

Date: 20090129

Docket: IMM-245-09

Citation: 2009 FC 101

Ottawa, Ontario, January 29, 2009

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

BALMORE ALEXANDER RAMOS SANCHEZ

Applicants

AND

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

-and-

**THE MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS**

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] The Courtroom is not a forum for theory. This, especially, when the fragility of the human condition is at stake on the one hand and the integrity of the government immigration apparatus (to safeguard the society as a whole) hangs in balance on the other.

[2] For that matter, in any decision (between a private party and a public entity or between private parties themselves) whether of an interim or permanent nature, a Court must acknowledge practical realities.

[3] Practical realities oblige a Court to give weight to the merits of each party's application; therefore, the Supreme Court of Canada has acknowledged two potential exceptions to *American Cyanamid* (*American Cyanamid Co. v. Ethicon Ltd.*, [1975] A.C. 396, wherein the Court of Appeal of England and Wales, ("English C.A."), applied the traditional *prima facie* case test and dismissed the interlocutory injunction ordered by the motions judge). The first, when a case revolves on a "simple question of law". The second, when the primary facts are self-evident.

[4] The suggestion has been made in the private law context that a third exception to the *American Cyanamid* "serious question to be tried" standard should be recognized in cases where the factual record is largely settled prior to the application being made. Thus in *Dialadex Communications Inc. v. Crammond* (1987), 34 D.L.R. (4th) 392 (Ont. H.C.), at p. 396, it was held that:

Where the facts are not substantially in dispute, the plaintiffs must be able to establish a strong *prima facie* case and must show that they will suffer irreparable harm if the injunction is not granted. If there are facts in dispute, a lesser standard must be met. In that case, the plaintiffs must show that their case is not a frivolous one and there is a substantial question to be tried, and that, on the balance of convenience, an injunction should be granted.

(*RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R 311).

II. Introduction

[5] Mr. Balmore Alexander Ramos Sanchez is a 20 year old young man from El Salvador. He fled his country at the age of 16 due to fear of the Mara Salvatrucha (MS-13) and Mara 18 gangs who had tried to recruit him, harassed and assaulted him, and threatened him with death. He claimed refugee protection in Canada, but the Refugee Protection Division (RPD) denied his claim. He applied for a Pre-Removal Risk Assessment (PRRA), but the PRRA Officer denied his application. He is under an effective deportation order and faces removal to El Salvador, on January 30, 2009, unless this motion for a stay is granted.

[6] On January 20, 2009 Mr. Ramos Sanchez filed an application for leave and for judicial review of the PRRA Officer's decision.

[7] There are serious issues to be examined in the judicial review application.

[8] Mr. Ramos Sanchez will suffer irreparable harm if returned to El Salvador prior to a decision in the judicial review herein, in that he faces a risk to his life or to his physical security in that country. In light of the risk, the balance of convenience favours a stay.

III. Background

[9] Mr. Ramos Sanchez is a 20 year old young man from the neighbourhood San Jose Puerto de Golpe, in the city of Cojutepeque, El Salvador. His father owns properties, and the family cultivates coffee and fruit, and raises cattle and chickens. Mr. Ramos Sanchez is the second son of his parents,

and has 7 full siblings. His five sisters and youngest brother are still living in his hometown with their parents.

[10] Mr. Ramos Sanchez's father has four children from a previous marriage. One of them, Cesar, joined the Mara Salvatrucha (MS-13) after it started up in Cojutepeque in 1998. Cesar resents that his father left his mother and created a new family; therefore he and his fellow gang members expect Mr. Ramos Sanchez's family members to support them and join them, otherwise they seek revenge.

[11] Mr. Ramos Sanchez was only 10 years old in 1998, when the MS started pressuring him to join. From that year on, he was harassed and mistreated, and his family was robbed and coerced into providing MS with products from their farm. The details are set out in the narrative of events he provided to the Immigration and Refugee Board (Board). Highlights include:

- **1998:** Mr. Ramos Sanchez and his brother Tomas were beaten by MS who stole a truck full of eggs and fruit. The incident was reported to the police;
- **1999:** Mr. Ramos Sanchez was physically forced to take MS gangsters to his grandmother's house to find his uncle, a national policeman. The gangsters shot a worker who they mistook for his uncle;
- **2000:** Cesar and other MS members stole food that Mr. Ramos Sanchez's family was providing to help earthquake victims. They forcibly took Mr. Ramos Sanchez to his home where they stole everything they found, tied him to a post, blindfolded him and spray

painted him. His father called the police, and when the gang found out they came to the house and shot two of the family's dogs and two geese out of revenge;

- **2001:** MS gangsters intercepted Mr. Ramos Sanchez on his way to Church where he was to serve as an altar boy. They took his gown, spray painted it and tore it up. They made him put on a shirt with "MS Cojutepeque" written front and back. They hit him with a knife and forced him to go into the Church wearing their shirt, threatening to stab him. MS threats continued at school, church, home and on the streets;
- **2002:** Mr. Ramos Sanchez and his cousin were attacked by MS gangsters who wanted to know where his older siblings were. When the boys did not respond and ran away, MS shot at them, and a bullet hit his cousin in the leg;
- **2004:** In September, the MS gangster "El Toro" shot a bullet that went through the roof of the family's home, then he and other gangsters who had surrounded the house held the family at gunpoint while they looked for money. During the incident, one gangster secretly ordered Mr. Ramos Sanchez to leave rice and corn for them at a particular spot before midnight, otherwise they would come after the family again. He ordered Mr. Ramos Sanchez at gunpoint not to tell anyone about this.

[12] It was in November 2004 that his situation worsened. The following incidents precipitated his flight from his country:

- On November 2, five gangsters from Mara 18 (the rival of MS) arrived at the church where Mr. Ramos Sanchez and other members of his youth group were gathered. Someone had told them that MS 13 gathered there. They shot bullets towards the church, and blocked the

doors. They wanted to know who Cesar Ramos' brother was because they had a score to settle. Mr. Ramos Sanchez was saved when the group coordinator told them Cesar's brother had not come that day. They forced the youths to remove their shirts to check for MS tattoos, tied everyone up, took out their guns and threatened to kill them. The youths escaped when police cars arrived and a gunfight between Mara 18 and the police ensued;

- On November 15, the MS gangster El Cobra came to Mr. Ramos Sanchez's house, firing shots in the air. He was looking for Mr. Ramos Sanchez because someone told him that Mr Ramos Sanchez had joined the Mara 18. Mr. Ramos Sanchez's sister yelled out that Mr. Ramos Sanchez was at school, and the gangster left;
- Mr. Ramos Sanchez feared for his life and didn't know what to do. Mara 18 assumes he belongs to MS like his half brother Cesar, and MS believes he has joined Mara 18. He feared both gangs wanted to kill him. He left home and went to the capital, San Salvador where he sought refuge with a cousin. In San Salvador, he met a man who said he could help him leave the country. The man was leaving on December 1st;
- On November 28, Mr. Ramos Sanchez went back to Cojutepque to say farewell to his family. When he got off the bus near his sister's school, he realized that a group of MS gangsters were following him. He ran and hid in the school. They started shooting at him, and shot another man who looked similar.

[13] Mr. Ramos Sanchez went back to San Salvador, and left the country on December 1, 2004. He went to the United States of America (USA), where he stayed for almost two years.

[14] In December 2006, Mr. Ramos Sanchez came to Canada, where he has uncles and cousins, and made a refugee claim. The claim was heard by the RPD, on September 17, 2007, and rejected by decision dated, October 10, 2007. The RPD found his evidence of past harm not credible, putting significant weight on his failure to provide any documentary corroboration to independently support what he had asserted. The RPD rejected his explanations for lack of corroboration, and drew an adverse inference. The RPD also found that he had failed to supply clear and convincing confirmation of the state's inability to protect him. (Reasons of RPD, Motion Record (MR) at pp. 235, 238-241).

[15] Mr. Ramos Sanchez applied for a PRRA. In support of his application, he provided new evidence, as follows:

- Evidence to refute the RPD finding on credibility; that is, statements of witnesses to the incidents of November 2, 2004 and November 28, 2004. He also provided a letter from the police, a letter from his father and an affidavit from his uncle documenting why further evidence was not available;
- Evidence about new threats and attacks on his family by members of the MS-13 and the inadequacy of the police response to their request for protection. This included evidence that MS-13 was trying to forcibly recruit his sisters, that they had a continuing interest in Mr. Ramos Sanchez, and that the local police could not respond to a request for assistance when his sister was being sexually assaulted because they did not have transportation;

- Country documentation published after the decision of the RPD containing more recent information about the inability of the state to provide adequate protection to those targeted by MS-13 and Mara 18;
- A report titled “No Place to Hide: Gang, State and Clandestine Violence in El Salvador”, published by the Human Rights Program of Harvard Law School in February 2007.

Although published before the hearing, this evidence was not before the RPD.

(MR at pp. 45, 54-68, 70-72, 83, 87-89, 94, 97-98, 102-124, 125-234, 243-245).

Decision of the PRRA Officer

[16] The PRRA Officer took cognizance of the new evidence of all the documents except those country documents that pre-dated the hearing. The PRRA Officer found that the “No Place...” report could have been presented at the hearing and, therefore, excluded it per the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), subsection 113(a) (MR at pp. 13, 14).

[17] The PRRA Officer noted that Mr. Ramos Sanchez and counsel had addressed some of the credibility concerns of the RPD. The Officer made no finding with respect to whether the new evidence was sufficient to overcome the negative credibility findings of the RPD and no finding as to whether he had been personally targeted in the past. The Officer found that the new evidence does not establish a current or future threat from Cesar or the M-18. The PRRA Officer found that “Taken as a whole, ...the new evidence does not establish a personalized risk against Mr. Ramos Sanchez” (MR at pp. 18-19).

[18] The PRRA Officer also found that Mr. Ramos Sanchez has an Internal Flight Alternative (IFA) in San Salvador, and that state protection is available to him. The Officer also found that he “has not demonstrated that such changes have been wrought in El Salvador, or in his personal situation that he would now face a risk of persecution, a risk to life, a risk to torture, or of cruel and unusual treatment or punishment” (Emphasis added). The Officer found that he will face less than a mere possibility of persecution and will be unlikely to face a risk to life or a risk of cruel and unusual treatment or punishment if removed to El Salvador, based on the new evidence adduced. (MR at pp. 19, 24-25).

IV. Issue

[19] The grounds for this motion for a stay of removal are:

- a. There are serious issues to be tried in the Application for Leave and Judicial Review of the Decision of the Respondent rejecting the Applicant’s Application for a PRRA;
- b. The Applicant will suffer irreparable harm if removed to El Salvador pending the decision;
- c. The balance of convenience favours the Applicant.

(Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd., [1987] 1 S.C.R. 110; *Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302, 11 A.C.W.S. (3d) 440 (F.C.A.)).

V. Analysis

A. **Serious Issue**

[20] The test of whether there is a serious issue to be tried is easily satisfied, and the test is lower than the test for leave. Interim relief should be refused on this ground only when sought in support of proceedings that are manifestly without merit or “frivolous and vexatious” *Thamotharampillai v. Canada (Minister of Citizenship and Immigration)* (1999), 86 A.C.W.S. (3d) 1114, [1999] F.C.J. No. 246 (QL); *Sowkey v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 67, 128 A.C.W.S. (3d) 777).

[21] There are serious issues to be examined in the Application for leave and judicial review.

PRRA Officer’s jurisdiction

[22] The scope of a PRRA Officer’s jurisdiction to grant refugee protection is set out in the IRPA, sections 112 and 113, and has been recently interpreted by the Federal Court of Appeal in the case of *Raza v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 385, 162 A.C.W.S. (3d) 1013. The Court held that, while a PRRA application by a failed refugee claimant is not an appeal or reconsideration of the decision of the RPD, nevertheless it may require consideration of some or all of the same factual and legal issues. The IRPA mitigates the risk of re-litigation by limiting the evidence that may be presented to the PRRA Officer. The negative determination by the RPD must be respected by the PRRA Officer, unless there is new evidence of facts that might have affected the outcome of the RPD hearing if the evidence had been presented to the RPD.

[23] The Court found that, in order to come to a different conclusion from the RPD, the PRRA Officer must find the evidence to be credible, relevant, new, and material (*Raza*, above at para. 13).

[24] “Newness” is defined as evidence that is capable of:

- a. proving the current state of affairs in the country of removal or an event that occurred or a circumstance that arose after the hearing in the RPD;
- b. proving a fact that was unknown to the refugee claimant at the time of the RPD hearing; or
- c. contradicting a finding of fact by the RPD (including a credibility finding).

[25] If evidence is capable of proving only an event that occurred or circumstances that arose prior to the RPD hearing, then the applicant must establish either that the evidence was not reasonably available to him or her for presentation at the RPD hearing, or that he or she could not reasonably have been expected to have presented the evidence at the hearing. If the evidence is capable of proving an event that occurred or circumstances that arose after the RPD hearing, the evidence must be considered (unless it is rejected because it is not credible, not relevant, not new or not material) (*Raza*, above at para. 13).

[26] The decision of the Federal Court of appeal in *Raza* is clear that a PRRA is not limited to assessing risk on the basis of changes in circumstances arising after the hearing in the RPD. The PRRA Officer must also consider whether the new evidence is capable of contradicting a finding of fact by the RPD, including a credibility finding.

[27] The Reasons demonstrate that the PRRA Officer misconstrued the meaning of section 113 of the IRPA and based the decision solely on changes in circumstances. In the concluding paragraph, the Reasons state:

...I find the applicant has not demonstrated that such changes have been wrought in El Salvador, or in his personal situation that he would now face a risk of persecution, a risk to life, ... or of cruel and unusual treatment or punishment.

[28] The new evidence consisted of statements of witnesses corroborating two key events: 1. the attack by Mara 18 on the Church group, on November 2, 2004, and the fact that they were looking for Mr. Ramos Sanchez; 2. the attack on Mr. Ramos Sanchez by MS-13, on November 28, 2004. Witness Josefa Beltran Flores also provided further evidence corroborating his claims to have been persecuted by the gangs for many years in their attempts to recruit him. The PRRA Officer acknowledged these witness statements.

[29] The PRRA Officer, however, made no finding as to whether or not this evidence was sufficient to overturn the credibility finding of the RPD. The PRRA Officer did not come to any determination as to whether Mr. Ramos Sanchez was subject to the harm he alleged. Rather, the PRRA Officer simply concluded that the new evidence on file does not establish a current or future threat from Cesar (his half brother) nor from M18. The Officer concludes that "Taken as a whole, I find the new evidence does not establish a personalized risk against Mr. Ramos Sanchez".

[30] The PRRA Officer's role is ultimately to assess the likelihood of current and future risk (*Raza*, above).

[31] The PRRA Officer was therefore obliged to exercise his jurisdiction and consider whether the witness statements established that Mr. Ramos Sanchez could be harmed and targeted.

[32] If the potential harm and targeting is credible, then the new evidence establishes the following:

- Mr. Ramos Sanchez was personally targeted by both MS-13 and Mara 18 before he left El Salvador in December 2004;
- The MS-13 gangsters who targeted him are continuing to extort and harass his family. His sisters are also being pressured to join MS;
- MS-13 has a continuing interest in Mr. Ramos Sanchez. His sister Rosita was physically attacked by the leader of the MS women's group, Marta Perez, after she refused to give information on Mr. Ramos Sanchez's whereabouts. His sister Beatriz was sexually assaulted by the gangster "El Toro" who also told her to send greetings to Mr. Ramos Sanchez and to tell him that he is waiting for him.

[33] This is sufficient to establish a likelihood of future targeting and harm. There is therefore a serious issue to be determined.

[34] The PRRA Officer found that Mr. Ramos Sanchez has an IFA in San Salvador because "he lived there without incident with his cousin". Mr. Ramos Sanchez stayed with his cousin in El Salvador from November 15 to December 1, 2004, a period of just over two weeks. It is not reasonable to conclude from such a short stay that San Salvador is a "safe refuge" or a "secure

substitute home”, particularly given the small size of the country (MR at pp. 19, 30, 40-41, 246-247; *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589, 45 A.C.W.S. (3d) 141; *Ahmed v. Canada (Minister of Employment and Immigration)* (1993), 42 A.C.W.S. (3d) 113, 156 N.R. 221 at para 5).

[35] The PRRA Officer’s finding of an IFA in San Salvador is further contradicted by the evidence cited in the following paragraph of the Reasons:

Entire swaths of the capital are virtually under the control of MS-13 and its rival, Mara 18. Local police patrol warily, tending when possible to avoid those parts of the city.

[36] The finding of IFA is therefore unreasonable.

State Protection

[37] State protection must be adequate and useful in the circumstances. The ability of a state to protect must be assessed not only on the existence of remedies but on the capacity and the will of the state to implement them (*Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689; *Canada (Minister of Citizenship and Immigration) v. Carrillo*, 2008 FCA 94, 165 A.C.W.S. (3d) 146; *Erdogu v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 407, 166 A.C.W.S. (3d) 311; *Avila v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 359, 295 F.T.R. 35; *Streanga v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 792, 159 A.C.W.S. (3d) 555 and cases cited therein).

[38] The PRRA Officer summarizes the new country documents provided by Mr. Ramos Sanchez, all dating from 2008. The Officer noted the following evidence; it is demonstrative of an inability of the state to protect persons at risk from MS-13 and Mara 18:

- Entire swaths of the capital are virtually under the control of MS-13 and Mara 18. **Local police try to avoid those parts of the city;**
- The Mano Dura or Hard Fist policies are said to be discredited and counterproductive, prisons become gang headquarters;
- El Salvador is one of the five most violent countries in the world. Ten murders are reported to police daily;
- **Police take little or no action with respect to extortion threats** against visiting Americans, due to a lack of training and staffing (Note: this is from a document produced for the purposes of providing security advice to Americans);
- Neighbourhood watch groups now employ security firms and checkpoints;
- Gangs and other criminal elements roam freely, day and night;
- Transnational street gangs, including MS-13 and M-18, are major threats to public security in El Salvador;
- The PNC is still in the development stages of becoming a modern and effective police force that can protect the public...routine street patrol techniques, **anti-gang and crime suppression efforts remain ineffective**. Equipment shortages (particularly radios and vehicles) further **limit their ability to deter or respond to crimes effectively;**
- Police estimate that there are between 10,000 and 13,500 members of the two gangs [MS-13 and Mara 18] in El Salvador, and between 60,000 to 120,000 in the region.

(Reasons, MR at pp. 19-20).

Additional evidence contained in those documents, not referred to by the PRRA Officer, included the following:

- Murder and violent gang activities occur routinely throughout the country, and **little to no action is taken by the police** (MR 108);
- The gangs modified strategies enable them to survive police raids and **maintain control over the neighbourhoods** where they operate (MR 119);
- **President Saca's Super Manodura plan fizzled out by late 2007** and in early April [2008] **Saca admitted that the fight against the gangs would take around 25 years.** (MR 122).

[39] The PRRA Officer reviewed the most recent US Department of State report on El Salvador, and noted the following:

- Protection of human rights was undermined by widespread violent crime, including gang-related violence, impunity and corruption;
- Inadequate training, insufficient government funding, lack of a uniform code of evidence and isolated instances of corruption and outright criminality undermined the PNC's effectiveness;
- The judiciary suffered from inefficiency and corruption (contributing) to impunity, undermining respect for the judiciary and the rule of law. Inadequate government funding of the PNC, combined with intimidation and killing of victims and witnesses made it difficult to identify, arrest and prosecute perpetrators of ...crimes.

[40] The PRRA Officer referred to two “Response to Information Requests” issued by the RPD Research Directorate in April 2006, concerning gangs and state response. The documents confirm that Mara Salvatrucha is an organized, ultra violent gang involved in serious crimes, and refer to various measures taken by the state from 2004 to April 2006. As noted above, however, as of 2008 such “anti-gang measures remain ineffective”. The Super Mano dura (super heavy hand) was discredited as counterproductive, and fizzled out by the end of 2007. The President of El Salvador admits as stated above that the fight against gangs will take around 25 years.

[41] Despite the overwhelming evidence that, as of 2008, the Salvadoran government cannot protect its citizens from MS-13 and Mara 18. The only rationale provided is that “gang members are arrested, trafficking operations are disrupted, corrupt police are dismissed or prosecuted, and different levels of government coordinate their efforts” (MR at p. 25).

[42] The PRRA Officer acknowledges that El Salvador faces serious challenges such as a high level of violence and official corruption and inefficiency; however, as the RPD acknowledged this and nonetheless found state protection was available, the PRRA Officer finds that “the new information on file does not establish that this situation has changed”. The Officer then goes on to find that state protection is available to Mr. Ramos Sanchez.

[43] The PRRA Officer’s approach must be examined in light of the jurisdiction under section 113 of the IRPA. In the absence of new evidence, the PRRA Officer is not entitled to revisit the RPD decision on state protection, no matter how erroneous it may be; however, where there is new

evidence about current country conditions, the PRRA Officer then conducts an independent review of that evidence, applies the correct legal tests, and determines the issue independently.

[44] The RPD finding was based on evidence from 2006. In 2008, there was significant new evidence that conditions had worsened and that the state's "serious efforts" to control gangs had failed. The Super Mano dura (super heavy hand) was discredited as counterproductive, and fizzled out by the end of 2007. It is reiterated that the President of El Salvador, himself, admits that the fight against gangs will take around 25 years. This is evidence that refutes the RPD finding (MR at pp. 240, 244).

[45] Mr. Ramos Sanchez has therefore raised a serious issue that the PRRA Officer erred in concluding that state protection is available.

PRRA Officer's requirement in respect of the application of paragraph 113(a) of the IRPA

[46] The PRRA officer excluded from consideration the report "No Place to Hide: Gang, State and Clandestine Violence in El Salvador", published by the Human Rights Program of Harvard Law School in February 2007, on the basis that Mr. Ramos Sanchez or his counsel could have located and presented it at the hearing. The PRRA Officer did not accept that the evidence was not available to Mr. Ramos Sanchez or that he could not reasonably have been expected to have presented it. The PRRA Officer applied paragraph 113(a) of the IRPA in an unreasonable way.

[47] The mere fact that this report was published prior to the hearing does not mean that it was obvious or easily accessible to Mr. Ramos Sanchez or his counsel. It was not obvious to the RPD research unit or the Tribunal officer whose role it is to provide relevant evidence to the RPD. The RPD research unit produces updated packages of documentation that are relied on in refugee claims. The National Documentation Package (NDP) for El Salvador was updated on July 2007, and was in evidence before the RPD. It does not contain the Harvard Law School report. If the RPD research team did not locate this document, then how could the claimant and his counsel have reasonably been expected to do so? (MR at pp. 54, 243-245).

[48] This is an extremely relevant report, from a credible source. It is the result of fact finding missions to El Salvador from March to September 2006, as well as months of follow-up research. Researchers conducted personal interviews with victims, current and former gang members, NGOs and government authorities. The information contained in the report post-dates other evidence about the gangs contained in the NDP, and is much more detailed. It documents the risks that youths face from the gangs, and the inadequacy of state protection. It is evidence that is material, particularly with respect to state protection. It is evidence that should have been considered by the PRRA Officer (MR at pp. 129, 244; reference is also made to Report, MR at pp. 129-234).

[49] Furthermore, even if the Officer may exclude a report under paragraph 113(a), the PRRA Officer had discretion to consider the report. A PRRA Officer is not limited to considering evidence submitted by the applicant, but rather has an obligation to conduct sufficient independent research in order to come to a proper determination. The Officer did consult and rely on other sources in

addition to the documents submitted, including two Response to Information Requests from April 2006, also pre-dating the hearing. The PRRA Officer therefore erred in that he failed to properly exercise his discretion to consider credible, material evidence that supports Mr. Ramos Sanchez's allegations of risk (Immigration Manual, PP 3, paragraph 10.2 and 10.3; *Elezi v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 240, 310 F.T.R. 59 at paras. 44, 45; *Hassaballa v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 489, 157 A.C.W.S. (3d) 602 at para. 33).

[50] Mr. Ramos Sanchez has therefore demonstrated that there are serious issues to be tried. The Issues are not manifestly without merit, and a Stay is therefore warranted.

B. Irreparable Harm

[51] The definition of "irreparable harm" is provided by Sopinka and Cory JJ. in *RJR-MacDonald*, above:

"Irreparable" refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other

[52] Where there is a risk of harm in the home country, this is irreparable. In the case of *Suresh v. Canada (Minister of Citizenship and Immigration)*, [1999] 4 F.C. 206, 90 A.C.W.S. (3d) 443

(F.C.A.), Justice Joseph Robertson stated:

[12] ...No transgression of a basic human right can be accurately measured or compensated by money. This is particularly true in immigration cases involving deportation to a country which fails to abide by international norms respecting human rights...

[53] As stated by Justice Luc Martineau in *Figurado v. Canada (Solicitor General)*, 2005 FC 347, [2005] 4 F.C.R. 387:

[45] Where there is a serious issue in respect of a negative PRRA decision resulting in exposing the applicant to persecution or subjecting him personally to a danger of torture or a risk to life or cruel or unusual treatment or punishment, for which a stay is sought pending the determination of the underlying judicial review application, irreparable harm will necessarily result and the balance of convenience in such a case will normally favour the applicant. Thus, a stay should normally be granted by the Court in these circumstances apart from the question of whether the underlying judicial review application may also be otherwise rendered moot if removal is affected... (Emphasis added).

(Reference is also made to *Streanga*, above).

[54] If Mr. Ramos Sanchez is removed, he will have no remedy if the allegations of harm are true. The remedy sought would be rendered nugatory by the Applicant's removal.

[55] Mr. Ramos Sanchez has raised serious issues that he would not be at risk in El Salvador. The totality of the evidence before this Court establishes that he is at risk and would therefore suffer irreparable harm, in that:

- He was personally targeted by both MS-13 and Mara 18 in the past;
- MS-13 continues to harass his family and has a continuing interest in Mr. Ramos Sanchez;
- The State of El Salvador is incapable of providing adequate protection.

C. Balance of Convenience

[56] In light of the irreparable harm faced by Mr. Ramos Sanchez, the balance of convenience favours the applicant. The harm he would face upon removal is much greater than any inconvenience to the Respondent in removing him (MR at pp. 5, 29, 32).

[57] The balance of convenience therefore favours a stay.

VI. Conclusion

[58] Therefore, a stay of removal is granted pending the determination of the application for leave and for judicial review of the PRRA decision.

JUDGMENT

THIS COURT ORDERS that the Applicant's request for a stay of removal be granted pending the determination of the application for leave and for judicial review of the Pre-Removal Risk Assessment decision.

“Michel M.J. Shore”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-245-09

STYLE OF CAUSE: BALMORE ALEXANDER RAMOS SANCHEZ
v. THE MINISTER OF CITIZENSHIP AND
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PREPAREDNESS

PLACE OF HEARING: Ottawa, Ontario

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**REASONS FOR JUDGMENT
AND JUDGMENT:** SHORE J.

DATED: January 29, 2009

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