Federal Court  Cour fédérale

Date: 20170306

Docket: IMM-2879-16

Citation: 2017 FC 265

Ottawa, Ontario, March 6, 2017

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

VICTOR EDGARDO SANTOS CHINCHILLA
LESI MARISOL CARDOZA HERNANDEZ
VICTOR MAURICIO SANTOS CARDOZA

Applicants

and

THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP CANADA

Respondent

ORDER AND REASONS

[1] The Applicants, a family of three (the principal applicant, Mr. Chinchilla, his spouse, Ms. Hernandez, and their 12 year old son, Victor) are citizens of Honduras. They seek judicial review of a decision of a Senior Immigration Officer, dated April 26, 2016, rejecting their Pre-Removal Risk Assessment application (PRRA application) on the basis that they had provided insufficient new evidence of risk.

[2] The relevant facts can be summarized as follows. The Applicants entered Canada on August 9, 2011 and claimed Canada's protection on the basis that they fear persecution and torture in Honduras as a result of Mr. Chinchilla having witnessed, on November 26, 2003, the murder of a journalist who was a friend of his.

[3] More particularly, they alleged that:

a. A politician might have been involved in the murder as Mr. Chinchilla had seen him speak with the murdered prior to the incident;
b. A few weeks after the journalist's death, Mr. Chinchilla attempted to file a police report but the report was not taken;
c. In July 2006, Mr. Chinchilla began receiving death threats in various forms, which led him to leave Honduras for the United States (US) on May 25, 2007;
d. Following Mr. Chinchilla's departure for the US, Ms. Hernandez began receiving threatening phone calls from people looking for Mr. Chinchilla;
e. She too, attempted to file a police report but to no avail; and
f. Fearing for her life and that of her son's, Ms. Hernandez travelled to the US with her son on December 23, 2007 and joined Mr. Chinchilla.

[4] On November 7, 2012, the Immigration and Refugee Board of Canada, Refugee Protection Division (the RPD), dismissed the Applicants' protection claim. The RPD found that the Applicants had failed to provide sufficient credible and trustworthy evidence to support their fear of returning to Honduras. It also held that their failure to claim protection in the US, where they had lived for more than three years before entering Canada, was inconsistent with persons

who fear of returning to their home country. Finally, the RPD drew a negative inference from the fact Ms. Hernandez and her son returned to Honduras in February 2008 and stayed there for nearly a year before traveling back to the US despite allegedly being afraid of returning to Honduras.

[5] Leave to judicially review the RPD's decision was denied by the Court on March 12, 2013.

[6] On September 11, 2015, the Applicants filed their PRRA application. In support of their application, they submitted what they claimed to be new evidence of the risk they face upon returning to Honduras. That documentation consists of:

a. A statement from a local government official, dated July 7, 2015, indicating that Mr. Chinchilla was forced to leave Honduras because he is a key witness to the murder of the journalist German Antonio Morales whose murderers have still not been located;
b. A statement from the president of the Community Council of Santa de Copan in Honduras, dated August 14, 2015, indicating that the Community Council witnessed the threats that led the Applicants to leave Honduras;
c. A statement from another witness of the journalist’s murder, dated January 27, 2015, indicating that he went in hiding after the murder, that the murderers are still on the run and that Mr. Chinchilla is most likely to be killed if he returns to Honduras;

d. Statements from a friend and a neighbour of Mr. Chinchilla in Honduras, dated January 27, 2015, indicating that the Applicants suffered serious death threats and had to leave Honduras;

e. A police report, dated June 23, 2015 (the Police Report), regarding the murder of one of Mr. Chinchilla's friends, who was allegedly shot in front of his son by people who were looking for Mr. Chinchilla and who afterward stated out loud that they had shot the wrong person;

f. News articles about that friend's murder, as well as internet news articles on the breakdown of basic human rights and the high rate of rampant crime and murders in Honduras; and

g. Letters from Mr. Chinchilla and Ms. Hernandez's employers in Canada and from community church leaders about the Applicants' good character and establishment in Canada.

[7] The Officer found that the Applicants had not satisfied the burden set out in paragraph 113(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) which provides that a PRRA applicant whose claim to refugee protection has been rejected "may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been excepted in the circumstances to have presented, at the time of the rejection".

[8] The Officer held that the Applicants were restating, materially, the same circumstances which had been articulated before the RPD and that none of the articles, statements and letters

submitted in support of the PRRA application was evidence of a new risk development which is personal to the Applicants and which has arisen since the date of the RPD's decision.

[9] With respect to the Police Report, the Officer found it problematic as it did not read like a professional police statement would be expected to read as some parts sounded as having been written by the complainant - the victim's son - while others read as if they had been written by police officers. Furthermore, the Officer noted that the original copy in Spanish was not signed by anyone whereas the English translation was and that no typed name appeared for any police officer.

[10] The Officer, noting that it was not his role to conduct a second refugee hearing, denied the Applicants' PRRA application.

[11] The Applicants claim that the Officer's decision is both unreasonable and procedurally unfair and should, as a result, be quashed and the matter remitted back to a different immigration officer for reconsideration. They also contend that the Officer's decision is fatally flawed as the Officer failed to consider the interest of Mr. Chinchilla and Ms. Hernandez’s Canadian-born child.

[12] With respect, I see no reason to interfere with the Officer's decision.

[13] It is trite law that, questions related to procedural fairness are reviewable on the correctness standard (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, at para 43,

[2009] 1 SCR 339) whereas “issues relating to the treatment of the evidence made by a PRRA officer are reviewable on a standard of reasonableness as such issues are fact-driven and attract deference” (*Nguyen v Canada (Citizenship and Immigration)*, 2015 FC 59 at para 4 [*Nguyen*]). As is well-settled, the standard of reasonableness is concerned mostly with the existence of justification, transparency, and intelligibility within the decision-making process and with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[14] First, the Applicants' claim that the Officer committed a breach of procedural fairness by failing to consider their new evidence is without merit. As pointed out by the Court in *Nguyen*, PRRA officers benefit from a presumption that they have considered all the evidence before them (*Nguyen*, at para 5).

[15] Here, I am satisfied that the Applicants have failed to rebut that presumption and that while the Officer may not have quoted all the documentation, he nevertheless referred to it as appears from this passage of the Officer's decision:

> The submissions I have been provided with contain attestations and letters from people who knew the applicants in Honduras as well as here in Canada as well as copies of internet news articles which have been translated on the internet. I find that none of this documentation is evidence of a new risk development which is personal to the applicants and which has arisen since the date of the Board’s decision. The documentation refers to the incidents which had been considered by the Board. The news articles do not mention the applicants or refer to their personal circumstances.
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> (PRRA decision, p. 4)

[16] The Officer also referred in detail to the Police Report. The Applicants' claim that the Officer breached procedural fairness by failing to consider their new material shall therefore be dismissed.

[17] The Applicants also submit that the Officer failed to provide adequate reasons in reaching his decision. In *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*], the Supreme Court of Canada held that reasons are sufficient as long as they allow the reviewing court to understand why the decision-maker made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, even though they do not include "all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred" or "an explicit finding on each constituent element, however subordinate, leading to its final conclusion" (*Newfoundland Nurses*, at para 16). It also held that reasons for decision need not be perfect and that the reviewing court, although it ought not substitute its own reasons may, if it find it necessary, "look to the record for the purpose of assessing the reasonableness of the outcome" (*Newfoundland Nurses*, at paras 15 and 18).

[18] Here, I am satisfied that the Officer's reasons meet the threshold set out in *Newfoundland Nurses* as they allow the Court to understand why the Officer made his decision, even though they could have been more detailed.

[19] Therefore, I find that there was no breach of the duty of fairness owed to the Applicants.

[20] I am also satisfied that it was reasonably open to the Officer to find that the Applicants, as failed refugee claimants, had provided insufficient evidence of a new risk, as required by paragraph 113(a) of the *Act* which, as indicated previously, limits the evidence PRRA officers may consider to new evidence that arose after the rejection of the refugee claim or that was not reasonably available at that time.

[21] In *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 [*Raza*], the Federal Court of Appeal set out the test for determining whether evidence provided by PRRA applicants qualifies as new evidence under paragraph 113(a):

> [13] As I read paragraph 113(a), it is based on the premise that a negative refugee determination by the RPD must be respected by the PRRA officer, unless there is new evidence of facts that might have affected the outcome of the RPD hearing if the evidence had been presented to the RPD. Paragraph 113(a) asks a number of questions, some expressly and some by necessary implication, about the proposed new evidence. I summarize those questions as follows:
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> > 1. Credibility: Is the evidence credible, considering its source and the circumstances in which it came into existence? If not, the evidence need not be considered.
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> > 2. Relevance: Is the evidence relevant to the PRRA application, in the sense that it is capable of proving or disproving a fact that is relevant to the claim for protection? If not, the evidence need not be considered.
> >
> > 3. Newness: Is the evidence new in the sense that it is capable of:
> >
> > (a) proving the current state of affairs in the country of removal or an event that occurred or a circumstance that arose after the hearing in the RPD, or

> (b) proving a fact that was unknown to the refugee claimant at the time of the RPD hearing, or
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> (c) contradicting a finding of fact by the RPD (including a credibility finding)?
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> If not, the evidence need not be considered.
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> 4. Materiality: Is the evidence material, in the sense that the refugee claim probably would have succeeded if the evidence had been made available to the RPD? If not, the evidence need not be considered.
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> 5. Express statutory conditions:
>
> (a) If the evidence is capable of proving only an event that occurred or circumstances that arose prior to the RPD hearing, then has the applicant established either that the evidence was not reasonably available to him or her for presentation at the RPD hearing, or that he or she could not reasonably have been expected in the circumstances to have presented the evidence at the RPD hearing? If not, the evidence need not be considered.
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> (b) If the evidence is capable of proving an event that occurred or circumstances that arose after the RPD hearing, then the evidence must be considered (unless it is rejected because it is not credible, not relevant, not new or not material).
>
> [14] The first four questions, relating to credibility, relevance, newness and materiality, are necessarily implied from the purpose of paragraph 113(a) within the statutory scheme of the IRPA relating to refugee claims and pre removal risk assessments. The remaining questions are asked expressly by paragraph 113(a).

[22] Here, I find that the letters and statements from Canadian residents regarding the Applicants' establishment in Canada were simply not relevant to the PRRA application and, therefore, do not qualify as new evidence under paragraph 113(a). The letters and statements made by people in Honduras regarding the events that led the Applicants to flee that country, do

not qualify either as new evidence under paragraph 113(a) since the Applicants have failed to establish that this evidence was not reasonably available at that time the RPD dismissed their refugee claim. This issue was not even addressed by the Applicants.

[23] As for the news articles on country conditions, they do not suggest that there has been a change since the RPD considered the Applicants' refugee claim. They do not mention either the Applicants or refer to their particular circumstances. As a result, they do not assist the Applicants in establishing that they now face a new risk of harm if they were to return to Honduras.

[24] With respect to the Police Report, I find that it was reasonably open to the Officer to assign it little weight. As the Respondent rightfully points out, the reasons show that the Officer had concerns about the authenticity and probative value of that document and that without further evidence to explain it or provide information about the surrounding circumstances, the Officer's finding that it was insufficient evidence of a new risk was within the range of reasonable outcomes.

[25] As we have seen, paragraph 113(a) of the *Act* is based on the premise “that a negative refugee determination by the RPD must be respected by the PRRA officer, unless there is new evidence of facts that might have affected the outcome of the RPD hearing if the evidence had been presented to the RPD” (*Raza*, at para 13). In light of the RPD significant findings in this case, it was open to the Officer, in my view, to conclude that the Police Report, given its shortcomings, was insufficient to overcome these findings.

[26] Finally, the Applicants' contention that the Officer erred in failing to consider the possible impact of their removal on their Canadian-born child is without merit. As pointed out by the Respondent, the Federal Court of Appeal in *Varga v Canada (MCIC)*, 2006 FCA 394 [*Varga*], clearly held that immigration officers have no obligation to consider, in the context of a PRRA application, the interests of a Canadian-born child when assessing the risks involved in removing at least one of the parents of that child (*Varga*, at para 20).

[27] For all these reasons, the Applicants' judicial review application will be dismissed. Neither party proposed a question for certification. None will be certified.

ORDER

THIS COURT ORDERS that:

1. The judicial review application is dismissed.

2. No question is certified.

"René LeBlanc"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	VICTOR EDGARDO SANTOS CHINCHILLA LESI MARISOL CARDOZA HERNANDEZ, VICTOR MAURICIO SANTOS CARDOZA v THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA
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APPEARANCES:

Peter A. Abrametz	FOR THE APPLICANTS
Cailen Brust	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Peter A. Abrametz Barrister and Solicitor Prince Albert, Saskatchewan	FOR THE APPLICANTS
William F. Pentney Deputy Attorney General of Canada Saskatoon, Saskatchewan	FOR THE RESPONDENT