

Federal Court



Cour fédérale

Date: 20181107

Docket: IMM-1972-18

Citation: 2018 FC 1114

Vancouver, British Columbia, November 7, 2018

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

**ROSALINA URQUIA MURILLO,
ARNOL MENDEZ, AND
JOSEPH JOEL MENDEZ URQUIA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The present Application is a judicial review of a April 6, 2018 decision of the Refugee Protection Division [RPD] pursuant to s. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] in which the Applicants were found not to be Convention refugees or persons in need of protection.

[2] Rosalina Urquia Murillo [Ms. Murillo] and Arnol Mendez [Mr. Mendez] are citizens of Honduras. Their minor son, Joseph Joel Mendez Urquia, is a citizen of the United States by birth. Ms. Murillo and Mr. Mendez also have a minor daughter who was granted refugee status, and, thus, is not included in the present Application.

[3] The family claimed refugee protection on the basis of fearing gang activity in Honduras. The RPD found that their claim fell under s. 97 of *IRPA*. The RPD accepted that Mr. Mendez “was boxed in by cars, shot at and clearly was individually targeted back in 2006” (Decision, p 5). However, given the passage of twelve years since the family left Honduras, the RPD found that there was not “a sufficient basis to find that the death threat is still more likely than not to be executed” (Decision, p 5).

[4] In coming to this conclusion, the RPD made the following findings:

I do think it is entirely reasonable to worry about being instantly identified as newcomers from North America and becoming targets of extortion on that basis. However, I find that that would be generalized, rather than personalized risk. Consequently, I cannot find that these adult claimants meet the section 97(1) protection test.

(Decision, p 6)

[5] I find that the words “instantly identified” implicitly engage personalized risk because the Applicants would be personally identified as returnees. In my opinion, for the RPD to then proceed to conclude that the identified risk is generalized, rather than personalized, lacks justification, transparency and intelligibility. Because this erroneous finding was critical to the RPD’s conclusion that the Applicants did not meet the test under s. 97(1) of *IRPA*, I find that the decision under review is unreasonable.

JUDGMENT

THIS COURT'S JUDGMENT is that the decision under review is set aside and the matter is referred back for redetermination by a different decision-maker.

There is no question to certify.

"Douglas R. Campbell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1972-18

STYLE OF CAUSE: ROSALINA URQUIA MURILLO, ARNOL MENDEZ,
AND JOSEPH JOEL MENDEZ URQUIA v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: NOVEMBER 5, 2018

JUDGMENT AND REASONS CAMPBELL J.

DATED: NOVEMBER 7, 2018

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