

Federal Court



Cour fédérale

Date: 20110719

Docket: IMM-7512-10

Citation: 2011 FC 903

Toronto, Ontario, July 19, 2011

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

ALEJANDRINA JUANA ORTIZ REYES

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of a Pre-Removal Risk Assessment (PRRA) Officer dated November 10, 2010 and communicated to the Applicant on December 9, 2010.

[2] The Applicant is an adult female citizen of Mexico. She claimed refugee status in Canada. That claim was rejected in a decision of the Immigration and Refugee Board dated September 18, 2009. The Applicant sought a pre-removal risk assessment essentially basis on her fear of returning

to Mexico based on her assertion that she would be perceived as a returning wealthy person and would be targeted by organized criminals.

[3] The PRRA Officer considered the application and, in a decision dated November 10, 2010, rejected it. That decision was not, however, released at that time. The Applicant had been asked to file any further materials in support of the application. On November 24, 2010 the Applicant's representative filed further materials. The record now produced including the affidavit of the PRRA Officer shows that on November 25, 2010 the PRRA Officer reviewed this further material and placed a handwritten notation on the cover to the effect that the material had been reviewed. That note says:

Reviewed decision rendered 10-11-2010 (Signature) 25-11-2010.

[4] On the cover page which bears this note is a copy of a "sticky note" in different handwriting which says:

Submissions Reviewed by officer as per Note below. Decision stands, PA to file 25/11/10.

There is no evidence as to who wrote this note or for what purpose.

[5] The decision of November 10 includes the following:

I have read and carefully considered the application and all the submissions presented ... (emphasis added)

...

After having carefully assessed all of the evidence including documentary evidence on country conditions (emphasis added) ...

[6] These statements may have been true as of November 10, 2010, however the material filed November 24, 2010 contained a great deal of further material directed to country conditions in Mexico.

[7] The Officer provided an affidavit in this matter sworn May 26, 2011, which is after the Application for leave had been granted. She swore:

a. On November 25th, 2010 I reviewed and considered the further submissions I determined that the further submissions did not alter my original decision and made a notation on the cover page of the further submissions along with my signature.

[8] The notation she made is silent as to whether the further submissions altered her decision of November 10, 2010. A third party's notation on a sticky note addresses this matter. It is unexplained as to whose note this was.

[9] At best the Officer's practice was sloppy. If indeed the decision written November 10, 2010 was unaltered, it should have been redated before it was sent to the applicant. The applicant did not receive the decision until December 9, 2010. Therefore, the decision could have been redated before it was sent out.

[10] If, on the other had, the unknown author of the sticky note and not the Officer made a determination that the November 10, 2010 was to stand, then the decision was not that of the Officer.

[11] Accordingly, the application is allowed. It is best that the matter be returned for redetermination by a different Officer. There is no question for certification, nor any special reason to grant costs.

JUDGMENT

FOR THE REASONS PROVIDED

THIS COURT ORDERS AND ADJUDGES that:

1. The application is allowed;
2. The matter is returned for a new determination by a different Officer;
3. There is no question to be certified;
4. No order as to costs.

“Roger T. Hughes”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7512-10

STYLE OF CAUSE: ALEJANDRINA JUANA ORTIZ REYES v. THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: July 19, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** HUGHES J.

DATED: July 19, 2011

APPEARANCES:

Wennie Lee FOR THE APPLICANT

Veronica Cham FOR THE RESPONDENT

SOLICITORS OF RECORD:

Wennie Lee FOR THE APPLICANT
Barrister and Solicitor
Toronto, Ontario

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario