

Federal Court



Cour fédérale

Date: 20191210

**Docket: IMM-5813-18
IMM-5814-18**

Citation: 2019 FC 1574

Ottawa, Ontario, December 10, 2019

PRESENT: The Honourable Mr. Justice Ahmed

Docket: IMM-5813-18

BETWEEN:

EDWIN ROBERTO MEDINA CERRATO

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

Docket: IMM-5814-18

BETWEEN:

EDWIN ROBERTO MEDINA CERRATO

Applicant

and

**THE MINISTER OF CITIZENSHIP
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Respondent

JUDGMENT AND REASONS

I. Overview

[1] Edwin Roberto Medina Cerrato (the “Applicant”), has been in and out of Canada since 2013 on various work permits. In May 2017, he was found working for a different employer than the one listed on his closed work permit. Canada Border Services Agency (“CBSA”) issued a removal order against the Applicant. He then applied for permanent residence based on humanitarian and compassionate (“H&C”) grounds and for a pre-removal risk assessment (“PRRA”).

[2] The Senior Immigration Officer (the “Officer”) refused the Applicant’s PRRA application on September 18, 2018 and also rejected his H&C application on September 24, 2018. The Applicant now applies for judicial review of both decisions on a number of grounds, alleging that the Officer failed to consider documentary and country condition evidence and therefore made unreasonable decisions. The two applications numbered IMM-5813-18 (PRRA) and IMM-5814-18 (H&C), were heard concurrently.

[3] I will allow these applications for judicial review for the following reasons.

II. Facts

A. Applicant

[4] The Applicant was born on January 1, 1986, in Honduras. He was married on April 14, 2012, and he and his wife had their only son on May 15, 2013. The Applicant claims his family has always been active in politics and he himself has been active since a young age. His father belongs to the Liberal Party and is a former local councillor. His mother belongs to the National Party and is also a secretary for the party.

[5] The Applicant is currently a member of the opposition Freedom or LIBRE Party, and claims he has received threats from members of the ruling National Party. The Applicant states that he has always been outspoken against the National Party, including on topics such as corruption and mismanagement of state property. Between 2010 and 2014, the Applicant claims he protested at Congress, the Presidential Residence, and the National Pedagogical University. As noted below, the Applicant has also filed a complaint with the Attorney General in Honduras, alleging a member of the National Party tried to extort him and his coworkers in 2016.

[6] The Applicant originally came to Canada under the Temporary Foreign Worker program in 2013. According to his PRRA application, he briefly returned to Honduras in 2014. The Applicant again returned to Honduras in 2016, this time to help his wife and child move closer to the Applicant's parents, as the wife and child were living in an unsafe area at the time. The Applicant claims that while in Honduras in 2016, he worked briefly as a driver for the Honduran Forest Conservation Institute. After refusing to pay a bribe to keep this job, the Applicant claims he and his coworkers were fired. They then filed a complaint with the Attorney General.

[7] The Applicant also claims that around this time, he was robbed by four armed men who threatened his wife and child if he did not leave the country. The Applicant reported this event to the authorities. The Applicant claims these were political attacks based on his known opposition views and the illicit influence of Carlos Gaitan, whom he describes as a corrupt businessman with ties to the National Party. The Applicant further claims that Mr. Gaitan continues to threaten him through his mother, who as noted above is a National Party member and secretary.

[8] When the Applicant returned to Canada in 2016, he found that his previous employer had replaced him. Unaware that his work permit was a closed one, he sought employment with another employer. On May 9, 2017, CBSA found the Applicant working for this other employer and issued a removal order against him.

[9] The Applicant submitted an H&C application on March 22, 2018 and his PRRA application on May 31, 2018. The Applicant's H&C application was based on his establishment in Canada, the hardship he would face in Honduras due to his political opinion, and the best interests of his son, whom he supports financially through his work in Canada. The Applicant's PRRA application was based on his fear of persecution because of his political opinion, as evidenced by a series of Facebook posts critical of the Honduran government, his other activism, the illicit influence of Mr. Gaitan within the National Party, and the firing and robbery incidents.

B. Country Conditions in Honduras

[10] In this case, it is helpful to set out, at the outset, the objective country conditions and risk profiles in Honduras. As the Respondent's counsel admitted in the hearing, "Honduras is not doing well at all right now," and "Honduras is not a good place to go." Based on the information available in the National Documentation Package ("NDP"), even these concessions may miss the mark.

[11] As the Applicant notes, the Immigration and Refugee Board's ("IRB") NDP contains 1,395 pages of publicly available country condition documents. This includes a February 2018 Mission Report. The Mission Report notes that "Honduras is...considered one of the most violent countries that is not at war" (at "Overview"). Further, "social leaders, student activists and journalists are subject to intimidation by state agents and criminal organizations," and political activists and those working to combat corruption face similar treatment. The Mission Report adds that youth in Honduras often have to either join street gangs or flee, leading some parents to confine their children to their home. The Mission Report also adds that criminal investigations are inefficient and the population mistrusts the justice system. Further, the government is reported to collude with criminal organizations, including gangs. Finally, the Mission Report notes "a significant number of cases where returnees [to Honduras] were killed shortly after they returned".

[12] Another document in the NDP confirms that "young men and boys [in El Salvador and Honduras] continue to be forcibly recruited by gangs" and that persons fleeing Honduras do not trust in authorities to protect them, which is not surprising given the "pervasive impunity" (Amnesty International, *Home Sweet Home? Honduras, Guatemala and El Salvador's Role in a*

Deepening Refugee Crisis (London, UK: Amnesty International Ltd, 2016) at 17, 22 [*Home Sweet Home*]). This document also notes that Honduras' national police force is "undergoing yet another purge," which saw over 100 high-ranking officers dismissed due to corruption accusations (*Home Sweet Home*, above at 22).

[13] Yet another document notes that corruption in Honduras, as in many other states around the world, "is the operating system of sophisticated networks that link together public and private sectors and out-and-out criminals," adding that, "[c]orruption is built into the functioning of such countries' institutions" (Sarah Chayes, *When Corruption is the Operating System: The Case of Honduras* (Washington, DC: Carnegie Endowment for International Peace, 2017) at 3–4). A final relevant document notes threats and attacks targeting, among other, Freedom Party activists and their families (United Nations High Commissioner for Refugees, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Honduras*, UN Doc HCR/EG/HND/16/03, 27 July 2016 at 59–60).

[14] The Applicant also provided the Officer with news reports of the killing of a Freedom Party supporter (Digital Freedom, "Three supporters of the opposition Alliance and one missing leave military persecution", *Digital Freedom* (January 2018)) and general political unrest surrounding Honduras' 2017 election (i.e. Sarah Kinosian, "Families fear no justice for victims as 31 die in Honduras post-election violence", *The Guardian* (2 January 2018)).

C. PRRA decision

[15] On September 18, 2018, the Officer rejected the Applicant's PRRA application, determining that the Applicant would not be subject to persecution, a danger of torture, a risk to life, or to a risk of cruel and unusual punishment if returned to Honduras.

[16] The Officer accepted that the Applicant was a member of the Freedom Party. However, the Officer found that there was no evidence the Facebook posts submitted were available for viewing or viewed by the general public, and thus found them insufficient to establish that the Applicant was a public political activist. The Officer ascribed them little weight. The Officer noted the evidence submitted of Mr. Gaitan's corrupt practices, but made no further comments on the issue. The Officer acknowledged the Applicant's firing report and his robbery complaint, but gave them no weight as he/she was not satisfied that the incidents were the result of the Applicant's political opinion.

[17] The Officer also did not give any weight to letters submitted by the Applicant's brother and mother about the incidents because these letters indicated the wrong date for the robbery, citing instead the date of the police report, and because the letters did not indicate how they came to know Mr. Gaitan was behind the robbery. Finally, the Officer noted that the country documents submitted indicated a generalized risk not directly related to the Applicant's circumstances. For all these reasons, the Officer did not find sufficient objective evidence to establish that the Applicant would face persecution or any danger or risk that would make him a person in need of protection.

D. H&C decision

[18] On September 24, 2018, the Officer rejected the Applicant's H&C application, determining that an H&C exemption was not warranted. The Officer gave little weight to the Applicant's establishment in Canada and hardship in Honduras, and moderate weight to the best interests of the Applicant's son.

[19] Regarding establishment in Canada, the Officer noted the letters of support submitted, but also noted that no financial documentation to validate his self-sufficiency were submitted. The Officer found the degree of establishment was merely "typical...for a person in similar circumstances."

[20] Regarding hardship, the Officer again noted the Facebook posts submitted and outlined the Applicant's declaration considering some of his other political activities in Honduras. However, the Officer noted no evidence was tendered to substantiate these other political activities. The Officer found there was insufficient objective evidence of public political manifestation to warrant hardship at the hands of the National Party. The Officer again dismissed the firing report and the robbery complaint as he/she was unsatisfied these resulted from politically motivated incidents. The Officer also found that the Applicant's concerns about poor employment prospects and the possibility of being socially disadvantaged were ordinary consequences of removal, flowing from the process of re-integration and re-establishment.

[21] Regarding the best interests of the Applicant's son, the Officer was not satisfied that the Applicant's return to Honduras would be detrimental in a way that would be contrary to the son's best interests. Rather, the Officer was satisfied that the Applicant would be able to continue to

support his son if returned to Honduras. The Officer did not directly address the Applicant's concerns about the lack of social benefits and adequate healthcare and education in Honduras.

[22] The Officer acknowledged that Canada "could be considered a more desirable place to live" and that the Applicant's son "may enjoy better future opportunities and find greater comfort in Canada than in Honduras." However, the Officer noted that the comparative socio-economic advantage that Canada offers was not a determining factor in this application.

III. **Issue and Standard of Review**

[23] The issue before the Court is whether the decisions are reasonable. The standard of review for PRRA and H&C decisions is reasonableness (*Tapambwa v Canada (Citizenship and Immigration)*, 2019 FCA 34 at para 32; *Garcia v Canada (Citizenship and Immigration)*, 2019 FC 1005 at para 25; *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44; *Chen v Canada (Citizenship and Immigration)*, 2019 FC 988 at para 24). Reasonableness requires that the Officer's assessment be justified, transparent, and intelligible, and that the decision fall within a range of reasonable outcomes, defensible in the facts and the law: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47.

IV. **Analysis**

[24] At the outset, I note students from the University of Windsor's Faculty of Law helped prepare the Applicant's PRRA and H&C applications. I would be remiss not to recognize the effort that went into the Applicant's submissions to the Officer and point out that they formed a

very helpful record for the Court. For the reasons below, the Officer's brief reasons in both decisions were simply not responsive to the thorough evidence presented.

[25] I also note the Respondent argued the Applicant's submission of his political risk as proof of hardship in his H&C application was an acceptance that the Applicant was not at risk under the higher thresholds for his PRRA application pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*"). This argument is without any merit. As the Officer noted in the H&C decision, factors under sections 96 and 97 of the *IRPA* cannot be considered a part of H&C considerations. Given this, it was appropriate for the Applicant to tailor his submissions to the applicable standards for each application, and reframe his perceived political risk as hardship.

[26] While the reasons suggest the Officer was unsatisfied with the sufficiency of the evidence put forward, the reasons offered for dismissing or assigning little weight to the documentary evidence are not justified, transparent, or intelligible. As such, the Officer's decisions to refuse both applications do not fall within a range a reasonable outcomes, defensible on the facts and law. Therefore, both decisions are unreasonable.

A. IMM-5813-18: PRRA Decision

[27] Concerning the PRRA decision, the Applicant submits the Officer made unreasonable findings and had a duty to conduct independent research on the country conditions in Honduras. The Applicant submits the Officer unreasonably focused only on his social media advocacy and

ignored all his other stated advocacy as well as his profile as a person who filed an extortion complaint against someone affiliated with the National Party.

[28] The Applicant submits the Officer unreasonably gave no weight to the firing report, the robbery complaint, or the letters from his mother and brother. The Applicant further submits that the Officer failed to consider significant documentary evidence on country conditions in Honduras, and therefore performed only a cursory risk analysis, unreasonably concluding that the Applicant faces only a generalized risk in Honduras.

[29] The Respondent submits the Officer reasonably singled out the Facebook posts because these were the only pieces of advocacy the Applicant supported with evidence. The Respondent further submits that it was reasonable for the Officer to have disregarded the firing report and robbery complaint since the Applicant had not followed up on their outcomes. The Respondent adds that the Applicant bears the onus of explaining why the Officer had to mention certain country condition documents, citing *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 (FC) at paras 15-17. The Respondent denies that the Officer had a duty to conduct additional research, stating this is only required if it “would have provided contrary information that should have been taken into account” (*Jessamy v Canada (Citizenship and Immigration)*, 2009 FC 20 at paras 81-82).

[30] In my view, the Officer’s risk analysis is unreasonable and as such, the decision cannot stand. The Officer failed to properly classify the Applicant’s risk profile and Honduras’ country conditions. Therefore, the risk analysis is unintelligible.

[31] It is well settled that decision-makers need not refer to every piece of evidence they reviewed and explain how they dealt with it (*Cepeda-Gutierrez*, para 16). However, when a decision-maker disposes of some 1,395 pages of country condition evidence in mere nine paragraphs barely covering one full page, and where some of that country condition evidence calls this brief analysis into question, the Officer's statements that they "have read and carefully considered all the documentary material presented in association with and support of this application" and that they "have considered all [the supporting documentation from news and research sources describing the current political climate in Honduras] in the context of assessing country conditions" cannot suffice to render the decision intelligible. Further, the Officer's conclusion that this documentation is "generalized in nature and [does] not establish a linkage directly to the applicant's personal circumstances" is unreasonable, for the reasons below.

[32] The Applicant's submissions to the Officer included the newspaper article, noted in the country conditions section, above, mentioning the death of a Freedom Party supporter. The submissions also included the Applicant's confirmation of membership in the Freedom Party. At the hearing, the Respondent's counsel focused on one word in the article suggesting the supporter was a "militant," and therefore that the Officer could reasonably have found the Applicant did not face similar risk as he was not a "militant."

[33] First, I note that the phrase in question reads "several comrades assured that his violent death obeys his militancy within the political formation." This is insufficient information to compare that victim's profile and activities to those of the Applicant. Second, even if I follow this reasoning, it does not appear in the Officer's decision. Instead, the Respondent's counsel, on

application for judicial review, mentioned it as a possible reasoning. In the case at bar, this specific evidence was important enough that its omissions from the reasons allow a finding that the decision was made without regard to the evidence (*Cepeda-Gutierrez*, para 17).

[34] Further, the Officer addressed the Applicant's allegations of Mr. Gaitan as follows:

The applicant has presented news articles regarding the illicit dealings [of] Carlos Gaitan, an individual he characterizes as a drug lord, a corrupt businessman and a gangster. The applicant states that Mr. Gaitan is a powerful local representative of the National Party in his town and knows that he has been publicly outspoken about his acts of corruption. He further states that Mr. Gaitan knows the applicant's mother since she is [a] member of the National Party and has used her to send him threatening messages.

[35] The above paragraph cited by the Officer contains no analysis or conclusion. The Officer never returns to the Applicant's allegations against Mr. Gaitan, nor does the Officer deal with the Applicant's allegations that Mr. Gaitan threatened him through his mother. The Officer appears to have wholly discarded these allegations without any explanation. Given my previous finding that the Officer's decision is unintelligible because it ignores the Applicant's submissions and the documentary evidence, this lack of analysis is equally troubling.

[36] Finally, the Officer failed to assign any weight to the letters from the Applicant's mother and brother on the basis that they stated the wrong date for the robbery incident, and did not explain how the Applicant's mother or brother became aware that Mr. Gaitan was responsible for the incident. First, it is undisputed that both letters misstate the date of the robbery incident as the date of the police report about the incident. However, given that neither the Applicant's mother nor brother were physically present at the attack, I am not persuaded that the misstated

date would form such a crucial detail to warrant assigning no weight to the letters. Second, the fact that the letters do not recount how the writers became aware of Mr. Gaitan's responsibility for the robbery disregards the letters for what they do not state, rather than what they do state (*Sitnikova v Canada (Citizenship and Immigration)*, 2016 FC 464 at paras 22-23). Indeed, there is much more in both letters than the statement that Mr. Gaitan was behind the robbery incident. To give both letters—and the entirety of their content—no weight because of something the letters did not say is unreasonable.

[37] For all these reasons, I find the Officer's PRRA decision is unreasonable.

B. IMM-5814-18: H&C Decision

[38] Concerning the H&C decision, the Applicant submits the Officer erred in focusing only on the Applicant's Facebook advocacy and ignoring all his other stated advocacy and also ignoring his profiles as the son of an opposition politician and as a person who filed an extortion complaint against someone affiliated with the National Party. The Applicant also submits that the Officer unreasonably failed to consider significant documentary evidence on country conditions in Honduras and erred in assessing the best interests of the Applicant's son, only doing so on a cursory basis.

[39] The Respondent submits the Officer's BIOC analysis is reasonable and concluded that the condition in Honduras was not sufficiently detrimental against the Applicant's son's best interests. The Respondent also submits that the Applicant did not indicate which country condition documents outside the Officer's observations should have been referenced in the

decision. The Respondent further submits that the Applicant is asking the Court to reweigh the evidence that was before the Officer.

[40] In my view, the Officer's hardship analysis is unreasonable and, as such, the decision cannot stand.

[41] I would first note that the Applicant incorrectly states the Officer only focused on his Facebook advocacy in the H&C decision. In fact, the Officer notes the Applicant's other stated advocacy, but that no evidence was tendered to substantiate this other advocacy. However, for many of the same reasons the PRRA risk assessment is unreasonable, the H&C hardship analysis is unreasonable.

[42] The Applicant had framed his hardship submissions in much the same way as his PRRA risk analysis, relying on hardship he would experience as a member of an opposition political party that was critical of the current government. The Officer's curt five-paragraph analysis of the factors in Honduras does not adequately address the Applicant's submissions.

[43] The Officer was "not satisfied of any hardship emanating from [the Applicant's] political activism." However, the Officer never referred to the country condition documents outlined above suggesting hardship based on political opinions. Since the Officer did not refer to any of this evidence, it is impossible to know whether the Officer even carried out such an analysis.

[44] The decision cannot represent a reasonable weighing of H&C factors if one of the factors was not properly analyzed. As such, I am not persuaded by the Respondent's assertion that the Applicant is simply asking this Court to reweigh the evidence. Rather, the Applicant asks this Court to recognize that there is no indication that crucial evidence was considered, and to send the matter back to have another Officer properly weigh the evidence, which is within this Court's jurisdiction.

[45] Given this finding, I do not consider it necessary to address the Applicant's BIOC submissions. Country conditions that may factor into a BIOC analysis are summarized above, but I find it unnecessary to carry out an analysis on the Officer's determinations in this regard.

[46] For these reasons, I find the Officer's H&C decision is unreasonable.

V. **Certified Question**

[47] Counsel for each party was asked if there were any questions requiring certification. They each stated that there were no questions for certification and I concur.

VI. **Conclusion**

[48] These applications for judicial review are allowed.

JUDGMENT IN IMM-5813-18 and 5814-18

THIS COURT'S JUDGMENT is that:

1. The decisions under review are set aside and the matters referred back for redetermination by a different officer.
2. No question is certified.

"Shirzad A."

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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