

Federal Court



Cour fédérale

Date: 20140828

Docket: IMM-6224-14

Ottawa, Ontario, August 28, 2014

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

**BETWEEN:**

**MARCO VINICIO DUARTE MANZO  
VIRNA GIOVANNA DE LEON CUSTODIO  
DIEGO ANDRES DUARTE DE LEÓN  
ANA TERESA DUARTE DE LEÓN  
ANA SOFIA DUARTE DE LEÓN  
ALEJANDRO JOSE ARROYAVE DE LEÓN**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION AND THE MINISTER OF  
PUBLIC SAFETY AND EMERGENCY  
PREPAREDNESS**

**Respondents**

**ORDER**

**UPON** motion by the Applicants for a stay of their removal to Guatemala presently scheduled for September 1, 2014 until such time as the Court has dealt with their application for leave and judicial review of a negative deferral decision dated August 25, 2014;

**AND UPON** the Court reading and considering all materials filed and hearing counsel and behalf of the Applicants and the Respondents;

**AND UPON** noting, finding and concluding as follows:

1. Although the Officer's analysis is not as clear as it might be, I read the decision to say that the Officer did exercise her discretion to consider the new evidence submitted by the Applicants in their request for deferral. She also specifically refers to the submissions regarding "the influx of unaccompanied migrant children traveling to the United States, the high murder rate in Guatemala and other general country conditions." Her conclusion is that "In review of all the evidence presented, I conclude that you fail to establish a case that reasonably demonstrates that you will be exceptionally subjected to the general country conditions in Guatemala."
2. The word "exceptionally" is problematic but, when read in context, I think it is clear that it means that the Applicants have not established that, notwithstanding the general difficult situation in Guatemala, they would personally be at risk if returned.
3. In my view, then, the only possible ground for a serious issue is whether, in reaching these conclusions, the Officer ignored or misunderstood the documentary evidence submitted on risk. As their deferral request makes clear, the Applicants were particularly concerned about risk to the children as a result

of prevalent gang activity in Guatemala and risk to female members of the family as a result of widespread sexual violence against women.

4. My review of the documentation suggests to me that children in Guatemala face an extraordinary level of risk from marauding gangs and that normal families are forced to resort to drastic and dangerous evasive procedures that put the children at further risk. It is also clear that women are at a heightened risk because of widespread sexual violence. There is also evidence to suggest that the police can offer no meaningful protection against these risks.
5. The United States has recently recognized the extraordinary nature of the situation in Guatemala and John Kerry has said that “Tens of thousands of young children are being exploited and are being put at great danger” and that the “lives of children cannot be put at risk in this way.” There was strong evidence before the Officer of these risks to all children from ordinary families, and although the Officer pointed out that she is not a PRRA officer, the jurisprudence is clear that she has the jurisdiction to consider risks of death, torture and inhumane treatment and whether even failed refugee claimants face a real risk of harm. I think the Officer accepts this responsibility.
6. Given the nature of the evidence before the Officer, and the extremely dangerous situation in Guatemala for women and children, I think a serious and convincing argument can be made that the Officer’s bald conclusion that the Applicants have not demonstrated they will be at risk lacks clarity, intelligibility and justification. What was required in this case was a careful

look at the evidence and, in particular, an explanation as to why these children would not be at risk when so many children from ordinary families are. The decision does not suggest that this occurred.

7. My conclusion, then, is that the Applicants have established a serious issue even on the elevated standard (quite a strong case) applicable in this case. This also means that the risk to the children and the female Applicants has not been appropriately assessed, even within the limits of the Officer's discretion. The evidence shows that the situation in Guatemala is dire for ordinary people and that women and children are particularly vulnerable for obvious reasons. Hence, I am also willing to accept that the Applicants have established irreparable harm in this case. It follows, inevitably in my view, that the lives of children and women (or indeed anyone) are far more important than the administrative imperatives of removal, so that the balance of convenience favours the Applicants.
8. All in all, then, I believe the Applicants have satisfied the conjunctive, tripartite, *Toth* test for a stay of removal.

**THIS COURT ORDERS** that the motion is allowed and the Applicants' removal is stayed until the Court has dealt with the underlying application for leave and judicial review.

"James Russell"

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Judge