

Federal Court



Cour fédérale

Date: 20210429

Docket: IMM-1997-20

Citation: 2021 FC 382

[ENGLISH TRANSLATION REVISED BY THE AUTHOR]

Ottawa, Ontario, April 29, 2021

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

**PATRICIA LIZBET WASSMER DE AGUIRRE
WILBER STEVEN AGUIRRE WASSMER
LESLEY STEPHANIE AGUIRRE
WASSMER**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Ms. Wassmer and her two children are citizens of El Salvador. They filed a claim for refugee protection, but the Refugee Protection Division [RPD] and the Refugee Appeal Division [RAD] rejected their claim.

[2] The RAD relied on the principle set out by Justice Robert Déary of the Federal Court of Appeal in *Williams v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 126 at paragraph 19, [2005] 3 FCR 429 [*Williams*]:

. . . refugee protection will be denied where it is shown that an applicant, at the time of the hearing, is entitled to acquire by mere formalities the citizenship . . . of a particular country with respect to which he has no well-founded fear of persecution.

[3] A few years ago, Ms. Wassmer learned that her father, whom she did not know until that time, was a citizen of Nicaragua. Based on the documentary evidence regarding that country, the RAD concluded that Ms. Wassmer and her two children could easily obtain Nicaraguan citizenship. Since Ms. Wassmer and her children have no well-founded fear of persecution in relation to Nicaragua, the RAD concluded that they did not meet the definition of a refugee.

I. Procedural Fairness

[4] Ms. Wassmer submits that her claim was not treated fairly by the RPD and the RAD. Her grievance stems from the RPD's refusal to postpone the hearing to allow her to provide additional evidence regarding the possibility of obtaining Nicaraguan citizenship.

[5] It is not necessary to address this argument in detail. Ultimately, the new evidence amounts to a letter from the Nicaraguan Ambassador to Canada, who provided a brief explanation of the process allowing Ms. Wassmer to obtain Nicaraguan citizenship. While this letter postdates the RAD's decision, Ms. Wassmer asked me to consider it. Although new evidence is usually not admissible on judicial review, the Minister did not object and rather

submitted that the content of the letter is not sufficient to render the RAD's decision unreasonable. I agree with the Minister.

[6] The letter in question notes various administrative steps that Ms. Wassmer should take to obtain Nicaraguan citizenship. In light of *Tretsetsang v Canada (Citizenship and Immigration)*, 2016 FCA 175, [2017] 3 FCR 399, and *Phuntsok v Canada (Citizenship and Immigration)*, 2020 FC 1110, such administrative formalities are not a sufficient impediment to prevent Nicaragua from being considered a country of reference for the purposes of section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27. It is true that the Ambassador states that obtaining Nicaraguan citizenship is not automatic. However, a holistic reading of his letter shows that this statement pertains to the administrative process and not to any discretionary power of the Nicaraguan state to reject Ms. Wassmer's application. Therefore, there was no breach of procedural fairness, and there is no evidence that the RAD's decision is unreasonable with respect to Ms. Wassmer.

II. The Children's Situation

[7] However, I find that the situation of Ms. Wassmer's children is different. In order to understand why, it is useful to cite the relevant excerpt from the backgrounder on Nicaraguan citizenship the RAD relied on:

Law No. 761 states in its article 45 the types of persons that can be considered nacionales: . . . the children of Nicaraguans born overseas regardless of any other nationalities they may have,¹¹ . . .

¹¹ Even if such Nicaraguan parents gave up Nicaraguan citizenship to acquire another, their children need only request Nicaraguan citizenship upon reaching the legal age of majority. . . .

[8] Ms. Wassmer's situation appears to fall under footnote 11, since, as I understand it, her father had already lost Nicaraguan citizenship by the time Ms. Wassmer was born. However, Ms. Wassmer never applied for citizenship and has never been a citizen of Nicaragua. This means that at the time of their birth, her children were not "the children of Nicaraguans born overseas". Nor were they children of parents who had renounced their Nicaraguan citizenship; Ms. Wassmer never did anything of the kind. There is nothing in the backgrounder consulted by the RAD that establishes that the children could benefit retroactively from their mother's eventual acquisition of citizenship. With respect, the RAD's findings in this regard are speculative.

[9] At the hearing, the Minister submitted that Ms. Wassmer and her children had to attempt to obtain Nicaraguan citizenship, even if their right was uncertain. I cannot agree with that contention. The duty of refugee claimants to take steps to obtain citizenship from another country arises only if it is established that they have the right, pursuant to the laws of the country, to acquire citizenship or, in other words, that "there is entitlement to citizenship on the face of the law": *Tretsetsang*, at paragraph 39.

[10] However, there is no evidence that Ms. Wassmer's children had such an entitlement. Unlike what was alleged in *Tretsetsang*, it is not a situation where Nicaraguan officials are denying in fact an entitlement that exists in law. Ms. Wassmer's children are not required to take reasonable steps to establish a non-existent right.

[11] The application for judicial review will therefore be allowed with respect to Ms. Wassmer's children, and the matter will be referred back to the RAD for reconsideration in

accordance with these reasons. However, the application will be dismissed with respect to Ms. Wassmer since, in her case, the decision is reasonable and the RAD did not breach procedural fairness.

JUDGMENT in IMM-1997-20

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is allowed with respect to Wilber Steven Aguirre Wassmer and Lesley Stephanie Aguirre Wassmer, and the matter is sent back to the Refugee Appeal Division for reconsideration.
2. The application for judicial review is dismissed with respect to Patricia Lizbet Wassmer de Aguirre.
3. No question is certified.

“Sébastien Grammond”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1997-20

STYLE OF CAUSE: PATRICIA LIZBET WASSMER DE AGUIRRE,
WILBER STEVEN AGUIRRE WASSMER, LESLEY
STEPHANIE AGUIRRE WASSMER v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HEARD BY VIDEOCONFERENCE BETWEEN
OTTAWA, ONTARIO, AND GATINEAU, QUEBEC

DATE OF HEARING: APRIL 28, 2021

JUDGMENT AND REASONS: GRAMMOND J.

DATED: APRIL 29, 2021

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