Federal Court  Cour fédérale

Date: 20180307

Docket: IMM-1536-17

Citation: 2018 FC 263

Ottawa, Ontario, March 7, 2018

PRESENT: The Honourable Mr. Justice O'Reilly

AND BETWEEN:

MARINO VICTORIA CARDENAS
MARTHA LUCIA LOZANDA GOMEZ

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] In 1999, the applicants, Mr Marino Victoria Cardenas and his wife, Martha, fled Colombia with their children out of fear of the Revolutionary Armed Forces of Colombia (FARC). Mr Victoria Cardenas and his wife failed in their applications for refugee protection, for a pre-removal risk assessment (PRRA), and for permanent residence on humanitarian and

compassionate grounds (H&C). This application for judicial review relates to the decision on the applicants' H&C. I have rendered a separate decision on the applicants' application for judicial review of their PRRAs.

[2] The applicants' children were successful on their H&C applications. Further, Mr Victoria Cardenas's wife's application for judicial review is no longer in issue. Accordingly, the sole issue before me relates to Mr Victoria Cardenas's H&C application. He argues that the officer who rendered the decision on his H&C failed to conduct a complete analysis of the evidence supporting his application. The officer reasoned that it was unnecessary to weigh the hardships that might face the applicants if they returned to Colombia given that he had decided to grant them Temporary Resident Permits allowing them to remain in Canada for at least three years.

[3] Mr Victoria Cardenas argues that the officer ignored relevant evidence relating to hardship. He asks me to quash the officer's decision and to order another officer to reconsider his application.

[4] I can find no basis for overturning the officer's decision. The officer reasonably concluded that the analysis of risk should be carried out closer in time to Mr Victoria Cardenas's removal from Canada, whenever that might be, if ever.

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

II. Was the Officer's decision unreasonable?

[6] The officer reviewed the applicants' overall circumstances, including:

- Their employment history and other indications of establishment in Canada;
- Their English language skills;
- The children's schooling;
- Their family ties in Canada;
- The psychological impact of removal on Mr Victoria Cardenas's wife, a victim of sexual assault;
- The difficulty in returning to Colombia after such a long absence;
- The discrimination they might face in Colombia due to their Afro-Colombian ethnicity;
- The risk of persecution by FARC; and
- The problems the children would face, not speaking Spanish and having never been to Colombia.

[7] The officer concluded that Mr Victoria Cardenas was not entitled to H&C relief because he had committed fraud in the United States and had attempted to deceive Canadian immigration authorities. However, without conducting a full weighing of the evidence, the officer granted Mr Victoria Cardenas a three-year TRP, thereby providing him an opportunity to demonstrate his willingness to abide by Canadian laws.

[8] Mr Victoria Cardenas submits that the officer's decision was unreasonable because the officer had a duty to analyze all of the relevant evidence, even if removal from Canada was not imminent.

[9] I disagree. An analysis of the hardship that Mr Victoria Cardenas might face in Colombia three years from now, or even later, would be inherently speculative and likely pointless. Conditions in Colombia could change significantly during that period of time. Further, over the next three or more years, the applicants' ties to Canada will likely deepen. Mr Victoria Cardenas's inadmissibility to Canada stems primarily from his convictions in the United States for using fraudulent identity documents while living there illegally. There is no suggestion that he is likely to commit any offences in Canada. Otherwise, the officer would not have granted Mr Victoria Cardenas a TRP for the purpose of providing him an opportunity to prove his fidelity to Canadian law.

[10] Mr Victoria Cardenas points to two cases that, he says, support his position: *Brar v Canada* (*Minister of Citizenship and Immigration*) 2011 FC 691, and *Zazai v Canada* (*Minister of Citizenship and Immigration*) 2012 FC 162.

[11] In my view, neither case assists Mr Victoria Cardenas.

[12] In *Brar*, the applicant's deportation had been stayed due to concerns that he would be subjected to serious mistreatment in India. The officer conducting the applicant's H&C denied the application based on the applicant's inadmissibility to Canada and found that, given the stay

of removal, the best interests of the applicant's children and the country conditions in India did not have to be weighed. Justice James Russell found that the officer erred because the applicant's status in Canada was "contingent and provisional" – the stay of the applicant's removal could be lifted at any time. Further, it was not clear that there was any mechanism other than the H&C application that could address the best interests of the affected children prior to the applicant's removal. The same would be true in respect of hardship.

[13] In this case, however, the applicant's status is secure for at least three years. The interests of the applicant's children have already been considered and they have been granted permanent resident status in Canada. While the issue of hardship has not yet been fully analyzed, that issue relates entirely to the risks that Mr Victoria Cardenas might face if he were removed from Canada to Colombia, an issue that can be fully reconsidered on a fresh pre-removal risk assessment.

[14] In *Zazai*, the applicant was granted a TRP for five years. The officer assessing the applicant's H&C took note of the applicant's inadmissibility to Canada and other relevant factors but denied the application without analyzing the best interests of the applicant's children. Justice John O'Keefe found that the officer erred because there was no other mechanism available for considering the best interests of the applicant's children before the applicant's removal from Canada. The applicant would be entitled to a PRRA, but that would not include an analysis of the best interests of the children. Further, the applicant's status in Canada was in doubt given that the Canadian Border Services Agency had issued orders to the applicant to file reports to it on a regular basis.

[15] Again, the circumstances here are different. Mr Victoria Cardenas has a secure status in Canada for at least three years. The best interests of his children have been fully considered. Any risk to him on removal from Canada can be considered on a future PRRA.

[16] Accordingly, I find that the officer reasonably concluded that it was unnecessary to carry out a balancing of all the relevant factors given that the applicant was entitled to remain in Canada for at least three years.

III. Conclusion and Disposition

[17] Mr Victoria Cardenas was entitled to remain in Canada for at least three years on a TRP. The officer reasonably concluded that it was unnecessary to conduct a full analysis of the evidence relating to the hardship he would face on removal. Therefore, I must dismiss this application for judicial review. Neither party proposed a question of general importance to be certified, and none is stated.

JUDGMENT IN IMM-1536-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance is stated.
3. The style of cause is amended, with immediate effect, by removing "THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP" and substituting "THE MINISTER OF CITIZENSHIP AND IMMIGRATION" as the Respondent.

"James W. O'Reilly"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET	IMM-1536-17
STYLE OF CAUSE:	MARINO VICTORIA CARDENAS, MARTHA LUCIA LOZANDA GOMEZ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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APPEARANCES:

Subodh Singh Bharati	FOR THE APPLICANTS
Neeta Logsetty	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Subodh S. Bharati Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANTS
Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT