

Federal Court



Cour fédérale

Date: 20121219

Docket: IMM-3769-12

Citation: 2012 FC 1507

Toronto, Ontario, December 19, 2012

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

**MIRYAM PUENTES PERDOMO
ELIANA PENA PUENTES
LIDA PENA PUENTES
SEBASTIAN PENA PUENTES**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is a judicial review of a decision made by a Pre-Removal Risk Assessment (PRRA) Officer dated March 8, 2012 wherein it was determined that the Applicants would not be at risk if they returned to Colombia.

[2] The Applicants are a mother who is the principal Applicant, her children, and a grandson. The principal Applicant lived with her husband in Colombia with their family. She testified that

there was a long history of marital abuse while they were in Colombia, yet she never reported this to any authority. The husband, wife and family came to Canada. Apparently, the domestic violence continued, the husband was removed from their Canadian residence, and returned voluntarily to Colombia. The principal Applicant states that she fears that if she and the rest of her family returned to Colombia, her estranged husband would seek them out and, motivated by a desire for revenge, seek to inflict further harm upon them. This fear is one that arose since the failed refugee decision.

[3] The determinative issue in this case arises from the fact that the principal Applicant never sought state assistance in Colombia during the period when she was the victim of spousal abuse. Does this failure to seek assistance make any argument as to the adequacy of state protection moot?

[4] Applicants' Counsel argues that the failure to seek state protection does not render the argument moot in circumstances where it is clear that it would be futile to seek such protection.

[5] Respondent's Counsel argues that the Applicants bear the burden in providing clear and convincing evidence of a state's inability to provide state protection (*Canada (Attorney General) v Ward*, [1993] SCR 689). The assessment of that evidence is a matter of fact or, at best, mixed law and fact such that, given the law as set out in *Dunsmuir v New Brunswick*, [2008] 1 SCR 190, it must be determined by this Court whether the conclusions reached by the Officer were within an acceptable range of reasonableness.

[6] This Court is not sitting as a Court of Appeal, nor is it sitting as a Court *de novo*. This Court is sitting as a Court of judicial review. It is not for this Court to redetermine the matter; rather, it is

to determine whether the determination, in this case by a PRRA Officer, falls within the acceptable bounds of reasonableness.

[7] I have reviewed and considered the decision and arguments raised by Counsel. Although the decision as to whether it would have been futile to seek state protection in the circumstances of this case lies near an outer boundary of reasonableness, I have determined that it is, nonetheless, reasonable. The application will be dismissed. No party requested certification.

JUDGMENT

FOR THE REASONS PROVIDED:

THIS COURT'S JUDGMENT is that:

1. The application is dismissed;
2. No question is certified; and
3. No Order as to costs.

“Roger T. Hughes”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-3769-12

STYLE OF CAUSE: MIRYAM PUENTES PERDOMO
ELIANA PENA PUENTES
LIDA PENA PUENTES
SEBASTIAN PENA PUENTES v MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 17, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** HUGHES J.

DATED: December 19, 2012

APPEARANCES:

Clifford Luyt FOR THE APPLICANTS

Kevin Doyle FOR THE RESPONDENT

SOLICITORS OF RECORD:

Barrister & Solicitor FOR THE APPLICANTS
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