

Date: 20080522

Docket: IMM-4567-07

Citation: 2008 FC 645

Toronto, Ontario, May 22, 2008

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

**ALEXEY LOSHKARIEV, SILIGIZ LOSHKAREV,
ALFRED LOSHKAREV, SOFIA LOSHKAREV,
BERENIKA LOSHKAREV, EMILIA LOSHKARIEV**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The Loshkariev family, originally from Russia, but now Israeli citizens, claim to be United Nations Convention refugees or otherwise in need of Canada's protection. This is a judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada which found that they were neither.

[2] The claim is based on the father, Alexey, who was active in the construction business in Israel. The essence of the claim is that he hired Palestinian subcontractors to work at his construction company. After the Intifada began in 2000, both he and his workers were beaten by religious fanatics. In fact, he was attacked on a number of occasions and subjected to threats and harassment by Jewish settlers and Orthodox Jews. The police did little or nothing to help.

[3] The Board did not find Mr. Loshkariev credible, preferring country documentation instead. Although the Board found that Palestinians are subjected to ill-treatment by certain Jewish settlers, there was no evidence that Jews who took up the Palestinian cause, on a human rights basis, were subject to attacks otherwise than *in situ*. There was no evidence that those Israeli citizens who so participated were tracked down by settlers and harassed.

[4] The Board also found that the police had come to disperse settlers who had allegedly attacked the claimant and his workers.

[5] The Board determined, in any event, that there was an internal flight alternative (IFA) in Haifa and that state protection was available there.

ANALYSIS

[6] No matter if the pertinent proportions of the decision under review are based on findings of fact, or mixed findings of fact and law, in light of the most recent Supreme Court of Canada

decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] S.C.J. No. 9, the decision is not to be disturbed unless unreasonable.

[7] It was submitted that the findings with respect to credibility were really findings of plausibility, and not supported by clear evidence in the record. I disagree. All the factual findings with respect to credibility, the IFA and state protection were inferences properly drawn from evidence in the record.

[8] As noted by Lord Wright in *Grant v. Australian Knitting Mills Ltd & Ors.*, [1936] AC 85, [1935] All ER Rep. 209:

Mathematical, or strict logical, demonstration is generally impossible; juries are in practice told that they must act on such reasonable balance of probabilities as would suffice to determine a reasonable man to take a decision in the grave affairs of life.”

[9] This is a case of inference, not outright speculation or conjecture unsupported by the record. (*Canada (Minister of Employment and Immigration) v. Satiacum (F.C.A.)*, 99 N.R. 171, [1989] F.C.J. No. 505).

[10] I consider the decision reasonable in all respects. As stated by Justices Bastarache and LeBel in *Dunsmuir* at paragraph 47:

Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the

range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[11] In its earlier decision of *Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 S.C.R. 748, [1996] S.C.J. No. 116, Mr. Justice Iacobucci equated the standard of reasonableness with the standard to be applied in reviewing findings of fact by a trial judge. At paragraph 59, he said:

The standard of reasonableness simpliciter is also closely akin to the standard that this Court has said should be applied in reviewing findings of fact by trial judges. In *Stein v. "Kathy K" (The Ship)*, [1976] 2 S.C.R. 802, at p. 806, Ritchie J. described the standard in the following terms:

. . . the accepted approach of a court of appeal is to test the findings [of fact] made at trial on the basis of whether or not they were clearly wrong rather than whether they accorded with that court's view of the balance of probability. [Emphasis added.]

[12] *The Kathy K.* admonished appellate courts from interfering with findings of fact unless tainted with a “palpable and overriding error”. This warning applies equally to findings of fact based on inferences (*N.V. Bocimar S.A. v. Century Insurance Co. of Canada*, [1987] 1 S.C.R. 1247, [1987] S.C.J. No. 39; and *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235.

[13] For these reasons, the application will be dismissed. There will be no serious question of general importance to certify.

ORDER

THIS COURT ORDERS that:

1. The application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada, determining that the applicants were not Convention refugees or otherwise in need of protection, is dismissed.
2. There is no serious question of general importance to certify.

“Sean Harrington”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4567-07

STYLE OF CAUSE: ALEXEY LOSHKARIEV, SILIGIZ LOSHKAREV,
ALFRED LOSHKAREV, SOFIA LOSHKAREV,
BERENIKA LOSHKAREV, EMILIA LOSHKARIEV v.
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

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**REASONS FOR ORDER
AND ORDER:** Harrington J.

DATED: May 22, 2008

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