would or could conclude that the Applicants' case is so hopeless or the result so inevitably against them that there is no point in a re-determination (see *Mobil Oil Canada Ltd. v. Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 S.C.R. 202).

IV. CONCLUSION

[21] Therefore, the judicial review will be granted, the PRRA decision quashed and the matter remitted back to be heard by a different officer and on an updated record. There is no question for certification.

"Michael L. Phelan"
Judge

Ottawa, Ontario
December 22, 2008

FEDERAL COURT

SOLICITORS OF RECORD

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