

Federal Court



Cour fédérale

Date: 20230113

Docket: IMM-6802-21

Citation: 2023 FC 51

Toronto, Ontario, January 13, 2023

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

**PAOLA ANDREA ZUNIGA BARRERA
ISIDORA BELEN MORENO ZUNIGA
TRINIDAD PASCAL MORENO ZUNIGA
JOAQUIN ANDRES MORENO ZUNIGA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a September 8, 2021 decision [Decision] of the Refugee Appeal Division [RAD], allowing the appeal of the principal claimant, but determining that the Applicants of this proceeding are neither Convention refugees nor persons in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] As set out further below, it is my view that the application should be dismissed as the RAD reasonably determined that there was insufficient evidence to establish that the Applicants faced a forward-looking risk based on their membership in a social group as part of the principal claimant's family.

I. Background

[3] The Applicants are citizens of Chile and are the wife and children of Andres Patricio Moreno Jara, who was the principal claimant in the Decision.

[4] Mr. Moreno Jara owned three taxis and in September 2013 became the president of the Collective Taxi Union [CTU]. In early 2019, the CTU and the School Transport Unions decided to strike due to high gasoline prices.

[5] In March 2019, Mr. Moreno Jara allegedly began to have problems with the authorities, police, and inspectors of the Ministry of Transportation and was stopped numerous times by police and told to cease his activities. He received death threats and several taxi cooperatives were burnt down by authorities as reprisals. As a result of these acts, Mr. Moreno Jara allegedly transferred ownership of his taxis to a friend.

[6] In November 2019, a few days before a national strike, a group of officers allegedly came to the Applicants' home, took the principal claimant from the home, and assaulted him. The officers told Mr. Moreno Jara that he should not participate in the upcoming strikes and protests

or they would kill him. The Applicants left Chile for Canada shortly thereafter and made refugee claims on March 11, 2020.

[7] On March 23, 2021, the Refugee Protection Division [RPD] dismissed the family's refugee claims. The RPD accepted that Mr. Moreno Jara was targeted due to his union activities; however, they found that the claimants could not establish that they faced a forward-looking risk, as the country condition evidence did not establish that the unrest in Chile was ongoing. The RPD also found that Mr. Moreno Jara had not rebutted the presumption of state protection.

[8] The claimants appealed to the RAD. They argued that the RPD had erred in its findings and submitted new evidence to support that the unrest in Chile was ongoing.

[9] On September 8, 2021, the RAD issued the Decision. The RAD allowed Mr. Moreno Jara's appeal and referred his claim back to the RPD for redetermination; however, it dismissed the appeals of the Applicants. While the RAD found that the RPD had erred in its handling of the country condition evidence and that there were some outstanding credibility concerns and inconsistencies with the principal claimant's evidence, it found that there was no evidence that there had been any threat to the Applicants or evidence that the Applicants would face a forward-looking risk based on political opinion or being members of Mr. Moreno Jara's family.

II. Issues and Standard of Review

[10] The sole issue on this application is whether the RAD erred in refusing the appeal against the Applicants in spite of determining that the RPD had insufficiently canvassed certain aspects

of the principal claimant's evidence which prevented the RAD from making a final determination relating to his claim.

[11] The parties assert and I agree that the standard of review is reasonableness. None of the situations that would rebut the presumption that all administrative decisions are reviewable on a standard of reasonableness are present in this case: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 16-17.

[12] A reasonable decision is “based on an internally coherent and rational chain of analysis” that is “justified in relation to the facts and law that constrain the decision maker”: *Vavilov* at paras 85-86; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at paras 2, 31. A decision will be reasonable if when read as a whole and taking into account the administrative setting, it bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at paras 91-95, 99-100.

III. Preliminary Matter – Style of Cause

[13] As a preliminary matter, I note that the style of cause for this proceeding has been amended to reflect the correct Respondent – “The Minister of Citizenship and Immigration”.

IV. Analysis

[14] A refugee claim cannot be based solely on membership in a family, but must be supported by a personal connection to the persecution alleged to have occurred on a Convention ground: *Nyembua v Canada (Citizenship and Immigration)*, 2015 FC 970 at para 18. Claimants

must show they have been or will be targeted by the persecutors because they are members of that family group: *Theodore v Canada (Citizenship and Immigration)*, 2021 FC 651 at para 8.

[15] In Mr. Moreno Jara's narrative, he states that when the strikes were going on in Chile, he hid at home in fear of something happening to him and his family. The narrative does not, however, expressly make mention of any danger that the Applicants would face.

[16] Mr. Moreno Jara was asked questions at the RPD hearing regarding risks to his family. As noted by the RAD, Mr. Moreno Jara indicated that it was possible that his wife and oldest daughter may face reprisals, but his children likely would not. However, he acknowledged that his wife and oldest daughter had not faced any threats or attacks.

[17] Mr. Moreno Jara's wife, the Principal Applicant, testified that she was relying on Mr. Jara's narrative and did not have any additional facts to add.

[18] The RAD found that the Applicants had not "established their allegation that they face any risk from the authorities based on their political opinion and membership in a social group". More broadly, it found that the Applicants had not "established or even alleged that they face any threat or attack" and stated that Mr. Moreno Jara "does not allege in his narrative or oral evidence that the children would face any repercussions from his alleged political organizing". The RAD noted Mr. Moreno Jara's oral testimony about possible reprisals against his wife, but found the testimony on this to be speculative, as Mr. Moreno Jara gave no reason why he

believed this might happen, and there was no evidence that the Principal Applicant had faced any repercussions in the past.

[19] In a section 96 risk assessment, an applicant must establish that they subjectively fear persecution and that this fear is objectively well-founded. The latter element requires that there be a “reasonable chance”, a “reasonable possibility”, or a “serious possibility” of persecution on Convention grounds: *Tapambwa v Canada (Citizenship and Immigration)*, 2019 FCA 34 at para 4. This requires more than a mere possibility of persecution: *Li v Canada (Minister of Citizenship & Immigration)*, 2005 FCA 1 at paras 10-12, referring to *Adjei v Canada (Minister of Employment and Immigration)*, [1989] 2 FC 680 (CA).

[20] On the basis of the evidence on the record and the testimony given, in my view, it was reasonable for the RAD to find that Mr. Moreno Jara’s concerns for his family were speculative and unsubstantiated and that the Applicants had not met the threshold of establishing a well-founded fear of persecution.

[21] The Applicants submit that if the evidence before the RAD was not sufficient to make a determination on the risk that Mr. Moreno Jara would face in Chile, it would also be insufficient to determine the risk the Applicants would face, as those claims depend on evidence that the RAD considered inconclusive.

[22] In my view, this misinterprets what led to the RAD allowing Mr. Moreno Jara’s appeal. The RAD found the RPD erred by largely relying on the lack of country condition evidence

regarding the situation in Chile in 2021 in its finding regarding the principal claimant's forward-looking risk, as it considered this to be only tangential to his claim. However, the RAD also had outstanding credibility concerns with Mr. Moreno Jara's evidence, and in particular inconsistencies in his evidence relating to the transfer of ownership of his taxis which took place before the alleged assault by police in November 2019 and the inconsistency in the account of his medical report. The RAD further highlighted the vagueness of his evidence regarding the alleged threats by police in March 2019 where he alleged that he was stopped repeatedly, asked for documentation about his vehicles, and told to stop organizing protests. The RAD did not have credibility concerns regarding the Applicants' testimony or the facts relating to the Applicants; rather, it found the evidence insufficient to establish a forward-looking risk to the Applicants and that the lack of evidence relating to the Applicants was determinative of their claim.

[23] While the Applicants assert that the RAD would not know what evidence could arise on the redetermination of Mr. Moreno Jara's claim, I agree with the Respondent that the issues to be assessed on redetermination; namely, the credibility of Mr. Moreno's evidence relating to the March 2019 threats that he received, his November 2019 attack, and the transfer of the ownership of his taxis, are distinct from the Applicants' forward-looking risk. The Applicants have not established how Mr. Moreno Jara's evidence on these points could speak to risks they would face on return to Chile.

[24] In my view, it was reasonable for the RAD to find that there was insufficient evidence to establish a risk to the Applicants and the application should be dismissed.

[25] None of the parties raised a question for certification and I agree none arises in this case.

JUDGMENT IN IMM-6802-21

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended to correctly identify the Respondent as “The Minister of Citizenship and Immigration”.
2. The application for judicial review is dismissed.
3. No question of general importance is certified.

"Angela Furlanetto"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6802-21

STYLE OF CAUSE: PAOLA ANDREA ZUNIGA BARRERA, ISIDORA BELEN MORENO ZUNIGA, TRINIDAD PASCAL MORENO ZUNIGA, JOAQUIN ANDRES MORENO ZUNIGA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 11, 2023

JUDGMENT AND REASONS: FURLANETTO J.

DATED: JANUARY 13, 2023

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