

**Date: 20080215**

**Docket: IMM-626-07**

**Citation: 2008 FC 195**

**Ottawa, Ontario, February 15, 2008**

**PRESENT: The Honourable Mr. Justice Phelan**

**BETWEEN:**

**NADEEM IMTIAZ AHMED  
HINA NADEEM**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. INTRODUCTION**

[1] The principal Applicant, Mr Ahmed, and his wife, claimed protection on the basis of a fear of persecution for political affiliation. The central issue in the RPD's decision was exclusion pursuant to Article 1(E) of the *Refugee Convention*, as incorporated into s. 98 of the *Immigration and Refugee Protection Act*.

The relevant provisions read:

Refugee Convention, Article 1

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

Immigration and Refugee Protection Act

**98.** A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.

**98.** La personne visée aux sections E ou F de l'article premier de la Convention sur les réfugiés ne peut avoir la qualité de réfugié ni de personne à protéger.

II. BACKGROUND

[2] The Applicant claimed that his father was jailed because of his military position and support of the leader of the Pakistan Muslim League – who was also the prime minister toppled by the Pakistani military. The Applicant was also convicted in absentia and his name placed on the Exit Control List because of his father's political affiliation.

[3] In 2000 the Applicant, through an immigration lawyer in Dubai, secured the "sponsorship" of a U.A.E. citizen for payment of an annual fee. The "sponsorship" resulted in the Applicant securing a residency permit valid from September 17, 2000 to September 16, 2003. The permit becomes invalid if the holder of it resides outside the U.A.E. for more than six months.

[4] The Applicant and his wife then lived in Saudi Arabia for 3½ months before coming to Canada.

[5] Arriving in Canada in November 2000 as visitors, they obtained student visas. The Applicant's wife returned to Pakistan in 2003 at which time she was detained and questioned about her husband's whereabouts. Upon her return to Canada, they both filed a refugee claim.

### III. ANALYSIS

[6] The Applicant explained that the reason for leaving the U.A.E. was because it was close to Pakistan. The Refugee Protection Division (RPD) rejected, quite reasonably, this explanation as being sufficient for a refugee claim.

[7] However, in my view, the RPD did not focus on the issue of whether the Applicant had the rights and responsibilities of a national in the U.A.E. The right to work and the right to a health card are attributes of the rights of a national but they are not the sole rights to consider (see *Canada (Minister of Citizenship and Immigration) v. Choovak*, 2002 FCT 573).

[8] The RPD failed to have before it clear evidence of the rights of U.A.E. nationals, as compared to the rights of the Applicant, before it made its determination. Therefore, the decision of the RPD is not reasonable in these circumstances.

IV. CONCLUSION

[9] This judicial review will be granted, the RPD's decision quashed and the matter remitted to the RPD for a new determination by a differently constituted panel.

[10] There is no question for certification.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** this application for judicial review is granted, the RPD's decision is quashed and the matter is to be remitted to the RPD for a new determination by a differently constituted panel.

“Michael L. Phelan”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-626-07

**STYLE OF CAUSE:** NADEEM IMTIAZ AHMED  
HINA NADEEM

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 15, 2008

**APPEARANCES:**

Mr. Michael Korman FOR THE APPLICANTS

Mr. David Tyndale FOR THE RESPONDENT

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