

Federal Court



Cour fédérale

**Date: 20130528**

**Docket: IMM-2760-12**

**Citation: 2013 FC 558**

**Ottawa, Ontario, May 28, 2013**

**PRESENT: The Honourable Mr. Justice O'Keefe**

**BETWEEN:**

**URIEL JASSO SALINAS**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) for judicial review of a decision by the pre-removal risk assessment (PRRA) officer (the officer) dated February 10, 2012, wherein the applicant's PRRA application was refused. The officer's decision was based on the finding that the applicant would not be subject to risk of persecution, danger of torture, risk to life or risk of cruel and unusual treatment or punishment if returned to Mexico.

[2] The applicant requests that the officer's decision be set aside and the application be referred for redetermination by a different officer.

### **Background**

[3] The applicant is a citizen of Mexico. He was targeted due to a feud between his own family and the Cepeda family. In January 2007, he was abducted and suffered a number of beatings, sexual assaults and a mock execution, which caused him permanent physical injury and severe mental and emotional problems. His brother fled Mexico for the United States. He asked the police for assistance but they appeared to be allied with the Cepeda family. The applicant and his wife fled to Ario de Rosales, but were found by the Cepeda family. They then fled to Tijuana, where they were attacked by gangsters. They then fled in turn to Mexico City for five days before leaving the country.

[4] The applicant came to Canada on May 6, 2007. He claimed refugee protection on May 14, 2007, but his claim was ultimately abandoned because he did not attend hearings due to a major depressive paranoid episode requiring hospitalization. He fears returning to Mexico due to violence at the hands of the Cepeda family, a threat compounded by his physical and mental health problems and the resulting inability to access social services.

[5] He made a PRRA application on May 17, 2011.

### **Officer's PRRA Decision**

[6] In a letter dated February 10, 2012, the officer informed the applicant his application had been rejected.

[7] The reasons began by summarizing the risks identified by the applicant and his immigration status history. The officer noted the documentary evidence submitted by the applicant, including medical records and the applicant's Personal Information Form (PIF) narrative from his refugee claim.

[8] The officer then turned to the evaluation of the risks alleged by the applicant. The officer described how the applicant feared retribution by the Cepeda family due to failing to pay protection money. The officer concluded the applicant had not demonstrated that this feud was ongoing or that his alleged persecution had a nexus to the Convention grounds under section 96 of the Act, as victims of crime are not a particular social group.

[9] The officer therefore considered the applicant's claim under section 97 of the Act, noting that risks caused by the inability of Mexico to provide the applicant with adequate health or medical care were excluded from consideration under subparagraph 97(1)(b)(iv). The officer described how the applicant feared being beaten, raped and killed by the Cepeda family and his claim that he had no internal flight alternative (IFA) in Mexico due to his persecutors being able to find him anywhere in the country. The officer concluded that the applicant's problems were local in nature and he had

not demonstrated that his persecutors would still be interested in him as the crimes in question had been committed in January 2007.

[10] The officer then considered the applicant's flight to Ario de Rosales. The applicant did not explain why he chose to flee to an area where he knew the Cepeda family lived or why the encounter with the Cepedas was a result of the family pursuing him instead of a random encounter. The applicant did not provide detailed information regarding the confrontation, including whether complaints were made to the police.

[11] The officer considered the applicant's further flight to Tijuana. The officer noted the applicant did not allege the attack by gangsters in that city was linked to the other attacks by the Cepedas and reported no other problems while living in Tijuana. The applicant had not explained why this criminal act resulted in the decision to flee to Mexico City.

[12] The officer described the applicant's evidence with regard to his wife, who originally came with him to Canada but had since returned to Mexico. The applicant alleged that upon return to Mexico, his wife was threatened by someone who asked about the applicant's whereabouts. The officer concluded the details about this event, such as the date, location and identity of the attacker were lacking. The officer also concluded the applicant's evidence of members of his family being victims of crime were the result of general criminality and not linked to the Cepeda family. The applicant had not provided evidence of his brother's status in the United States or whether he had claimed refugee protection. The officer concluded on a balance of probabilities that the reasons for the applicant's past mistreatment no longer existed. The officer also concluded there was

insufficient evidence to conclude that there were police officers among the applicant's attackers during the 2007 attack.

[13] The officer acknowledged the medical problems that the applicant suffered from but concluded that this would not affect the applicant's ability to access social services in Mexico. The officer noted the applicant had previously received medical treatment in Mexico after the 2007 attack and had relatives in the country to support him. Therefore, the officer rejected the applicant's argument that IFA was not available.

[14] Finally, the officer noted the country conditions documents pertaining to criminality and corruption in Mexico, but concluded that they did not provide any evidence of the applicant's personal situation or the risks that he would face upon return.

### **Issues**

[15] The applicant submits the following point at issue:

1. Is the decision reasonable?

[16] I would rephrase the issues as follows:

1. What is the appropriate standard of review?
2. Did the officer err in denying the application?

**Applicant's Written Submissions**

[17] The applicant submits the appropriate standard of review is reasonableness.

[18] The first error alleged by the applicant is that the officer mischaracterizes the relevance of the applicant's health problems. The applicant had argued that his physical and mental health problems contributed to his inability to access whatever state protection may be available. The officer analyzed the health problems as a source of risk upon return to Mexico, instead of a fact that adversely affected his ability to avoid that risk by state protection or IFA.

[19] The second error is the officer's misreading of the evidence relating to the Cepeda family's interest in the applicant. The officer focused on the 2007 incident and ignored the applicant's evidence relating to the more significant family feud, including the murder of his uncle for refusing to sell prescription drugs to the Cepedas. The officer's conclusion the Cepeda family no longer threatened the applicant was based on a selective view of the evidence.

[20] Third, the officer should have considered whether there were compelling reasons arising out of the applicant's previous persecution for him not to return to Mexico. This inquiry applies to a claim under sections 96 or 97 and is not dependant upon nexus. The officer has a duty to consider the compelling reasons exception even if it was not raised by a claimant. The applicant's mental health issues should have been considered as compelling reasons.

[21] Fourth, the officer was wrong to conclude the applicant faced a generalized risk, given the evidence he had been personally and repeatedly targeted. The fact that a risk arises from criminal activity does not in itself foreclose the possibility of protection under section 97.

[22] Fifth, the officer was wrong to conclude an IFA was available to the applicant because the extensive health care evidence filed shows that his mental state would have prevented him from having an IFA in Mexico or accessing the necessary support. The officer also ignored the applicant's submission that social and medical services in Mexico would only be available if the applicant were employed, which would not be possible given his medical and mental state. The officer does not identify an IFA locale or the state protection mechanisms available in such an IFA.

[23] Sixth, the applicant has not claimed protection because he would not get the appropriate health care in Mexico. The applicant never stated that the risk was caused by the lack of health care. Rather, his condition renders him unable to access the care he needs and he is unable to access state protection.

[24] Finally, the officer failed to address state protection and made no finding on the matter.

### **Respondent's Written Submissions**

[25] The respondent argues that the applicant has no nexus to the Convention grounds as a victim of crime. The applicant's alleged problem with his persecutors only began after he refused to pay

protection money. The application record does not disclose any corroborating evidence of the applicant's allegations of a long-running family feud.

[26] The respondent argues that past persecution is a relevant factor, but not determinative of a future-looking fear. The applicant did not submit adequate evidence to demonstrate he would still be at risk if he returned to Mexico. The officer found that the events were local in nature and that the extortion incidents indicative of a generalized risk of criminality.

[27] The officer found that the applicant failed to satisfactorily explain why he chose to flee to an area where he knew the Cepeda family lived and had not established that the incident in Ario de Rosales was not the result of a random encounter. There was no indication the police were contacted. The officer found the criminal attack in Tijuana to be unrelated to the Cepeda family. The applicant submitted no objective evidence showing his family members had been targeted by the Cepeda family, so it was reasonable to conclude they were victims of a generalized risk.

[28] The respondent points out the applicant failed to rebut the presumption of state protection. The applicant had a higher burden given Mexico's status as a democratic society. In this case, the one time that the applicant claims to have sought police help, the police were not able to conduct a full investigation because the applicant could only identify one of his assailants. The applicant stated a forensic doctor examined him and took notes, but provided no forensic or police report. The officer found the applicant did not establish police were involved in the 2007 attack. There was no indication the applicant took any further steps to seek state protection, including in Ario de Rosales, Tijuana or Mexico City. A failure to pursue state protection in a democracy like Mexico will usually



be fatal to a refugee claim. A number of recent Mexican state protection cases have held that it is insufficient for an applicant to solely rely on documentary evidence if he has failed to avail himself of state protection.

[29] The officer plainly realized that the applicant's medical condition was a secondary factor and not part of the risk being alleged. The officer reasonably concluded that the applicant was able to access medical and social services in Mexico. The officer properly excluded consideration of medical care as required by section 97.

### **Applicant's Reply Submissions**

[30] The applicant argues the respondent attempts to defend the officer's decision based on a basis other than the decision actually rendered. The respondent argues that the record does not disclose objective evidence of the family feud, but the officer did not find that this history was untrue and did not require such evidence. Sworn testimony is to be believed unless there is good reason not to.

[31] The applicant argues the respondent's memorandum contains many other arguments made by the respondent based on the record that did not appear in the officer's decision. The officer undertook no state protection analysis.

[32] The applicant argues the central finding of the officer was that the mistreatment of the applicant was a one-time event which contributed to the finding of generalized risk. While an inter-family blood feud may not give rise to nexus, it was certainly not an isolated occurrence.

### **Analysis and Decision**

#### **Issue 1**

What is the appropriate standard of review?

Where previous jurisprudence has determined the standard of review applicable to a particular issue before the court, the reviewing court may adopt that standard (see *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 57, [2008] 1 SCR 190).

[34] It is trite law that the standard of review of PRRA decisions is reasonableness (see *Wang v Canada (Minister of Citizenship and Immigration)*, 2010 FC 799, [2010] FCJ No 980 at paragraph 11; and *Aleziri v Canada (Minister of Citizenship and Immigration)*, 2009 FC 38, [2009] FCJ No 52 at paragraph 11). Similarly, issues of state protection and of the weighing, interpretation and assessment of evidence are reviewable on a reasonableness standard (see *Ipina v Canada (Minister of Citizenship and Immigration)*, 2011 FC 733, [2011] FCJ No 924 at paragraph 5; and *Oluwafemi v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1045, [2009] FCJ No 1286 at paragraph 38).

[35] In reviewing the officer's decision on the standard of reasonableness, the Court should not intervene unless the officer came to a conclusion that is not transparent, justifiable and intelligible

and within the range of acceptable outcomes based on the evidence before it (see *Dunsmuir* above, at paragraph 47 and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 59, [2009] 1 SCR 339). As the Supreme Court held in *Khosa* above, it is not up to a reviewing court to substitute its own view of a preferable outcome, nor is it the function of the reviewing court to reweigh the evidence (at paragraph 59).

[36] **Issue 2**

Did the officer err in denying the application?

The officer is presumed to have considered all of the evidence before him (see *Oprysk v Canada (Minister of Citizenship and Immigration)*, 2008 FC 326 at paragraph 33, [2008] FCJ No 411). However, the more important the evidence that is not mentioned, the more willing a court may be to infer from silence that the officer made a finding of fact without regard to the evidence (see *Pinto Ponce v Canada (Minister of Citizenship and Immigration)*, 2012 FC 181 at paragraph 35, [2012] FCJ No 189).

[37] In this case, the central risk alleged by the applicant was a long running family feud. The officer makes no finding that the feud did not exist or that the applicant's evidence lacked credibility. Instead, the officer notes the applicant had not demonstrated the feud was ongoing or that he had been victimized prior to the incident precipitating his flight from Mexico.

[38] Despite implicitly accepting the existence of the feud, at least in the past, the officer's risk analysis is only concerned with the individual incident relating to the applicant's failure to provide protection money. The officer notes "[the applicant's] problems in Mexico were local in nature ...

[t]he crimes committed in January 2007 are over now” and expresses skepticism that the criminals who kidnapped him would still be interested in him on the basis of failing to pay protection money. The officer’s analysis of whether the applicant’s persecutors would follow him elsewhere in Mexico also makes no mention of the family feud, so is presumably based only on the protection money incident.

[39] In considering the applicant’s evidence relating to his family members, the officer concluded that they were general victims of crime in Mexico, as the applicant had not provided details such as whether the perpetrators were members of the Cepeda family. This ignores the applicant’s PIF narrative which clearly states that the murder of his father and beating of his brother were perpetrated by that family.

[40] It is not this Court’s role to reweigh evidence. It is the officer’s role, however, to properly consider the evidence submitted by the applicant. Here, the applicant’s evidence that the risk he faced was rooted in a violent family feud. The officer did not consider that evidence when evaluating the likelihood that the applicant would face risks upon returning to Mexico.

[41] This brings the officer’s decision into conflict with the *Dunsmuir* above, values of transparency and justification. For that reason, I would grant the application and remit the matter to a different officer for redetermination.

[42] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

**JUDGMENT**

**THIS COURT’S JUDGMENT is that** the application for judicial review is allowed and the matter is referred to a different officer for redetermination.

“John A. O’Keefe”

---

Judge

## ANNEX

**Relevant Statutory Provisions*****Immigration and Refugee Protection Act, SC 2001, c 27***

72. (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is commenced by making an application for leave to the Court.

72. (1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est subordonné au dépôt d'une demande d'autorisation.

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2760-12

**STYLE OF CAUSE:** URIEL JASSO SALINAS  
- and -  
THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** December 18, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT OF:** O'KEEFE J.

**DATED:** May 28, 2013

**APPEARANCES:**

Neil Cohen FOR THE APPLICANT

Lucan Gregory FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Neil Cohen FOR THE APPLICANT  
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Toronto, Ontario