

Federal Court



Cour fédérale

**Date: 20190508**

**Docket: IMM-3450-18**

**Citation: 2019 FC 613**

**Toronto, Ontario, May 8, 2019**

**PRESENT: Mr. Justice Campbell**

**BETWEEN:**

**FRANCIS REBECA ROSALES LOAISIGA  
ABRAHAM RAFAEL STEIN GUTIERREZ  
ROSALES**

**Applicants**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The present Application for judicial review concerns a decision of the Refugee Protection Division (RPD), where the member found that the Applicants are neither Convention refugees nor persons in need of protection. The Applicants are a mother and minor child who are citizens of Nicaragua. They sought protection in Canada on the basis of fear of domestic violence from the Principal Applicant's former common-law partner, "Lester".

[2] The Principal Applicant testified that Lester is the father of the Minor Applicant. She alleged that he physically and sexually abused her throughout their relationship. She stated that he was not supportive when she became pregnant and refused to acknowledge paternity. She testified that at the hospital she registered her son with her own surname. A few months later, she married her current husband, “Wilmer,” from whom she is now separated. She testified that Wilmer asked his uncle, “Rafael”, to assist her with obtaining a visa in order to leave the country and escape Lester. The Principal Applicant testified that Rafael pretended to be her son’s father in order to obtain travel documents and facilitate their exit from persecution.

[3] The RPD found that the Principal Applicant was not credible. The Member concluded that there was insufficient evidence that Lester exists as alleged and that he’s the father of the Principal Applicant’s son. The RPD found instead that Rafael is the Minor Applicant’s father.

[4] In my view, the RPD’s analysis on this issue is unintelligible. It is not clear that the RPD understood the Principal Applicant’s evidence about how she registered her son’s birth and why she listed Rafael as his father. As well, the RPD does not appear to have considered all of the evidence before it, including the affidavit of service of family law documents on Lester and a medical note documenting a sexual assault against the Principal Applicant.

[5] For these reasons, I find that the decision under review is not intelligible and does not fall within the standard of reasonableness set out in *Dunsmuir v New Brunswick*, 2008 SCC 9.

**JUDGMENT in IMM-3450-18**

**THIS COURT'S JUDGMENT is that** the decision presently under review is set aside, and the matter is referred back to a differently constituted panel for redetermination.

There is no question to certify.

“Douglas R. Campbell”

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Judge

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

**DOCKET:** IMM-3450-18

**STYLE OF CAUSE:** FRANCIS REBECA ROSALES LOAISIGA,  
ABRAHAM RAFAEL STEIN GUTIERREZ  
ROSALES v MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 25, 2019

**JUDGMENT AND REASONS:** CAMPBELL J.

**DATED:** MAY 8, 2019

**APPEARANCES:**

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