

Federal Court



Cour fédérale

Date: 20111110

Docket: IMM-1468-11

Citation: 2011 FC 1301

Toronto, Ontario, November 10, 2011

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

RICARDA ROSARIO HERNANDEZ

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant is an adult female citizen of Mexico. She entered Canada with her daughter in 2007 and claimed refugee status. That claim was rejected. That rejection was upheld on a judicial review (2009 FC 106). In November 2009, the Applicant's pre-removal risk assessment (PRRA) was determined unfavourably to her. She sought an exemption under humanitarian and compassionate grounds (H & C). In a written decision dated January 21, 2011, the Applicant was

informed that such an exemption would not be granted. This is a judicial review of that H & C decision.

[2] For the reasons that follow, I find that the application is dismissed.

[3] There is no doubt that the Applicant's life in Mexico has been marked with hardship and abuse at the hands of her male partners. Her first daughter, born in Mexico, died from apparent poisoning. She had a son, born in Mexico, who had apparently been harassed. The son and his family are now in Canada; however, the record does not show what status, if any, they have in Canada. The third child, fathered by a man named Garcia, is the daughter who accompanied the Applicant to Canada. The record is unclear as to this daughter's whereabouts or status.

[4] The Applicant was subjected to a removal Order but failed to show up for her pre-removal hearing. Nonetheless, she somehow obtained a work permit. She worked in a convent doing household chores and subsequently worked in a daycare centre. It is not clear from the record whether the Applicant is still working, or if so, where.

[5] The Applicant alleges that she fears returning to Mexico for a variety of reasons, including that Garcia would track her down and continue his violent ways with her; and that a man identified only as "Victor", who is alleged to have attempted to extort money from her using threats of violence, would continue to do so. At the hearing, Applicant's Counsel abandoned the allegations respecting "Victor".

[6] The Officer determining the H & C application provided nine pages of detailed reasons and concluded that the grounds put forward by the Applicant for an exemption did not constitute unusual and undeserved, or disproportionate, hardship; thus, the application was refused.

[7] Applicant's Counsel raised three issues in seeking to set aside the Officer's decision:

1. Did the Officer make unreasonable findings based on the evidence before her? In this regard, three matters were raised:
 - Did the Officer fail to appreciate the evidence as to how the Applicant could be located in Mexico by those wishing to harm her?
 - Did the Officer fail to appreciate properly the psychological evidence respecting the Applicant?
 - Did the Officer fail to appreciate the evidence as to the level of violence in Mexico?
2. Did the Officer breach the duty of procedural fairness by providing inadequate reasons for dismissing contradictory evidence on the record?
3. Did the Officer breach the duty of procedural fairness by relying on extrinsic evidence without providing the Applicant with an opportunity to respond to this evidence?

[8] First, I will consider the general nature of a review of an H & C decision. As stated by the Supreme Court of Canada in *Baker v Canada (MCI)*, [1999] 2 SCR 817 at para 51, the legislation respecting an H & C application signals an intention to leave considerable choice to the Minister on the question of whether to grant an H & C application. As Justice Russell of this Court said in *Hinzman v Canada (MCI)*, 2009 FC 415, at paragraph 39, the Court should only intervene if the Decision was unreasonable in the sense that it falls outside the range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[9] Turning to the first issue raised by the Applicant as to whether the Officer made unreasonable findings on the evidence, Counsel made strong efforts to point out how a person's whereabouts could be obtained by bribing those who keep voter's records, apparently not an uncommon occurrence. While the Officer thought this to be unlikely in the Applicant's circumstances, which I find to be not an unreasonable finding, the Officer went on to find that neither Garcia or "Victor" would be notified of the Applicant's return, nor that she would still be a target for them. This finding was not unreasonable.

[10] Next, Applicant's Counsel challenged the Officer's findings as to psychological assessments of the Applicant. The Officer did accept that the Applicant suffers from effects of violence in her life. However, the Officer found that there was assistance available to the Applicant in Mexico and that the Applicant had provided insufficient evidence to show that she would not be able to access such assistance. This finding was reasonable.

[11] Then Applicant's Counsel agreed that the Officer failed to appreciate properly the level of violence, particularly against women, in Mexico. That evidence included a copy of an affidavit of Alicia Elena Pérez Duarte y Noroña dated 10 March 2010, a copy of an affidavit of Jimena Avalos Capin dated 4 June 2010 and a copy of an affidavit of Francisco Roco-Martinez dated 7 June 2010. It must be pointed out that these are copies of affidavits not prepared particularly for this case, but apparently made for other proceedings. These copies are apparently now generally available to the public. While the Officer could receive these copies into evidence if they are considered credible or trustworthy in the circumstances, these copies do not reach the status of expert affidavits prepared especially for this case. They are, like newspaper reports and country condition reports, pieces of evidence to be taken into consideration and given appropriate weight in the circumstances.

[12] The Officer concluded that, while the actual situation in Mexico is not ideal, the state is able to protect its citizens. This finding is not unreasonable.

[13] I find that the Applicant is simply asking this Court to re-weigh the evidence before the Officer. I find that, given the wide discretion afforded, the findings of the Officer on the evidence are not unreasonable.

[14] The second main issue raised by Applicant's Counsel is in respect of adequacy of the reasons. In this regard, Counsel pointed to criteria as to adequacy set out by the Federal Court of Appeal in *Vancouver International Airport Authority v Public Service Alliance of Canada*, 2010 FCA 158, particularly at paragraph 16. Reasons are to set out the bases for the decisions in an

understandable manner with some discernable rationality and logic; an observer should be able to scrutinize and understand what was decided, and why.

[15] Despite Applicant's Counsel's efforts to point out possible gaps and lapses in the Officer's reasons, I find that the reasons are quite satisfactory and easily meet the *Vancouver Airport* criteria.

[16] The third main issue raised by Applicant's Counsel was the Officer's reliance in her reasons upon a *US Department of State Mexico Country Report*, and a *Freedom House Country Report - Mexico*. Neither of these documents had been submitted by the Applicant, nor was the Applicant's attention specifically drawn to these documents prior to receipt of the reasons. These reports, however, are public reports easily obtained, and of the type frequently referred to in proceedings of this kind. As stated by the Federal Court of Appeal in *Mancia v Canada (MCI)*, [1998], 3 FC 461, in answering a certified question at the end of that decision, fairness does not require that such documents be disclosed to the Applicant prior to determination of the matter.

[17] In conclusion, therefore, the application is dismissed. Neither Counsel requested a certified question.

JUDGMENT

FOR THE REASONS PROVIDED:

THIS COURT'S JUDGMENT is that:

1. The application is dismissed;
2. No question is certified; and
3. No Order as to costs.

"Roger T. Hughes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1468-11

STYLE OF CAUSE: RICARDA ROSARIO HERNANDEZ v. THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 9, 2011

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

DATED: November 10, 2011

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