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REPORT No. 251/22
PETITION 311-17
REPORT ON INADMISSIBILITY

RUBEN VALBUENA, LISBETH FIGALLO AND FAMILY
CANADA

Approved by the Commission electronically on August 26, 2022.

Cite as: IACHR, Report No. 251/22, Petition 311-17. Inadmissibility.
Ruben Valbuena, Lisbeth Figallo and family. Canada. August 26, 2022.

I. INFORMATION ABOUT THE PETITION

Petitioners:	Ruben Valbuena, Lisbeth Figallo
Alleged victims:	Ruben Valbuena, Lisbeth Figallo and family
Respondent State:	Canada
Rights invoked:	No specific provisions invoked

II. PROCEEDINGS BEFORE THE IACHR¹

Filing of the petition:	February 13, 2017
Additional information received at the stage of initial review:	October 20, 2019, January 26, 2020, and March 9, 2020
Notification of the petition to the State:	April 20, 2021
State's first response:	July 16, 2021

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Declaration on the Rights and Duties of Man ² (ratification of the OAS Charter on January 8, 1990)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	None
Exhaustion of domestic remedies or applicability of an exception to the rule:	No, in terms of Section VI
Timeliness of the petition:	N/A

V. ALLEGED FACTS

1. The petitioner complains that Canada denied refugee protection to the alleged victims; and further refused to grant alternate protections (such as permanent residence on humane and compassionate grounds). The petitioner contends that the State's refusal to grant protection placed them at risk of being returned to Venezuela, where they claim that they would be at risk of being persecuted.

2. The alleged victims comprise the petitioners: Ruben Valbuena and his wife Lisbeth Figallo; and their three children: Gabriel Jesus, Jose Andres, and Emmanuel Antonio. By way of background, the petitioners are citizens of Venezuela, while the three children are citizens of the United States of America ("USA"). According to the petitioners, they were politically opposed to Hugo Chavez and his government; and they fled to the USA from Venezuela in 1996 because of fear of persecution by Hugo Chavez and/or his government. The petitioners allege that lived in the USA for fifteen years during which they unsuccessfully attempted to obtain refugee protection in the USA; and their three sons were born.

¹ The observations submitted by each party were duly transmitted to the opposing party.

² Hereinafter "the American Declaration" or "the Declaration"

3. According to the record, the petitioners and their children left the USA for Canada in July 2011. On July 22, 2011, they applied for refugee protection. The application was based on fear of persecution by the Chavez government, having regard for the petitioners' history of political opposition to Hugo Chavez. The application was heard by the Refugee Protection Division (RPD) of Canada's Immigration and Refugee Board (IRB) in April 2013. The RPD dismissed the application on May 15, 2013, finding that the petitioners and their children did not qualify for refugee protection. The RPD found that the petitioners had not provided sufficient evidence to support a well-founded fear of persecution, torture, or other serious violations of their human rights if they returned to Venezuela.

4. The petitioners indicate that on June 20, 2013, they applied to a Federal Court in Canada for leave to seek judicial review of the RPD decision; however, on September 19, 2013, the Federal Court denied the petitioners' application for leave.

5. According to the record, on April 10, 2014, the petitioners subsequently applied to the Canadian authorities (Citizenship and Immigration Canada) for permanent residence in Canada based on humanitarian and compassionate (H&C) considerations. Based on documents received, an H&C application is one in which a foreign national in Canada seeks an exemption from the usual requirement to apply for permanent residence from outside Canada. Additionally, the official considering the application is legally required to consider and weigh all relevant H&C considerations in a particular case, including, but not limited to, the establishment of the applicant in Canada, ties to Canada, health considerations including the inability of a country to provide medical treatment, and the best interests of any child directly affected.

6. According to the record, on October 22, 2014, the H&C application was denied. The decision was based largely on the following findings: (a) the petitioners did not provide sufficient evidence of a personalized risk that is distinguishable from that of the general population in Venezuela; (b) the petitioners did not demonstrate with sufficient evidence that they would suffer harm that would amount to hardship that is unusual and undeserved or disproportionate if they were to apply for permanent residence in the normal process; (c) the petitioners had provided insufficient evidence to show that they would not be able to re-establish and resettle themselves upon return to Venezuela; and (d) the petitioners did not demonstrate that the general consequences of relocating and resettling back in Venezuela would be counter to the best interest of their children.

7. On June 25, 2014, the petitioners applied for a Pre-Removal Risk Assessment (PRRA). According to the record, a foreign national who is facing removal from Canada and who alleges a risk of harm in his or her destination country may apply to the Minister of Citizenship and Immigration for protection prior to removal, by means of a PRRA. For applicants who have already had their asylum claim determined by the IRB/RPD, the PRRA is an evaluation primarily based on facts or evidence that arose after the IRB/RPD's rejection of the claim or which was not reasonably available at that time. In essence, the PRRA considers whether the applicant will be at risk of persecution, torture, risk to life or risk of cruel or unusual treatment or punishment if removed. The record indicates that on October 17, 2014, the petitioners' PRRA application was denied on the ground that the petitioners had not demonstrated that they would face more than a mere possibility of persecution in Venezuela nor that they would be subjected to torture, a risk to their life or cruel and unusual treatment or punishment on return to Venezuela.

8. The petitioners indicate that on December 10, 2018, the Canada Border Services Agency (CBSA) notified them that their removal from Canada had been scheduled for January 11, 2019. The CBSA subsequently cancelled the removal on December 24, 2018, because of issues relating to the travel documents of two of the petitioners' children.

9. On January 18, 2019, the petitioners submitted a second application for permanent residence on humanitarian and compassionate grounds. According to the petitioners, this application was pending as of October 2019.

10. The State rejects the petition as inadmissible, contending that the petition is manifestly groundless; and that the petitioners failed to exhaust domestic remedies.

11. Canada indicates that on January 7, 2021, the petitioners and their children were granted permanent residence on humanitarian and compassionate grounds. In this regard, the State indicates that the grant of permanent residence means that the petitioners can remain in Canada and no longer face a risk of removal. Since the petitioners are no longer at risk of being returned to the country where they claim to fear persecution, the State submits the basis for the petition claim longer exists. Accordingly, the State submits that the petition has become moot and, therefore, manifestly groundless pursuant to Article 34 of the Commission's Rules of procedure.

12. The State contends that the petitioners failed to pursue some effective domestic remedies available to them before filing their petition with the Commission. More specifically, the State argues that the petitioners failed to seek leave for judicial review of the decision refusing the first application for permanent residence on humanitarian and compassionate grounds; and the denial of the PRRA application. Both decisions were issued in October 2014.

13. The State submits that Canada's domestic system of judicial review, and in particular its Federal Court, provides an effective remedy against removal where there are substantial grounds for believing that a complainant faces a risk of torture or irreparable harm. The function of judicial review in Canada is to ensure the legality, reasonableness, and fairness of the decision-making process and its outcomes. The State further argues that the petitioners could, that the Federal Court could have granted relief, had it found an error of law or an unreasonable finding of fact (concerning the two adverse decisions). The State indicates that the petitioners had a duty to avail themselves of this remedy and that they have not provided any explanation for their failure to exhaust this available and effective remedy prior to filing their petition with the IACHR. The State concludes that the petitioners' failure to seek leave for judicial review means that they did not exhaust an effective remedy that was available to them prior to filing this petition with the Commission.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

14. According to the record, the petitioners applied to a Federal Court in Canada for leave to seek judicial review of the RPD's decision that refused their application for refugee protection. This application was denied on September 19, 2013.

15. Concerning the subsequent adverse decisions taken by the Canadian authorities in 2014, the State contends that the petitioners failed to pursue available and effective domestic remedies before filing their petition with the Commission. More specifically, the State submits that that the petitioners failed to apply to the Federal Court for leave for judicial review of (a) the decision refusing the first application for permanent residence on humanitarian and compassionate grounds; and (b) the denial of the PRRA application.

16. The petitioners have not disputed the State's contention regarding the availability or effectiveness of this domestic remedy. The petitioners have also not demonstrated that they qualify for an exception to the general requirement exhaust domestic remedies including the remedy of resorting to the Federal Court for relief.

17. In light of the foregoing, the Commission concludes that the petitioners have not fulfilled the requirement of exhaustion of domestic remedies as prescribed by Article 31 (1) of the Commission's Rules of Procedure. Accordingly, the Commission considers the petition to be inadmissible.

VII. ANALYSIS OF COLORABLE CLAIM

18. Whereas the foregoing conclusion on the issue of domestic remedies is sufficient to dispose of this petition, the Commission nevertheless wishes to make some observations regarding the applicability of Article 34 of the Commission's Rules of Procedure to the petitioners' claims. The Commission notes that the petitioners' claims amount to a disagreement with adverse decisions by the Canadian authorities relating to their applications for refugee protection and other protections, such as permanent residence on humane and compassionate grounds.

19. The IACHR notes that the interpretation of the law, the relevant proceeding, and the weighing of evidence, is among others, a function to be exercised by the domestic jurisdiction, which cannot be replaced by the IACHR. In this regard, it should be recalled that the Commission does not have authority to review judgments handed down by domestic tribunals acting within their competence and applying all due judicial guarantees unless it finds that a violation of one of the rights protected by the American Declaration has been committed. Consequently, in the absence of elements indicating that the decisions of the domestic tribunals have been adopted based on arbitrary criteria or contrary to rights enshrined in the American Declaration, the facts raised by the petitioners do not tend to characterize a violation of this international instrument.

20. More importantly, the Commission also notes that the petitioners have not disputed the State's claim that they were, in January 2021, granted permanent residence. In the absence of any information to the contrary, the Commission considers that this development effectively nullifies the claims of the petitioners, given that they are now under the protection of the State and no longer at risk of being returned to Venezuela.

21. Having regard for the foregoing, the Commission, therefore, concludes that the claims of the petitioners are manifestly groundless and are therefore inadmissible pursuant to Articles 34 and 42.1 of the Commission's Rules of Procedure.

VIII. DECISION

1. To find the instant petition inadmissible; and
2. To notify the parties of this decision; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 26th day of the month of August, 2022. (Signed:) Julissa Mantilla Falcón, President; Margarete May Macaulay, Second Vice President; Roberta Clarke, and Carlos Bernal Pulido, Commissioners.