



**Date: 20110920**

**Docket: IMM-881-11**

**Citation: 2011 FC 1082**

**Calgary, Alberta, September 20, 2011**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**ALONSO ELENES GAONA  
SUSANA GASTELUM OCHOA AND  
ALONSO ELENES GASTELUM**

**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(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 of a decision to deny the applicants' Pre-Removal Risk Assessment (PRRA application). The officer determined that if Mr. Gaona and the members of his family were removed to Mexico they would not be personally subjected to a danger, "believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture" or "to a risk to their lives or to a risk of cruel and unusual treatment or punishment."

[2] This family came to Canada in 2005 and filed an application for refugee protection. Their claim was rejected on April 28, 2006 and their application for leave to judicially review that decision was denied by this Court on August 14, 2006.

[3] In their PRRA application, the applicants submitted the same risk allegations that had previously been rejected by the Refugee Protection Division of the Immigration and Refugee Board. The RPD rejected their claim because it did not believe the applicants. It stated that “the panel is of the opinion that there was no credible or trustworthy evidence adduced at the hearing on the basis of which it could have granted refugee protection.”

[4] A PRRA application cannot be allowed to become a second hearing on a claim for protection: *Kaybaki v Canada (Solicitor General of Canada)*, 2004 FC 32.

[5] In my view, the officer did not err by relying on the RPD’s findings in the absence of new evidence to establish risk: *Cupid v Canada (Minister of Citizenship and Immigration)*, 2007 FC 176.

[6] The applicants did not submit any new evidence to the officer that would have warranted a different conclusion. The alleged new evidence was found to be vague and of little persuasive value. Having reviewed that evidence in light of the RPD decision, I agree with that

characterization. It was reasonable for the officer to determine that the applicants did not demonstrate a risk to their lives should they return to Mexico.

[7] Two additional grounds of review were set out in the written memorandum but were not pursued at the hearing. Both are without merit. There was no abuse of process nor was the officer acting contrary to the principles of procedural fairness in providing them with the PRRA decision some four months after it had been rendered. Further, the failure to provide the applicants with an opportunity to address a legal authority relied upon by the officer does not constitute a breach of procedural fairness; it is not extrinsic evidence and, in any event, the applicants and their counsel are presumed to know the law.

[8] Neither party proposed a question for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed and no question is certified.

"Russel W. Zinn"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-881-11

**STYLE OF CAUSE:** ALONSO ELENES GAONA et al. v. THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Calgary, Alberta

**DATE OF HEARING:** September 19, 2011

**REASONS FOR JUDGMENT  
AND JUDGMENT:** ZINN, J.

**DATED:** September 20, 2011

**APPEARANCES:**

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Ms. Camille Audain FOR THE RESPONDENT

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