

Federal Court



Cour fédérale

Date: 20160817

Docket: IMM-567-16

Citation: 2016 FC 938

Ottawa, Ontario, August 17, 2016

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

**LUIS CARLOS SANCHEZ JIMENEZ
MARTHA LUCIA PAZ PAREDES
JUAN SEBASTIAN SANCHEZ PAZ AND
MARIA JOSE SANCHEZ PAZ**

Applicants

and

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

Respondents

JUDGMENT AND REASONS

I. Introduction

[1] The Applicants apply pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [IRPA], for leave to commence an application for judicial review

of a negative decision of a Pre-Removal Risk Assessment [PRRA] Officer dated December 9, 2015, finding that the Applicants are neither Convention Refugees nor are persons in need of protection under sections 96 and 97(1) of the IRPA.

II. Background

[2] The background facts leading up to the Applicants' failed PRRA application are set out in the negative decision of this Court concerning the Applicants' judicial review of their Refugee Protection Division [RPD] claim, dated December 5, 2014, in IMM-3854-13, as follows:

- The Applicants are citizens of Colombia;
- In December 2006, Mr. Jimenez started operating Compusales and Supplies Inc., a business which imported computers from the United States to Colombia;
- In November 2008, Mr. Jimenez started to receive threatening phone calls from individuals of a paramilitary group, requesting him to refund a debt owed to them by his deceased business partner [the debt];
- On November 27, 2008, while standing next to his car on the side of the road, Mr. Jimenez was assaulted by members of the Baez Clan, a paramilitary group, riding motorcycles, who also attempted to abduct him;
- In January 2009, seven members of the Baez Clan requested Mr. Jimenez to launder money through his business in the United States as part of the refunding of the debt;
- On February 2, 2009, Mr. Jimenez travelled to the United States for a six-day business trip, did not then seek refugee protection and returned to Columbia;
- Between February and March 2009, illegal funds were transferred to Mr. Jimenez's American bank accounts and he received harassing phone calls from individuals asking him for payments. As per the January 2009 arrangement, Mr. Jimenez purchased computers in the United States to return the laundered money to the Baez Clan;

- From March to April 2009, Mr. Jimenez received more than 150 phone calls and he was told in April that his failure to deliver the money would lead to his death or to the kidnapping of his family;
- In response, Mr. Jimenez closed his American bank accounts;
- In May 2010, Mr. Jimenez notified the Colombian police anonymously about his predicament, but decided not to follow through with the meeting proposed by the police officer as he found said proposal unreliable;
- Mr. Jimenez wrote to both the President's Office and the Information and Financial Analysis Unit about his predicament, but received no support;
- On July 14, 2010, Mr. Jimenez met with his lawyer, two agents of the United States Drug Enforcement Administration [the DEA] in Columbia, Jimmy Alverio and Luis Perez where it was decided that the Applicants would travel to the United States and enter a protection program;
- On July 21, 2010, a DEA agent informed Mr. Jimenez that the DEA had started an investigation related to the activities of the narcotics traffickers that he had been involved with involuntarily, and that he was interested in his information, but because the investigation was related to narcotics-trafficking rather than money laundering, the Applicants may not access the protection program in the United States as previously expected;
- On July 27, 2010, the Applicants fled from Colombia to the United States;
- On August 12, 2010, the Applicants left the United States, requested entry into Canada and claimed refugee protection;
- The Applicants based their claim on the risk to their life or a risk of cruel and unusual treatment or punishment, on membership in a particular social group and on political opinion;
- On May 9, 2013, the RPD rejected the Applicants' claim based on "issues of credibility, failure to claim protection elsewhere, and re-availment";

[3] To support their continued risk before the PRRA Officer, the Applicants submitted new evidence. The PRRA Officer indicated that he accepted all of the new evidence, except for:

- i. a documentation package presented to the RPD during their hearing in May 2013, because it pre-dates the decision of the RPD; and
- ii. the letter of Dr. Ana Margarita Duran De Leon, dated March 24, 2011, because it also pre-dates the decision of the RPD.

[4] However, it appears that the PRRA Officer failed to consider or analyze the official letter from the DEA's Acting/Regional Director, Andean Region, Mr. Donahue, dated February 5, 2015 [the DEA Letter].

[5] The PRRA Officer found that the accepted new evidence did not overcome the credibility concerns of the RPD, nor provide sufficient evidence of a forward-looking risk to the Applicants.

[6] In addition, the PRRA Officer reviewed the documentary evidence and found that the Applicants submitted country condition documents that were not linked to their personalized forward-looking risks. The documentary evidence regarding Colombia and the country conditions did not support that the Applicants personally faced a risk to life, or of cruel and unusual treatment or punishment. The Applicants faced generalized risk. Consequently, the PRRA Officer refused the application.

III. Issues

[7] The issues are:

- A. Was the PRRA Officer's decision in rejecting certain evidence as not being new reasonable?
- B. Was the PRRA Officer's decision that the Applicants failed to link country documentation to their specific circumstances reasonable?

IV. Standard of Review

[8] The standard of review is reasonableness.

V. Analysis

- A. *Was the PRRA Officer's decision in rejecting certain evidence as not being new reasonable?*

[9] Evidence is not new merely because it arises after the Board hearing. It must relate to "new developments, either in country conditions or in the applicant's personal situation." The focus is not on the date the evidence was produced (*Raza v Canada (MCI)*, 2007 FCA 385 [*Raza*]; *Elezi v Canada (MCI)*, 2007 FC 240 [*Elezi*]; *Win v Canada (MCI)*, 2008 FC 398 [*Win*]).

[10] Evidence does not have to disclose new risks. It can relate to risks that an applicant claimed at his or her Board hearing. Where there is evidence that arises after the Board decision, it is an error for a PRRA officer not to assess that evidence if the reason the officer gives for not

doing so is that the Board had already assessed the alleged grounds to which the evidence relates (*Elezi*, above; *Win*, above; *Adeshina v Canada (MCI)*, 2015 FC 15 at para 11; *Djordjevic v Canada (MCI)*, 2014 FC 13 at para 17).

[11] A negative refugee determination by the Board must be respected by the PRRA Officer, if the evidence presented to the PRRA Officer had been presented to the Board, that is, unless there is new evidence of facts that might have affected the outcome of the Board hearing. Subsection 113(a) of the IRPA asks a number of questions, including whether the evidence is relevant, whether it is new and whether it is material (*Raza*, above, at para 13).

[12] Whether evidence is “new” depends on a number of factors. Does the evidence:

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

[13] The Respondent takes the position that the letters of the Colombian prosecutor, Dr. Ana Margarita Duran De Leon, and the DEA Officer, Mr. Donahue, were not new because they could have been made available before the RPD hearing.

[14] However, the RPD had rejected the Applicants’ claim entirely on inter-related grounds of credibility and a lack of subjective fear. One of the RPD’s key credibility findings was that there

was no “official” corroborative evidence from the DEA. The RPD noted that much of the evidence from the DEA, adduced before the RPD, was in the form of informal emails.

[15] As a material document in support of their PRRA application, the Applicants obtained and adduced the DEA Letter, which appears to corroborate their forward-looking risk scenario in Colombia and their need for protection.

[16] The PRRA Officer erred on focusing on whether there was a new risk, as opposed to whether there was new evidence concerning a risk that the Applicants had asserted before the RPD.

[17] The PRRA Officer refused to consider the DEA Letter, because she was of the view that it did not comply with the definition of new evidence. The PRRA Officer stated that the risks the Applicants had identified in their PRRA submissions were “essentially the same” as those assessed by the RPD. The PRRA Officer noted that the Applicants’ credibility had been “thoroughly impugned” by the RPD and that the Applicants “have simply re-stated their case, and they have not addressed this issue”.

[18] This is simply wrong. The PRRA Officer misapprehended the law, which allows the Applicants to assert new evidence on a PRRA application that seeks to refute credibility findings of the RPD.

[19] Moreover, while the Respondent argues that there was insufficient linkage between the DEA Letter and the specific risk faced by the Applicants due to the Baez Clan and their paramilitary group, I find that while there is no specific linkage between the DEA Letter, the Baez Clan, and the specific risk to the Applicants because of the Baez Clan, the record implicitly, if not clearly, indicates that such a linkage exists.

[20] The Applicants also adduced a letter from a Colombian prosecutor, with whom the Applicants had dealings with while in Colombia, who appears to corroborate the risk the Applicants face, and who made submissions as to why the information in the letter should be considered new evidence. The PRRA Officer also did not deal with this evidence, because she was of the view that it was not new.

[21] I find that the PRRA Officer was wrong in her conclusion that the Applicants had not addressed the RPD's adverse credibility determination through new evidence consisting of the above two impugned letters. The Applicants provided an explanation of why the DEA Letter and the prosecutor's letter contradicted key adverse credibility findings of the RPD, and why the prosecutor's letter was not available earlier.

B. *Was the PRRA Officer's decision that the Applicants failed to link country documentation to their specific circumstances reasonable?*

[22] The PRRA Officer found that the Applicants' submissions "describe the general country conditions in Colombia, and they have not linked this evidence to their personalized, forward-looking risks".

[23] The Applicants argue that they linked the country documentation they adduced in their PRRA application to their own personal situation. They submitted that there was continued risk and a lack of protection for people in their circumstances and who fit their risk profile.

[24] The record shows that there was a direct linkage of country documentation to the Sanchez Jimenez family. In addition, given I find that the DEA Letter from Mr. Donahue is accepted as new evidence, it is also apparent that, notwithstanding country conditions in Colombia offering safe refuge to some people at risk from paramilitary groups, such is probably not the case for the Applicants. The PRRA Officer failed to deal with this argument and the two letters. The rejection of the two letters as new evidence was unreasonable.

[25] I agree with the Applicants that the PRRA Officer's finding that their personalized risk was not present is not reasonable.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is allowed and the matter is referred to a different Officer for reconsideration;
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-567-16

STYLE OF CAUSE: LUIS CARLOS SANCHEZ JIMINEZ ET AL V MCI ET AL

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