

Date: 20071126

Docket: IMM-6513-06

Citation: 2007 FC 1206

Ottawa, Ontario, November 26, 2007

PRESENT: The Honourable Mr. Justice Blais

BETWEEN:

**AMELIA ZEBALLOS
AARON AGUSTIN VEGA ZEBALLOS
MARIANO GABRIEL VEGA ZEBALLOS
GASTON ZEBALLOS**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) of a decision of an Immigration officer (the officer), dated November 3, 2006, wherein the officer rejected the applicant's PRRA application.

BACKGROUND

[2] Ms Zeballos and three of her four children are citizens of Argentina, with the remaining child being a Canadian citizen. They were found not to be persons in need of protection in 2001

and again in 2004, with leave to review the second decision refused in 2004. They applied for a PRRA, which was rejected.

[3] Ms Zeballos' first refugee claim was made in 2001, in combination with her now ex-common law husband, Mr. Vega. She testified at that hearing that she had been raped by police officers in 2000, because of her spouse's political activities. She states now that this testimony was based on his coaching, and that she was coerced by him due to the long-standing control he had asserted over her over the course of their relationship. This claim was denied, and a PRRA requested.

[4] Before that PRRA was undertaken, Ms Zeballos and Mr. Vega had separated, and she learned that she could request leave to resubmit her claim and those of her children without Mr. Vega. The PRRA was therefore abandoned. She resubmitted the claims in 2004, and was again denied. Leave was not granted for judicial review. The PRRA application was received on May 18, 2005 and denied and delivered to Ms Zeballos on November 30, 2006. She applied for judicial review on December 11, 2006. A stay of deportation was granted by Mr. Justice John A. O'Keefe on December 18, 2006.

Decision

- The officer decided that the principal applicant had not linked the country conditions of Argentina to her personal risk.

- The officer further gave limited weight to the letters of Ms Lala and Dr. Kirstine, a therapist and psychiatrist who both have treated Ms Zeballos, as they based their knowledge of Ms Zeballos' assaults on her information without independent corroboration. The officer also found the medical opinions that she would suffer psychological harm if returned to Argentina to be problematic due to the lack of specificity of where within Argentina would or would not be safe.
- The officer gave little weight to the letters from Susana Chiarotti and Sandra de Castro because they were not directly linked to the situation of Ms Zeballos, and because they had been in evidence before the Refugee Protection Division.
- The officer found that Ms Zeballos had failed to rebut the presumption of state protection because Mr. Albanes' attacks were localized and she could "reasonably be expected to find employment to support herself and her family" elsewhere in Argentina. The officer noted that Ms Zeballos sought out and gained assistance in Canada against the abuse of her ex-spouse when she had no support from her family and did not speak the language. The officer further noted that Argentina does provide support to women suffering domestic abuse.
- In respect of Dr. Kirstine's concerns that Ms Zeballos might become suicidal if returned to Argentina, the officer noted that there is "adequate medical

assistance available” in the country and that she has family to assist with the children if required.

ISSUES

1. Did the PRRA officer err in rejecting evidence of “similarly situated persons”?
2. Did the PRRA officer err in his assessment of the evidence concerning state protection?
3. Did the PRRA officer err in finding, in effect, that the applicant had a viable IFA in Argentina?
4. Did the PRRA officer err in making patently unreasonable and perverse findings?

STANDARD OF REVIEW

[5] I believe that the majority of the issues raised in this application are questions about the validity of the PRRA officer’s factual findings. The standard of review is, therefore, one of patent unreasonableness: *Tekie v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 27, [2005] F.C.J. No. 39.

ANALYSIS

[6] In my view, the existence of a generalized risk will not amount to a well-founded fear of persecution. Proving that there are poor country conditions for women in Argentina does not bring the applicants within section 96 of IRPA as fearing persecution directed at them personally or as members of a targeted group: *Darwich v. Canada (Minister of Manpower and Immigration)*, [1979] 1 F.C. 365 (F.C.A.).

[7] While Ms Chiarotti and Ms. de Castro certainly indicate that there is not a great enthusiasm on the part of Argentine police to deal with sexual abuse, particularly within families, they are not thereby made 'similarly situated persons'.

[8] Furthermore, the officer did not reject the evidence as alleged by the applicants. The officer assessed the letters, noted that they were not about the personal risk of the applicants and further noted that they had been before the RPD and were therefore not 'new' evidence. The letters were then assigned a low probative value. This was not an unreasonable decision on the part of the PRRA officer and should stand. This judicial review is not an appeal at which the existing evidence should be reweighed.

[9] As noted by Mr. Justice Michael Shore in *E.J. v. Canada (Solicitor General)*, 2006 FC 165 at paragraph 20:

The fact that violence against women is universal is irrelevant when determining whether gender-specific crimes constitute forms of persecution. The real issues are whether the violence is a serious violation of a fundamental human right for a Convention ground, and in what circumstances can the risk of that violence be said to result from a failure of state protection. Women have an internationally protected right to protection from domestic violence and failure to give that protection is a form of gender-related discrimination.

[10] The question which the PRRA officer needed to find a reasonable answer to is: did the risk of gender violence to Ms Zeballos result from a failure of state protection? The officer noted the starting point of such an analysis, which is that in the absence of clear and convincing evidence, a state is presumed capable of protecting its nationals. The officer then stated that Ms Zeballos did

not seek state protection and, on the officer's reading of the evidence, that she would be protected by the state if she chose to seek such help. The officer's answer to the question posed above was clearly 'no', and that does not appear a patently unreasonable answer to me.

[11] In *Omekam v. Canada (Minister of Citizenship and Immigration)* 2006 FC 331, Mr. Justice O'Keefe cited by the applicant *Omekam*, sent the case back for redetermination because the officer gave little weight to both the applicant's evidence of poor mental health and inadequate medical facilities available to him in that case in Benin City.

[12] In this case, the officer clearly noted the existence of the mental health problems suffered by the principal applicant, but found that the medical assistance available to her in Argentina were sufficient. This was not a patently unreasonable finding.

[13] The applicant appears to be attempting to use this judicial review as an appeal. The officer considered the psychological reports, noted that they were not new evidence and assigned them a low probative value. This was open to the officer to do, and it is my sense that such reasoning is neither patently unreasonable nor perverse.

[14] I would dismiss the application.

[15] No question for certification was suggested by parties, and none will be certified.

JUDGMENT

1. The application is dismissed.
2. There is no question for certification.

“Pierre Blais”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-6513-06

STYLE OF CAUSE:

**AMELIA ZEBALLOS, AARON AGUSTIN VEGA
ZEBALLOS, MARIANO GABRIEL VEGA
ZEBALLOSGASTON ZEBALLOS
and**

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 14, 2007

**REASONS FOR JUDGMENT
AND JUDGMENT:** Blais, J

DATED: November 26, 2007

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