Federal Court		Cour fédérale

Date: 20090320

Docket: IMM-3538-08

Citation: 2009 FC 285

Ottawa, Ontario, March 20, 2009

PRESENT: The Honourable Mr. Justice Orville Frenette

BETWEEN:

ANTRANIK MAKSOUDIAN,
ARDA AGOPJIAN,
ANI MAKSOUDIAN,
KRIKOUR MARKSOUDIAN

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision by the Refugee Protection Division of the Immigration and Refugee Board (panel), dated July 14, 2008, that the applicants are neither "Convention refugees" nor "persons in need of protection" under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. (2001), c. 27 (Act).

Facts

[2] The evidence in the record shows that the applicants, a man, a woman and their two adult children, are citizens of Syria who came to Canada in 2005. They claim that they were persecuted by Syrian society in general because they are Christians. The vast majority of the population is Muslim.

[3] According to the "U.S. Department of State, Country Reports on Human Rights Practices" issued on March 11, 2008, the Constitution of Syria provides for freedom of religion. However, this report discloses human rights abuses, violence and discrimination against women. Specifically, the applicants allege that they were harassed on many occasions by the Muslim majority in Syria. They claim that they were discriminated against by the police, jeered at by strangers in the street and threatened with assault. The female applicants also claim that they were victims of harassment and unwanted sexual touching.

Impugned decision

[4] The panel recounted the factual versions, as presented by the applicants. The applicants' credibility was not questioned, and therefore their narrative appeared to be true. However, further to the analysis of the specific situation of the applicants and that of the country in general, as revealed in the general documentation, the panel found that the events experienced, even taken cumulatively, did not amount to persecution.

[5] In short, it was a situation commonly experienced by Christians in that country. Consequently, their situation did not amount to persecution within the meaning of the Act.

Standard of judicial review

[6] This decision is a question of mixed fact and law and is consequently subject to the reasonableness standard (*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190; *Liang v. Minister of Citizenship and Immigration*, 2008 FC 450, at paragraphs 12 to 15). The Supreme Court of Canada defined the nature of this standard in the recent decision *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, stating that the reasonableness standard meant that deference was owed to the decisions of administrative tribunals.

Issue

[7] Was the decision reasonable?

Analysis

[8] The applicants rely on the following ground to impugn the decision, namely, that the panel did not comply with the Convention standards concerning persecution.

[9] The Geneva Convention relating the Status of Refugees defines persecution. Specifically, it emphasizes the importance of analyzing the subjective and objective elements of a situation to determine whether the circumstances are such that they amount to persecution (*Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, UNHCR, document HCR/1P/4/ENG/REV.1 (1992)) :

> 41. Due to the importance that the definition attaches to the subjective element, an assessment of credibility is indispensable where the case is not sufficiently clear from the facts on record. It will be necessary to take into account the personal and family background of the applicant, his membership of a particular racial, religious, national, social or political group, his own interpretation of

> his situation, and his personal experiences – in other words, everything that may serve to indicate that the predominant motive for his application is fear. Fear must be reasonable. Exaggerated fear, however, may be well-founded if, in all the circumstances of the case, such a state of mind can be regarded as justified.
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> 42. As regards the objective element, it is necessary to evaluate the statements made by the applicant. The competent authorities that are called upon to determine refugee status are not required to pass judgement on conditions in the applicant's country of origin. The applicant's statements cannot, however, be considered in the abstract, and must be viewed in the context of the relevant background situation. A knowledge of conditions in the applicant's country of origin – while not a primary objective – is an important element in assessing the applicant's credibility. In general, the applicant's fear should be considered well-founded if he can establish, to a reasonable degree, that his continued stay in his country of origin has become intolerable to him for the reasons stated in the definition, or would for the same reasons be intolerable if he returned there.

[10] The Convention also stresses the difference between persecution and discrimination, as follows:

> 54. Differences in the treatment of various groups do indeed exist to a greater or lesser extent in many societies. Persons who receive less favourable treatment as a result of such differences are not necessarily victims of persecution. It is only in certain circumstances that discrimination will amount to persecution. This would be so if measures of discrimination lead to consequences of a substantially prejudicial nature for the person concerned, e.g. serious restrictions on his right to earn his livelihood, his right to practise his religion, or his access to normally available educational facilities.
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> 55. Where measures of discrimination are, in themselves, not of a serious character, they may nevertheless give rise to a reasonable fear of persecution if they produce, in the mind of the person concerned, a feeling of apprehension and insecurity as regards his future existence. Whether or not such measures of discrimination in themselves amount to persecution must be determined in the light of all the circumstances. A claim to fear of persecution will of course be stronger where a person has been the victim of a number of discriminatory measures of this type and where there is thus a cumulative element involved.

[11] Although the panel found the applicants' account of the events they experienced to be credible, the panel could not find, based on the inferences drawn from these facts, that the applicants had a reasonable fear of persecution if they were to return to their country.

[12] According to the case law, for the mistreatment suffered or anticipated to be considered persecution, it must meet two criteria: it must be serious and it must be repetitive or systematic.

[13] First, the mistreatment must be serious, as set out by the Supreme Court of Canada in *Chan v. Canada (M.E.I.)*, [1995] 3 S.C.R. 593 :

> 69 This approach is, in my view, eminently sensible. It returns the focus of a refugee hearing to the essential question of whether the claimant's basic human rights are in fundamental jeopardy. This point was underscored in *Ward* where it was stated, at p. 733, that "[u]nderlying the Convention is the international community's commitment to the assurance of basic human rights without discrimination". In that case, this Court endorsed an approach in which the concern of refugee law ought to be the denial of human dignity in any key way with the sustained or systemic denial of core human rights as the appropriate standard. The Court there noted, at pp. 733-34:
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> > This theme sets the boundaries for many of the elements of the definition of "Convention refugee". "Persecution", for example, undefined in the Convention, has been ascribed the meaning of "sustained or systemic violation of basic human rights demonstrative of a failure of state protection"; see Hathaway [*The Law of Refugee Status* (Toronto: 1991)], at pp. 104-5. So too Goodwin-Gill [*The Refugee in International Law* (Oxford: 1983)], at p. 38 observes that "comprehensive analysis requires the general notion (of persecution) to be related to developments within the broad field of human rights". This has recently been recognized by the Federal Court of Appeal in the *Cheung* case.

> 70 Both *Canada (Minister of Employment and Immigration) v. Mayers*, [1993] 1 F.C. 154, and *Cheung* were approved in *Ward* for developing tests making the consideration of basic human rights the appropriate focus of a refugee inquiry. It was noted that groups defined by a characteristic that is changeable or from which disassociation is possible, so long as neither option requires renunciation of basic human rights, were beyond Canada's obligation and responsibility. The essential question is whether the persecution alleged by the claimant threatens his or her basic human rights in a fundamental way. This question must be asked of the present appellant's allegations.

[14] Second, the mistreatment must be repetitive or systematic, and not consist of isolated acts (*Rajudeen v. Canada (M.E.I.)* (1984), 55 N.R. 129 (F.C.A.)):

> [14] The first question to be answered is whether the applicant had a fear of persecution. The definition of Convention Refugee in the *Immigration Act* does not include a definition of "persecution". Accordingly, ordinary dictionary definitions may be considered. The *Living Webster Encyclopedic Dictionary* defines "persecute" as:
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> "To harass or afflict with repeated acts of cruelty or annoyance; to afflict persistently, to afflict or punish because of particular opinions or adherence to a particular creed or mode of worship."
>
> The *Shorter Oxford English Dictionary* contains *inter alia*, the following definitions of "persecution":
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> "A particular course or period of systematic infliction of punishment directed against those holding a particular (religious belief); persistent injury or annoyance from any source."

[15] I believe, as the respondent argues, that the events, although unfortunate, cannot be considered to amount to persecution. These events are not “serious” within the meaning of the Convention; these events simply cannot be considered a sustained or systemic denial of core human rights as set out in *Chan*, above.

[16] I wish to point out that a reading of the record discloses no objective evidence to corroborate the female applicant's account as to her personal or even general risk of being a victim of public assault.

[17] In addition, the panel asked the applicants about this objective evidence in order to reconcile it with the facts; specifically, they were questioned about the fact that "there was little evidence of societal discrimination or violence against religious minorities", but the applicants had no comment. Their counsel explained, however, that this lack of evidence is due to the fact that people do not complain because the message in the Armenian community is that there would be no use in doing so; therefore, in addition to a fear of persecution by Syrian society in general because of their religion, the applicants have a fear of going to the authorities (panel record at pages 576 to 578).

[18] Essentially, the applicants are arguing that, as part of the Christian minority in a country with a Muslim majority, they have been victims of harassment, assault and threats by [TRANSLATION] "certain Muslims". The result is a family living in a state of distress, resulting in symptoms of severely traumatic anxiety that may compromise their mental health. The problem with this reasoning as justification for judicial review is that it would generally apply to all Christians in Syria, a proposal that would be unacceptable (see *Makhtar et al. v. Minister of Citizenship and Immigration*, 2004 FC 16, concerning the situation of Christians in Syria).

[19] It is well established that, in law, harassment does not constitute persecution, unless the above-mentioned conditions are established by the evidence, which was not the case here. The only issue is to decide whether the decision falls within the range of outcomes that are defensible by a reasonable analysis of the evidence (see *Dunsmuir*, above).

[20] In my opinion, the decision meets this standard; consequently, the application cannot be allowed.

JUDGMENT

The application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board dated July 14, 2008, is dismissed.

No question will be certified.

"Orville Frenette"
Deputy Judge

Certified true translation
Susan Deichert, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3538-08
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