

Date: 20080214

Docket: IMM-685-07

Citation: 2008 FC 187

Ottawa, Ontario, February 14, 2008

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**ROL YACOUB YOUKHANNA,
ALES YOUEL KHAMIS,
RIMON ROL YACOUB AND
SUSAN YACOUB**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is a judicial review of a negative H&C decision involving an Iraqi family who had come to Canada by way of Finland where they had been granted asylum and citizenship. Their refugee claim is based on the allegation that they experienced discrimination in Finland and that the

son wishes to avoid conscription into the military. In essence, the Applicants seek to be declared as refugees from Finland.

[2] The Applicants initially raised three errors in the H&C decision: (1) the application of the wrong legal test by imposing PRRA criteria into the H&C risk factors; (2) breach of natural justice by use of extrinsic evidence; and (3) failure to consider the best interests of the child. This last point was abandoned.

[3] As to the first issue, this argument is given some credence because the officer who performed the PRRA decision also analysed the H&C application. While this approach to dealing with the two applications may be legally permissible, it requires officials to compartmentalize their analysis in ways that beg for questioning. Both the H&C and PRRA look at some similar facts but judge them on different legal standards.

[4] However, in this instance, I can find no evidence of error. When the officer looked at the issue of state protection, she did so from the perspective of whether there was disproportionate hardship given that the Applicants had other avenues of relief from the alleged discriminatory conduct. In this regard, on its facts, this case is different from those in *Liyanage v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1045.

[5] The officer did no more than balance the claimed discrimination against the benefits, opportunities and government resources available to refugees. This is the very balancing mandated by law. There was nothing unreasonable about the officer's analysis.

[6] As to the breach of procedural fairness issue, it is based on the fact that the officer referred to a publication which described the conscription regime in Finland. That document was not put to the Applicants.

[7] In *Mancia v. Canada (Minister of Citizenship and Immigration)*, [1998] 3 F.C. 461 (C.A.), the Court of Appeal held that documents relied upon from public sources in relation to general country conditions which were publicly available and accessible did not have to be put to an applicant.

[8] The document in question was available on the internet but that fact alone is not sufficient to make it "publicly accessible". What is important are the contents of the document, prepared in 1998, which generally described the Finnish conscription system. That general summary of Finnish laws should be taken to be publicly available.

[9] The Applicants should not be surprised by a general description of Finnish conscription law – they are presumed to know it since the son was attempting to escape from it. Moreover, the Applicants do not challenge the accuracy of the general description.

[10] I fail to see where there was any unfairness in the officer referring to a description of the Finnish laws upon which the Applicant's son relies (in part) and does not challenge as to its content.

[11] Therefore, this judicial review will be dismissed. There is no question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review will be dismissed.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-685-07

STYLE OF CAUSE: ROL YACOUB YOUKHANNA, ALES YOUEL
KHAMIS, RIMON ROL YACOUB AND SUSAN
YACOUB

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 11, 2007

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

DATED: February 14, 2008

APPEARANCES:

Mr. Ali Amini FOR THE APPLICANTS

Mr. David Joseph FOR THE RESPONDENT

SOLICITORS OF RECORD:

NIREN & ASSOCIATES FOR THE APPLICANTS
Barristers & Solicitors
Toronto, Ontario

MR. JOHN H. SIMS, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario

