

Federal Court



Cour fédérale

**Date: 20110622**

**Docket: IMM-3627-11**

**Citation: 2011 FC 753**

**Toronto, Ontario, June 22, 2011**

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

**BETWEEN:**

**LILIANA RAMIREZ TRIANA  
OSCAR ESTEBAN CANAS GOMEZ  
SOFIA CANAS RAMIREZ**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

**UPON** hearing this motion for a stay of removal at Toronto on Monday, June 20, 2011;

**AND UPON** hearing counsel for the parties and reviewing the material filed;

**AND UPON** considering the tripartite test recognized by the decision in *Toth v. Canada* (1988), 86 N.R. 302 (F.C.A.);

**AND UPON** reserving decision;

**AND UPON** determining that this motion be dismissed for the following reasons:

[1] I am not satisfied that the Applicants have established a serious issue in their underlying application for judicial review. My assessment of the impugned PRRA decision indicates that the Officer was quite thorough in her assessment of both the RPD findings and of the evidence submitted to her.

[2] The Officer correctly observed that the risk allegations made by the Applicants were “essentially the same as those heard and considered by the RPD.” The decision also correctly states that a PRRA is not a forum for rearguing or reassessing RPD findings. Rather it presents an opportunity to provide new evidence not considered by the RPD or which was not available to be presented by an applicant.

[3] The Officer took appropriate note of the RPD’s credibility concerns including the absence of corroborative and expected linkages among the events relied upon by the Applicants, by their failure to seek timely protection in Spain and by their reavilment to Colombia in 2009. The Officer also cited the RPD’s rejection of Applicants’ “incredible” explanation for not seeking protection at the first available opportunity in Spain.

[4] The Officer then went on to consider the “new evidence” presented by the Applicants in the form of a private investigator’s letter. The Officer was clearly unimpressed by this evidence, describing its contents in the following way:

In the letter, Mr. Garcia Correa informs that he is a private investigator. He was engaged by the PA’s counsel to investigate the PA’s situation in Colombia. He submits that he interviewed Lilibian Restrepo, a front desk agent at the Dann Carlton Hotel. He states that Ms. Restrepo told him that she had heard of a disturbance between the PA and some hotel guests but that she was not a witness. She did see the PA go pale after getting a phone call and she believed that the phone calls were the reason that the PA and the PA’s spouse resigned from the hotel. He also writes that Ms. Restrepo told him that there was no way of confirming the identity of the guest at the hotel with whom the PA was believed to have had a disagreement.

I note that the investigator is repeating information that he submits was told to him. The information is not first hand nor has it been further corroborated by evidence such as an affidavit from Ms. Restrepo. The investigator has not indicated that he approached anyone who was present on the night of the incident (such as the hotel security) and if not, why not. I further note that his recounting of the interview he states he had with Ms Restrepo does not confirm the PA’s submission that she received threats from Daniel Mejia (or his associates), that Mr. Mejia (or his associates) were responsible for the death of her colleague Omar Caicedo or that Mr. Mejia’s associates were currently interested in the PA’s whereabouts.

The investigator also writes that he interviewed an officer “*who identified himself as Jorge Eduardo Mesias*”...of the Criminal Analysis unit. The officer advised the investigator that he was only speaking “*off the record because he had to comply with the law and treat [sic] such information as confidential.*” Information as to how the officer was contacted or on what objective evidence the investigator believed the person to be an officer involved in the investigation of the death of Omar Caicedo, has not been provided. I note that the letter indicates that the investigator asked, “*...for information on some facts around the killing of Mr. OMAR ALONSO CAICEDO RESTREPO.*” (The emphasis is as quoted from the letter.) Comments regarding the similarity to the hotel clerk’s last name have not been offered by either the applicant or the investigator. Nonetheless, the investigator states that the officer refused to provide an official statement. I find that the statements attributed to the officer are unsupported by the objective evidence. They are relayed

through a third party who is not disinterested in the evidence. Nonetheless, the investigator has indicated the officer's remarks that "*it was impossible to demonstrate*"... that Daniel Mejia was involved in threats against the PA or other hotel staff. Mr. Mejia had died in gang related violence and the authorities were unable to confirm his involvement in the death of Mr. Caicedo.

The final part of the letter is a narrative of the investigator on what he believes to be the "*larger picture of organized crime in the area.*" He has not indicated on what objective evidence he has based his explanation; nor, has he indicated his credentials, own experiences or first hand information such that he is knowledgeable of the social structure of paramilitary gangs or the history of the community in Colombia.

The letter from the investigator does not provide first hand or personal knowledge of the PA's submission of risks. The report is vague, speculative, lacking in details and based on the investigator's interpretation of statements by a third party. The investigator has injected descriptive statements (such as the feeling of staff or the "*atmosphere*" at the hotel) which are subjective and unsupported by objective evidence and he makes references (such as "*a lamentable crime*") which are not explained. For all the reasons noted above, I find the letter from the investigator of low probative value in this assessment.

While I accept the PA's assertion that she could not afford the services of a Colombian lawyer or private investigator prior to the RPD, the evidence before me does not support that the information such as a statement from colleagues at the hotel could not reasonably have been obtained without the services of an investigator. Nor does the evidence inform as to forward looking personalized risk for the applicants such that it could not reasonably have been contemplated by the RPD.

I do not give consideration to the evidence that predates the finding of the RPD, as the information could reasonably have been considered by the panel and it is not the purpose of the PRRA to reargue the findings of the RPD. All other evidence has been considered and assessed in this application.

[5] The above assessment of this supposed new evidence is reasonable if not compelling. The investigator's report had little, if any, probative value precisely because it contained uncorroborated

hearsay (in part, hearsay twice removed) in circumstances where far more probative and authoritative evidence ought to have been readily and freely available. If, in fact, the primary Applicants had left their employment at this apparently prestigious hotel because of workplace threats of death and by the murder of a co-worker, a letter from hotel management verifying that history and the status of the resulting police investigation could have been requested. Instead, the only information from the hotel was in the form of simple letters of reference. I would add that this type of evidence could easily have been put to the Court as proof of irreparable harm but it was not. The inference I draw from that failure is that the Applicants knew that the hotel management would not confirm material elements of their story.

[6] My reading of the PRRA decision satisfies me that the Officer refused to accept those parts of the investigator's report that addressed the Applicants' allegations of personal risk because this was the type of evidence that could have been obtained in advance of the RPD hearing from readily available sources. The Officer's further characterization of that evidence as vague and speculative was certainly reasonable and well supported by the reasons she gave.

[7] I accept Mr. Boulakia's point that the Officer's observation about the similarity of surnames between the investigator and one of the witnesses he claims to have interviewed is speculative; but there is no indication that this observation had any significance to the final decision.

[8] The Applicants complain that the Officer erred by rejecting those parts of the investigator's report which were based on hearsay. There is, however, nothing in the decision to suggest that this evidence was found to be inadmissible for that reason. The Officer simply discounted this evidence

because it was uncorroborated and because more reliable evidence ought to have been available.

That was a reasonable conclusion.

[9] The Applicants contend that an oral interview ought to have been offered to them in the face of the evidence they had presented. I agree with Ms. Singer that the Applicants' credibility was not an open issue on the evidence before the Officer. The Officer was faced with an adverse credibility finding made by the RPD – a finding that the Officer found had not been “overcome” by the evidence produced. The supposed new evidence about personal risk adduced by the private investigator was based on his interview with two witnesses. The Applicants were in no position to comment on the veracity of that evidence beyond restating the testimony that they had either given or could have given to the RPD. Accordingly, even if the Officer did overlook the Applicants' request for an interview there was no basis to convoke one because the Applicants were not privy to the investigator's work, because this evidence was not “new evidence” and because the Officer had no basis to look behind the RPD's previous credibility determination. Further, I do not agree with the Applicants that the existence of any new evidence in a PRRA opens up all of the evidence before the RPD to reconsideration.

[10] An oral hearing may be required where there is new and compelling evidence from an applicant that is sufficient to cast doubt upon an earlier credibility finding but that was not the situation here.

[11] This decision is clear and comprehensive and I can identify no serious issue with respect to either the reasonableness of the Officer's findings or the fairness of the process that was followed.

[12] Having found no serious issue it is unnecessary to consider irreparable harm or the balance of convenience.

**ORDER**

**THIS COURT ORDERS that** this motion is dismissed.

"R.L. Barnes"

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Judge



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

**DOCKET:** IMM-3627-11

**STYLE OF CAUSE:** LILIANA RAMIREZ TRIANA ET. AL. v. MCI

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 20, 2011

**REASONS FOR ORDER  
AND ORDER BY:** BARNES J.

**DATED:** JUNE 22, 2011

**APPEARANCES:**

RAOUL BOULAKIA FOR THE APPLICANTS

ALEXIS SINGER FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

RAOUL BOULAKIA FOR THE APPLICANTS  
BARRISTER AND SOLICITOR  
TORONTO, ONTARIO

MYLES J. KIRVAN FOR THE RESPONDENT  
DEPUTY ATTORNEY GENERAL OF CANADA  
TORONTO, ONTARIO