Federal Court  Cour fédérale

Date: 20120810

Dockets: IMM-6260-11
IMM-8634-11
IMM-8749-11

Citation: 2012 FC 980

Ottawa, Ontario, August 10, 2012

PRESENT: The Honourable Mr. Justice Near

Docket: IMM-6260-11

BETWEEN:

REYNA AUDELI ULLOA MEJIA

Applicant

and

MINISTER OF CITIZENSHIP
& IMMIGRATION

Respondent

Docket: IMM-8634-11

AND BETWEEN:

JOSHUA OTTONIEL MURILLO ULLOA,
KRIZZIA MUNILLO ULLOA

Applicants

and

MINISTER OF CITIZENSHIP
& IMMIGRATION

Respondent

Docket: IMM-8749-11

AND BETWEEN:

REYNA ULLOA MEJIA,
JOSHUA OTTONIEL MURILLO ULLOA,
KRIZZIA MUNILLO ULLOA

Applicants

and

MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] These are three applications for judicial review of decisions dated July 20, 2011, October 21, 2011 and November 30, 2011. The decisions consist of the refusal of Reyna Audeli Ulloa Mejia's (Reyna) Pre-Removal Risk Assessment (PRRA) by Officer K. Bilkevitch (the first PRRA Officer), the refusal of her children's PRRA by Officer I. Fonkin, and the refusal of the request to defer all of their removal by Officer C. Annamunthodo (the Enforcement Officer).

I. Facts

[2] The Applicants, Reyna, Joshua Ottoniel Murillo Ulloa, and Krizzia Munillo Ulloa, are citizens of Honduras; Reyna is Joshua's and Krizzia's mother. Reyna came to Canada in 1996 with her then husband and they claimed refugee protection; while they were in Canada, Reyna gave birth to a third child who is a Canadian citizen. They alleged persecution by a high-ranking military officer, but the Board found that they were not credible and did not have a well-founded fear of

persecution. After the claim was refused, a removal order was issued against the Applicant and her husband.

[3] On December 19, 2000, they left Canada and returned to Honduras. As time went on, Reyna alleges that her husband began working for a powerful political figure in Honduras who is known for being corrupt. She became increasingly suspicious about her husband's activities and began noticing strange men at their house and strange cars in the neighbourhood.

[4] In July 2009, Reyna contacted the police because she was suspicious about her husband's activities. The police did nothing to assist her.

[5] Some time thereafter, Reyna learned that her husband was involved with the Maras. Around the same time, he became verbally and physically abusive towards Reyna and threatened to kill all three of the Applicants if she reported him to the police or tried to leave him.

[6] Eventually, Reyna took her children and left her husband. She lived in hiding for approximately two years, and eventually went to live in San Pedro Sula with her father. Her husband found her there and beat her severely until a neighbour intervened.

[7] In March 2010, Reyna contacted the police again and told them of her husband's involvement with the Maras. Rather than take action against him, the police visited him and they sat together and had a drink. After the police left, Reyna's husband beat her for reporting him.

[8] Fearing for her children's safety and her own life, Reyna arranged for her Canadian daughter to come to Canada, where Reyna's parents live. Afraid of what her husband would do when he learned that the child was gone, the Applicants followed and arrived in Canada on June 8, 2010 and claimed refugee protection.

[9] Reyna was excluded from refugee protection because she was subject to a valid removal order from her prior claim, and the children's claim was refused on March 18, 2011. Reyna filed her PRRA on June 29, 2010 and her children filed theirs on September 22, 2011. Reyna also made an application for permanent residence from within Canada based on humanitarian and compassionate (H&C) grounds on September 23, 2011.

[10] Both PRRAs were refused and the Applicants were directed to report for removal scheduled on December 7, 2011. They applied for a deferral of that removal, and were refused on November 30, 2011.

[11] Justice Donald Rennie stayed the Applicants' removal on December 6, 2011 and granted leave to commence these applications on March 27, 2012.

II. Decisions under Review

A. *First PRRA*

[12] The first PRRA Officer found that Reyna had not provided sufficient detail or any corroborating evidence to support her allegations. The first PRRA Officer also found that Reyna had not rebutted the presumption of state protection by way of objective evidence about the lack of adequate protection. The PRRA was therefore refused.

B. *Second PRRA*

[13] The second PRRA Officer considered the negative refugee decision, which considered essentially the same allegations as were raised in the children's PRRA. The second PRRA Officer then turned to the affidavit of Jene Sanchez, provided by the Applicants as corroborating evidence. The second PRRA Officer gave the affidavit little weight because it did not explain how Jene Sanchez knew the Applicants or how the affiant knew that Reyna's husband was involved with the Maras. The second PRRA Officer researched country conditions in Honduras and found based on the evidence that state protection is available in Honduras. The PRRA was therefore denied.

C. *Deferral Request*

[14] The Enforcement Officer noted that there were several reasons put forward for the referral request: the outstanding application for judicial review of the first PRRA, the pending H&C

application, the interests of the children, the psychological state of all of the Applicants, and the poor health of Reyna's father. The Enforcement Officer also noted that the discretion to defer removal is extremely limited.

[15] The Enforcement Officer found that neither the application for review of the first PRRA nor the pending H&C request were sufficient to justify the referral, given that the deferral request is not a review mechanism for the PRRA and the H&C was not filed until after the children's PRRA was refused, 15 months after the Applicants were deemed ready for removal.

[16] The Enforcement Officer also rejected the children's interests and the psychological effect on them as justification for deferring removal, noting that the family was aware of their possible removal since June 15, 2010 and had already therefore had ample time to prepare for their departure.

[17] Finally, the Enforcement Officer noted that there was no evidence that Reyna's father was actually dying, and found that even if the Applicants were removed, the father would have adequate care, as he is a Canadian citizen.

[18] The requested deferral was therefore denied.

III. Issues

[19] The Applicants' submissions are fairly similar in all three applications, particularly their submissions about the second PRRA and the deferral request. However, their characterization of the issues is vague and unhelpful. I suggest that these three applications raise the following issues:

(a) Did the second PRRA Officer err in giving little weight to the supporting affidavit?

(b) Are the PRRA Officers' state protection findings unreasonable?

(c) Is the deferral request moot?

(d) If it is not moot, is the deferral decision reasonable?

[20] The Applicants also argue that, as the second PRRA Officer referenced the Board's decision, the children's PRRA relied on their refugee decision, and that the fact that several current Board members failed a qualification exam that is being administered to new members, the PRRA is therefore unreasonable because the Board is not competent. I have not dealt with this argument further as it is totally devoid of merit and was already rejected in Justice Rennie's stay order in IMM-8634-11.

[21] They also reference a failure to apply the Gender Guidelines in considering the PRRAs but do not actually explain this submission and the Respondent did not address it. There was no hearing

in any of the decisions below, and it is unclear how the Gender Guidelines would apply. This argument has therefore not been addressed further.

IV. Standard of Review

[22] The first, second, and fourth issues are reviewable on the reasonableness standard (see *Yousef v Canada (Minister of Citizenship and Immigration)*, 2006 FC 864, [2006] FCJ No 1101 at para 19, *Castillo Mejia v Canada (Minister of Citizenship and Immigration)*, 2010 FC 530, [2010] FCJ No 631 at para 10, and *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] SCJ No 9 at para 51, respectively). The question of mootness is a preliminary issue that arises with respect to the deferral request and therefore standard of review does not apply.

V. Analysis

[23] The Applicants submit that it was unreasonable to reject their PRRAs on the basis of a lack of corroborating evidence alone and that, in the absence of contradictory evidence, their evidence should have been accepted as true.

[24] The Respondent submits that the Applicants' arguments are misplaced, as they simply failed to provide sufficient evidence or sufficient detail to establish their claims.

A. *Weight Given to the Supporting Affidavit*

[25] The Applicants submit that the second PRRA Officer erred in rejecting the affidavit because it is self-serving.

[26] The Respondent submits that the second PRRA Officer reasonably decided to give the affidavit little weight and simply re-states the reasons for doing so that are listed in the second PRRA.

[27] The Respondent has not actually argued that the second PRRA Officer's reasons for rejecting the supporting affidavit are reasonable. Rather, the Respondent seems to argue that the second PRRA Officer did not reject the affidavit because it was self-serving evidence.

[28] It was not unreasonable for the second PRRA Officer to give little weight to the affidavit for the reasons listed. Although the fact that the affidavit was sworn in San Pedro Sula suggests that the affiant may be the neighbour who intervened when Reyna's ex-husband found her and was beating her, this is not stated in the affidavit or in counsel's submissions. There is other corroborating evidence in the record, but it was put forward in the refugee claim.

B. *State Protection*

[29] The Applicants submit that the PRRA Officers erred by failing to consider the lowered evidentiary burden to rebut the presumption of state protection that results from the fledgling

democracy in Honduras, failing to consider the evidence of similarly situated individuals who did not receive protection, and failed to consider whether there is adequate protection on an operational level rather than simply a willingness to protect citizens. The Applicants' PRRA submissions specifically referenced a recent coup in Honduras and argued that the presumption of state protection was therefore lessened.

[30] The Respondent submits that the PRRA Officers' factual determinations attract significant deference and that the PRRA Officers did consider the evidence about the political uncertainty in Honduras. The Respondent also reiterates the fact that Applicants bear the burden of providing evidence that rebuts the presumption of state protection.

[31] The first PRRA Officer found that the Applicant had not provided clear and convincing evidence that state protection would not be forthcoming. Given the evidence before the first PRRA Officer, in my view, this finding was reasonable given the circumstances of this case. With respect to the second PRRA, the certified record contains evidence not referenced by the second PRRA Officer: namely two police reports dated July 22, 2009 and March 6, 2010 (at pages 40 and 43 of the Certified Tribunal Record). These reports were both considered in the refugee decision, but were considered in the context of whether the fear of Reyna's ex-husband is well-founded; the Board found that the reports suggested that her ex-husband may be a "deadbeat dad" but does not pose a risk to the children's lives or safety as the disputes both involved payment of child support. While this application is not a review of the refugee decision, I note that neither police report references child support and, in any event, the refugee decision does not actually reference the

police reports in the context of state protection and its state protection finding is made in the alternative to the finding that the fear is not well-founded.

[32] Although both PRRA Officers may have erred, as the Applicants allege, in failing to explicitly recognize the lower evidentiary burden that is required to rebut the presumption of state protection where, as is the case here, the state is unstable and experiencing documented problems protecting its citizens, this error alone does not render the decisions unreasonable. The second PRRA Officer was dealing with a matter that was already considered in the refugee decision, and it was not unreasonable to find that the Applicants had not provided sufficient new evidence to justify a different finding.

C. *Mootness*

[33] The Applicants do not address whether the deferral request is now moot.

[34] The Respondent submits that the deferral of removal is moot. In particular, it argues that the 60-day deferral that was requested is moot, as the reasons for the deferral no longer exist

[35] I agree that the question of the 60-day deferral is moot, as the grounds for that requested delay no longer exist. Specifically, the 60-day deferral was sought so that the children could spend Christmas with their family and so that they could finish the school term. Both of these events have now come to pass.

[36] The Respondent cites *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342, [1989] SCJ No 14 noting that the test for mootness has two stages: determining whether there remains a live dispute, and then determining whether to proceed with a decision even if there is no live dispute. The Respondent submits that judicial review of the deferral decision will have no practical effect, as the 60 days have elapsed with the Applicants remaining in Canada thanks to Justice Rennie's stay. It argues that judicial economy favours declining to deal with the matter.

[37] Though the deferral request in general is still a live issue. Contrary to the Respondent's argument, the fact that the scheduled date for removal has passed does not render the deferral decision moot (see *Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81, 2009 FCA 81 at paras 27 to 29).

[38] It is unclear how declining to address the deferral promotes judicial economy, as the hearing will proceed regardless of whether the deferral application is moot.

D. *Reasonableness of the Deferral Decision*

[39] The Applicants submit that a permanent deferral of their removal was warranted based on their psychological condition, as evidenced by the letter from their psychiatrist. They further submit that the Enforcement Officer failed to address the 60-day deferral they sought to allow their children time to adjust and to complete the school term.

[40] They do acknowledge that the discretion to defer removal is limited, but cite *Ramada v Canada (Solicitor General)*, 2005 FC 1112, [2005] FCJ No 1384 which held that deferral decisions must consider the exigent personal circumstances that could justify the deferral.

[41] They also cite cases about the best interests of the child and argue that the Enforcement Officer failed to meet the requirements set out in those cases. Finally, the Applicants cite decisions of this Court about how a pending application that was delayed through no part of the Applicant can warrant a deferral if a decision is imminent. They argue that, where the pending application is only one of the grounds put forward, the deferral should be granted. They cite decisions in stay motions.

[42] The Respondent submits that the mere existence of an H&C does not warrant removal, citing *Baron*, above. It also notes that the H&C application will continue to be processed if the Applicants leave Canada.

[43] In the application for review of Reyna's negative PRRA, the Applicants have provided a letter from the Commissary of National Police in Honduras and a translation thereof (see affidavit from their counsel dated December 5, 2011, which is separate from the record). This letter was forwarded to the Enforcement Officer's attention. The Affidavit also includes a letter from the Enforcement Officer that states its authenticity is difficult to assess because the Enforcement Officer had not been provided with an original. The deferral decision is therefore affirmed.

[44] The deferral decision is not unreasonable. As both parties acknowledge, the discretion to defer removal is extremely limited, and the Applicants have not shown a reviewable error in the

Enforcement Officer's decision. Rather, they seem to be disputing the weight given to the evidence they put forward, which does not warrant this Court's intervention.

VI. Conclusion

[45] For these reasons, the applications are dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that these applications for judicial review are dismissed.

" D. G. Near "
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	**IMM-6260-11**
STYLE OF CAUSE:	**REYNA AUDELI ULLOA MEJIA v MCI**
DOCKET:	**IMM-8634-11**
STYLE OF CAUSE:	**JOSHUA OTTONIEL MURILLO ULLOA ET AL v MCI**
DOCKET:	**IMM-8749-11**
STYLE OF CAUSE:	**REYNA ULLOA MEJIA ET AL v MPSEP**
PLACE OF HEARING:	**TORONTO**
DATE OF HEARING:	**JUNE 25, 2012**
REASONS FOR JUDGMENT AND JUDGMENT BY:	**NEAR J.**
DATED:	**AUGUST 10, 2012**

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