Federal Court Cour fédérale

Date: 20131002

Docket: IMM-10846-12

Citation: 2013 FC 1008

Ottawa, Ontario, October 2, 2013

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

BRAULIA GUADALUPE RANGEL GOMEZ
OMAR ROBERTO QUEVEDO CRUZ
LORENA GEORGETTE CARDENAS RANGEL
KARLA YORDANA CARDENAS RANGEL

Applicants

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] This judicial review concerns a decision by an Inland Enforcement Officer [Officer] to refuse to defer execution of a removal order.

II. BACKGROUND

[2] The Applicants are all citizens of Mexico. They are relatives of Brenda Quevedo Cruz, another Mexican citizen who is awaiting trial in Mexico for the kidnapping and murder of Hugo de Wallace. Omar Quevedo Cruz, the male Applicant, is the younger brother of Brenda Quevedo Cruz. The female adult Applicant, Braulia Guadalupe Rangel Gomez, is Brenda's maternal aunt while Lorena Rangel and Karla Rangel are Braulia's daughters and Omar's cousins.

[3] In 2008, Omar, Braulia and her two daughters fled to Canada claiming fear of persecution from Hugo de Wallace's mother. Brenda is fighting the kidnapping and murder charges in relation to Hugo de Wallace. All of Brenda's co-accused have confessed to the charges. She claimed that she and others supporting her have been threatened and harassed.

[4] This Court denied judicial review of the PRRA decision which underlies the removal order (*Gomez v Canada (Minister of Citizenship and Immigration)*, 2013 FC 786).

[5] This is the second attempt by the Respondent to remove these Applicants. The Applicants sought a stay from Justice Boivin which was dismissed on October 9, 2012. Removal was scheduled for October 10, 2012, at which time the Applicants sought a deferral based on a letter from the Inter-American Commission on Human Rights [IACHR] dated September 24, 2012 [the first letter]. A copy of that letter was sent in with the deferral request on October 10.

[6] The first letter was addressed to members of the Cruz family and asks for further information in respect of their request for precautionary measures for Omar Cruz in Mexico. The letter filed with the Officer is clearly an informal (and not particularly good) translation.

[7] The Officer dealt with the deferral request immediately on October 10. About the same time as the negative decision [Deferral Decision] was being communicated to the Applicants, their counsel sent further submissions to the Officer in support of the deferral request. The further submissions consisted of a second letter from the IACHR dated October 10, 2010 [the second letter].

[8] The second letter was also addressed to the Cruz family and refers to the fact that the IACHR had sent a communication to the Government of Canada on this same day requesting information on the reasons for deportation and on the issue of risk of torture and threats to life if returned to Mexico as well as copies of the decisions in regard to those matters.

[9] In the Deferral Decision, the Officer noted that the deferral request with the first letter was manifestly untimely. The Officer made four points in respect to the first letter:

- the letter did not contain any information about the "anticipated violation of human rights" of Omar;
- the letter was in response to third party testimony from a relative who had an interest in the outcome;
- there is insufficient evidence that the IACHR will direct Canada not to deport Omar; and

- even if one accepted that the IACHR would make that request, there is insufficient evidence that the request would operate as a stay under Canadian immigration law (s 50 *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]).

[10] The Officer dealt with the best interests of the children but concluded that there was no risk not already dealt with. The Officer noted a Toronto Star article which repeated the risks already noted by the Refugee Protection Division [RPD] and in the PRRA. The Officer did write "I note the Toronto Star article mentions Karla and Lorena (although not specifically by name)".

[11] In the Deferral Decision there are several references to the limits on the Officer's discretion to defer, the exercise by the Applicants of all their avenues of relief, and the best interests of the children.

III. ANALYSIS

[12] The standard of review of a deferral decision is reasonableness (*Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81, [2010] 2 FCR 311 [*Baron*]). However, the Applicants have also argued that the Officer failed to apply or properly interpret paragraph 3(3)*(c)* of IRPA – an important issue of law for which the standard of review must be correctness.

3. (3) This Act is to be construed and applied in a manner that	3. (3) L'interprétation et la mise en oeuvre de la présente loi doivent avoir pour effet :
…	…
(c) facilitates cooperation between the Government of	*c)* de faciliter la coopération entre le gouvernement fédéral,

Canada, provincial governments, foreign states, international organizations and non-governmental organizations;	les gouvernements provinciaux, les États étrangers, les organisations internationales et les organismes non gouvernementaux;

[13] There remains a live issue concerning removal and deferral of removal. The Court was advised that one Applicant remains in custody for failure to appear for removal while the others had "gone to ground". Efforts at removal are likely to re-occur. Therefore, in accordance with the *Baron* decision, deferral of removal is not moot despite the passage of the removal date.

[14] The Applicants say that the Officer failed to consider the second letter because it is not mentioned in the Deferral Decision. A review of the time stamp on the faxes being exchanged that day show the sending of that IAHRC letter to be within approximately 15 minutes of the sending of the Deferral Decision. The Applicants have not shown that the Officer had the IAHRC letter before his decision was made. Given that it was a two-page decision, it is likely that it was created and en route by the time that IAHRC letter was received.

[15] No reason has been advanced, other than lack of timely receipt, for the failure to mention the second letter in the Deferral Decision. Given the fact that the letter adds nothing to the process and merely repeats the type of information requested in the first letter, there is no basis to suggest that the second letter was deliberately ignored. There is no basis for a claim that the Officer failed to consider relevant facts.

[16] Moreover, the second letter is not particularly relevant nor should it form a basis for deferral. The said letter is a request for information on what, in Canada, would be considered the

RPD decision and the PRRA decision. It does not indicate that the IAHRC was about to ask Canada to defer removal. A year later the Applicants have filed no evidence that any such request is contemplated even today.

[17] On the legal question of paragraph 3(3)*(c)*, the Officer did consider the need to promote cooperation between Canada and the IAHRC without reference to the particular subsection. The Officer considered what the impact of the first letter was in Canada and even the possibility of relief upon the Applicants' return to Mexico. The Officer went so far as to consider what would be the impact of a request by the IAHRC to Canada not to deport the Applicants.

It is not accurate to say that the Officer ignored the role paragraph 3(3)*(c)* played in this process or in any way fettered his discretion. Therefore, there was no legal error in regard to paragraph 3(3)*(c)*.

[18] The Applicants complain that the Officer erred in his description of the Toronto Star article. While the body of the article does not mention the names Karla and Lorena, there was a picture associated with the article which clearly names and identifies them. In that regard, the Officer's comments were erroneous.

[19] The important part of the Officer's consideration of the newspaper article is that it did not raise new issues or provide new information – all of the risks alleged were addressed in the RPD claim and the PRRA application and those details are in court and other public records.

[20] Therefore, the error was insignificant and the article did not form a basis for a *sur place* claim as it added nothing new to the facts in issue.

[21] Lastly, the Officer considered the best interests of the children within the context of the limited discretion available to him.

IV. CONCLUSION

[22] Therefore, there is no basis for disturbing the Officer's conclusions. The judicial review will be dismissed.

[23] Having reviewed the Applicants' proposed questions for certification, there is no factual basis to ground the questions. I conclude that there are no questions for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Michael L. Phelan"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-10846-12
STYLE OF CAUSE:	BRAULIA GUADALUPE RANGEL GOMEZ, OMAR ROBERTO QUEVEDO CRUZ, LORENA GEORGETTE CARDENAS RANGEL, KARLA YORDANA CARDENAS RANGEL v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	SEPTEMBER 18, 2013
REASONS FOR JUDGMENT AND JUDGMENT:	PHELAN J.
DATED:	OCTOBER 2, 2013

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