Date: 20080429

Docket: IMM-4176-07

Citation: 2008 FC 556

Toronto, Ontario, April 29, 2008

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

ROCIO VILLAGRANA CAMPOS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION and THE MINISTER FOR PUBLIC SAFETY AND EMERGENCY PREPARDNESS

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant is an adult female citizen of Mexico. She entered Canada first on December 18, 2004 but was refused admission and sent back to Mexico on December 19, 2004. She entered Canada again on January 13, 2005 and claimed Refugee protection on the basis of apprehended harm from her common-law spouse (Luis Duarte) in Mexico. That claim was rejected by the Immigration and Refugee Protection Board on August 18, 2005. An application for leave for judicial review of that decision was dismissed on February 16, 2006.

[2] The Applicant applied for a Pre-Removal Risk Assessment (PRRA), filed evidence in addition to that before the Board on the Refugee hearing and made written submissions. By that time, the Applicant had given birth in Canada to a child (Ashley) who was not fathered by her former common-law spouse. The father of the child had abandoned the Applicant and was no longer keeping company with her.

[3] In her affidavit filed in support of the PRRA, the Applicant said, among other things:

> *10. Luis (Duarte) is an alcoholic and a drug addict. He is very violent man. He threatened many times that if I went to the police about him, he would kill me. I am extremely afraid of him. I am certain that if Ashley and I returned to Mexico, he would track us down and either kills both of us or do us serious harm. I do not believe that the authorities in Mexico would be capable or even willing to protect us.*

[4] In written submissions filed by Counsel for the Applicant with the PRRA Officer the following submissions were made, among others:

> *Second, a major new development is the fact that the applicant has a 5-month old daughter (Ashley), fathered by another man, not Mr. Duarte. In these PRRA submissions this fact is not presented as a humanitarian factor, but as a factor which goes to the risk that the applicant faces upon return to Mexico. The fact that the applicant had a child with another man, not Mr. Duarte, will, by anyone's reasoning, enrage Mr. Duarte, who, as has been credibly demonstrated, considers the applicant his possession, his woman, and who has vowed that if the applicant cannot be his, the applicant will not be any man's.*

[5] Counsel for the parties agree that the PRRA hearing should not be a re-hearing of a failed refugee claim. They also agree that PRRA Officer need not take into consideration the best interests of a child who is not the subject of the hearing. Neither point is the point made here.

[6] The point made here is that the Applicant, who is the subject of the hearing, would be exposed to greater risk from her former common-law spouse should she return to Mexico having given birth to a child of which the former spouse is not the father. This point was clearly raised in evidence and in argument before the PRRA officer yet the reasons for the decision delivered by the PRRA officer do not anywhere indicate that this argument was appreciated or that consideration was given to the argument.

[7] This argument raises a valid point. The Federal Court of Appeal in *Varga v. Canada (MCI)* [2007] 4 FCR 3, 2006 FCA 394 expressly dealt with such an argument and said that it is within the PRRA officer's jurisdiction to consider it at paragraph 17:

> *[17] In oral argument, counsel for the respondents argued that the PRRA officer failed to consider the possibility that, if their two Canadian-born children went to Hungary, the respondents would themselves be exposed to a greater risk of persecution. I agree that this is a matter within the PRRA officer's jurisdiction. However, since counsel did not make this submission to the officer, he cannot complain that the officer was at fault in not considering it.*

[8] In the present case, the matter was clearly raised before the PRRA Officer yet not considered. The Officer's decision must be set aside and the matter returned for re-determination by a different Officer on that basis alone.

[9] The Applicant’s counsel raised a number of other objections to the Officer’s reasoning which need not be addressed here. The different Officer should not be constrained by the findings of the previous Officer on any issue and must approach all matters anew.

[10] There is no question for certification and no special reason to order costs.

JUDGMENT

FOR THE REASONS GIVEN:

THIS COURT ADJUDGES that:

1. The application is allowed;

2. The matter is returned for re-determination by a different Pre-Removal Risk Assessment Officer; who shall approach all matters anew

3. There is no question for certification;

4. No Order as to costs.

"Roger T. Hughes"

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-4176-07
STYLE OF CAUSE:	*ROCIO VILLAGRANA CAMPOS* v. *MCI et al.*
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	APRIL 29, 2008
REASONS FOR JUDGMENT AND JUDGMENT:	HUGHES, J.
DATED:	APRIL 29, 2008

APPEARANCES:

NEIL COHEN	FOR APPLICANT
NEGAR HASHEMI	FOR RESPONDENT

SOLICITORS OF RECORD:

NEIL COHEN BARRISTER AND SOLICITOR TORONTO, ONTARIO	FOR APPLICANT
JOHN H. SIMS, Q.C. TORONTO, ONTARIO	FOR RESPONDENT