

Federal Court



Cour fédérale

**Date: 20140618**

**Docket: IMM-1960-13**

**Citation: 2014 FC 580**

**Ottawa, Ontario, June 18, 2014**

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

**BETWEEN:**

**CARLOS RODRIGUEZ SOLIS  
ALONDRA GONZALEZ PRAIZ**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Introduction

[1] This is the judicial review of a negative H&C decision by an Immigration Officer.

## II. Background

[2] The Applicants are a Mexican family of four. The parents and their Canadian born child are in Canada, whereas the other child is in Mexico with the mother's family.

[3] The Applicants' refugee claim was withdrawn before a decision. They are subject to a removal order. The H&C application was filed before both the refugee claim withdrawal and the issuance of the removal order.

[4] The H&C application was based on establishment in Canada, the best interests of the children, risk and adverse country conditions in Mexico.

[5] The Immigration Officer made the following key findings:

- that, having recognized the problems of crime in Mexico, the Applicants had to prove that they would be affected personally and directly by the country conditions of risk; generalized risk in the country was not sufficient and the Applicants failed to meet that burden;
- that, despite having family and friends in Canada, there was not such a high degree of emotional or financial interdependency that separation would constitute undue hardship;
- the best interests of the children would suggest that there were greater opportunities in Canada but the opportunities and services in Mexico were not inadequate. The Canadian child is young enough to adapt to Mexico and the

Mexican child is not sufficiently personally and directly impacted by the adverse country conditions; and

- the Applicants' establishment is not exceptional or more than would be expected for similarly situated individuals. Any establishment was not due to prolonged inability to depart or circumstances beyond their control.

Therefore, the Immigration Officer concluded that the Applicants had not established that they would suffer unusual, undeserved or disproportionate hardship if required to apply for permanent residence visas from outside Canada.

### III. Analysis

[6] The standard of review applicable in this judicial review is that in *Pardo v Canada (Minister of Citizenship and Immigration)*, 2014 FC 579, at paragraph 10:

The issue of the correct test for hardship is reviewable on a standard of correctness (*Ambassa v Canada (Minister of Citizenship and Immigration)*, 2012 FC 158, 211 ACWS (3d) 434).

Whether the discretion was exercised properly is reviewable on a standard of reasonableness (*Lemus v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1274, 221 ACWS (3d) 966).

[7] Despite the Applicants' written submissions, there is no real issue on the legal test applicable and that it was applied in this case.

[8] The Officer's conclusion that the Applicants had not adequately linked the risks described in the country conditions with their personal circumstances was reasonable. The restrictions faced by the Mexican child were acknowledged but are only one aspect of the issue.

The Immigration Officer acknowledged the problems in parts of Mexico including unemployment and drug violence but noted that many people relocate within Mexico to avoid these problems – as could the Applicants.

[9] The Immigration Officer was entitled to, and did, weigh the evidence of establishment. It was reasonable to give little weight to establishment based on the facts of the case.

[10] The “best interests of the children” analysis was reasonable. The age of the Canadian child was a relevant matter in terms of readjusting to Mexico. The Mexican child, while inherently affected by the H&C decision, was not formally covered by the H&C application and the decision would not accord her status in the matter. It was reasonable to give that child’s situation a lower priority in the H&C analysis. The circumstances of the Canadian child who was part of the H&C application were fully canvassed.

#### IV. Conclusion

[11] Therefore, there is no basis for overturning the Immigration Officer’s decision. The judicial review will be dismissed. There is no question for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

"Michael L. Phelan"

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Judge

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

**DOCKET:** IMM-1960-13

**STYLE OF CAUSE:** CARLOS RODRIGUEZ SOLIS, ALONDRA  
GONZALEZ PRAIZ v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** CALGARY, ALBERTA

**DATE OF HEARING:** DECEMBER 11, 2013

**JUDGMENT AND REASONS:** PHELAN J.

**DATED:** JUNE 18, 2014

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