

Federal Court



Cour fédérale

Date: 20170515

Docket: IMM-4396-16

Citation: 2017 FC 500

Toronto, Ontario, May 15, 2017

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

VICTOR HUGO CABELLO DUARTE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The present Application concerns a decision of a Senior Immigration Officer (Officer), dated August 17, 2016, denying the Applicant's Pre-Removal-Risk Assessment (PRRA) application.

[2] The Applicant was born in Canada on September 14, 1972. He acquired Mexican rather than Canadian citizenship at birth because his father was a Mexican diplomat. He is married to a

Canadian citizen, has three Canadian-born children, and has never been to Mexico. According to his Counsel, “he was unaware of his lack of Canadian citizenship and lived in Canada without status, which led to an exclusion order being made against him...” (Applicant’s Memorandum of Argument, para. 3).

[3] In support of the PRRA application, Counsel for the Applicant argued that the Applicant would be at risk to life or of cruel or inhumane treatment or punishment on a personalized basis if he were to return to Mexico:

If he were to be sent to Mexico, his life would be at risk as he has no home, job prospects or relatives he can rely on for support in Mexico. He would be homeless and extremely vulnerable to the situation existing in Mexico, at the present time. He would be viewed as a foreigner having never lived in Mexico and perceived to have money. Therefore, he would be the target of criminals and other persons who would see him as a vulnerable human being who could be exploited by them. He would face the possibility of abduction, kidnapping for ransom and forced disappearance by criminal elements and others in Mexico.

(Certified Tribunal Record, p. 50)

[4] In rejecting the Applicant’s PRRA application, the Officer repeated the Applicant’s submissions above and concluded:

With respect to having no home, job prospects or relatives he can rely on for support in Mexico are not risks as define in Section 96 and 97 of the IRPA [sic] (Decision, p. 5).

The evidence before me indicates that the applicant fears criminals in Mexico. Crime affects every citizen and resident in Mexico.

[...]

I find that the risk identified by the applicant is one faced generally by others in Mexico and thus the applicant does not meet the requirement of the IRPA (Decision, p. 6).

[5] In support of the present Application, Counsel for the Applicant argues that the Applicant's situation is unique because he has never been to Mexico. As such, he is unable to provide evidence of personalized risk in the same manner as individuals who have fled a home country and, with respect to return, fear personalized risk of generalized crime and violence due to past targeting.

[6] In response, Counsel for the Respondent argued that risk of kidnapping and crime in Mexico is generalized, and, therefore, cannot ground a successful PRRA application.

[7] The evidence before the Officer raises the issue of whether unique ineptitude constitutes a personalized risk. That is, the Applicant's particular circumstances personalize an otherwise generalized risk of crime and violence faced by Mexicans, because they render him uniquely vulnerable and unable to protect himself. I find that the Officer's failure to address this issue renders the decision unreasonable.

JUDGMENT

THIS COURT'S JUDGMENT is that I set aside the decision under review and refer the matter back for redetermination by a different Officer.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4396-16

STYLE OF CAUSE: VICTOR HUGO CABELLO DUARTE v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 9, 2017

JUDGMENT AND REASONS: CAMPBELL J.

DATED: MAY 15, 2017

APPEARANCES:

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