

Federal Court



Cour fédérale

Date: 20150408

Docket: IMM-6670-14

Citation: 2015 FC 421

Edmonton, Alberta, April 8, 2015

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

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

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

ORDER AND REASONS

[1] The present claim pursuant to s. 96 and s. 97 of the *IRPA* concerns a family of parents and four children, citizens of Mexico, who came to Canada under the temporary foreign worker program. In 2009 the father returned to Mexico leaving his wife and children in Canada. The father is a lay Catholic preacher who, upon return to Mexico, spoke out against organized crime in that country. According to his written statement filed with the RPD in the present Application,

he is at risk from the Zetas in Mexico, and, as a result, so are the members of his family. Based on this evidence the children in the family applied for refugee status independently from their mother, the Applicant in the present Application. The children's claim was accepted by the RPD pursuant to s. 97 on the basis of personalized risk. The Applicant subsequently also applied; her claim was refused. The present Application is a challenge to that decision. For the reasons described below, I find that the RPD's decision is unreasonable for two reasons.

[2] The evidence supporting the Applicant's claim for protection is based on her husband's experience in Mexico beginning in 2009 and thereafter. On this issue, the RPD made the following key findings:

In summary you fear persecution on grounds of your membership in a particular social group as the family member of a person targeted by the Zetas for his perceived political opinion, specifically anti-gang and anti-crime advocacy, and you also fear risks from criminal organizations as described in section 97(1) of the Act.

The determinative issue in this claim is the credibility of your allegation that you will be targeted by the Zetas or other criminal organizations in Mexico owing to your husband's high profile anti-gang message and/or the perception that you have grown rich while overseas.

Your identity as a national of Mexico is accepted on the basis of your testimony and your passport.

Earlier in the hearing I explained to you the definition of a Convention refugee and the need to demonstrate that your risk has a link to one of five grounds listed in the Convention. That linkage is known as a nexus.

I find that there is a nexus between your allegations and one of the five Convention grounds as you allege that your husband's anti-gang stance would be viewed by criminal organizations as, in effect a political opposition to their agenda and so your claim is eligible to be assessed under both section 96 and subsection 97(1).

[Emphasis added] (Decision, p.2)

[3] The RPD accepted the Applicant's claim for protection as a member of a social group being her husband's family. Indeed, in the decision presently under review, the RPD found that the Applicant's husband and his family are at risk, but, nevertheless, voiced the opinion that the Applicant had to establish more:

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 torture or a risk of cruel and unusual treatment or punishment.

[Emphasis added] (Decision, p. 6)

I find that this fundamentally important conclusion to the Applicant's claim is unintelligible because it is internally inconsistent. As a result, I find that it renders the decision unreasonable.

ORDER

THIS COURT ORDERS that

The decision under review is set aside, and the matter is referred back for redetermination by a differently constituted panel on the following direction:

The redetermination be conducted on the evidentiary record that presently exists and on any further evidence to be presented by Counsel for the Applicant and Counsel for the Respondent.

I find there is no question to certify.

"Douglas R. Campbell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-6670-14

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

PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: APRIL 7, 2015

REASONS FOR JUDGMENT AND JUDGMENT: CAMPBELL J.

DATED: APRIL 8, 2015

APPEARANCES:

Yuliya Dumanska

FOR THE APPLICANT
CLAUDIA PARTICIA GOMEZ FLORES (A.K.A.
CLAUDIA PATRICI GOMEZ)

Souheil Saab

FOR THE RESPONDENT
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

SOLICITORS OF RECORD:

Yuliya Dumanska
Barrister and Solicitor
Toronto, Ontario

FOR THE APPLICANT
CLAUDIA PARTICIA GOMEZ FLORES (A.K.A.
CLAUDIA PATRICI GOMEZ)

Souheil Saab
Barrister and Solicitor
Edmonton, Alberta

FOR THE RESPONDENT
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION