

Date: 20080220

Docket: IMM-1887-07

Citation: 2008 FC 232

Toronto, Ontario, February 20, 2008

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

**LUIS GUILLERMO MANRIQUE FERNANDEZ
ALEXANDRA NOEMI RAMOS BAUSERO
MELANIE CAMILA MANRIQUE RAMOS
GUILLERMO FEDERICO MANRIQUE RAMOS**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION
THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicants are a family, the Principal Applicant, Fernandez, his common-law wife Bausero and two minor children Melanie and Guillermo. They are all citizens of Uruguay. They sought and were denied refugee protection. They filed an application for a pre-removal risk assessment (PRRA) on the basis that the common-law wife was sexually assaulted by neighbourhood criminals in Uruguay and that they fear a recurrence should she return and that state protection would be inadequate. That application resulted in a negative finding set out in a decision of the PRRA officer dated April 13, 2007. It is that decision that is under review.

[2] For the reasons that follow, I find that the application is dismissed.

ISSUES

[3] The Applicants have raised the following issues in their Memorandum:

1. Did the PRRA officer err in assessing and applying the psychological evidence and determining the psychological risk of return including, *inter alia*, failing to consider the *IRB Gender Guidelines for Women Refugee Claimants*?
2. Did the PRRA officer err in assessing and applying the evidence and law with respect to state protection and applying the evidence to the law?
3. Did the PRRA officer err in his treatment of an Internal Flight Alternative?
4. Did the PRRA officer err in law and failing to assess and protect the best interests of the minor applicants?

STANDARD OF REVIEW

[4] The standard of review to be applied to a decision of a PRRA officer in a matter of this kind is dependent on the nature of the decision. Where the decision is one of law the standard is correctness. Where the decision is one of fact, the standard is patent unreasonableness. Where the decision involves mixed fact and law, not readily separable, the standard is reasonableness. This was summarized by Layden-Stevenson J. in *Nejad v. Canada (MCI)*, 2006 FC 1444 at para. 14:

14 In Nadarajah v. Canada (Solicitor General) (2005), 48 Imm. L.R. (3d) 43, I adopted Mr. Justice Mosley's pragmatic and functional analysis in Kim v. Canada (Minister of Citizenship and Immigration) (2005), 272 F.T.R. 62 regarding the standard of

*review applicable to PRRA decisions. The standard of review for questions of fact is patent unreasonableness, for questions of mixed law and fact, reasonableness, and for questions of law, correctness. When the decision is considered "globally and as a whole", as noted by Mr. Justice Martineau in *Figurado v. Canada (Solicitor General)*, [2005] 4 F.C.R. 387 (F.C.), the standard of review is reasonableness.*

ISSUE #1 PSYCHOLOGICAL EVIDENCE, RISK, GENDER GUIDELINES

[5] The Applicants submitted a psychological report of the adult female applicant by a psychologist, Dr. Day, after the hearing before the Refugee Protection Branch. This report was accepted and reviewed by the PRRA officer as new evidence. That review was careful and compassionate. I find no error in that assessment. This is a matter of factual determination and deference must be given to the PRRA officer in the making of such determination.

[6] While the officer did not specifically mention the *Gender Guidelines* in the PRRA report it is clear that the officer was alert to and aware of the adult female applicant's circumstances and treated them with understanding and sensitivity. It is not necessary that the officer make specific reference to the Guidelines in the report (*Quintanar v. Canada (MCI)*, 2004 FC 677 at paras. 15-16).

ISSUE #2 – STATE PROTECTION

[7] There is a presumption that the state can afford protection to its citizens (*Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 at page 726). The Applicants bear the burden of demonstrating that such protection would not be reasonably available.

[8] As stated in *Syed v. Canada (MCI)*, (2000), 195 F.T.R. 39 at paragraph 18 and *Smirnov v. Canada (Secretary of State)*, [1995] 1 F.C. 780 at paragraph 11, one must accept that state protection may be sometimes ineffective or unresponsive, it does not have to be perfect.

[9] The Applicants offered as “new” evidence to the PRRA officer updated general country conditions in Uruguay and a report of a telephone conversation between the principal male applicant and his sister in Uruguay in which the sister spoke of threatened harm by an unidentified individual. The Federal Court of Appeal has recently held that a PRRA officer need not consider newly offered evidence that is not credible or relevant (*Raza v. Canada (MCI)*, 2007 FCA 385 at para. 17). The “new” evidence offered in the present case is vague and speculative and does not provide any further relevant evidence. I find no reviewable error by the PRRA officer in this regard.

ISSUE #3 – INTERNAL FLIGHT ALTERNATIVE

[10] The PRRA officer found that the Montevideo area where the Applicants had lived was provided with adequate state protection. The Officer also noted that throughout Montevideo and the country generally that state protection was available. I find no reviewable error in that regard.

ISSUE #4 – BEST INTERESTS OF THE CHILDREN

[11] The record shows that the Applicants led no independent evidence as to the children and that the children based their case on that of the adult applicants. In any event, as stated by Dawson J. in *Ammar v. Canada (MCI)*, 2006 FC 1041 at paragraph 16, the best interests of the children are not to be assessed within a PRRA application.

CONCLUSION

[12] I find that the PRRA officer made no reviewable error. There is no question for certification.

JUDGMENT

For the Reasons given:

1. The application is dismissed;
2. There is no question for certification;
3. No Order as to costs.

"Roger T. Hughes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1887-07

STYLE OF CAUSE: *LUIS GUILLERMO MANRIQUE FERNANDEZ,
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AND IMMIGRATION THE MINISTER OF PUBLIC
SAFETY AND EMERGENCY PREPAREDNESS*

PLACE OF HEARING: TORONTO, ONTARIO

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**REASONS FOR JUDGMENT
AND JUDGMENT:** HUGHES J.

DATED: FEBRUARY 20, 2008

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