**Date: 20080415**

**Docket: IMM-2781-07**

**Citation: 2008 FC 481**

**Toronto, Ontario, April 15, 2008**

**PRESENT: The Honourable Madam Justice Dawson**

**BETWEEN:**

**LUIS FERNANDO RODRIGUEZ ZAMBRANO**
**CAROLINA GOMEZ**
**KATHERINE ABIGAIL RODRIGUEZ**
**JOSHUA ALEXANDER RODRIGUEZ**
**CAROLINA GOMEZ**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP**
**AND IMMIGRATION**

**Respondent**

**<u>REASONS FOR JUDGMENT AND JUDGMENT</u>**

[1] The applicants ask that the decision of a pre-removal risk assessment officer (officer), which refused their application for landing in Canada on humanitarian and compassionate grounds, be set aside. This application for judicial review of the officer's decision is dismissed because the applicants have failed to establish any breach of fairness, bias or error of law, or that the decision was unreasonable.

**Background Facts**

[2] The applicants attack the officer's decision on a number of grounds. It is therefore necessary to set out the following chronology of events.

[3] Luis Fernando Rodriguez Zambrano, his spouse, Carolina Gomez, and their three children, Katherine Abigail Rodriguez, Joshua Alexander Rodriguez and Carolina Gomez, are citizens of Ecuador, Venezuela, and the United States, respectively.

[4] Mr. Rodriguez Zambrano and his wife lived illegally in the United States for 10 years before coming to Canada.

[5] On November 26, 2002, the applicants arrived in Canada and claimed refugee protection. Their claims were rejected by the Refugee Protection Division of the Immigration and Refugee Board (RPD). On July 20, 2005, the application for leave for judicial review of the RPD's decision was dismissed.

[6] On January 18, 2006, the applicants applied for a pre-removal risk assessment.

[7] On March 9, 2006, the applicants applied for permanent residence on humanitarian and compassionate grounds.

[8] On June 13, 2006, the pre-removal risk assessment was rejected by officer Mazzotti.

[9] The applicants were scheduled to be removed from Canada to the United States on July 18, 2006.

[10] The applicants requested a deferral of their removal on the basis that they would voluntarily comply with the removal order and make their own travel arrangements to another country so they could avoid deportation to the United States. This was because the applicants believed that they might be arrested and detained in the United States. A deferral of removal was granted to permit the family to make travel arrangements.

[11] The applicants then made a second request for deferral on the basis of their outstanding humanitarian and compassionate application. This second request was refused by a removal officer.

[12] On July 12, 2006, the applicants commenced an application for judicial review of the negative decision of the removal officer.

[13] On July 18, 2006, the Federal Court granted the applicants a stay of removal pending the determination of their application for judicial review.

[14] On August 6, 2006, the applicants were informed by letter that their humanitarian and compassionate application had been transferred to the Citizenship and Immigration Canada (CIC) office in Mississauga, Ontario, for further processing.

[15] On July 3, 2007, the applicants' humanitarian and compassionate application was denied by officer Mazzotti. Officer Mazzotti worked at the CIC office in Niagra Falls, Ontario.

[16] On July 10, 2007, notice of the negative humanitarian and compassionate decision was received by the applicants' counsel. The notice was sent by the officer who had refused the applicants' second request for a deferral of removal.

[17] Also on July 10, 2007, the Federal Court allowed the applicants' application for judicial review, quashed the decision of the removal officer, and remitted the deferral request to a new removal officer for determination "as expeditiously as possible."

[18] On July 11, 2007, the applicants commenced an application for judicial review of the negative humanitarian and compassionate decision. That is the application currently before the Court.

[19] On July 12, 2007, the applicants' deferral request was redetermined by a different removal officer and again refused.

**The Officer's Decision**

[20] After considering the applicants' application on humanitarian and compassionate grounds, the officer concluded that no exemption would be granted.

[21] In the course of reaching her decision, the officer considered a number of factors, including:

- the hardship possibly faced by the applicants upon return to Ecuador or Venezuela;
- the effect of removal on the applicants' family and personal relationships;
- the applicants' degree of establishment in Canada;
- the applicants' establishment and ties in Ecuador, Venezuela, and the United States;
- the best interests of the children;
- the mental state of the applicants; and
- the effect of the applicants' return to their respective countries of origin.

[22] In refusing the application, the officer made a number of findings. The relevant findings are summarized below:

- The officer noted that the RPD had determined the applicants not to be credible and their fears not to be well-founded. After reviewing the documentary evidence, the officer concluded that adequate state protection existed in both Ecuador and Venezuela. The officer was of the view that any risk faced by the applicants did not amount to unusual and undeserved or disproportionate hardship.

- The officer noted that the applicants did not have any family living in Canada, but did acknowledge the collection of letters submitted by their friends and co-workers.

- The officer noted that Mr. Rodriguez Zambrano failed to provide updated information as to when he began his employment, whether he continued to be employed, or whether he had sought other employment opportunities. The officer noted that the applicants were self-supporting and operated a general cleaning business. The officer also noted that the principal applicant had completed several courses, obtaining certificates and diplomas. The officer further noted the applicants' participation in the community, specifically their involvement in the church and their sponsorship of a child in Zambia.

- The officer noted that the applicants had minimal difficulties obtaining employment and pursuing academic study in Ecuador, Venezuela, and the United States. In the officer's view, there was insufficient evidence to find that the applicants would have any difficulties adjusting in Ecuador or Venezuela. The officer also noted that the applicants had a family network that could assist in the family's reintegration. Finding that the applicants' ties and establishment in Ecuador and Venezuela were extensive, the officer concluded that the applicants' personal circumstances were not such that the hardships would be unusual and undeserved or disproportionate.

- The officer noted the positive academic achievement of the children in Canada, but observed that updated information had not been provided by the applicants. While the

officer acknowledged that children in Canada may enjoy better social and economic amenities, the officer was of the view that there was little evidence to indicate that the basic amenities would not be provided in Ecuador or Venezuela. The officer also noted that the applicants had provided no evidence to demonstrate that there would be any legal obstacle to the children residing in Ecuador or Venezuela. In finding that the hardships faced by the children would not be unusual and undeserved or disproportionate, the officer pointed to the demonstrated ability of the children to readjust and the network existing in each country to facilitate the children's adjustment.

- The officer noted the applicants' psychological assessment, but observed that it did not indicate their functional level. The officer also noted that there was insufficient evidence as to whether the applicants continued to suffer from the same symptoms or continued to receive treatment. The officer further noted the absence of any evidence indicating that treatment was not available in Ecuador or Venezuela.

- The officer noted that the applicants' return to Ecuador was feasible. As for the children, the officer observed that it would be in their best interests for the family to resettle as a unit. The officer placed particular emphasis on the applicants' demonstrated ability to establish themselves and their transferable skills. In the officer's view, the fact

that Canada was a more desirable place for the applicants to live was not determinative of their humanitarian and compassionate application.

[23] On the evidence provided by the applicants, the officer concluded that the hardships arising from the failure to grant an exemption would not be unusual and undeserved or disproportionate.

**The Issues**

[24] The applicants raise the following issues:

1) Whether the officer breached the duty of fairness owed to the applicants:

   a. by not providing the applicants with an opportunity to update the information supporting their application;

   b. by determining the humanitarian and compassionate application; or

   c. by relying on extrinsic evidence without notice to the applicants.

2) Whether the circumstances surrounding the refusal of the humanitarian and compassionate application give rise to a reasonable apprehension of bias.

3) Whether the officer erred by applying the wrong legal test in assessing the humanitarian and compassionate application.

4) Whether the officer's decision was unreasonable in assessing:

a. the risk faced by the applicants;

b. the best interests of the children; or

c. the applicants' degree of establishment.

5) Whether the applicants are entitled to an award of costs.

**The Standard of Review**

[25] There are now only two standards of review: reasonableness and correctness. See: *Dunsmuir v. New Brunswick*, 2008 SCC 9 at paragraph 34.

[26] Determining the appropriate standard of review involves two steps. First, the Court must ascertain whether the jurisprudence has already satisfactorily determined the degree of deference to be accorded to the particular type of question at issue. If so, the required analysis is deemed to have been performed and is not required. Where that initial inquiry proves unsuccessful, the second step requires the Court to consider the relevant standard of review factors. Those factors include: (i) the presence or absence of a privative clause; (ii) the purpose of the decision-maker in question, as determined by its enabling legislation; (iii) the nature of the question at issue; and (iv) the relative expertise of the decision-maker. See: *Dunsmuir* at paragraphs 57, 62, and 64.

[27] Examples of issues that will generally attract scrutiny on a correctness standard include: questions of law that are of importance to the legal system and fall outside the expertise of the

administrative decision-maker; constitutional questions regarding the division of legislative powers; true questions of jurisdiction or *vires*; and matters of fairness. See: *Dunsmuir* at paragraphs 55, 58, 59, 60, 129 and 151.

[28] Other questions will generally attract review on the reasonableness standard, including matters of: fact; mixed law and fact where the legal issues cannot be easily separated from the factual issues; discretion; and policy. See: *Dunsmuir* at paragraphs 51 and 53. The reasonableness standard will also generally apply where an administrative tribunal is interpreting its own enabling statute, or statutes closely connected to its function. See: *Dunsmuir* at paragraph 54. Guidance as to what other questions attract deference may also be found in the existing case law. See: *Dunsmuir* at paragraph 54.

[29] Turning to the issues raised in this case, it is for the Court to determine whether an administrative decision-maker has adhered to the principles of procedural fairness. No deference is due. See: *Canadian Union of Public Employees v. Ontario (Minister of Labour)*, [2003] 1 S.C.R. 539 at paragraph 100. Such matters continue to fall within the supervising function of the Court on judicial review. See: *Dunsmuir* at paragraphs 129 and 151.

[30] The question of whether an officer applied the correct test in assessing risk in an humanitarian and compassionate application is a question of law, and it has been held to be reviewable on the standard of correctness. See, for example, *Pinter v. Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 366 at paragraphs 3-5 (QL). Legal questions of central importance

to the legal system as a whole and outside a decision-maker's specialized area of expertise continue to attract scrutiny on a correctness standard. Questions of law that do not rise to this level may be compatible with a reasonableness standard. See: *Dunsmuir* at paragraphs 55 and 60. Having regard to the absence of a privative clause, the relative lack of expertise on the part of an officer to appreciate whether he or she has applied the wrong test at law, and the importance of ensuring that officers apply the test that Parliament has prescribed, I conclude that the question of whether the officer applied the correct test is reviewable on the correctness standard.

[31] The appropriate standard of review for a humanitarian and compassionate decision as a whole has previously been held to be reasonableness *simpliciter*. See: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at paragraphs 57-62. In my view, given the discretionary nature of a humanitarian and compassionate decision and its factual intensity, the deferential standard of reasonableness continues to be appropriate. See: *Dunsmuir* at paragraphs 51 and 53.

[32] As to what the two standards of review require of a reviewing court, the correctness standard does not require the Court to show deference to the decision-maker. Rather, the Court is to undertake its own analysis and determine whether it agrees with the determination made by the decision-maker. In the event that the Court disagrees, it is to substitute its own view and provide the correct answer. See: *Dunsmuir* at paragraph 50. Review on the reasonableness standard requires the Court to inquire into the qualities that make a decision reasonable, which include both the process and the outcome. Reasonableness is concerned principally with the existence of

justification, transparency, and intelligibility in the decision-making process. It is also concerned with whether the decision falls within the range of acceptable outcomes that are defensible in fact and in law. See: *Dunsmuir* at paragraph 47.

[33] I now apply the appropriate standard of review to each asserted error.

**Application of the Standard of Review to the Issues**

**1. Did the officer breach the duty of fairness?**

a) The opportunity to update the information provided

[34] The applicants submitted the affidavit of a lawyer who has practiced immigration law for thirty-six years. He swore that, in his experience, it is CIC's practice to ask an applicant for updated information before a final decision is made on a humanitarian and compassionate application. The applicants say that they understood they would be contacted and asked to provide further information, but they were not.

[35] On this evidence, the applicants argue that they had a legitimate expectation that they would be able to present updated information and they were denied procedural fairness when they were not afforded that opportunity. They point to the officer's comments in the decision that no updated information had been provided in order to argue that the lack of updated evidence impeded the officer's ability to make a proper assessment of the best interests of the children.

[36] At paragraph 26 of its reasons in *Baker*, cited above, the Supreme Court of Canada wrote, in the context of legitimate expectations, that the circumstances that affect procedural fairness take into account the promises or regular practices of administrative decision-makers. Generally, it is unfair for them to act in contravention of their representations as to procedure.

[37] The applicants gave no evidence about the source of their expectation that they would be contacted by CIC and asked to provide updated information.

[38] The most authoritative source with respect to procedural representations about inland humanitarian and compassionate applications is the immigration policy manual, IP 5, entitled "Immigration Applications in Canada made on Humanitarian or Compassionate Grounds." The manual does not represent that applicants will be asked to provide updated submissions. Section 5.26 instructs officers that they are not required to elicit information on humanitarian and compassionate factors and that the onus is on the applicants to put forth factors that they feel exist in their case. That instruction should not lead an applicant to believe that he or she will be contacted and asked for further or updated information.

[39] This Court has held that an applicant bears the burden of supplying all of the documentation necessary to support their claim and that an officer is not required to request updated information. See, for example, *Melchor v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 1600 (QL) and *Arumugam v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 1360 (QL). In *Arumugam*, the Court wrote at paragraph 17 that:

> In my opinion, although the [officer] did not seek new or updated country information from the applicant or elsewhere after the interview in March 1999, except for the PDRCC decision, there was no duty on the [officer] to do so. It was open to the applicant to submit further relevant information following the interview at any time before the decision, whether it be personal or related to the changing circumstances in Sri Lanka. The applicant did not do so. The [officer] rendered a decision based on the evidence provided to her. I cannot agree that the process was unfair or that the decision was unreasonable where the applicant did not take any initiative to provide further information concerning country conditions which, in his opinion, deteriorated through 1999. The responsibility of the [officer] was to consider the application to apply for admission on h&c grounds on the basis of the evidence provided by the applicant, and any evidence available from the applicant's immigration records or provided by the Minister. This the officer did.

[40] I come to the same conclusion. The applicants were assisted by counsel when they prepared and submitted their humanitarian and compassionate application. They could have, but did not, provide updated information.

[41] Further, and in any event, the applicants did not provide any evidence of significant, new information that they could have provided that would have been material to the decision. In other words, the applicants have advanced no evidence to support the position that the decision would have been different had they been afforded the opportunity to update their submissions. Thus, even if there was an obligation on the part of the officer to request updated submissions, if the failure to do so had no impact on the decision, the Court will not intervene. See: *Yassine v. Canada (Minister of Employment and Immigration)* (1994), 172 N.R. 308 (F.C.A.).

b) The application was decided by a pre-removal risk assessment officer

[42] The applicants submit that they had a legitimate expectation that their application would be decided by a humanitarian and compassionate officer, not a pre-removal risk assessment officer. They rely upon IP 5, which they say instructs that humanitarian and compassionate applications are only referred to a pre-removal risk assessment officer for decision when there are insufficient humanitarian and compassionate grounds upon which a positive decision can be made or when there is an existing pre-removal or risk assessment application that is being processed simultaneously. The applicants say that neither situation applied to their application.

[43] Section 13.2 of IP 5 states:

> **Role of H&C Units: Preliminary screening without formal H&C assessment**
>
> When the H&C application is referred by the Case Processing Centre to the H&C Unit, the Unit performs a preliminary screening of applications and documentation to determine whether the application indicates a claim to personal risk.
>
> If there is no claim of personal risk, the application is referred to an H&C officer.
>
> If there is a claim of personal risk, but there appears to be sufficient other non-risk H&C grounds for accepting the application, the application is referred to an H&C officer.
> If there is a claim of personal risk, but there does not appear to be sufficient other non-risk H&C grounds for accepting the application, the application is referred to the PRRA unit.

[44] The submissions filed in support of the humanitarian and compassionate application were relatively extensive. Three pages were devoted to humanitarian and compassionate factors. Four

pages were devoted to risk. In the order of 69 pages of country conditions documentation was filed with the submissions.

[45] The applicants' humanitarian and compassionate claim certainly advanced a claim of personal risk and, in my view, it was reasonably open to a screening officer to conclude that there did not appear to be other sufficient non-risk humanitarian and compassionate grounds for accepting the application. On that evidence, the applicants have not shown that it was unfair that their application was screened and referred to the pre-removal risk assessment unit for adjudication.

c) Reliance upon extrinsic evidence

[46] The officer is also said to have erred by relying upon two extrinsic sources of information. First, the officer relied upon information from a publication entitled "Citizenship Laws of the World" to find that the applicants' children could obtain either Ecuadorian or Venezuelan citizenship. Second, the officer relied upon the website "thebestofecuador.com" to find that the applicants could all reside in Ecuador.

[47] I believe that it is settled law that the duty of fairness requires disclosure of documents if their disclosure is necessary in order for the person concerned to have a meaningful opportunity to present his or her case fully and fairly to the decision-maker. The overriding concern with respect to disclosure is whether the document is one that the individual is aware or deemed to be aware. See, for example, *Chen v. Canada (Minister of Citizenship and Immigration)*, [2002] 4 F.C. 193

(T.D.), and *Asmelash v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 2145 (QL).

[48] The issue of whether the family could live together in Ecuador was raised in 2004 in proceedings before the RPD. The RPD had provided RIR ECU40090.E to the applicants. This document stated that "the foreign wife of an Ecuadorian national can request naturalization through an expedited process." By July of 2006, a year before the humanitarian and compassionate application was decided, the applicants also knew that the pre-removal risk assessment officer had relied upon the "Citizenship Laws of the World" publication to find that the children could obtain either Ecuadorian or Venezuelan citizenship.

[49] In my view, on these facts, the applicants have failed to establish that they required disclosure of "Citizenship Laws of the World" in order to present their case fully and fairly to the officer. They had raised the issue of the family's ability to reintegrate into either Ecuador or Venezuela because some members of the family were not citizens of those countries. They were aware of the existence of the impugned document a year before the decision was made. The applicants could have filed supplementary submissions if they wished to contest the information found in the document.

[50] As for the officer's reliance on the website, I agree that the applicants could not have reasonably anticipated that the officer would rely on information from this particular website. However, the applicants knew that the issue of their ability to live together in Ecuador was a live

one. The applicants failed to establish that the officer obtained any information from this website that was incorrect or that they could have refuted. In the absence of such evidence, any failure to consult the applicants about this information was not material to the officer's decision and the Court cannot conclude that the decision would have been different had the applicants been given the opportunity to respond. Therefore, there is no ground upon which the Court should intervene. See: *Yassine*, cited above.

**2. Is there a reasonable apprehension of bias?**

[51] The applicants submit that the circumstances of their case demonstrate that the immigration authorities made a concerted effort to deny the applicants' ongoing applications and requests, without due process, in an effort to immediately remove them from Canada. The following facts are said to establish this bias:

- on the same day that this Court set aside the decision of the removal officer, which had refused the applicants' request for a deferral of removal, the same officer conveyed the negative humanitarian and compassionate decision to the applicants' lawyer;

- the officer who rendered the negative humanitarian and compassionate decision was from the same office as the removal officer and was the same officer who had rejected the applicants' pre-removal risk assessment; and

- two days after this Court set aside the decision of the removal officer, directing that the matter be redetermined as expeditiously as possible, another removal officer refused the

request and set a new removal date without seeking updated submissions from the applicants.

[52] The test at law for the existence of the reasonable apprehension of bias was described in the following terms by the Supreme Court of Canada in *Committee for Justice and Liberty v. Canada (National Energy Board)*, [1978] 1 S.C.R. 369 at 394:

> [T]*he apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "**what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly**."* [emphasis added]

[53] As a matter of law, a high threshold must be met in order to establish either bias or the apprehension of bias. See: *R. v. R.D.S.*, [1997] 3 S.C.R. 484 at 532, and *Wewaykum Indian Band v. Canada*, [2003] 2 S.C.R. 259 at paragraph 76.

[54] The circumstances the applicants rely upon are, in my view, matters of coincidence that are insufficient to establish any reasonable apprehension of bias:

- The negative humanitarian and compassionate decision (which had been made a week earlier) was faxed to the applicants' lawyer at 7:25 a.m. on July 10, 2007. This was obviously well before the Court's reasons of that date were released. The timing of the transmission of the humanitarian and compassionate decision in relation to the Court's decision was a matter of pure coincidence.

- Because this was a matter of coincidence, nothing flows from the fact that the removal officer and the officer who decided the humanitarian and compassionate application were from the same geographic office. The mere fact that one officer dealt with both the pre-removal risk assessment and the humanitarian and compassionate application does not establish bias. See: *Monemi v. Canada (Solicitor General)* (2004), 266 F.T.R. 31 (F.C.).

- When the Court set aside the decision of the removal officer, it expressly directed that the decision be redetermined as expeditiously as possible. This is what, quite literally, was done. While the second removal officer did not seek updated submissions with respect to the appropriateness of removal on the long past scheduled removal date, the officer set a new removal date. This gave the applicants the opportunity to again request a deferral of removal and to make submissions in support of that request.

**3. Did the officer apply the wrong legal test?**

[55] The applicants submit that the officer focused on the risk aspect of the humanitarian and compassionate application. They further submit that, while the officer mentioned the appropriate test (the existence of unusual, undeserved or disproportionate hardship), the officer applied the wrong test. This is said to be evidenced by the fact that the officer relied upon the existence of state protection and changed country conditions. The officer ought to have instead considered the issue of hardship.

[56] It is instructive to review the applicants' submissions in their humanitarian and compassionate application regarding the issue of risk. The applicants:

- attached their Personal Information Form narrative and stated that the risk they faced was described in the narrative;

- attached country condition documentation;

- stated that "in assessing the risk that the applicant's [*sic*] face if returned to their home countries it is useful to perform an assessment of the usual issues identified at refugee hearings" and went on to discuss the agents of persecution, nexus, state protection, and the existence of an internal flight alternative; and

- did not discuss unusual, undeserved or disproportionate hardship.

[57] Thus, the applicants' submissions invited consideration of the very matters the officer discussed in her reasons. The officer cannot be faulted for engaging in the analysis the applicants invited. At the conclusion of the analysis, the officer went on to discuss the appropriate test of hardship.

[58] On those facts, the applicants have failed to establish that the officer erred by applying the wrong test.

**4. Was the decision unreasonable?**

a) The risk faced by the applicants

[59] The decision is said to be unreasonable because the officer ignored the applicants' documentary evidence on country conditions and their submissions on risk. The officer is also said to have ignored the serious harm that was described in a psychological report prepared by Dr. Pilowsky.

[60] With respect to the documentary evidence and submissions on risk, it is not strictly correct to say that the officer ignored the documentary evidence the applicants had provided. For example, the applicants had submitted the 2004 United States Department of State reports for Venezuela and Ecuador and a 2005 Amnesty International report "Ecuador: Threats and violence against government critics increase", which dealt with threats to journalists, opposition politicians, a university rector, and a religious aid development organization. The officer cited the 2007 United States Department of State reports for Venezuela and Ecuador and a 2006 Amnesty International report. The officer cannot be faulted for reviewing more recent and relevant information.

[61] While the applicants rely upon the decision of this Court in *Cepeda–Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35 (T.D.), they have failed to point to any material evidence that was contrary to the officer's findings. Thus, the applicants have failed to establish any error on this ground.

[62] With respect to Dr. Pilowsky's psychological report, the applicants did not submit this report to the officer or make any submissions upon it. Rather, the officer obtained the report from the applicants' submissions on their pre-removal risk assessment. Notwithstanding, the applicants now argue that the officer failed to adequately consider the report.

[63] The officer noted in her reasons that:

> Dr. Pilowsky's report states: "*I believe she meets the diagnostic criteria for a Major Depressive Disorder, Moderate Severity (296.22) and chronic symptoms of Posttraumatic Stress Disorder (PTSD)*". Similarly, Dr. Pilowksy believed that the [principal applicant] suffered the same conditions as his spouse. An explanation of the diagnostic test was not provided in documentary evidence. The report provided does not identify the applicants' score with respect to the Global Assessment of Functioning; and no clinical description of their level of functioning is provided. There is insufficient evidence to support that the applicants continue suffer from the above-mentioned symptoms and furthermore, there is no indication that they received or continue to receive treatment for their diagnosis. The evidence before me does not support that the applicants are having difficulty functioning. Counsel for the applicants has not submitted objective documentary evidence to indicate that treatment, if required, is not available for the applicants in either one of their home countries. [emphasis in original]

[64] Moreover, in reasons reported as *Zambrano v. Canada (Minister of Public Safety and Emergency Preparedness)*, [2007] F.C.J. No. 982 (QL), Justice Phelan commented about this report in the context of considering the propriety of the removal officer's refusal to defer removal. At paragraph 12, he wrote:

> The Removal Officer made no error in consideration of the psychological report and it did not merit a detailed analysis. The report, if accepted, would mean that the Applicants could never be removed because they feared and were stressed by the thought that they would be removed to the country in which they were

> persecuted. Whatever the merits of this subjective basis for the report, the Immigration and Refugee Board and the PRRA Officer had rejected as credible the very factual basis on which the fear and stress were based.

[65] I endorse and adopt those comments.

[66] In all of these circumstances, the officer's consideration of Dr. Pilowsky’s report was reasonable.

b) The best interests of the children

[67] The applicants complain that the documentary evidence contradicted the officer's conclusion that the children would have access to the basic amenities in Ecuador and Venezuela. They also argue that the officer speculated that the children would have been exposed to the Spanish language and culture by their parents, unreasonably relied upon the children's transition from the United States to Canada as an indicator of their ability to make a transition to a Spanish-speaking country, and ignored evidence that the applicants had described their family in their home countries to be impoverished and not able to provide assistance.

[68] Again, one must consider the submissions made to the officer. Only one paragraph was devoted specifically to the children. That paragraph detailed their academic achievement and friends in Canada. While it referred to the fact that the children have studied in English, it was silent about their ability to speak Spanish at home. The applicants did not identify any lack of

amenities in Venezuela or Ecuador and simply described their families as not being in a "financial position to be able to support the applicants."

[69] There was evidence before the officer that at least one child, Katherine, was studying English as a second language, which suggests that Spanish was spoken at home.

[70] In my view, the officer considered all of the evidence and submissions made to her. Her reasons reflect a careful and sympathetic assessment of the children's interests as required. See: *Hawthorne v. Canada (Minister of Citizenship and Immigration)*, [2003] 2 F.C. 555 (C.A.). While the officer acknowledged the children's academic achievement and noted that they may enjoy better social and economic amenities in Canada, the officer was ultimately of the view that the potential hardships in Ecuador or Venezuela would not be unusual and undeserved or disproportionate. The officer relied upon the demonstrated ability of the children to readjust, the network existing in each country to facilitate the children's adjustment, and the absence of evidence that basic social and educative amenities would not be provided in Ecuador or Venezuela.

[71] The officer ultimately found that the applicants had failed to establish that "the general consequences of relocating and resettling back in their home countries, would have a significant negative impact on the children which would amount to an unusual and undeserved or disproportionate hardship." In my view, the officer's reasons justified that conclusion in an intelligible fashion. As there was evidence to support the officer's findings, the decision also comes

within the range of acceptable outcomes. Accordingly, the officer's finding with respect to the best interests of the children was not unreasonable.

c) The applicants' establishment

[72] The applicants argue that their application was primarily based upon their establishment in Canada. They say that, while the officer acknowledged their positive establishment factors, the officer made no findings with regard to establishment.

[73] In my view, the applicants simply disagree with the weight the officer assigned to the evidence. Establishment is merely one of a number of factors to be considered by an officer and the failure to make an express finding on the extent of establishment is not, in this case, a reviewable error. The officer clearly appreciated all of the relevant establishment factors. The facts of this case are very distinguishable from those before the Court in *Raudales v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 532 (QL) which the applicants rely upon.

[74] In closing on this issue, I adopt the comments of my late colleague Justice Rouleau in *Chau v. Canada (Minister of Citizenship and Immigration*, [2002] F.C.J. No. 119 (QL). There, he wrote at paragraphs 27 through 28:

> The applicant in the present case raised a number of arguments which, when considered together, amount to several inconveniences by leaving Canada and submit an application abroad which is the normal rule laid down by Parliament. As Lemieux J. rightly state in *Mayburov v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 953 (QL) at para. 39, inconvenience is not the criteria of undue hardship as laid

> out in the guidelines. The material filed in support of her application leads one to believe that the Applicant could well be a model immigrant and a welcome addition to the Canadian community; she has shown herself to be law-abiding, hard-working, enterprising and thrifty since her illegal entry into Canada. However, that is not the test as to whether or not there are sufficient humanitarian and compassionate grounds to warrant exceptional relief. As Pelletier J. stated in *Irimie*, supra at para. 26:
>
> > [...] To make it the test is to make the H & C process an ex post facto screening device which supplants the screening process contained in the Immigration Act and Regulations. This would encourage gambling on refugee claims in the belief that if someone can stay in Canada long enough to demonstrate that they are the kind of persons Canada wants, they will be allowed to stay. The H & C process is not designated to eliminate hardship; it is designated to provide relief from unusual, undeserved or disproportionate hardship.
>
> The burden which the applicant had to discharge was whether the Immigration Officer's decision not to grant her an exemption for the inland processing of her permanent residence application was unreasonable. When deciding this issue, the reviewing court cannot overstep its role. In the absence of an error in the legal sense, the Court could not and should not substitute its opinion for that of the Immigration Officer. The perspective of the reviewing judge is to examine the evidence before the Immigration Officer and determine whether there was absence of evidence supporting her conclusion or whether her decision was made contrary to the overwhelming weight of the evidence. I cannot reach that conclusion.

[75] Similarly, the applicants in this case appear to be hard-working, law-abiding, self-sufficient, enterprising, thrifty, and charitable to others. They will face hardship if forced to leave Canada. However, they have not established that the officer erred in finding that such hardship would not be unusual and undeserved or disproportionate.

## 5. Costs

[76] Rule 22 of the *Federal Courts Immigration and Refugee Protection Rules*, SOR/93-22, provides that no costs are to be awarded on an application for judicial review unless the Court, for special reasons, makes such an order.

[77] The threshold for "special reasons" within the meaning of Rule 22 is high. Special reasons may exist where the Minister's conduct is "unfair, oppressive, improper or actuated by bad faith." See: *Uppal v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 1390 at paragraph 8 (QL).

[78] Given that I have found no error or unfairness, no special reasons exist for an award of costs.

## Conclusion

[79] For these reasons, the application for judicial review will be dismissed. Counsel posed no question for certification, and I see no question arising on this record.

## JUDGMENT

**THIS COURT ORDERS AND ADJUDGES that:**

1. The application for judicial review is dismissed, without costs.

"Eleanor R. Dawson"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-2781-07 |
| **STYLE OF CAUSE:** | LUIS FERNANDO RODRIGUEZ ZAMBRANO, CAROLINA GOMEZ, KATHERINE ABIGAIL RODRIGUEZ, JOSHUA ALEXANDER RODRIGUEZ, CAROLINA GOMEZ v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | Toronto, Ontario |
| **DATE OF HEARING:** | March 18, 2008 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | DAWSON J. |
| **DATED:** | April 15, 2008 |

**APPEARANCES:**

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| Ms. Janet Chisholm | FOR THE RESPONDENT |

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