Federal Court  Cour fédérale

Date: 20120824

Docket: IMM-8539-11
IMM-8541-11

Citation: 2012 FC 1009

Ottawa, Ontario, August 24, 2012

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

IMM-8539-11

IGNACIO VELAZQUEZ SANCHEZ,
MARIA GUADALUPE MENDOZA SUAREZ,
ARIANA VELAZQUEZ MENDOZA,
IRIS ANEL VELAZQUEZ MENDOZA and
LLUVIA VANESSA VELAZQUEZ MENDOZA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

AND BETWEEN:

IMM-8541-11

IGNACIO VELAZQUEZ SANCHEZ,
MARIA GUADALUPE MENDOZA SUAREZ,
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REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants seek judicial review of a decision of Senior Immigration Officer J. Belyea (Officer), dated October 3, 2011, refusing the applicants' application for permanent residence on humanitarian and compassionate (H&C) grounds pursuant to section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*), and a decision of the same Officer, dated September 30, 2011, refusing the applicants' Pre-Removal Risk Assessment (PRRA) application. For the reasons that follow the application in respect of the H&C decision (IMM-8539-11) is granted and is dismissed in respect of the PRRA decision (IMM-8541-11).

Facts

[2] The applicants are a family from Mexico: Ignacio Velasquez Sanchez (applicant); his wife Maria Guadalupe Mendoza Suarez (female applicant); and their three daughters, Ariana Velasquez Mendoza, Iris Anel Velasquez Mendoza, and Lluvia Vanessa Velasquez Mendoza. The applicants also have a Canadian born son, Victor Steven Velasquez Mendoza.

[3] The applicant has been coming to Canada to work as a seasonal farm labourer since 1991. In 2005, Iris entered a local beauty pageant and was drugged and sexually assaulted by one of the judges. She and her mother went to the police but they did nothing. The assailant approached Iris a couple weeks later, threatening her and her family. The family began to receive anonymous phone calls claiming to have a videotape of Iris naked. Money was demanded. Multiple attempts at obtaining police protection were similarly unsuccessful.

[4] The female applicant and her daughters came to Canada on July 12, 2005. The applicant returned to Mexico in November 2005 and checked on the status of the investigation by the police.

He became angry at the police inaction and accused them of corruption, and as a result was beaten by police officers. The applicant returned to Canada on February 4, 2006 and the applicants made their refugee claims in May 2006.

[5] The Refugee Protection Division (RPD) initially rejected the applicants' claims in 2007 on the basis of state protection; however, that decision was quashed on judicial review and a new hearing was held. In 2010 the applicants' claims were again rejected, this time based on the availability of an internal flight alternative (IFA) in the Federal District. The RPD found that neither the judge nor the local police in the applicants' hometown would pursue the applicants in the Federal District. The RPD further found that it was reasonable to expect the applicants to relocate there.

[6] The applicants submitted a PRRA application in July 2010 which was refused in October 2010. The applicants also submitted an H&C application which was refused in September 2010. The applicants applied for leave and judicial review of both these decisions. The respondent consented to refer both matters back for re-determination since the deciding officer erroneously relied on the quashed 2007 RPD decision. The applicants' PRRA and H&C applications were decided by a new officer, and again were both refused.

PRRA Decision

[7] The Officer found that some evidence submitted predated the applicants' RPD hearing dates and therefore could not be considered. The Officer reviewed the findings of the RPD in its 2010 decision and noted that the risks alleged were those already assessed by the RPD. The Officer also noted that many of the submissions by the applicants related to H&C factors rather than risk, which are outside of the mandate of the Officer in a PRRA application.

[8] The Officer rejected some of the documentary evidence submitted because it was undated or it was unclear who translated it from Spanish to English. The Officer reviewed some of the statements in the 2010 US DOS report on Mexico.

[9] The Officer stated that he had reviewed all the evidence and found insufficient objective new evidence that the beauty pageant judge or any other individuals would be interested in pursuing the applicants if they returned to Mexico. The Officer also found insufficient evidence that there has been a significant change in country conditions or the applicants' personal circumstances since the RPD hearing. The application was therefore refused.

H&C Decision

[10] The Officer first considered the applicants' allegations of hardship based on risk. The Officer recounted the incidents involving the beauty pageant and the police, noting that it had been six years since the applicants fled Mexico, and found that there was insufficient evidence that any individuals were still interested in pursuing the applicants. The Officer also found that the applicants provided no details of attempts to seek state protection and had not proven that such

protection was unavailable. The Officer found insufficient evidence that the daughters would face social stigma or ridicule due to others knowing about Iris' sexual assault. The Officer concluded that he was not satisfied that there was a risk upon returning to Mexico that amounted to unusual and undeserved or disproportionate hardship.

[11] Regarding the best interests of the children, the Officer noted there were two children to be considered: the youngest applicant, Lluvia, and the Canadian born son, Victor Steven. The Officer referred to the letters of support and other evidence indicating that Lluvia has adapted to life in Canada and is doing well in school and making friends. The Officer found that the mere fact that the children may enjoy better opportunities in Canada did not mean that H&C discretion should be exercised in this case.

[12] The Officer reiterated the finding that there was insufficient evidence of any risk of violence upon returning to Mexico. The Officer acknowledged the difficulties the children would face adjusting to life in Mexico, including separation from their friends and adapting to a new education system. However, the Officer found that the children would likely continue to enjoy the love and support of their family, who would assist them in adapting. Thus, the Officer concluded that it would not be contrary to the best interests of the children to return them to Mexico.

[13] Finally, regarding establishment, the Officer reviewed the applicants' employment histories and noted their involvement in their church and their community. The Officer found that they had exemplary civil records but this was expected of all residents in Canada. The Officer found that the evidence submitted did not demonstrate a significant level of establishment such that removal to

Mexico would cause unusual and undeserved or disproportionate hardship. The Officer found that the applicants may initially experience some difficulty re-establishing themselves but that an H&C exemption was not warranted. The application was therefore refused.

Standard of Review and Issue

[14] These applications raise the following issues:

a. Was the Officer's PRRA decision reasonable?

b. Was the Officer's H&C decision reasonable?

[15] Both decisions are to be reviewed on a standard of reasonableness: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190.

Analysis

PRRA Decision

[16] The applicants' only submission in respect of the PRRA decision is that the Officer failed to properly analyze whether state protection was available to the applicants. They argue that the Officer relied on the state's good intentions only, rather than assessing whether they had translated into effective protection in practice.

[17] The problem with the applicants' argument is that the Officer found insufficient evidence that the applicants were at risk of persecution if returned to Mexico. The Officer found that there was no evidence that the beauty pageant judge or anyone else was interested in pursuing them, particularly since several years have passed since the sexual assault of one of the daughters. Since the Officer did not accept that the applicants faced any risk upon return there was no need to engage

in a state protection analysis. The applicants have not presented any argument for why the Officer's finding on risk was unreasonable and therefore the decision must be upheld.

H&C Decision

[18] I agree with the applicants that the Officer's reasoning in rejecting the submission that Iris and her sisters would face social stigma due to her sexual assault is insufficient. The Officer acknowledged this submission but found insufficient evidence to substantiate it. That was the extent of the analysis. I agree with the applicants that this is a mere statement of a conclusion and does not meet the requirements of justification, transparency and intelligibility. The evidence under consideration was not identified let alone the deficiency which purportedly permits the conclusion.

[19] It has become commonplace to read H&C and PRRA decisions in which the reasons offered are confined to the following formula: "The applicants allege X; however, I find insufficient objective evidence to establish X." This boilerplate approach is contrary to the purpose of providing reasons as it obscures, rather than reveals, the rationale for the officer's decision. Reasons should be drafted to permit an applicant to understand why a decision was made and not to insulate that decision from judicial scrutiny: Lorne Sossin, "From Neutrality to Compassion: The Place of Civil Service Values and Legal Norms in the Exercise of Administrative Discretion" (2005), 55 UTLJ 427.

[20] The Officer resorted to the boilerplate approach in respect of the submission regarding social stigma which continued throughout the balance of the analysis.

[21] The application for judicial review is granted in respect of the H&C decision and dismissed in respect of the PRRA decision. There is no question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review in respect of the H&C decision (IMM-8539-11) is granted. The matter is referred back for re-determination before a different officer at Citizenship and Immigration Canada.
2. The application for judicial review in respect of the PRRA decision (IMM-8541-11) is dismissed.
3. There is no question for certification.

"Donald J. Rennie"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8539-11
STYLE OF CAUSE:	IGNACIO VELAZQUEZ SANCHEZ, et al v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
DOCKET:	IMM-8541-11
STYLE OF CAUSE:	IGNACIO VELAZQUEZ SANCHEZ, et al v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto
DATE OF HEARING:	July 26, 2012
REASONS FOR JUDGMENT AND JUDGMENT:	RENNIE J.
DATED:	August 24, 2012

APPEARANCES:

Ms. Wennie Lee	IMM-8539-11 / IMM-8541-11 FOR THE APPLICANTS
Ms. Ildiko Erdei	IMM-8539-11 / IMM-8541-11 FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lee & Company Immigration Advocacy, Counsel & Litigation Toronto, Ontario	IMM-8539-11 / IMM-8541-11 FOR THE APPLICANTS
Myles J. Kirvan, Deputy Attorney General of Canada Toronto, Ontario	IMM-8539-11 / IMM-8541-11 FOR THE RESPONDENT