

Federal Court



Cour fédérale

Date: 20240222

Docket: IMM-9008-22

Citation: 2024 FC 264

Ottawa, Ontario, February 22, 2024

PRESENT: Mr. Justice Pentney

BETWEEN:

**VICTOR HUGO SALAS AGUIRRE
VICTOR HUGO SALAS PACHECO**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants are a father (Victor Hugo Salas Aguirre) and son (Victor Hugo Salas Pacheco) from Guatemala. Mr. Salas Aguirre was informed of the hearing but did not participate in it. Mr. Salas Pacheco did participate, and was assisted by a friend who served as a translator.

[2] I am writing these reasons directly to the Applicants, because they are the ones most affected by them, and in particular my reasons are addressed to Mr. Salas Pacheco. He is not a

lawyer, and so I will explain my decision using less of the legal terminology than is common in these sorts of cases. I will sometimes refer to him directly and sometimes to the two Applicants together – who I refer to as “the Applicants” or “the father and son”.

[3] The Applicants are citizens of Guatemala. They left that country and eventually came to Canada because they feared persecution by a man named Juan and others who are associated with the Mara Salvatrucha gang (“MS-13”). The father said that Juan killed a man in Guatemala over a loan dispute and that man now wants to kill him because he knows about the murder. The father left Guatemala and lived without legal status in the United States from 2003 until 2019. He then came to Canada.

[4] Mr. Salas Pacheco said he was at risk from the same man who wanted to harm his father. He says that man came after him in 2015, and the man’s daughter tried to run him down with her car. He left Guatemala and came to Canada in 2020.

[5] The father and son both claimed refugee status in Canada. The Refugee Protection Division Panel heard their joint claims over several days in January, July and August 2022. The Panel dismissed their refugee claims. It is not necessary to review that decision in great detail, but I will set out a short summary of the main points.

[6] The Panel found the evidence of the father and son was not credible for several reasons. When they testified before the Panel, their evidence did not line up on some key points. In addition, their testimony before the Panel did not match their written forms on some important details (in particular their Basis of Claim forms). The Panel asked them about these contradictions and omissions, and it found they did not have good explanations for the differences. The Panel also found that their evidence did not always match the statements in the other documents they filed, such as the police report about the car accident involving Mr. Salas Pacheco.

[7] Because of all of these problems, the Panel did not believe the story of the father and son about the risks they faced from Juan. It also did not find that they would be at risk if they had to go back to Guatemala. The Panel dismissed their refugee claims.

[8] The Applicants seek judicial review of the Panel's decision. They were represented by a lawyer when they filed their application but she withdrew from representing them before the hearing.

[9] At the hearing, I explained to Mr. Salas Pacheco that it was not my role to consider all of the evidence again. Instead, I must look at the whole record, including any submissions he wanted to make, plus the arguments of the former lawyer as well as those of the government, and

to decide whether the Panel's decision is unreasonable. The rules I have to follow in reviewing the Panel's decision have been set out in two decisions of the Supreme Court of Canada, : *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, and *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21.

[10] Under the law, a decision can be found to be unreasonable because it does not apply the correct legal tests, or because it fails to take into account a key fact. A decision can also be unreasonable because the reasons do not explain the result. So in this case, even if the Panel applied the right law and considered the important facts, I could find the decision to be unreasonable if the Panel failed to explain its reasoning process on one of the key points.

[11] Mr. Salas Pacheco did not argue that the Panel made legal errors, and he did not point out any important evidence that the Panel failed to consider. He said he did not know why his evidence did not match the evidence of his father. He did not know why the police report had details that did not match his story. Mr. Salas Pacheco said that he and his family continued to face risks in Guatemala. That is why he went there to bring his wife and children to Canada.

[12] It is not necessary to repeat all of the arguments the government lawyer put forward in the hearing, in both her written and oral submissions. The government says that the Panel's decision is reasonable, because the findings on the Applicants' credibility and their future risk in

Guatemala are based on the evidence. The government says there is no reason to overturn the Panel's decision.

[13] I have taken a hard look at the Panel's decision. I have reviewed the evidence that was put forward by the Applicants. And I have examined the reasons set out in the Panel's written decision. Based on all of that, I can find no basis to find the decision to be unreasonable.

[14] The Panel found that the Applicants' evidence just did not line up. The father and son contradicted each other, and when they were questioned about the contradictions and then changed their evidence, they did not have good explanations. Their story also did not match the other evidence they had brought forward, such as the police report. And the medical evidence they submitted did not explain why their stories were not consistent or complete.

[15] I have no reason to doubt that Mr. Salas Pacheco genuinely believes that his family will be at risk if they go back to Guatemala. But I have no basis to overturn the Panel's decision, as a matter of law or on the facts. The decision meets the legal test for a reasonable decision, as that is understood in Canadian law.

[16] I am therefore dismissing the application for judicial review.

[17] There is no question of general importance for certification in this case.

[18] In closing, I want to thank Mr. Dario Garcia for acting as the translator for Mr. Salas Pacheco. I also want to thank counsel for the Attorney General, for her flexibility during the hearing and for the manner in which she presented her arguments so that the translator could ensure that Mr. Salas Pacheco could understand. Her approach reflects the best traditions of counsel for the Attorney General of Canada.

[19] Finally, I want to thank Mr. Salas Pacheco for his participation in the hearing.

JUDGMENT in IMM-9008-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question of general importance for certification.

"William F. Pentney"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9008-22

STYLE OF CAUSE: VICTOR HUGO SALAS AGUIRRE, VICTOR HUGO SALAS PACHECO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: ZOOM (TORONTO, ON)

DATE OF HEARING: FEBRUARY 14, 2024

JUDGMENT AND REASONS: PENTNEY J.

DATED: FEBRUARY 22, 2024

APPEARANCES:

Victor Hugo Salas Aguirre (ABSENT)	FOR THE APPLICANT
Victor Hugo Salas Pacheco	FOR THE APPLICANT (ON HIS OWN BEHALF)
Ferishtah Abdul-Saboor	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT
--	--------------------