Federal Court Cour fédérale

Date: 20211015

Docket: IMM-899-20

Citation: 2021 FC 1080

Ottawa, Ontario, October 15, 2021

PRESENT: Madam Justice Go

BETWEEN:

MARIO JOSUE LOVO ZAVALA
ELSY NOEMI RAMIREZ LOPEZ
MARIO JOSUE LOVO RAMIREZ
TATIANA NOHEMY LOVO RAMIREZ

Applicants

and

THE MINISTER OF IMMIGRATION, REFUGEES, AND CITIZENSHIP CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms. Elsy Noemi Ramirez Lopez [Principal Applicant], her spouse Mr. Mario Josue Lovo Zavala [male Applicant], together with their two minor children [the family together as the Applicants] applied for a Pre-Removal Risk Assessment [PRRA] under the *Immigration and*

Refugee Protection Act [*IRPA*], due to fear of persecution by members of MS-13, a criminal gang operating in El Salvador, their country of origin. The Application was denied by a Senior Immigration Officer in a decision dated December 5, 2019 [Decision].

[2] The Applicants have applied for judicial review of the Decision. For the reasons set out below, the application is dismissed.

II. **Background**

Factual Context

[3] The Principal Applicant and the male Applicant state that they were business owners who used to run a produce stall at a local market in San Miguel, El Salvador. In December 2013, they were threatened by members of MS-13 who demanded a portion of their business income. They paid the gang and closed their business to avoid further confrontation.

[4] That same month, the male Applicant left El Salvador to cross into the US through Mexico, while the Principal Applicant and the children remained in hiding in San Miguel. The male Applicant was deported back to El Salvador in January 2014. The Applicants claim that the MS-13 members confronted them at their home in June 2014 and demanded a sum of five thousand dollars within three days. Knowing that they could not pay this amount, the Applicants fled again, as a family, to the United States in June 2014. They were arrested and detained at the border. The Principal Applicant and her children were released on bond. They then travelled to Canada where they filed a refugee claim in October 2014. The male Applicant, in the meanwhile,

was deported to El Salvador a second time. He arrived in Canada about one year later on December 8, 2015 and joined his family's application for protection.

The RPD Decision

[5] The Applicants' claim was rejected by the Refugee Protection Division [RPD] in a decision dated October 23, 2017. The RPD held that the Applicants' claim lacked any nexus to a Convention ground under section 96 as they were targeted solely because they owned a business.

[6] Noting that evidence in the National Documentation Package [NDP] established that the risk of extortion by gangs is a risk faced by all business owners in El Salvador, the RPD concluded that the risk faced by the Applicants was not sufficiently personalized to them.

[7] The RPD further found that the Applicants' claim that they continued to be threatened by MS-13 after the closing of their business to be not credible for several reasons. The RPD pointed to the male Applicant advising American immigration officers in December 2013 that he entered the US to join his father and work there, and that he had no fear of returning to El Salvador. When asked why he would say that to the American immigration officers, the male Applicant explained he wanted to go back to El Salvador and return to the US with his wife and children.

[8] The RPD concluded it was unlikely, on a balance of probabilities, and based on the NDP and country condition evidence provided by the Applicants, that MS-13 would continue to be interested in the Applicants given that they operated a small-scale produce business that had been

closed for many years. The RPD also found that the two children did not face a risk of persecution because they did not fit the profiles described in the NDP.

[9] As the Applicants had made their claim at a land border with the United States under an exception to the Safe Third Country Agreement, they had no right to appeal the RPD Decision pursuant to section 110(2)(d) of the *IRPA*.

PRRA Submissions

[10] The Applicants filed a PRRA Application on June 12, 2019. The Applicants submitted new country condition evidence, including reports contained in the NDP in support of their claim that the conditions in El Salvador had worsened since their RPD hearing.

[11] The Applicants claimed that they faced new risk in El Salvador because of the increased numbers of deportations of MS-13 gang members from the US and Mexico to their home country. They also alleged risk on the basis of the Principal Applicant's gender and invoked the best interest of the child assessment under section 25(1) of the *IRPA*.

[12] The Applicants submitted no personal evidence in support of their PRRA application.

Decision under Review

[13] The PRRA Officer provided two reasons for refusing the Applicants' claim. First, the Applicants failed to establish a nexus with the Convention ground as required by section 96 of the *IRPA* because they did not provide evidence that they were targeted by the MS-13 on a

protected ground. The Officer adopted the RPD's findings that the Applicants did not establish forward-looking risk (i.e. that the extortion would continue). Applying *Rodriguez v Canada (Minister of Citizenship and Immigration)*, 2012 FC 11 [*Rodriguez*], the Officer found that being a business owner did not constitute membership in a social group, and further, that extortion was a risk all business owners in El Salvador faced. The Officer thus concluded that the Applicants did not face more than a mere possibility of persecution on a protected ground under section 96.

[14] Second, the Officer found that the Applicants failed to provide personalized evidence to support their fear of gang activity in El Salvador to support a section 97 claim. Specifically, the Officer considered two reports from the NDP describing that gang activity is widespread in El Salvador and that gangs including MS-13 increasingly rely on extortion to maintain profits. The Officer accepted this general evidence but noted that the Applicants did not provide any evidence that these risks were personal to them as per section 97(1)(b)(ii) of the *IPRA*.

III. **Issues**

[15] The Applicants raise a number of issues in their application. In my view, these can all be distilled into a single determinative issue on judicial review, namely: *Did the PRRA Officer err in finding that the Applicants faced a "generalized risk" in El Salvador, contrary to section 97(1)(b)(ii) of the IRPA?*

IV. **Analysis**

[16] The Applicants make two arguments to support their position that the Officer erred in assessing their risk.

First Argument: The Officer ignored evidence that the Applicants were threatened with death by the MS-13

[17] The Applicants say that the Officer accepted that the family was of modest means and that they were threatened with death in December 2013 by MS-13, but ignored these facts when assessing evidence contained in the NDP. The Applicants point to six reports in the NDP discussing the risk faced by people who refuse to pay extortion to MS-13 in El Salvador as well as Guidelines issued by Immigration, Refugees and Citizenship Canada (IRCC) instructing officers to undertake independent research in assessing PRRA applications. The Applicants cite *Malveda v Canada (Minister of Citizenship and Immigration),* 2008 FC 447, at paras 42-49 in support of this claim.

[18] The Applicants continued to pursue this argument at the hearing, stating that the RPD never challenged their narrative that they were threatened in December 2013 by MS-13.

[19] The Applicants' argument missed the mark.

[20] As the Respondent has rightly pointed out, a PRRA officer is entitled to rely on credibility findings made by the RPD: *Perampalam v Canada (Minister of Citizenship and Immigration),* 2018 FC 909, at para 20.

[21] The Applicants fail to appreciate that the issue is not about whether they were threatened in December 2013. Rather, given that the Applicants had already paid the extortion as per the threat, the RPD did not find credible that they would continue to face new demands for money

after they closed down their business. The documentary evidence provided by the Applicants and in the NDP establishes that individuals who cannot pay MS-13's extortion would face a risk of death in El Salvador. In the Applicants' case, the extortion had already been paid. The Applicants' reliance on documentary evidence fails to address the RPD's key finding that it was not credible that the MS-13 continued to target the Applicants after they paid the initial extortion amount in 2013. The Applicants did not provide any new personal evidence to overcome that negative credibility finding at the PRRA stage. They cannot now fault the Officer for deferring to the RPD's finding on this point.

Second Argument: The Officer conflated generalized country conditions with lack of personalized risk under section 97(1)(b)(ii)

[22] The Applicants further submit that the Officer failed to properly conduct an individualized inquiry of the risk as required by section 97. The Applicants say that the generalized risk of criminal activity in El Salvador became a personal risk to them because they were in fact, targeted for extortion by the MS-13. The Applicants say that the Officer conflated the reason for the risk with the risk itself, as per *Guerrero v Canada (Minister of Citizenship and Immigration),* 2011 FC 1210, at paras 25-30. They further cite *Portillo v Canada (Minister of Citizenship and Immigration),* 2012 FC 678, at para 36 and *Balcorta Olvera v Canada (Minister of Citizenship and Immigration),* 2012 FC 1048, at paras 40-41, and *Correa v Canada (Minister of Citizenship and Immigration),* 2014 FC 252 [*Correa*], at para 46, to support their position that the Officer improperly dismissed the personal targeting faced by the Applicants as an extension of generalized risk. Finally, the Applicants say that the Officer erred by relying on *Rodriguez.*

[23] The Applicants' position is misguided as it goes to the reasonableness of the RPD decision and not the PRRA decision. The Applicants place themselves squarely in between two conflicting lines of jurisprudence on whether individuals targeted by criminal gangs for extortion or forced recruitment will qualify for protection under section 97(1)(b) of the *IRPA*: see, Justice Russell's survey of the jurisprudence in *Correa*, at paras 41-46. However, these are all cases addressing the reasonableness of RPD findings on personalized risk, and while there is some overlap between the PRRA Officer's findings and the RPD's, the Court must take care not to conduct a review of the RPD decision that is not the basis of the present application. Instead, the question under review is whether the PRRA Officer reasonably deferred to the credibility finding of the RPD in the PRRA assessment.

[24] The Applicants' argument is also not supported by the evidence they presented to the PRRA Officer. The Applicants provided only general evidence of gang activity in El Salvador on their PRRA application. *Raza v Canada (Citizenship and Immigration),* 2007 FCA 38 [*Raza*], cited by the Respondent, holds that the role of a PRRA officer is limited to assess allegations of risk prior to removal based on fresh evidence. Such evidence must meet the requirements set out in section 113(a) of the *IRPA* and must be of such significance that it would have allowed the RPD to reach a different conclusion: *Raza,* at paras 12-15. In addition, *Canada (Minister of Citizenship and Immigration) v Singh,* 2016 FCA 96, at para 47, holds that a PRRA officer must show deference to a negative decision by the RPD and may only depart from that principle on the basis of new factual circumstances or new risk. Without such evidence, the PRRA Officer had no grounds to justifiably depart from the credibility finding of the RPD.

[25] As such, I find that the PRRA officer reasonably relied on the RPD finding and reasonably concluded that the Applicants did not provide any evidence that these risks were personal to them as per section 97(1)(b)(ii) of the *IRPA*.

V. **Conclusion**

[26] The application for judicial review is dismissed.

[27] Neither party proposed a serious question of general importance for certification and I find that none arises in this case.

JUDGMENT in IMM-899-20

THIS COURT'S JUDGMENT is that:

1. The Applicants' application for judicial review is dismissed.

2. There is no question for certification.

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-899-20
STYLE OF CAUSE:	MARIO JOSUE LOVO ZAVALA, ELSY NOEMI RAMIREZ LOPEZ, MARIO JOSUE LOVO RAMIREZ, TATIANA NOHEMY LOVO RAMIREZ v THE MINISTER OF IMMIGRATION, REFUGEES, AND CITIZENSHIP CANADA
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