

Federal Court



Cour fédérale

Date: 20220420

Docket: IMM-6139-21

Citation: 2022 FC 570

Ottawa, Ontario, April 20, 2022

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

**AMILKAR RAMON REYES CHAVARRIA
AURELIA ELIZABETH SILES
HERNANDEZ MATIAS ADAIR REYES
SILES
REGINA BELEN REYES SILES**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a refusal of a Pre-Removal Risk Assessment (PRRA) decision, dated February 14, 2020, with an addendum dated March 30, 2021.

[2] The Applicants contend that the Officer's decision is unreasonable as the Officer failed to consider or unreasonably discounted evidence, and made inconsistent findings of fact.

[3] For the reasons that follow, the application is granted.

II. **Background**

[4] The Applicants, a couple and their two minor children, are citizens of Nicaragua. They claim a fear of the government and a group that monitors anti-government activity related to protests that began in 2018. They say that during the protests they sheltered a friend, "Dorwin", and his family in their home. Dorwin had openly opposed the government's actions. He subsequently fled Nicaragua and was granted refugee status in Canada.

[5] The Applicants claim that their home and church were under surveillance and that a death threat was spray painted on their door. They fled to Canada in March 2019. Being ineligible to claim refugee protection as they had passed through the United States, they completed an application for a PRRA in April 2019 alleging fear of persecution from the government.

[6] Among the documentary evidence submitted in support of their application was a letter from Dorwin.

[7] The PRRA was refused on February 14, 2020. The Officer did not accept that the Applicants had sheltered Dorwin stating:

I accept that the applicants know Dorwin, as they have provided a copy of his Refugee Protection Claimant Document, however the submissions put forth do not support that they sheltered him or aided in his escape to Canada. Details such as the length of time they sheltered him or how they aided in his escape have not been provided. Nor has evidence, such as a sworn declaration from Dorwin attesting to their involvement in his situation, been provided.

[8] No mention was made of the letter from Dorwin, dated April 12, 2019, which confirms that he had stayed with the Applicants during the anti-government protests. The letter does not appear in the Certified Tribunal Record but the Respondent does not dispute that it was submitted in support of the application. It appears that the Respondent's ministry has a "thin file" policy which results in original documents not being retained on the file but returned to the applicants. A record is kept, however, of the evidence submitted on behalf of the application which confirms that the letter was before the Officer.

[9] The Officer made several findings relating to the other evidence submitted by the Applicants. With respect to the threat spray painted on the door, the Officer found that there was nothing to indicate that it was directed at the Applicants as it could have been meant for Dorwin. The Officer also drew a negative inference as a result of the failure of the Applicants to mention an implicitly threatening note left in their doorframe. A letter from the Applicants' parish rector was discounted as the author was not a witness to the events and described threats aimed at the church.

[10] The Officer concluded:

While it is accepted that country conditions in Nicaragua are far from ideal, the applicants' evidence does not support that they personally face risk upon return as a result. The fact that the documentary evidence shows that the human rights situation in a country is problematic does not necessarily mean that there is a risk to a given individual. The evidence before me does not support that the applicants' profile in Nicaragua is similar to those persons that are currently at risk of persecution or harm in that country. Specifically, the applicants have provided insufficient evidence to indicate that they are opposed to the current government and that the perceived threats were personal to them.

[11] The Applicants provided additional documents on March 19, 2021 including a letter confirming the Female Applicant's involvement in a Political Leadership Program, and an Amnesty International report. In an addendum to the PRRA, the Officer held that the new documents did not demonstrate that the Applicants' face a forward-facing risk or that the government was currently pursuing them as activists.

III. **Issue and Standard of Review**

[12] The sole issue in this application is whether the Officer's decision is reasonable.

[13] There is no reason in this matter to depart from the presumption that the standard of review is reasonableness. As stated in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], "[i]n conducting a reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified" (at para 15).

[14] Further, “[t]he reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it” (*Vavilov* at para 126).

IV. Analysis

[15] As a preliminary matter, the Court notes that both parties have named the Minister of Public Safety and Emergency Preparedness as a Respondent in addition to the Minister of Citizenship and Immigration. As stated by Justice Norris in *Sala Del Rosario v Canada (Citizenship and Immigration)*, 2019 FC 705 at para 18, in a judicial review of a denial of a PRRA application, the proper respondent is the Minister of Citizenship and Immigration as that office is the Minister responsible for the administration of the statute in respect of the matter for which judicial review is sought.

[16] I am satisfied that this application must be granted because there is no indication that the Officer considered the letter from Dorwin, dated April 12, 2019, which corroborated the Applicants’ story. The Respondent says that the letter is not contained in the CTR as a result of a “thin file” policy or practice but concedes that the letter was before the Officer. The Respondent contends that the letter was considered by the Officer but was not sufficient to demonstrate that the Applicants would have a forward-looking risk.

[17] That rationale, however, does not appear in the Officer’s reasons and the Officer’s failure to reconcile this evidence with the finding that the Applicants did not shelter Dorwin renders the

decision unreasonable. The Respondent's explanations read into the decision a line of analysis that is not present in the reasons.

[18] It is well established that the Court may infer that a decision-maker has made an erroneous finding of fact "without regard to the evidence" from the failure to mention in its reasons evidence that is relevant and points to a different conclusion. As stated in *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC), the more important the evidence that is not mentioned and analysed in the reasons, the more willing a court may be to find a reviewable error (at paras 15-16).

[19] I do not consider it necessary to deal with the Applicants other arguments, which, in my view, would not have been sufficient to interfere with the Officer's decision. I will note that it appears that the application submitted to the Officer was not well organized by the Applicants' former counsel and that may have contributed to the outcome of the assessment. They will have another opportunity to present their submissions and evidence to a different officer on reconsideration of their application.

[20] No serious questions of general importance were proposed.

JUDGMENT IN IMM-6139-21

THIS COURT’S JUDGMENT is that:

1. The style of cause is amended to remove the Minister of Public Safety and Emergency Preparedness as a respondent;
2. The application for judicial review is granted and the matter is remitted for reconsideration by another officer, and
3. No question of general importance is stated.

“Richard G. Mosley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6139-21

STYLE OF CAUSE: AMILKAR RAMON REYES CHAVARRIA
AURELIA ELIZABETH SILES HERNANDEZ
MATIAS ADAIR REYES SILES
REGINA BELEN REYES SILES v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HEARD VIA VIDEOCONFERENCE
VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: APRIL 7, 2022

JUDGMENT AND REASONS: MOSLEY J.

DATED: APRIL 20, 2022

APPEARANCES:

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