

Federal Court



Cour fédérale

Date: 20210915

Docket: IMM-4461-20

Citation: 2021 FC 954

St. John's, Newfoundland and Labrador, September 15, 2021

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

**KATIA MARGENTINA RAMIREZ CUETO
(a.k.a. KATIA MARGARITA RAMIREZ CUETO)**

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Ms. Katia Margentina Ramirez Cueto (the “Applicant”) seeks judicial review of the decision made by the Immigration and Refugee Board, Refugee Appeal Division (the “RAD”), dismissing her appeal from the decision of the Immigration and Refugee Board, Refugee Protection Division (the “RPD”). In its decision, the RAD confirmed the decision of the RPD and found that the Applicant was not a Convention refugee nor a person in need of protection,

within the meaning of section 96 and subsection 97(1), respectively, of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 (the “Act”).

[2] The Applicant is a citizen of Mexico. She claims to be at risk of persecution in Mexico due to her sexual orientation as a lesbian woman.

[3] The RAD decided that the Applicant has a viable Internal Flight Alternative (“IFA”) in Mexico City and dismissed her appeal.

[4] The Applicant argues that the RAD’s decision is unreasonable and was made without regard to the evidence, including evidence that was accepted by the RAD in another case involving sexual orientation, that is the decision in *X (Re)*, TB8-19175.

[5] In that case, the RAD accepted that the applicant would not be safe in Mexico City, as a homosexual man and granted him protection.

[6] The Minister of Citizenship and Immigration (the “Respondent”) submits that the RAD is not bound by its prior decisions and that the decision in this case is reasonable having regard to the evidence.

[7] The test for a viable IFA is addressed in *Rasaratnam v. Canada (Minister of Employment & Immigration)* (1991), [1992] 1 F.C. 706 (Fed. C.A.), at 710-711. The test is two pronged and provides as follows:

- First, the Board must be satisfied that there is no serious possibility of a claimant being persecuted in the IFA and
- Second, it must be objectively reasonable to expect a claimant to seek safety in a different part of the country before seeking protection in Canada.

[8] In order to show that an IFA is unreasonable, an applicant must show that conditions in the proposed IFA would jeopardize life and safety in travelling or relocating to that IFA; see *Thirunavukkarasu v. Canada (Minister of Employment & Immigration)* (1993), [1994] 1 F.C. 589 (Fed. C.A.), at 596-598.

[9] In the present case, the problem is not with the RAD's statement of the test but with the manner in which it was applied.

[10] According to the decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov* (2019), 441 D.L.R. (4th) 1 (S.C.C.), the standard of reasonableness presumptively applies to administrative decisions, including decisions made under the Act, except where legislative intent or the rule of law suggests otherwise; see *Vavilov, supra* at paragraph 23.

[11] In considering reasonableness, the Court is to ask if the decision under review "bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on that decision"; see *Vavilov, supra* at paragraph 99.

[12] While I agree in principle that each appeal before the RAD will turn on its own facts, there will be occasion when the evidence in one appeal, and its treatment by the RAD, will be relevant to another case.

[13] In my opinion, that is the situation here, particularly the National Documentation Package (“NDP”) that was before the RAD in *X (Re), supra*, and the NDP that was before the RAD in the Applicant’s case.

[14] In *X (Re), supra*, the RAD relied on the April 30, 2018 NDP for Mexico. In the present case, the RAD relied on the March 29, 2019 NDP for Mexico.

[15] While there are some differences in the documents contained in each NDP, the following excerpt from *X (Re), supra* at paras 26-27, cites directly to documents that were contained in both NDPs:

The objective evidence also indicates the complicity of state actors in the persecution of members of the LGBTIQ community. Specifically, same-sex couples engaged in public displays of affection are “a frequent target of police abuse and arbitrary detention by state agents – often with excessive use of force or verbal abuse – because of what is considered ‘immoral behaviour’ in public spaces.” [43] Officials from the Public Ministry often mistreat LGBTIQ persons and refuse to open investigations for crimes against them. [44]

While the State is not expected to afford perfect protection at all times, authorities must be able and willing to implement law and procedure. [45] Based on my review, I find that the preponderance of the evidence is clear and convincing and rebuts the presumption of state protection in the Appellant’s particular circumstances.

[16] In the present case, the RAD considered the same evidence that led to the above conclusions in *X (Re)*, *supra*. However, this time a different panel of the RAD reached a different conclusion.

[17] In my opinion, the RAD's failure to address the similarities and differences between the NDPs in *X (Re)*, *supra*, and the present case amounts to a reviewable error, as addressed in the decision in *Cepeda-Gutierrez v. Canada (Minister of Citizenship & Immigration)* (1998), 157 F.T.R. 35.

[18] It follows that this application for judicial review will be allowed, the decision of the RAD will be set aside and the matter remitted to a differently constituted panel of the RAD for redetermination. There is no question for certification arising.

JUDGMENT in IMM-4461-20

THIS COURT'S JUDGMENT is that the decision of the Immigration and Refugee Board, Refugee Appeal Division is set aside and the matter is referred back for redetermination by a differently constituted panel of the Refugee Appeal Division.

There is no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4461-20

STYLE OF CAUSE: KATIA MARGENTINA RAMIREZ CUETO (a.k.a. KATIA MARGARITA RAMIREZ CUETO) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: AUGUST 30, 2021

JUDGMENT AND REASONS: HENEGHAN J.

DATED: SEPTEMBER 15, 2021

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