

Federal Court



Cour fédérale

**Date: 20130104**

**Docket: IMM-9550-11**

**Citation: 2013 FC 3**

**Ottawa, Ontario, January 4, 2013**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**EDGARD PATRICIO PEREZ ALCOCER,  
CELINA RENDON ELIZALDE,  
DIANA PEREZ RENDON AND  
PATRICIO PEREZ RENDON**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

I. Overview

[1] In 2005, Mr Edgard Patricio Perez Alcocer was kidnapped and held captive for four days in Mexico. He was released on payment of a \$20,000 ransom. Out of fear of reprisals, he did not report the incident to police. Nevertheless, believing that Mr Perez Alcocer had reported them, his captors continued to threaten him. Ultimately, he did go to police but they told him there was nothing to be

done. As the threats continued, Mr Perez Alcocer fled to Canada in 2007. His wife, his daughter, and his son joined him shortly thereafter. A second son was born in Canada.

[2] The family made a claim for refugee protection but that was turned down. They subsequently applied for a pre-removal risk assessment (PRRA). It, too, was denied. They applied for humanitarian and compassionate relief (H&C) and were turned down again. In this application for judicial review, they challenge the H&C decision. Their principal argument is that the H&C officer failed to conduct an adequate analysis of the best interests of the children. They ask me to quash the officer's decision and order another officer to reconsider their application.

[3] I agree that the officer failed to be "alert, alive and sensitive" to the children's best interests. This rendered the officer's decision unreasonable. Therefore, I will allow this application for judicial review.

[4] I need only consider the issue of the best interests of the children.

## II. The Officer's Analysis of the Children's Best Interests

[5] The officer noted that the children take swimming and skating lessons in Canada, and also attend day camps.

[6] She found that the children will be upset and disappointed if they have to return to Mexico. However, there is no evidence that they will be denied basic amenities and be personally affected by

the prevailing conditions in Mexico. Returning to Mexico would not be contrary to their best interests or cause them unusual, undeserved or disproportionate hardship.

III. Was the Officer's Analysis Adequate?

[7] The Minister argues that the officer's analysis was adequate because he considered the impact that the move to Mexico would have on the children. There being no evidence of any particular harm, the officer reasonably concluded that the children's best interests would not be seriously compromised by a return to Mexico.

[8] In my view, the officer missed some important factors.

[9] The officer considered a psychological report in which Mr Perez Alcocer was diagnosed with Post Traumatic Stress Disorder (PTSD). She noted that there was no evidence that Mr Perez Alcocer was being treated for his condition or that treatment was unavailable in Mexico.

[10] However the officer did not consider some of the report's key findings. It states that Mr Perez Alcocer sleeps poorly and worries about his family's safety; he experiences dissociative behaviour and memories of traumatizing events; if he returns to Mexico, Mr Perez Alcocer's condition will worsen because of his fear for his family; the entire family will feel the psychological effects of a return to Mexico. The officer did not refer to these factors.

[11] In addition, the officer did not consider the advantages for the children if the family were permitted to stay in Canada. The evidence before the officer contained letters from teachers, school certificates, and documentation of their community activities. The officer did not refer to any of this evidence beyond noting the children's involvement in some extracurricular activities.

[12] Further, the officer seemed unaware that there was a Canadian-born child involved. He was entitled to remain in Canada. Yet, the officer noted that "both children" (not all three) will have the support of their parents in Mexico. The officer failed to weigh the comparative benefits of remaining in Canada and moving to Mexico for the Canadian-born child.

[13] Finally, the officer concluded that the children will not experience significant harm in Mexico that would amount to unusual, undeserved, or disproportionate hardship. This is neither the correct test (*Hawthorne v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 475, at para 9), nor the proper framework of analysis (*Williams v Canada (Minister of Citizenship and Immigration)*, 2012 FC 166 at para 63).

[14] Accordingly, I find that the officer's analysis of the best interests of the children was inadequate. This resulted in an unreasonable conclusion.

#### IV. Conclusion and Disposition

[15] The officer failed to be "alert, alive and sensitive" to the best interests of the children affected by her decision, most particularly the Canadian-born child. This failure caused the officer

to render a decision that did not fall within the range of defensible outcomes based on the facts and the law. The decision is unreasonable. Therefore, I must allow this application for judicial review and order another officer to reconsider the application. Neither party proposed a question of general importance for me to certify, and none is stated.

**JUDGMENT**

**THIS COURT’S JUDGMENT is that:**

1. The application for judicial review is allowed. The matter is referred back to another officer for reconsideration.
2. No question of general importance is stated.

“James W. O’Reilly”

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Judge

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

**DOCKET:** IMM-9550-11

**STYLE OF CAUSE:** EDGARD PATRICIO PEREZ ALCO CER, ET AL  
v  
MCI

**PLACE OF HEARING:** Calgary, Alberta

**DATE OF HEARING:** December 19, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT:** O'REILLY J.

**DATED:** January 4, 2013

**APPEARANCES:**

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Camille Audain FOR THE RESPONDENT

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