

Federal Court



Cour fédérale

Date: 20140319

Docket: IMM-13106-12

Citation: 2014 FC 267

Toronto, Ontario, March 19, 2014

PRESENT: The Honourable Madam Justice Mactavish

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] Miryam Puentes Perdomo, together with her two daughters and her grandson Sebastian, seek judicial review of the decision of a Senior Immigration Officer refusing their application for permanent residence from within Canada on humanitarian and compassionate (H&C) grounds.

[2] The applicants submit that the Immigration Officer erred in the treatment accorded to

Sebastian's best interests. The Officer further erred, the applicants say, in assessing the hardship that would be faced by the adult applicants in the event that they were required to return to Colombia.

[3] For the reasons that follow, the applicants have not persuaded me that the Officer's decision was unreasonable. As a result, the application for judicial review will be dismissed.

The Assessment of Sebastian's Best Interests

[4] When Sebastian was approximately two years old, he witnessed the murder of his parents at the hands of the Fuerzas Armadas Revolucionarias De Colombia (FARC) members. The applicants submit that although the Officer acknowledged that this would have been traumatic for Sebastian, no real consideration was given to his best interests, in particular, how these interests could be served by his return to Colombia. Instead, the applicants say that the Officer erred by looking at Sebastian's interests through the lens of unusual, undeserved or disproportionate hardship.

[5] The H&C submissions provided by the applicants with respect to Sebastian's best interests were minimal. The only reference to Sebastian's interests in the applicants' submission letter was the bald assertion that "the children" (including Sebastian) feared Ms. Puentes Perdomo's abusive husband, who was living in Colombia. Included in the package of documents submitted with the H&C application were two letters from a play therapist who had been working with Sebastian, helping him overcome the trauma of his parents' murder. No submissions were made by the applicants as to the significance of this evidence.

[6] Notwithstanding the limited submissions provided with respect to Sebastian's best interests, the Officer reviewed what evidence there was with respect to the child, specifically considering the effect that removal from Canada would have on him, in light of this evidence.

[7] The Officer accepted that returning to Colombia may be upsetting for Sebastian, given that this was where his parents were killed and where his abusive grandfather lives. The Officer found, however, that the upset experienced by the child would be mitigated by the continued emotional support of his grandmother and his aunts, and by the stable home environment that they could provide for him, far away from the place where the violence occurred. The Officer also noted that there was little evidence in the record to suggest that Sebastian would be unable to continue to receive mental health treatment in Colombia.

[8] Nowhere in the officer's analysis of the best interest of the child does the term "unusual, undeserved or disproportionate hardship" appear. The phrase is used in the paragraph of the decision that sets out the Officer's overall conclusion with respect to the applicants' H&C application. However, when the decision is considered as a whole, I am satisfied that the Officer had due regard for Sebastian's best interests, explaining in an intelligible fashion why they did not outweigh other factors in the case. No error has been demonstrated in this regard.

The Hardship to the Adult Applicants

[9] The applicants also say that the Officer erred in concluding that the difficulties that they would face if they were required to return to Colombia did not amount to unusual, undeserved or disproportionate hardship.

[10] The applicants further submit that it was unreasonable for the Officer to conclude that any emotional difficulties that they might suffer by returning to Colombia could be addressed by their relocation to Bogotá, some eight or nine hours from their hometown. In addition, it was also unreasonable for the Officer to find that the hardship that the family would encounter in relocating to Bogotá would be no greater than that experienced by similarly-situated individuals attempting to re-settle in a country.

[11] In support of these contentions, the applicants point to a letter from Ms. Puentes Perdomo's mental health counsellor which was written before her refugee claim was rejected by the Immigration and Refugee Board (IRB). According to her counsellor, Ms. Puentes Perdomo's trauma could only be cured by a favourable answer to her refugee claim. The applicants say that this evidence was central to their case, with the result that it was therefore incumbent on the Officer to specifically address it and indicate why it was not accepted.

[12] The risk faced by the applicants in Colombia at the hands of the FARC had already been addressed by the IRB, which found that the family had a viable Internal Flight Alternative (IFA) in Bogotá. A Pre-removal Risk Assessment subsequently determined that the applicants also had access to adequate state protection, insofar as their risk of domestic violence was concerned. For his part, the H&C Officer quite properly addressed the issue of the applicants' fear of returning to Colombia through the lens of hardship.

[13] The Officer accepted that it would be emotionally difficult for the applicants to return to the

place where they had lost their loved ones in a violent attack and where an abusive family member still lives. However, the Officer also found that there was little documentary evidence to show that they could not relocate to Bogotá, where they could access services, including mental health services for women and children who have been victims of abuse or trauma.

[14] The Officer's comment that the hardship that the applicants would experience in relocating to Bogotá would be no greater than that experienced by similarly-situated individuals attempting to re-settle in a country was clearly made in the context of their ability to find housing and employment, and no error has been identified in this regard.

[15] The Officer specifically considered the letter provided by Ms. Puentes Perdomo's counsellor regarding her emotional condition. Weighing this against other evidence in the record, including the apparent availability of mental health treatment in Colombia for victims of trauma, the Officer concluded that the difficulties that the applicants would face if they were required to return to Colombia did not constitute unusual, undeserved or disproportionate hardship. While the applicants may not agree with this finding, they have not persuaded me that it was unreasonable.

Conclusion

[16] For these reasons, the application for judicial review is dismissed. I agree with the parties that the case does not raise a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

“Anne Mactavish”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-13106-12

STYLE OF CAUSE: MIRYAM PUENTES PERDOMO, ELIANA PENA
PUENTES, LIDA PENA PUENTES, SEBASTIAN PENA
PUENTES v THE MINISTER OF CITIZENSHIP, AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 17, 2014

**REASONS FOR JUDGMENT
AND JUDGMENT:**

MACTAVISH J.

DATED: MARCH 19, 2014

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