

Federal Court



Cour fédérale

Date: 20120524

Docket: IMM-8451-11

Citation: 2012 FC 639

Ottawa, Ontario, May 24, 2012

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

LUIS ALCIDES RAMON ALCARAZ

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant seeks judicial review of a decision of Senior Immigration Officer L. Zucarelli (Officer), dated October 15, 2011, refusing the applicant's Pre-Removal Risk Assessment (PRRA) application pursuant to section 112 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). For the reasons that follow the application is granted.

Facts

[2] The applicant is a citizen of Mexico. He and his partner at the time, Eric Castillo Ramirez, fled Mexico in 2008 because they feared persecution based on sexual orientation and based on the applicant's relationship to his father. Before the Refugee Protection Division (RPD) the applicant testified that his father was the head of a drug cartel in Juarez and has been in prison since June 2001. In 2005, the applicant was pressured to assist the drug cartel in its activities by communicating with his father in prison and he was threatened if he did not comply. He fled Mexico City to Villa Hermosa as a result, where he met Eric in May 2006.

[3] The applicant also testified that he and Eric were attacked by four armed men in April 2008 and again ordered to assist in communicating with the applicant's father. The applicant tried to report this incident to the Attorney General's office and to the General Secretary of Public Security, but neither office would assist him. The applicant was approached again in July 2008 and was told that the only way to be safe was to cooperate, that there were orders to execute Eric to force the applicant to comply. The applicant and Eric also both lost their jobs at a bank because of their connection to the applicant's father. They fled to Canada in October 2008 and made claims for refugee protection on April 3, 2009.

[4] The RPD refused the applicant's and Eric's refugee claims on February 4, 2011, on grounds of credibility and state protection. The RPD found that the applicant had not presented credible evidence that he was the son of a drug cartel leader, nor that he and Eric faced persecution in Mexico on the basis of their sexual orientation.

[5] The applicant submitted his PRRA application, separately from Eric, since they were no longer in a relationship. In his application he indicated that he was now married to Philip Dale Anthony, a Canadian citizen. The applicant was not assisted by counsel in preparing and submitting his PRRA application and there is a dispute between the parties regarding the documents that were submitted as part of the application.

[6] By letter dated October 15, 2011, the Officer refused the applicant's PRRA application, along with Eric's PRRA application. The Officer refers to the applicant and Eric as common-law spouses in the Notes to File and the decision.

[7] The Officer noted that only new evidence arising after the RPD's decision could be considered. The Officer stated that the applicant and Eric provided several news articles and a magazine in Spanish, but had not provided translations into English or French and therefore they were not considered.

[8] After reviewing the background facts and the RPD decision the Officer found that the risks identified in the application were essentially the same as those found not to be credible by the RPD. The Officer noted that reiteration of a risk scenario found not credible, "unaccompanied by objective corroborative evidence, neither overcomes the credibility concerns of the RPD nor provides sufficient evidence of a forward-looking risk to the applicants."

[9] The Officer noted that the applicant and Eric provided country reports and articles but did not link this general documentary evidence to their personal circumstances. The Officer then

reviewed general documentary evidence on state protection in Mexico, concluding that state protection is adequate. The application was therefore refused.

Standard of Review and Issue

[10] The issue whether the Officer's decision is unreasonable because it was made without regard to relevant evidence is to be assessed against a standard of reasonableness. It may be, however, that whereas in this case, the Officer did not consider pertinent evidence at all, the decision is to be reviewed on the basis of correctness. This question need not be determined for the purposes of this application as the decision in question cannot be sustained even when assessed on the basis of the lower standard of reasonableness.

Analysis

[11] The applicant's core submission relates to the alleged failure of the Officer to consider evidence submitted as part of the PRRA application. These include the applicant's birth certificate and his parents' marriage certificate, as well as photographs, all of which prove that he was in fact the son of a drug cartel leader. The applicant also argues that the Officer erroneously stated that none of the submitted articles were translated, as translations were provided. The respondent counters these arguments with reference to affidavits from the officer and from Canada Border Services Agency (CBSA) Removals Officer, I. Pachynskyy, as well as the Certified Tribunal Record, to demonstrate that most of the documents alleged to have not been considered were not actually before the Officer in her decision.

[12] However, the application should be granted on the basis that the Officer made her decision without reviewing the record before her and without regard to the evidence that was in the record. The applicant and Eric had separated by the time they submitted their PRRA applications. Their applications were submitted separately and each application included statements that they were no longer common-law spouses. The applicant's application clearly identified Philip Dale Anthony as the applicant's spouse in several places.

[13] While the applicant's marital status was not pertinent to the PRRA determination this error provides context to the central allegation that the Officer did not, and could not have, reviewed the application in its entirety before rendering her decision.

[14] The applicant submitted translations of his birth certificate and his parents' marriage certificate with his PRRA application. These documents were relevant as they responded directly and in a material way to the RPD's finding that the applicant had not established his relationship to Alcides Roman Magana, the drug cartel leader.

[15] While the translated version of the marriage and birth certificates appear in the record, the applicant (likely inadvertently) failed to submit copies of the original documents with the translations which would have meant these documents could not be given any probative value. However, the Officer makes no mention of the translations, even to explain why they could not be considered. In addition, the Officer made no reference in her decision to the written narratives of the applicant or Eric, instead relies entirely on the RPD decision for her summary of the facts. I

note as well that the affidavit evidence as to what was before the PRRA Officer at the time of the decision changed and was at variance with the content of the certified tribunal record.

[16] These omissions, coupled with the Officer's erroneous statement that the applicant and Eric were still spouses, creates a strong impression that the Officer failed to review the application in its entirety and that relevant evidence in the file was not considered.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted. The matter is referred back to Citizenship and Immigration Canada for reconsideration before a different Pre-Removal Risk Assessment officer. There is no question for certification.

"Donald J. Rennie"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8451-11

STYLE OF CAUSE: LUIS ALCIDES RAMON ALCARAZ v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto

DATE OF HEARING: May 16, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** RENNIE J.

DATED: May 24, 2012

APPEARANCES:

Bola Adetunji FOR THE APPLICANT

Margherita Braccio FOR THE RESPONDENT

SOLICITORS OF RECORD:

Bola Adetungji FOR THE APPLICANT
Barrister-at-Law
Toronto, Ontario

Myles J. Kirvan, FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario