Federal Court  Cour fédérale

Date: 20120612

Docket: IMM-7150-11

Citation: 2012 FC 705

Ottawa, Ontario, this 12th day of June 2012

Present: The Honourable Mr. Justice Pinard

BETWEEN:

Gwang Su LEE, Su Mi HONG, aka Sumi HONG and Hana LEE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review by Gwang Su Lee, his wife Su Mi Hong (aka Sumi Hong) and their minor daughter Hana Lee (the "applicants"), citizens of South Korea, of the decision of the Refugee Protection Division of the Immigration and Refugee Board (the "Board"), pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act"). The Board rejected the applicants' claim for refugee protection under the Act.

[2] The Board concluded that the applicants lacked credibility; that they did not subjectively fear returning to South Korea; and that in any event, state protection exists in that country.

[3] The applicants allege that they were not given a reasonable opportunity to present their evidence at the hearing after the Minister and the Member finished asking their questions. Thus, the only question before this Court is whether the Board conducted its hearing in accordance with the principles of procedural fairness:

> *Did the Board breach the principles of procedural fairness by denying the applicants an opportunity to testify in response to matters raised during questioning by the Board and the Minister?*

[4] As this Court owes no deference on questions of procedural fairness, the applicable standard of review is correctness (see *Sketchley v. Attorney General*, 2005 FCA 404, at paragraph 53).

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[5] The applicants assert that they were denied a fair hearing, being deprived of the opportunity to respond to the questions that were put to them.

[6] Further, they argue that administrative decision-makers owe a heightened duty of fairness when dealing with unrepresented litigants, relying on *Nemeth v. Minister of Citizenship and Immigration*, 2003 FCT 590, where Justice James O'Reilly held at paragraph 13 that:

> . . . the Board's obligations in situations where claimants are without legal representation may actually be more onerous because it cannot rely on counsel to protect their interests.

[7] The applicants contend that the Board failed to sufficiently protect their procedural rights. They argue that the Board did not allow them to provide evidence after questioning, which was unfair, considering they were consequently not given the opportunity to explain why they did not seek state protection in Korea and explain their side of the story in order to help the Board understand the apparent inconsistencies in their evidence.

[8] The applicants finally submit that the Member should have offered them an opportunity to lead their own evidence in chief and that her failure to permit them to do so constituted a reviewable error.

[9] The respondent concedes that the principles of fundamental justice required the Board to provide the applicants with an opportunity to tell their story in full, to adduce evidence in support of their claim, and to make relevant submissions. However, the respondent submits that they did have such an opportunity, as illustrated by the transcript of the hearing.

[10] The respondent contends that there is no indication in the transcript that the applicants wished to further testify at the end of the Board's questions, nor have they adduced affidavit evidence to that effect. In any event, the respondent submits that the Member asked them at the end of the hearing whether they had anything to add, and they did make additional representations.

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[11] The real issue is whether the Board's request for final comments by the applicants at the time of the hearing provided them with an opportunity to lead their own evidence. In my opinion, the Board's request for final comments was sufficient and allowed the applicants to adduce their own evidence.

[12] The authorities establish that unrepresented litigants before the Board are owed a heightened duty of fairness. However, the transcript of the hearing reveals that the applicants were provided with the chance to present their side of the story. At the beginning of the hearing, the Board explained to the applicants that after its questions and the Minister's, the applicants would "have an opportunity to add anything else that's relevant to [their] claim". After the Minister's final representations, the Board invited them "to say why, based on the evidence and the law, … [they] should be granted refugee protection in Canada".

[13] The applicants' response to the latter invitation makes clear that they understood that they were entitled to comment on the sufficiency of the evidence already in the record and to bring new evidence to the Board's attention, as illustrated by the following passage from Gwang Su Lee's final remarks during the hearing:

> Counsel stated that there is no evidence that we met CIA in the United States, but when we met them, we asked for confirmation or some kind of documentation with their signature on for permanent residence but they told us that because they are the secret agency they cannot leave any evidence. . . .

[14] The Board is not bound by strict rules of evidence. It is accordingly not material that the applicants' opportunity to adduce their own evidence came at the "representations" stage rather than

immediately after the Board had finished asking its questions. The applicants had a chance to comment on the evidence in the record and to call new evidence, which they did.

[15] Moreover, the record is bereft of evidence that the applicants were not permitted to explain why they did not seek state protection in Korea, or to account for the apparent inconsistencies in their evidence. Again, the transcript evinces that the applicants had those opportunities, and the applicants failed to provide any evidence to the contrary.

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[16] As the applicants have not demonstrated a reviewable procedural error, this application for judicial review is dismissed.

[17] No question for certification was proposed and none is certified.

JUDGMENT

The application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board rejecting the applicants' claim for refugee protection under the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, is dismissed.

"Yvon Pinard"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7150-11
STYLE OF CAUSE:	Gwang Su LEE, Su Mi HONG, aka Sumi HONG and Hana LEE v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	May 10, 2012
REASONS FOR JUDGMENT AND JUDGMENT:	Pinard J.
DATED:	June 12, 2012

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