

Federal Court



Cour fédérale

Date: 20161221

Docket: IMM-2972-16

Citation: 2016 FC 1402

Ottawa, Ontario, December 21, 2016

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**CLAUDIA PATRICIA GOMEZ FLORES
(A.K.A. CLAUDIA PATRICI GOMEZ
FLORES)**

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is the judicial review of the second decision of the Refugee Protection Division [RPD] denying the Applicant's claim for refugee protection. The initial RPD decision had denied the Applicant's claim, but it was quashed and sent back for a redetermination by Justice Campbell.

The Applicant was unrepresented in this judicial review but had been represented in earlier proceedings.

[2] The Applicant's claim for protection was grounded in her husband's work in Mexico for the Catholic Church and the danger of threats and violence that she faced if she returned to that country. (She also claimed fear because others may perceive her to be wealthy.)

The Applicant's basis for her claim was the same as that of her three children whose claim was successful before the RPD.

II. Background

[3] The Applicant, a Mexican citizen, arrived in Canada in 2007 on a valid work permit. She was accompanied by her husband, who also had a valid work permit. The husband returned to Mexico in 2009 where he engaged in community work on behalf of the Catholic Church.

[4] On June 26, 2014, the RPD granted refugee status to three of the Applicant's children [Children's Decision]. The fourth child is a permanent resident of Canada by way of spousal sponsorship.

[5] In the Children's Decision, the RPD found those claimants credible and concluded that the actions of the father as a "missionary" advocating against gangs put them at risk. The risk was directly related to the family connection to their father's work. The RPD then examined the claim in the context of country conditions, which showed consistency with the children's claim.

The decision also addressed documentary evidence of the risk of kidnapping and of gang activities, particularly those of Los Zetas.

All of this led to the conclusion that the children were at risk as a result of their father's work.

[6] Following the Children's Decision, the Applicant filed for refugee protection relying upon the very same risk. The incidents relied upon were generally ones which had occurred prior to the release of the Children's Decision on May 21, 2014.

[7] The initial RPD Decision [1st Decision] dismissed the Applicant's claim, citing credibility concerns, inconsistencies, and insufficient evidence.

[8] Justice Campbell, in the judicial review of the 1st Decision, noted that the RPD had accepted the Applicant's claim as a member of a social group, that being her husband's family. The RPD found that the Applicant's husband and his family were at risk if they returned to Mexico.

The RPD voiced the opinion that the Applicant had to establish more for a positive outcome:

The panel accepts your husband's 2012 statement that he and his family have been threatened but finds that is [*sic*] insufficient to establish, that you have been targeted by the Zetas or that you face a forward looking risk of persecution on grounds of your relationship to him, or, on a balance of probabilities that you face a risk to your life, a risk of cruel and unusual treatment or punishment.

[9] Justice Campbell found that this conclusion, which was fundamentally important to the Applicant's claim, was unintelligible because it was internally inconsistent. As a result, Justice Campbell referred the matter back for a redetermination.

[10] In the redetermination decision [2nd Decision], the RPD again rejected the claim because there was insufficient credible and trustworthy evidence upon which to ground a positive outcome. The RPD noted some inconsistencies in the evidence about whether the husband was hiding.

[11] At paragraph 22, the RPD summarized the case as follows:

In this case, the claim depends on the evidence of what has happened to the claimant's husband, in Mexico, whom she says she is not in contact with. [Court comment: I note that the evidence of family contact is between the husband and one of the sons.] That evidence then became the basis of the children's claims, which were successful, and has since been supplemented by more recent statements. There is little identifiable foundation, however, for any of these statements.

[12] It is fair to conclude that the RPD did not find the more recent statements persuasive. However, the RPD said nothing about the Children's Decision and the finding that the husband's family members are at risk.

III. Analysis

[13] While the Respondent would cast this case as one of credibility which attracts a "reasonableness" standard of review, the problem with the 2nd Decision is one of intelligibility and reasonableness as a whole.

[14] The RPD was within its mandate with respect to its treatment of the “new statements” submitted, but it fails to address the significance of the Children’s Decision relied upon by the Applicant.

[15] The Applicant is a close family member of the husband, as are the children. She is a “similarly situated person” with respect to a risk which the RPD has already found to exist. She is presumed to be exposed to the same risk as those in a similar situation unless there is some reason to distinguish between family members, and none is cited.

[16] The RPD does not reject or even address the earlier finding of the risk occasioned by the father’s work or the consequential risk to family members.

[17] It matters little whether one describes the decision as unintelligible/unreasonable due to the failure to address the “similarly situated” risk, or as unfair because the RPD failed to make a specific finding in relation to the Children’s Decision and its impact on the present case or failed to consider an important issue or fact. This decision cannot stand whatever the infirmities may be with respect to some of the other evidence presented.

[18] While no doubt unintended, the RPD’s pursuit of further inconsistencies and insufficiencies to supplement the 1st Decision raises concern that the Decision was not a fresh appraisal of all of the evidence, but was instead a buttressing of a decision which had been quashed by Justice Campbell.

IV. Conclusion

[19] Therefore, for these reasons, the judicial review is granted, the Decision of the RPD will be quashed and the matter remitted back to a different panel for a new determination.

[20] There is no question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted, the Decision of the Refugee Protection Division is quashed and the matter is to be remitted back to a different panel for a new determination.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2972-16

STYLE OF CAUSE: CLAUDIA PATRICIA GOMEZ FLORES (A.K.A. CLAUDIA PATRICI GOMEZ FLORES) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: DECEMBER 19, 2016

JUDGMENT AND REASONS: PHELAN J.

DATED: DECEMBER 21, 2016

APPEARANCES:

Claudia Gomez Flores

FOR THE APPLICANT
(ON HER OWN BEHALF)

Kathleen Pinno
Galina Bining

FOR THE RESPONDENT

SOLICITORS OF RECORD:

William F. Pentney
Deputy Attorney General of
Canada
Edmonton, Alberta

FOR THE RESPONDENT