

Date: 20081107

Docket: IMM-1758-08

Citation: 2008 FC 1244

Ottawa, Ontario, November 7, 2008

PRESENT: The Honourable Madam Justice Dawson

BETWEEN:

**JORLENY VARGAS CAMPOS, CARLOS ANDRES BRENES CAMPOS
AND KAROLINA LISETH BRENES CAMPOS**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Jorleny Vargas Campos, and her children Carlos Andres Brenes Campos and Karolina Liseth Brenes Campos, are citizens of Costa Rica. They have all lived in Canada since November 10, 1997, when they moved here to live with Ms. Vargas Campos' fiancé, a Canadian citizen.

[2] Ms. Vargas Campos' husband has been unsuccessful in his efforts to have Ms. Vargas Campos and her two children landed in Canada. This is because of Ms. Vargas Campos' difficulties in getting formal legal custody of her two children.

[3] This application for judicial review does not relate to an application for humanitarian and compassionate or other relief. Rather, in this application Ms. Vargas Campos and her children challenge the decision of a Pre-Removal Risk Assessment (PRRA) officer that they do not face more than the mere possibility of persecution if they return to Costa Rica. The officer also found that Ms. Vargas Campos and her children were not likely to face any of the risks contemplated by section 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act), such as a risk to life or risk of torture, if they returned to Costa Rica.

[4] The situation of Ms. Vargas Campos and her children is sympathetic. It is one that might attract relief under the humanitarian and compassionate provisions of the Act. On this application, however, the sole issue is whether it was unreasonable for the officer to conclude that Ms. Vargas Campos and her children would not be at risk in Costa Rica, as risk is defined in sections 96 and 97 of the Act. Those provisions, together with subsection 25(1) of the Act are set out in the schedule to these reasons.

The Risk Alleged

[5] Ms. Vargas Campos' PRRA application disclosed that her parents, grandmother, three brothers and a sister live in Costa Rica. Her fear, and that of her children, is that Ms. Vargas

Campos' ex-common law spouse, an individual I will simply refer to as Mr. B, will harm them if they return to Costa Rica.

[6] Ms. Vargas Campos says that shortly after she moved in with Mr. B, she learned that he was involved with drugs and the local mafia, and that "he was working closely with the police." Ms. Vargas Campos lived with Mr. B for three years and four months, during which time she was regularly beaten and sexually assaulted. Her neighbors would call the police. Ms. Vargas Campos says that even when she reported the abuse to the police they did nothing. The only thing the police would do would be to call an ambulance, or to take her to the hospital if they believed she needed to be hospitalized. The officers who responded to her calls, and the neighbours' calls, were officers that she identified as being associates of Mr. B.

[7] Ms. Vargas Campos left Mr. B in July of 1996, and hid at her parents' house. When Mr. B came to her parents' house looking for her, he threatened to kill everyone if Ms. Vargas Campos did not return to him. According to Ms. Vargas Campos, the police did nothing, even after her mother called them to report death threats.

[8] In August of 1996, Ms Vargas Campos went to San Jose to find a job. She found a job at a hotel where she met her current husband. From October of 1996 to January of 1997 they lived, with her children, in Nicaragua where her current husband worked. In March of 1997, they all returned to Costa Rica, where they lived until November of 1997, when they all moved to Canada. While in Costa Rica, Mr. B was unable to find Ms. Vargas Campos because they lived in a "wealthy suburb." According to Ms. Vargas Campos, Mr. B was, however, persistently calling her mother in an effort

to locate Ms. Vargas Campos. Also according to Ms. Vargas Campos, in 2007 Mr. B apparently told her mother that he had "unfinished business" with Ms. Vargas Campos.

The Officer's Decision

[9] After reviewing the nature of Ms. Vargas Campos' claim to be a protected person, the officer concluded as follows:

I have carefully reviewed all the relevant evidence provided by the applicant and I have also read the U.S. Department of State Country Report and a document from Refworld. I am empathetic to the severe abuse suffered by the applicant and her children, and the fact that mechanisms in place to deal with domestic abuse are less than perfect in Costa Rica. However, the applicant has provided insufficient objective evidence that state protection is not available to her in Costa Rica. I have read the evidence pertaining to measures adopted by the government such as laws prohibiting domestic abuse and measures for protection against domestic violence. The National Institute for Women provided legal and psychological counseling, lodging and shelters and police receive training on how to handle domestic abuse cases. The public prosecutor, police and ombudsman have special offices dedicated to victim-assistance mechanisms. The determinative issue in this particular case is whether state protection is forthcoming and the applicant has provided insufficient evidence to rebut the presumption that Costa Rica is capable of protecting its citizens.

The applicant's statement indicated the police were friends with her ex-common law spouse and would not take any action against him. However, the concept of risk is forward looking, and I note these incidences occurred approximately 11 years ago and the applicant has provided insufficient objective evidence that she continues to be at risk from her ex-common law partner. Furthermore, the more current objective evidence indicates the perception of police corruption is not a serious problem. Each ministry had an internal disciplinary unit to investigate charges of abuse and corruption against its officers. Citizens could also file a complaint against police directly with the Judicial Investigative Police or anonymously through its hotline.

I have also considered affidavits written by family and friends, however give them minimal weight as they have a vested interest in a

favourable outcome to the applicant's request for protection. I give more weight to the objective evidence that indicates Costa Rica makes serious efforts to protect its citizens. While I acknowledge protection is not always successful the affidavits are not sufficient to establish that Costa Rica is unable to protect persons who are victims of domestic abuse.

In the absence of any other personal evidence, the country documentation leads me to conclude the applicants face no more than a mere possibility of persecution for any of the Convention grounds as per section 96 of the Immigration and Refugee Protection Act (IRPA). The documentation also satisfies me the applicants are not likely to face a risk of torture, a risk to life or a risk of cruel and unusual treatment or punishment as per section 97 of IRPA.

Standard of Review

[10] On an application of this nature, it is not the role of the Court to substitute its opinion for that of the officer. Instead, the Court is to determine the degree to which the officer's decision is to be scrutinized, and then to determine whether the decision withstands that degree of scrutiny.

[11] In the present case, the fundamental issue centers around the officer's conclusion that the "determinative issue in this particular case is whether state protection is forthcoming and the applicant has provided insufficient evidence to rebut the presumption that Costa Rica is capable of protecting its citizens."

[12] Questions about the adequacy of state protection are questions of mixed fact and law, reviewable on the standard of reasonableness. See, for example, *Rizvi v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 915 at paragraphs 16-21.

[13] Review on the standard of reasonableness requires the Court to look to the process of articulating reasons and to outcomes. This review is "concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See: *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at paragraph 47.

Applicable Principles of Law

[14] Before turning to the officer's decision, there are a number of settled principles of law concerning state protection that the officer was obliged to apply. A number of those principles are:

1. The test of risk is forward looking.
2. Refugee protection is a form of surrogate protection. It is only to be invoked when protection is unavailable from one's home state, or when it would be unreasonable to expect a claimant to seek protection. Therefore, in the absence of a complete breakdown of the state apparatus, it is assumed that a state is capable of protecting its nationals.
3. To rebut that presumption, a claimant must adduce "relevant, reliable and convincing evidence which satisfies the trier of fact on a balance of probabilities that the state protection is inadequate" in respect of the applicant's own risk. See: *Carillo v. Canada (Minister of Citizenship and Immigration)* (2008), 377 N.R. 393 at paragraph 30 (F.C.A.).
4. The more democratic a country, the heavier the burden is to rebut the presumption of state protection. See: *Hinzman v. Canada (Minister of Citizenship and*

Immigration); *Hughey v. Canada (Minister of Citizenship and Immigration)* (2007), 362 N.R. 1 at paragraphs 45-46 (F.C.A.).

5. Local failures to provide effective policing do not establish a lack of state protection. "[W]here a state is in effective control of its territory, has military, police and civil authority in place, and makes serious efforts to protect its citizens from terrorist activities, the mere fact it is not always successful at doing so will not be enough to justify a claim that the victims of terrorism are unable to avail themselves of such protection." See: *Canada (Minister of Employment and Immigration) v. Villafranca* (1992), 150 N.R. 232 at paragraph 7 (F.C.A.). This quotation is equally applicable to victims of domestic abuse.

[15] Having set out these principles, I turn to the errors the officer is alleged to have made.

The Alleged Errors

[16] The applicants frame the issues in terms of subsection 18.1(4) of the *Federal Courts Act*, R.S.C. 1985, c. F-7. However, I understand the applicants to assert the following errors:

1. The officer erred by relying upon the fact that 11 years had elapsed since the incidents of abuse and violence occurred, in order to support her finding that the applicants were no longer at risk. The applicants argue that by doing so, the officer exceeded her jurisdiction because it was not the intention of Parliament to grant the officer power to evaluate the effect of the passage of time on the potential for future risk. Additionally, the evaluation of risk is "in the eyes of the beholder."

2. The officer erred by finding that affidavits sworn by Ms. Vargas Campos' mother and three others were not sufficient to establish that Costa Rica is unable to protect victims of domestic abuse on the ground that the deponents had a vested interest in an outcome favorable to the applicants. The officer's unwillingness to consider evidence favorable to the applicants shows the officer's "impartiality [sic] and inability to decide the case based on its merits".
3. The officer unreasonably concluded that state protection was available to the applicants. In so concluding, the officer read the country condition documentation in a selective fashion, and ignored evidence provided by the applicants.
4. The officer erred by failing to complete Part 5 of the PRRA notes to file, and so failed to consider the "common considerations".
5. The officer erred by relying upon the existence of a non-governmental organization, specifically the National Institute for Women (INAMU).
6. The officer erred by stating that she was "empathetic" to the abuse suffered by the applicants. If the officer was empathetic, the officer would have come to a different conclusion.
7. The officer erred because, if she believed that Ms. Vargas Campos was not credible, an oral hearing should have been held.
8. The officer erred by stating "the perception of police corruption is not a serious problem".

Application of the Standard of Review to the Decision

Did the officer err by finding that the applicants provided insufficient evidence to establish that they continue to be at risk from Ms. Vargas Campos' former common-law partner?

[17] The following analysis subsumes errors numbered 1, 2 and 8 as set out above.

[18] The officer relied upon the effluxion of time, the lack of objective evidence and evidence about the treatment of corrupt police officers in order to reach her conclusion that Ms. Vargas Campos and her family were no longer at risk from her former common-law partner.

[19] The applicants have failed to establish any reviewable error. Eleven years had elapsed since the last episode of violence, and it is now over 12 years since Ms. Vargas Campos left her abusive partner. While Ms. Vargas Campos argued in her PRRA application that her mother had told her that Mr. B had made many death threats and said that he had "unfinished business" with her, her mother did not give that information in her affidavit which was provided to the officer. That affidavit simply said that the mother was "afraid of the death threat that her partner has made". No other details were provided in the affidavit, and no other affidavit referred to any ongoing threats from Mr. B. On this evidence, it was not unreasonable for the officer to find insufficient evidence of any future risk.

[20] I know of no basis in law for the submission that the officer exceeded her jurisdiction by evaluating the effect of the passage of time on the reality of the current risk, nor do I know of any basis for the submission that the reality of an objective risk "is in the eyes of the beholder." This is

the very question to be decided by an officer on a PRRA application. This is distinguishable from consideration of the existence of subjective fear on an application for refugee protection.

[21] The officer was entitled to give less weight to the affidavits of Ms. Vargas Campos' mother, former neighbor and friends than to objective evidence from sources unrelated to Ms. Vargas Campos. In any event, aside from the one reference in the mother's affidavit quoted above, the content of all of the affidavits was directed solely to past treatment and not toward either current conditions or future risk. As such, the affidavits were of less relevance to the issue of future risk than the country condition documentation relied upon by the officer.

[22] The fact that the officer gave these affidavits little weight is not evidence of any partiality, unfairness or bias.

[23] Finally, the officer's somewhat oblique reference to the "perception of police corruption" was a reference to Ms. Vargas Campos' fear that Mr. B had friends or associates in the police force. The officer then referred to the evidence before her about the current measures in existence in Costa Rica to combat police corruption.

Was the officer's conclusion that adequate state protection existed unreasonable?

[24] This is the third error alleged above.

[25] The officer acknowledged that the mechanisms in place to protect women and children in Costa Rica were "less than perfect." However, relying upon the United States Department of State

Country Reports on Human Rights Practices in Costa Rica, issued on March 6, 2007 and RIR CRI43096.E, the officer found that the applicants had not rebutted the presumption of state protection. Specific information in those documents included:

- Costa Rica is a constitutional democracy, whose most recent elections were free and fair.
- The police forces generally were regarded as effective.
- The government continued to identify domestic violence against women and children as a serious and growing societal problem.
- The law prohibits domestic violence and provides measures for the protection of domestic violence victims including: training for new police personnel on the handling of domestic violence cases, requiring hospitals to report cases of domestic violence, and denying perpetrators possession of the family home. The public prosecutor, police and ombudsman had offices dedicated to domestic violence.
- Police can intervene even in the absence of a restraining order.

[26] A March 2004 interview with the Vice-Minister of the Ministry of Public Security (found in a document submitted by the applicants) contained the following information:

- Costa Rica has a specialized police force for domestic violence.
- Where possible, cases of domestic violence are investigated by both a male and a female officer.

- The position of "promoter against domestic violence" has been created within the police force, with one such position in each municipality. The promoters "tend to the violence, take statistics and elaborate projects of prevention".
- More attention is being paid to repeat offenders. The courts have access to "the Attorney General's criminal files of every one" so that the Attorney General and the judge can better assess the risk posed by repeat offenders.

[27] The officer's reasons for finding adequate state protection to exist are justified, transparent and intelligible. There was evidence to support the officer's findings so that the conclusion falls within the range of permissible, acceptable outcomes. As such, the decision was reasonable.

[28] As the officer noted, there was evidence of less than perfect state protection. As well, the officer did not refer to all of the documents submitted by the applicants. However, an officer is not obliged to refer to every piece of evidence. Given the age and the provenance of the documentary evidence not specifically cited by the officer, I am not prepared to draw the inference that the officer ignored evidence.

[29] I am satisfied that the applicants' complaint is really a complaint in respect of the manner in which the officer weighed the evidence.

The Other Alleged Errors

[30] The remaining errors can be disposed of briefly.

[31] Error 4: The officer did not check off any of the boxes in Part 5 of the PRRA notes. This is poor practice. However, the officer went on to deal with all of the common consideration factors in her reasons and fully assessed the risk asserted by the applicants. There is no material error that arises from the failure of the officer to check off the boxes.

[32] Error 5: The evidence is not clear as to whether INAMU is a non-governmental organization. RIR CRI41541.FE states:

According to the law, the National Women's Institute (Instituto Nacional de las Mujeres, INAMU) is responsible for establishing policy on domestic violence, especially with relation to the detection of cases of domestic violence, the procedures to follow, and the preventive measures (Costa Rica. n.d.). Seventeen offices divided amongst various government departments are responsible for enforcing INAMU policy (ibid.). INAMU is also responsible for sensitizing and training of police with regard to domestic violence (Asociación Alianza de Mujeres Costarricenses 30 June 2003). Despite INAMU efforts, however, women who file official complaints are not always treated well by police (ibid.).

[33] On that evidence, I find no error on the part of the officer in referring to this organization as one relevant to the existence of state protection.

[34] Error 6: In stating that she was "empathetic" to the applicants' situation, the officer was doing no more, and no less, than expressing sympathy and sensitivity to the applicants. Such expression of sentiment did not require a favorable outcome.

[35] Error 7: The officer accepted the credibility of Ms. Vargas Campos' evidence. Therefore, no oral hearing was required.

[36] For these reasons, the application for judicial review will be dismissed. Counsel posed no question for certification, and I am satisfied that no question arises on this record.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is dismissed.

“Eleanor R. Dawson”

Judge

SCHEDULE

Subsection 25(1) and sections 96 and 97 of the *Immigration and Refugee Protection Act*

read as follows:

25. (1) The Minister shall, upon request of a foreign national in Canada who is inadmissible or who does not meet the requirements of this Act, and may, on the Minister's own initiative or on request of a foreign national outside Canada, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligation of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to them, taking into account the best interests of a child directly affected, or by public policy considerations.

[...]

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,
(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

25. (1) Le ministre doit, sur demande d'un étranger se trouvant au Canada qui est interdit de territoire ou qui ne se conforme pas à la présente loi, et peut, de sa propre initiative ou sur demande d'un étranger se trouvant hors du Canada, étudier le cas de cet étranger et peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des circonstances d'ordre humanitaire relatives à l'étranger — compte tenu de l'intérêt supérieur de l'enfant directement touché — ou l'intérêt public le justifient.

[...]

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(2) A person in Canada who is a

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(2) A également qualité de

member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1758-08

STYLE OF CAUSE: JORLENY VARGAS CAMPOS ET AL., Applicants
and
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION, Respondent

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: NOVEMBER 3, 2007

**REASONS FOR JUDGMENT
AND JUDGMENT:** DAWSON, J.

DATED: NOVEMBER 7, 2008

APPEARANCES:

ZAK TATOMIROVIC MANULA FOR THE APPLICANTS

NICOLE BUTCHER FOR THE RESPONDENT

SOLICITORS OF RECORD:

TATOMIROVIC MANULA LAW OFFICE FOR THE APPLICANTS
OTTAWA, ONTARIO

JOHN H. SIMS, Q.C. FOR THE RESPONDENT
DEPUTY ATTORNEY GENERAL OF CANADA