

Federal Court



Cour fédérale

Date: 20220224

Docket: IMM-6701-20

Citation: 2022 FC 263

Ottawa, Ontario, February 24, 2022

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

ERIK OSWALDO RAMOS CABEZA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the Applicant's Pre-Removal Risk Assessment [PRRA] dated December 10, 2020. The PRRA Officer determined that, as a result of his bisexuality, the Applicant would not be subject to a risk of torture, a risk of persecution or face a risk to life or risk of cruel and unusual treatment or punishment if he returned to Guatemala.

[2] The Applicant was previously determined to be inadmissible on grounds of serious criminality with respect to a conviction in Canada. Specifically, on June 15, 2018, the Applicant was convicted in Manitoba of the offence of sexual interference contrary to section 151 of the *Criminal Code* and subsequently sentenced to a period of 40 months of incarceration.

[3] On November 19, 2020, the Manitoba Court of Appeal dismissed the Applicant's appeal of his conviction. However, the Applicant was released on bail pending his appeal to the Supreme Court of Canada [Final Appeal]. A condition of his release was that he was to surrender himself into custody immediately following the determination of his Final Appeal.

[4] On April 21, 2021, the Supreme Court of Canada dismissed his Final Appeal. However, the Applicant failed to surrender himself as required and on April 29, 2021, the Winnipeg Police Service issued a Canada-wide warrant for the Applicant's arrest. The Canada Border Services Agency [CBSA] also issued an immigration warrant for the Applicant's arrest, as he failed to report to the CBSA as required by his immigration conditions. Both warrants presently remain outstanding.

[5] The Applicant is also presently subject to two deportation orders –a deemed deportation order from 2013 which came into force when the Applicant failed to depart Canada after his refugee claim was refused, and a deportation order issued on December 10, 2020 when the Applicant was found inadmissible to Canada for serious criminality.

[6] The evidence before the Court is that the Applicant has not been seen or heard from in Canada since the Supreme Court of Canada dismissed his Final Appeal and that attempts to locate him at the addresses that he had provided to the CBSA proved unsuccessful. Moreover, the Winnipeg Police Service believes, based on their inquiries, that the Applicant has crossed the border illegally into the United States.

[7] The Applicant was previously represented by counsel in this proceeding. However, his counsel obtained an order removing them as solicitor of record on January 28, 2022, as counsel had been unable to reach the Applicant since the dismissal of his Final Appeal on April 21, 2021. Following the removal of his solicitor of record, the Registry transmitted to the Applicant, by email to the email address provided by his former solicitor, the Order setting this matter down for a hearing. A copy of the Order was also posted in the Registry in Winnipeg, Manitoba.

[8] The Applicant did not appear at the hearing of the application.

[9] Where a person leaves Canada after a negative PRRA decision, whether voluntarily or not, an application for judicial review of that decision becomes moot and the PRRA itself cannot be reassessed [see *Perez v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 171]. The Applicant is presently a fugitive from justice, he did not appear at the hearing of this application and the authorities believe he has left Canada. In all of the circumstance, I am not satisfied that there remains a live issue for determination. Accordingly, this application shall be dismissed as moot.

JUDGMENT in IMM-6701-20

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. The parties proposed no question for certification and none arises.

“Mandy Ayles”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6701-20

STYLE OF CAUSE: ERIK OSWALDO RAMOS CABEZA v. THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HEARD BY VIDEOCONFERENCE

DATE OF HEARING: FEBRUARY 24, 2022

JUDGMENT AND REASONS: AYLEN J.

DATED: FEBRUARY 24, 2022

APPEARANCES:

None FOR THE APPLICANT

Brendan Friesen FOR THE RESPONDENT

SOLICITORS OF RECORD:

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Winnipeg, Manitoba