

Federal Court



Cour fédérale

Date: 20170802

Docket: IMM-4800-16

Citation: 2017 FC 752

Ottawa, Ontario, August 2, 2017

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**HILDA GUDALUPE JAIMES CAMPOS,
OSCAR SANCHEZ MERCADO,
OSCAR ALEJANDRO SANCHEZ JAIMES,
KARINA SANCHEZ JAIMES**

Applicants

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP OF CANADA**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, Hilda and Oscar, and their two children, Oscar and Karina, arrived in Canada from Mexico in 2014. After their visitor visas expired later that year, they applied for permanent residence based on humanitarian and compassionate grounds (H&C). Their H&C

application was based on their degree of establishment in Canada, the best interests of the children, and the risks they faced from organized crime in Mexico. An immigration officer dismissed their application finding that there was insufficient evidence showing that the family would suffer significant hardship if they returned to Mexico.

[2] The applicants submit that the officer's decision was unreasonable because the officer applied an analysis suitable to a request for refugee protection, not an H&C application. In addition, the applicants contend that the officer took too narrow an approach to the best interests of the children. They ask me to quash the officer's decision and order another officer to reconsider their application.

[3] I can find no basis for overturning the officer's decision. The officer's analysis was reasonable on the evidence put forward by the applicants. I must, therefore, dismiss this application for judicial review.

[4] The sole issue is whether the officer's decision was unreasonable.

II. The Officer's Decision

[5] The officer reviewed the applicants' evidence regarding their experiences in Mexico with organized crime groups. The applicants claimed that they were subject to threats, extortion and thefts that caused them to relinquish their business. The officer noted that the applicants had not provided corroborating evidence of their claim, such as business records or police reports.

Further, they had not shown that that state protection was unavailable to them or that they could not live safely in some other area of Mexico.

[6] Regarding the children, the officer found that they would remain with their parents and would likely adapt well to returning to Mexico, whose food, health services, and school system they were reasonably familiar with. The officer acknowledged that the children have adapted well to life in Canada. While the standard of living in Mexico is lower than that in Canada, this did not, in itself, suggest that the children would face hardship in Mexico.

[7] In terms of their establishment in Canada, the officer noted that the family have lacked status here since 2014. The officer accepted that the family has integrated into the community through friends, employment, church activities, and volunteer work. With the exception of Hilda's mother, who lives in Canada, the remainder of the applicants' family members remain in Mexico. Since Hilda works from home, she could continue to do so in Mexico. Given that the applicants' establishment in Canada was accomplished during the period of time when they had no authority to live in Canada, the officer gave this evidence little weight.

[8] In the result, the officer found that the family had presented insufficient evidence to show that they merited H&C relief.

III. Was the Officer's Decision Unreasonable?

[9] The applicants argue that the officer adopted an approach that would have been appropriate to an application for refugee protection under ss 96 and 97 of the *Immigration and*

Refugee Protection Act, SC 2001, c 27 [IRPA]. However, such an approach, they say, is unsuitable to an H&C.

[10] The applicants identify passages in the officer's decision that they say are indicative of an inappropriate analysis. In particular, they point to the officer's statements that the applicants had failed to demonstrate an absence of state protection and had not shown that it would be unsafe for them to live elsewhere in Mexico. Those factors, according to the applicants, are relevant to a refugee claim but not an H&C application.

[11] Further, according to the applicants, the officer failed to conduct an adequate analysis of the best interests of the children and the family's establishment in Canada, focussing on their lack of status in Canada instead of the hardship they would experience if removed.

[12] I cannot agree that the officer's analysis was inadequate or inappropriate to an H&C application. The applicants claimed in their H&C application to fear organized crime activity in Mexico. The officer looked for evidence corroborating that allegation and found none. Although the applicants' allegations were supported by affidavit evidence, the officer did not err in noting the absence of corroborating evidence given the likelihood that it could have been obtained. Similarly, whether the applicants could obtain state protection or move to an area of Mexico where they could live safely is relevant to the degree of hardship they might suffer; it was not inappropriate for the officer to take these factors into account.

[13] Further, I find that the officer adequately considered the other relevant factors, the best interests of the children and the family's establishment in Canada. The officer properly noted an absence of evidence showing that the children would have serious difficulty re-adapting to life in Mexico or that they would lack access to adequate education and health care in Mexico. Further, the officer acknowledged the family's ties to Canada, but also considered their ability to re-adjust to living in Mexico.

[14] On the evidence, I cannot find that the officer's analysis or conclusions were unreasonable.

IV. Conclusion

[15] The applicants have failed to establish that the officer's decision was unreasonable. The officer was alive to the issues surrounding the applicants, including country conditions and the best interests of the children. Therefore, I must dismiss this application for judicial review. Neither party proposed a question for certification, and none is stated.

JUDGMENT IN IMM-4800-16

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. No question of general importance is stated

“James W. O'Reilly”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-4800-16

STYLE OF CAUSE: HILDA GUDALUPE JAIMES CAMPOS, OSCAR
SANCHEZ MERCADO, OSCAR ALEJANDRO
SANCHEZ JAIMES, KARINA SANCHEZ JAIMES v
THE MINISTER OF IMMIGRATION, REFUGEES AND
CITIZENSHIP OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 21, 2017

JUDGMENT AND REASONS: O'REILLY J.

DATED: AUGUST 2, 2017

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