Federal Court  Cour fédérale

Date: 20110728

Docket: IMM-6202-10

Citation: 2011 FC 947

Ottawa, Ontario, July 28, 2011

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

RANDY GHANUOM
JOANA GHANUOM
REUVEN GHANUOM
RIMI GHANUOM

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] Mr. Ghanuom, his wife and their two children, claimed their refugee status based on his fear of persecution in both Lebanon and Israel. Although he and his wife are dual citizens, their children are only citizens of Israel. Consequently, the member of the Refugee Protection Division, of the Immigration and Refugee Board of Canada, who heard the matter first considered the basis of fear of persecution should they be returned to Israel.

[2] She dismissed their claim, and so did not consider it necessary to assess the situation in Lebanon. This is a judicial review of that decision.

[3] Mr. Ghanuom fears Hezbollah in Lebanon because of his prior involvement in the South Lebanese Army, considered to be pro-Israeli. In Israel, he fears the Secret Service, the Mossad, who will harass and put pressure on him because he refused to become an informant for them, because of alleged links with sympathizers of the Hezbollah; he also fears mistreatment by both Arabic Israelis, who consider them as traitors, and by Jewish Israelis because of their Christian faith.

Issues

[4] The applicants raise two issues:

a. a lack of procedural fairness; and

b. the decision does not meet the reasonableness standard of review as described in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190.

[5] If the hearing was tainted with procedural unfairness, then it should be set aside for that reason alone, as it is not up to this Court to speculate what the outcome would otherwise have been (*Cardinal v Kent Institution*, [1985] 2 SCR 643, [1985] SCJ No 78 (QL)).

Procedural Unfairness

[6] The allegation of procedural unfairness arises from the fact that at the second of three hearings the member stated that she had forgotten her notes from the first hearing, and had to be reminded of exactly where they were in the proceedings. There was no request for an adjournment at the time, and the reasons do not give any hint of confusion on the member's part. If necessary, it was open for her to listen to the tape of the proceedings, as indeed the applicants had done in their application for leave.

[7] Applicants cite the decision of Madam Justice Layden-Stevenson, as she then was, in *Gondi v Canada (Minister of Citizenship and Immigration)*, 2006 FC 433, 147 ACWS (3d) 860, at paragraph 17. However, I do not consider that decision helpful in that it deals with a situation in which one could not have raised the lack of procedural fairness until receipt of the decision.

[8] In my opinion, the hearing was not tainted by procedural unfairness.

Was The Decision Reasonable?

[9] The member dealt with the various allegations and determined that they constituted evidence of discrimination and harassment, but not persecution, even if considered cumulatively.

[10] One allegation is that they were mistreated by neighbours who threw oil and coffee on their clothes. Yet Mrs. Ghanuom testified that although the police were called and arrived, they did not investigate because a neighbour declared that it had been children who had spilled the oil. The member found there was not much the police could have done in the absence of witnesses and with contradictory versions of the incident. However, the fact that they answered the claimant's call and came to her house demonstrated an intention to act.

[11] Mr. Ghanuom alleged that he was unable to secure stable employment due to his nationality and religion. Yet he was constantly employed while in Israel.

[12] As regards the children being physically assaulted and robbed by other children at school and in the neighbourhood, the claimants did not previously mention having complained about this treatment.

[13] Apparently, difficulty was experienced in finding a daycare for son Reuven, who suffers from a speech impairment. However, the member was not satisfied that his nationality and religion were the cause of the refusal to take him. There may well have been a lack of appropriate resources.

[14] Although pressured by Mossad, Mr. Ghanuom was not physically mistreated and the member considered that such treatment, however unpleasant, did not constitute persecution.

[15] The panel's view of persecution is fuelled by *Ward v Canada*, [1993] 2 SCR 689, [1993] SCJ No 74, a decision a Mr. Justice La Forest, at page 734:

> "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"

[16] The findings of the RPD members are entitled to deference. As stated by Mr. Justice Evans in *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35, [1998] FCJ No 1425 at paragraph 14:

> It is well established that section 18.1(4)(d) of the *Federal Court Act* does not authorize the Court to substitute its view of the facts for that of the Board, which has the benefit not only of seeing and hearing the witnesses, but also of the expertise of its members in assessing evidence relating to facts that are within their area of specialized expertise. In addition, and more generally, considerations of the efficient allocation of decision-making resources between administrative agencies and the courts strongly indicate that the role to be played in fact-finding by the Court on an application for judicial review should be merely residual. Thus, in order to attract judicial intervention under section 18.1(4)(d), the applicant must satisfy the Court, not only that the Board made a palpably erroneous finding of material fact, but also that the finding was made "without regard to the evidence": see, for example, *Rajapakse* v. *Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 649 (F.C.T.D.); *Sivasamboo* v. *Canada (Minister of Employment and Immigration)*, [1995] 1 F.C. 741 (F.C.T.D.).

See also *Stein v "Kathy K"*, [1976] 2 SCR 802, [1975] SCJ No 104 (QL) at page 807.

[17] The member's findings and conclusions were not unreasonable and should not be disturbed.

ORDER

THIS COURT ORDERS that

1. The application for judicial review is dismissed.

2. There is no serious question of general importance to certify.

"Sean Harrington"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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