Federal Court  Cour fédérale

Date: 20110623

Docket: IMM-3917-10

Citation: 2011 FC 756

Ottawa, Ontario, June 23, 2011

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

CESAR PEREZ ARIAS
MARIA ANGELICA RODRIGUEZ JEMIO
and KAREN VALERIA PEREZ RODRIGUEZ
and ERLAN AUGUSTO PEREZ RODRIGUEZ
(by their litigation guardians
CESAR PEREZ ARIAS and
MARIA ANGELICA RODRIGUEZ JEMIO)

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants seek judicial review of the decision made on May 17, 2010 rejecting the applicants' pre-removal risk assessment application. This was the third risk assessment decision respecting the applicants' claim for protection, in addition to a refugee determination. For the reasons that follow, this application is dismissed.

[2] The applicants are citizens of Bolivia. The principal applicant, Mr. Perez was a teacher in La Paz, Bolivia and was active in the teachers' union. He was also an activist who represented his school at the local federation and helped to organize demonstrations. After allegedly being targeted and threatened, he and his family came to Canada in 2000 and remained here until February 2005 when they were removed.

[3] During their time here, the family made a claim for refugee status which was denied. Their application for leave to judicially review the negative refugee decision was dismissed. A pre-removal risk assessment ("PRRA") was denied. The applicants applied for permanent residence on humanitarian and compassionate ("H&C") grounds on May 17, 2004. This was refused on July 28, 2006. In the interim they were removed from Canada. They returned on September 29, 2008 and were found to be ineligible to make a second refugee claim. They made a second H&C application in April 2009. That application was refused on May 17, 2010 and is the subject of a judicial review decision issued separately in Court file IMM-3918-10.

[4] Upon their return to Bolivia, the principal applicant re-engaged in union activism. The female applicant alleges she was raped by government agents looking for the principal applicant. They left Bolivia in March 2005 and went to the United States where they remained until September 2008. They re-entered Canada at that time and made another refugee claim on September 29, 2008. On the same date, an exclusion order was issued against them and they were found to be ineligible to make a refugee claim.

[5] The applicants applied for a second PRRA which was refused in March 2009. This was judicially reviewed and sent back for re-determination: *Perez Arias et al v. Canada (Minister of Citizenship and Immigration)* 2009 FC 1207. The applicants filed new evidence in January 2010 to supplement the material submitted with their application. A negative decision was issued on May 17, 2010. This is the decision which they are seeking to review in this application.

[6] The PRRA officer found that the applicants would not be subject to a risk of persecution, danger of torture, risk to life or risk of cruel and unusual treatment or punishment if returned to Bolivia. In making this determination, the officer considered a number of country reports and documentary evidence, as well as letters and notarized declarations submitted by the applicants. The officer found the applicants failed to rebut the presumption of state protection and did not face a personalized risk if returned.

[7] The issues raised are whether the officer erred in his consideration of the evidence and whether his findings were reasonable.

[8] The standard of review is reasonableness: *Kim v. Canada (Minister of Citizenship and Immigration),* 2005 FC 437, 30 Admin. L.R. (4th) 131; *Perea v. Canada (Minister of Citizenship and Immigration),* 2009 FC 1173 at paras. 22-24.

[9] The applicants argue that the officer erred in finding that state protection is available for women victims of violence in Bolivia. They point to their detailed submissions citing consistent and recent evidence about impunity in Bolivia for aggression against women. The applicants take issue

with the officer's reliance on a United States Department of State Report to find that Bolivia is serious in dealing with rape, and that laws and legal services exist. The applicants also submit that the officer erred in relying on a 2009 report on women's rights by the Inter-American Commission on Human Rights ("IAHCR") rather than the applicant's documents on this issue, and selectively chose references in that report to support his conclusion.

[10] The presumption of state protection applies equally to cases where the agent of persecution is a non-state entity: *Hinzman v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171, 282 D.L.R. (4th) 413 at para. 54. As such, the applicants had an obligation to demonstrate that Bolivia could not adequately protect them. The officer reasonably concluded that the applicants failed to rebut this presumption and referenced the documentary evidence such as the US DOS Report to suggest that state protection was available in Bolivia: "Bolivia is a constitutional, multiparty democracy" where "Civilian authorities generally maintained effective control of the security forces". It also says that the government generally respected the human rights of its citizens.

[11] The officer suggested that if the applicants did not want to seek protection in La Paz, they had other avenues of recourse which they could have exhausted. They did not do this. The officer found that Bolivia is a functioning democracy at least to the extent that there is not a complete breakdown of the state apparatus. Therefore, the applicants were required to attempt to seek protection.

[12] The applicants take issue with the officer's finding that there was no evidence to support the conclusion that the applicants would be of interest in Bolivia after having been absent for five years.

They point to the fact that the last time they were absent for five years and returned, they were again attacked. Thus, they argue that their time away has no real bearing on whether or not they would be again targeted.

[13] The officer noted that the applicants have entered and exited Bolivia with valid passports and in doing so have never had an issue. It was reasonable to infer that they do not appear to be watched or wanted. The officer also made it clear that although the evidence established that the female applicant was in fact raped, there was insufficient evidence to prove that the rape was from agents of the Ministry. This was not a veiled credibility finding but rather an acknowledgement that there was no evidence linking the government to the incident other than the female applicant's speculation that officials were responsible.

[14] Although the officer noted the applicants' concerns regarding Bolivia's response to women victims of violence and the serious issue of sexual violence in that country, he did not fully address them. He gave what may be fairly described as a selective analysis of the IAHRC Follow Up Report. However, that shortcoming was not material. There is no evidence that the female applicant had been targeted or would be targeted personally, apart from her speculation, or that the attackers would be interested in seeking her out again.

[15] There was no evidence linking the rape to the government and so it cannot be confirmed that the abuse was not an act of general criminality. Contrary to the applicants' argument at the hearing, it does matter in a claim for protection who the assailants were. Alternatively, even if it could be established, or was accepted, that this rape was linked to the principal applicant's political activism,

there is no evidence on the record to suggest the female applicant would be targeted again upon her return.

[16] Overall, the officer recognized the concerns of the applicants and took them into consideration. He consulted an extensive number of documents as is evidenced by his Notes to File. Those notes demonstrate his understanding of the concerns raised in relation to the *Convention on the Elimination of All Forms of Discrimination Against Women*. He also took into account new evidence submitted by the applicants such as medical certificates and letters. In so doing, he reasonably concluded that the evidence did not support a finding of personalized risk to the applicants.

[17] It is clear from reading the decision and from reviewing the documentary evidence submitted by the applicants that the officer properly examined the evidence on file. For example, he referred to the two notarized declarations dated July 8, 2008 by the female applicant's father and his neighbour, relating to the incident that had occurred in La Paz on February 21, 2005. Based on this evidence, the officer accepted that the female applicant was abused, although he fairly noted that the evidence did not indicate by whom. The priest's letter also corroborated the claim of abuse.

[18] The officer also referred to the medical certificate submitted by Doctor Ariel Chipana regarding the rape and the two psychology reports (one from 2002 and one from 2009). It was noted that the one from 2002 predated the applicants' departure from Canada. The officer accepted these reports but reasonably found that the evidence submitted does not support that the applicants would be unable to obtain psychological counselling in Bolivia. This was conceded at the hearing.

[19] In looking at the evidence regarding Bolivian trade union political activity, the officer reasonably concluded that although tensions between the unions and government exist, the evidence does not indicate that the unionists suffer repercussions as a result. According to the US DOS Report 2009, the officer noted that there are laws “allowing workers to associate and join trade unions”. The same report states that the law provides for freedom of peaceful assembly and that although teachers were prohibited from striking, they frequently did strike and were not penalized for doing so. To support this, the officer referenced the example of the teachers’ union protest against the government in 2005 in which the principal applicant participated. He noted that although the police initially surrounded the protesters, they were able to mediate the right to assemble. No one was hurt and the protest lasted into the evening.

[20] The officer’s decision, while flawed in some respects, fell within the range of acceptable outcomes that are defensible in the light of the facts and the law. Accordingly, the application is dismissed.

[21] The applicants have requested that I certify the following question:

> Where applicants who were found not credible by the RPD present new evidence on a PRRA application that the officer finds to be credible evidence, may (or must) the officer revisit the RPD's findings of lack credibility?

[22] I agree with the respondent that the proposed question would not be dispositive of an appeal as the determinative finding in the PRRA decision had to do with state protection. The officer's consideration of the credibility findings made by the refugee protection division had no bearing on the finding that the applicants had not rebutted the presumption of adequate state protection.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. No questions are certified

"Richard G. Mosley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3917-10
STYLE OF CAUSE:	CESAR PEREZ ARIAS MARIA ANGELICA RODRIGUEZ JEMIO And KAREN VALERIA PEREZ RODRIGUEZ And ERLAN AUGUSTO PEREZ RODRIGUEZ (by their litigation guardians CESAR PEREZ ARIAS and MARIA ANGELICA RODRIGUEZ JEMIO) and THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	March 24, 2011
REASONS FOR JUDGMENT AND JUDGMENT:	MOSLEY J.
DATED:	June 23, 2011

APPEARANCES:

Leigh Salsberg	FOR THE APPLICANTS
Sharon Stewart-Guthrie	FOR THE RESPONDENT

SOLICITORS OF RECORD:

LEIGH SALSBERG Jackman & Associates Toronto, Ontario	FOR THE APPLICANTS
MYLES J. KIRVAN Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT