

Federal Court



Cour fédérale

Date: 20220718

Docket: IMM-4820-21

Citation: 2022 FC 1049

Ottawa, Ontario, July 18, 2022

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

**ANTONIO GARCIA VELAZQUEZ
LOHAN SEBASTIAN GARCIA GALLEGOS
MARGARITA VANESSA GALLEGOS
REZA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Mr. Antonio Garcia Velazquez (the “Principal Applicant”), his wife Ms. Margarita Vanessa Gallegos Reza and their minor child Lohan Sebastian Garcia Gallegos (collectively, the “Applicants”) seek judicial review of the decision of the Immigration and Refugee Board, Refugee Appeal Division (the “RAD”). In the decision, the RAD upheld the decision of the Immigration and Refugee Board, Refugee Protection Division (the “RPD”) that the Applicants

are not Convention refugees or persons in need of protection within the meaning of section 96 and subsection 97(1), respectively, of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Applicants are citizens of Mexico. They fear persecution from a drug cartel from Columbia.

[3] Among other issues, the Applicants challenge the manner in which the RAD dealt with state protection. They argue that the RAD breached procedural fairness by making a finding on state protection when their counsel was stopped midway through submissions on the issue during the RPD hearing.

[4] The Minister of Citizenship and Immigration (the “Respondent”) submits that the RAD committed no breach of procedural fairness and otherwise, committed no reviewable error.

[5] The substance of the decision is reviewable on the standard of reasonableness, following the direction of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 SCR 653.

[6] In considering reasonableness, the Court is to ask if the decision under review “bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on that decision”; see *Vavilov*, at paragraph 99.

[7] The issue of procedural fairness is reviewable on the standard of correctness; see the decision in *Canada (Minister of Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339.

[8] In my view, the issue of state protection is determinative. Consideration of state protection in this case requires the Court to consider the Applicants' arguments about procedural fairness.

[9] The RAD acknowledged that the RPD erred by making a finding on state protection after stopping the Applicants' Counsel midway through submissions on the subject. However, the RAD committed the same error when it allowed the issue of state protection to contribute to its conclusion.

[10] I agree with the submissions of the Applicants that this interruption gave rise to a breach of procedural fairness.

[11] In the result, the application for judicial review will be allowed, the decision will be set aside and the matter remitted to a new panel of the RAD for redetermination. There is no question for certification arising.

JUDGMENT in IMM-4820-21

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision is set aside and the matter remitted to a new panel of the Immigration and Refugee Board, Refugee Appeal Division for redetermination. There is no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-4820-21

STYLE OF CAUSE: ANTONIO GARCIA VELAZQUEZ, LOHAN
SEBASTIAN GARCIA GALLEGOS, MARGARITA
VANESSA GALLEGOS REZA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE
BETWEEN TORONTO, ONTARIO AND ST. JOHN'S,
NEWFOUNDLAND AND LABRADOR

DATE OF HEARING: JUNE 13, 2022

REASONS AND JUDGMENT: HENEGHAN J.

DATED: JULY 18, 2022

APPEARANCES:

D. Clifford Luyt FOR THE APPLICANTS

Brad Bechard FOR THE RESPONDENT

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