

Federal Court



Cour fédérale

**Date: 20120629**

**Docket: IMM-7049-11**

**Citation: 2012 FC 830**

**Ottawa, Ontario, June 29, 2012**

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

**BETWEEN:**

**JOSE FRANCISCO SALDANA FAJARDO  
IVAN FRANCISCO SALDANA MARTINEZ**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGEMENT AND JUDGMENT**

[1] Jose Saldana Fajardo (Jose) and his fourteen-year-old son, Ivan Saldana Martinez, challenge the negative decision on their Pre-Removal Risk Assessment (PRRA). For the reasons that follow, their application is dismissed.

**Background**

[2] Jose and his late brother Moises were involved in a retail shoe business. They competed against Tomas Zavala who is allegedly rich and powerful.

[3] In July 2004, Mr. Zavala and several men kidnapped Moises and four employees. They were robbed of all their belongings and made them sign papers giving up ownership of their vehicles. Although the police were involved and Mr. Zavala was interviewed, no charges were laid against him. The applicants allege that this was because of his strong political ties.

[4] Moises found his stolen truck and demanded it be returned. Mr. Zavala called the police and Moises was charged with theft and imprisoned for approximately one year. He was later found not guilty.

[5] On March 16, 2006, Mr. Zavala and another man assaulted Jose and pointed a gun to his head when he was walking his son to school. Jose was told not to interfere in the dispute between Mr. Zavala and Moises if he wanted to stay alive.

[6] Fearing for his safety, on March 16, 2006, Jose left his son with his uncle and fled to Canada. He claimed refugee status and later made arrangements to have his son join him. He arrived in September 2006.

[7] Moises, accompanied by his wife and child, also came to Canada and claimed refugee protection. On January 26, 2007 the applicants' refugee claims, collectively with those of

Moises and his family, were refused due to significant credibility concerns. Leave was granted and on January 29, 2008, the application was allowed.

[8] On April 19, 2009, the matter was again dismissed by the Refugee Protection Division. The applicants sought leave to judicially review that decision but it was denied on April 30, 2009.

Moises and his family returned to Mexico. On November 4, 2010, a couple of weeks after his arrival, Moises was killed. Jose alleges that a note was left at the crime scene indicating that he was next.

[9] On November 26, 2009, Jose failed to appear for his scheduled pre-removal interview and an arrest warrant was issued. Jose remained underground in Canada until November 8, 2010 when he was arrested for his previous failure to appear for removal. He was subsequently released and on November 22, 2010, he filed the PRRA application which was later refused.

[10] The PRRA officer noted that the new evidence assessed according to section 113(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 related to the death of Moises. Although Jose indicated in the materials filed that a death certificate was included in the application, the PRRA officer said that no copy was found in record. Even if a copy had been adduced, the PRRA officer stated that it would not have been sufficient to establish a risk to Jose. The PRRA officer wrote:

Even if the principal applicant had adduced a copy of the certificate to establish his brother's death, confirmation of his

brother's death would not in itself be sufficient to establish that the applicants have a well-founded fear based on one of the Convention grounds, or that the applicants would, more likely than not, be subjected personally to a risk to their life or a risk of cruel and unusual treatment or punishment if they were to return to Mexico. I note that the principal applicant's statements concerning the allegations are unsworn, he has failed to provide any corroborative evidence that he has been in contact with police in Mexico regarding his brother's death, he has failed to provide any corroborative evidence that police believe that the agents of persecution identified in the applicants' refugee claims and PRRA applications are the men responsible for the applicant's brother's death, or that the applicant's brother's death is in any way related to the principal applicant. Moreover, the applicant has failed to provide any corroborative evidence that his sister-in-law and her children are in hiding due to his brother's death.

[11] Because there was no objective evidence to corroborate the applicants' new risk allegations, Jose's statements were given little weight. In the end, the PRRA officer mentioned the RPD's finding of available state protection and found that there was insufficient evidence to establish a forward looking risk. As a result, the application was dismissed.

### **Issues**

[12] The applicants raise two issues: Did the PRRA officer err by questioning the credibility of Jose regarding the death of his brother because he failed to provide corroborating evidence, and did the PRRA officer err by not providing an oral hearing.

### **Analysis**

[13] In my view, the passage from the decision, quoted above at paragraph 12 is sufficient to dispose of the first issue. Even if the PRRA officer erred as alleged, it was not determinative of

the decision reached because the officer continued to analyze the application as if corroboration had been filed.

[14] The applicants submit that the PRRA officer expressed credibility concerns by pointing to the lack of corroboration concerning the death of Jose's brother in Mexico, allegedly at the hand of Mr. Zavala. Accordingly, they submit that an oral hearing was required.

[15] The respondent submits that the PRRA officer may weigh the evidence and make a finding regarding its probative value and sufficiency without being required to hold an oral hearing and that this Court should not reweigh the evidence. The burden was on the applicants and they failed to meet it. The respondent notes that the only evidence before the PRRA officer was Jose's unsworn statement that his brother had been killed in Mexico and that he was next. The respondent submits that where a fact asserted is critical to the PRRA application, it is open to the officer to require more evidence to satisfy the applicant's legal burden: *Ferguson v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067 at para 32.

[16] I agree with the respondent. It is perfectly permissible for a PRRA officer to weigh the sufficiency of the evidence without resorting to an oral hearing. Reading the decision as a whole, and the following paragraph in particular, it is clear that the PRRA officer did just that:

In the absence of any objective corroborative evidence to establish the applicant's allegations of new risk developments I have given the principal applicant's statements low weight in this assessment and find they are not sufficient to establish a forward facing risk upon return to Mexico nor do I find they are sufficient to address the Board's finding of state protection. I have read and considered current [publicly] available documentary evidence on country conditions as they relate to the applicant and do not find that I have

sufficient objective evidence before me that conditions have changed significantly in Mexico since the Board's decision, nor do I have sufficient objective evidence before me to allow me to arrive at a different conclusion from that of the Board [emphasis added and footnotes omitted].

[17] It is without doubt that the issue was sufficiency of evidence and not credibility. The onus of providing sufficient evidence rested on the applicants. Even though their statements were believed, they were not enough to persuade the PRRA officer.

[18] Although this Court might have weighed the evidence differently, deference is owed to decision-makers who make decisions within their area of expertise.

[19] Accordingly, this application is dismissed. Neither party proposed a question for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application for judicial review is dismissed,  
and no question is certified.

"Russel W. Zinn"

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Judge

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

**DOCKET:** IMM-7049-11

**STYLE OF CAUSE:** JOSE FRANCISCO SALDANA FAJARDO ET AL v.  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** May 16, 2012

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

**DATED:** June 29, 2012

**APPEARANCES:**

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