

**Date: 20080617**

**Docket: IMM-2482-07**

**Citation: 2008 FC 747**

**Toronto, Ontario, June 17, 2008**

**PRESENT: The Honourable Maurice E. Lagacé**

**BETWEEN:**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Applicant**

**and**

**DHRUV NAVICHANDRA PATEL**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Introduction**

[1] This is an application, pursuant to s. 72 of the *Immigration and Refugee Protection Act* S.C. 2001, c. 27 (Act) of a decision, dated March 5, 2007, wherein the Board determines that the respondent is a Convention refugee and a Person in need of protection.

## II. Overview

[2] “I am afraid I will have no where to live. Afraid of having no caregiver in India.”

(Applicant’s Background Information, Schedule 1, Tribunal Record p. 114).

[3] Usually, more than half of any refugee populations are children. Refugee children are children first and foremost, and as children, they need special attention. As refugees, they are particularly at risk.

*Children are vulnerable.* They are susceptible to disease, malnutrition and physical injury.

*Children are dependent.* They need the support of adults, not only for physical survival, particularly in the early years of childhood, but also for their psychological and social well-being.

*Children are developing.* They grow in developmental sequences, like a tower of bricks, each layer depending on the one below it. Serious delays interrupting these sequences can severely disrupt development.

Refugee children face far greater dangers to their safety and well being than the average child. The sudden and violent onset of emergencies, the disruption of families and community structures as well as the acute shortage of resources with which most refugees are confronted, deeply affect the physical and psychological well being of refugee children. It is a sad fact that infants and young children are often the earliest and most frequent victims of violence, disease and malnutrition which accompany population displacement and refugee outflows. In the aftermath of emergencies and in the search for solutions, the separation of families and familiar structures continue to affect adversely refugee children of all ages. Thus, helping refugee children to meet their physical and social needs often means providing support ...[Emphasis added]

(UN High Commissioner for Refugees, *Refugee Children: Guidelines on Protection and Care*, 1994)

### III. The Facts

[4] Citizen of India, the respondent, is a 13 year old boy named Dhruv Navichandra Patel. His father left Grandhinigar, Gujarat, India for the United States in 1994. His mother joined in 1996 leaving the respondent, then a baby, with his grandparents in India.

[5] The respondent's parents continue to live without status in the United States. After the death of the respondent's grandfather in 1998, the respondent's uncle, who has legal status in the United States, makes provisions to sponsor the respondent's grandmother.

[6] The respondent's grandmother arranges to have a man, unknown to the minor respondent, take him from Gujarat to Mumbai where he boards an airplane with two men he does not know and flies to Canada. The respondent is instructed to say that his name is Mohamed Doma, and is given a birth date and age.

[7] The respondent arrives in Canada at Pearson International Airport on November 24, 2004 using a fraudulent Canadian passport in the name of one Mohamed Doba. He is in the company of two smugglers; one who was a known criminal to the Canadian airport authorities. No letter of permission to travel with the child is presented to the airport authorities. And since his arrival in Canada the respondent is placed and remains in the care of the Children's Aid Society of Peel (CASP) where his true identity is later revealed.

[8] His designated representative for the purposes of his refugee hearing is his child protection worker, Mohamed Shaw, a primary witness at the hearing of the claim for protection.

[9] Both the CASP and the Refugee Division consider the respondent to be an abandoned child with no family in India.

#### IV. Issue

[10] Does the Board err in law when it determines the minor respondent to be a Convention refugee and a person in need of protection?

#### V. Preliminary issue: Unaccompanied minors

[11] The United Nations Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (GA Res. 2198 (XXI), UNHCR (1951); UNHCR Handbook) specifically addresses the question of unaccompanied minors and what a decision maker must consider when determining if a minor child is a Convention Refugee:

214. The question of whether an unaccompanied minor may qualify for refugee status must be determined in the first instance according to the degree of his mental development and maturity. In the case of children, it will generally be necessary to enroll the services of experts conversant with child mentality. A child--and for that matter, an adolescent--not being legally independent should, if appropriate, have a guardian appointed whose task it would be to promote a decision that will be in the minor's best interests. In the absence of parents or of a legally appointed guardian, it is for the authorities to ensure that the interests of an applicant for refugee status who is a minor are fully safeguarded.

215. Where a minor is no longer a child but an adolescent, it will be easier to determine refugee status as in the case of an adult, although this again will depend upon the actual degree of the adolescent's maturity. It can be assumed that--in the absence of indications to the contrary--a person of 16 or over may be regarded as sufficiently mature to have a well-founded fear of persecution. Minors under 16 years of age may normally be assumed not to be sufficiently mature. They may have fear and a will of their own, but these may not have the same significance as in the case of an adult.

216. It should, however, be stressed that these are only general guidelines and that a minor's mental maturity must normally be determined in the light of his personal, family and cultural background.

217. Where the minor has not reached a sufficient degree of maturity to make it possible to establish well-founded fear in the same way as for an adult, it may be necessary to have greater regard to certain objective factors. Thus, if an unaccompanied minor finds himself in the company of a group of refugees, this may--depending on the circumstances--indicate that the minor is also a refugee.

218. The circumstances of the parents and other family members, including their situation in the minor's country of origin, will have to be taken into account. If there is reason to believe that the parents wish their child to be outside the country of origin on grounds of well-founded fear of persecution, the child himself may be presumed to have such fear.

219. If the will of the parents cannot be ascertained or if such will is in doubt or in conflict with the will of the child, then the examiner, in cooperation with the experts assisting him, will have to come to a decision as to the well-foundedness of the minor's fear on the basis of all the known circumstances, which may call for a liberal application of the benefit of the doubt. [Emphasis added]

[12] This is in brief the setting in which this Court is called to review the Board's decision.

## VI. Standard of Review

[13] Only two standards of review are now recognized: reasonableness and correctness

(*Dunsmuir v. New Brunswick*, [2008] S.C.J. No. 9, at paragraph. 34).

[14] The question of whether the officer applied the correct test is reviewable on the correctness standard, while the deferential standard of reasonableness continues to be appropriate standard of review for a humanitarian and compassionate decision as a whole, given the discretionary nature of a humanitarian and compassionate decision and its factual intensity, (*Zambrano v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 601 (QL)).

[15] The Court must now apply the appropriate standard of review to each asserted error.

## VII. Standard of Proof

[16] The applicant submits that the Board confuses in its decision the standard of proof for sections 96 and 97 of the Act, and errs as a result in its application of the requisite standard in this case, when it concludes that the evidence has established:

... that there is a 'reasonable chance' or 'serious possibility' that this child would be will be persecuted by reason of his membership in a particular social group, an abandoned child, should he return to India with no caregiver and that using the same standard of proof, that such consequences constitute cruel and unusual treatment

[17] The applicant submits that the Board uses the wrong legal test when it considers s. 97 of the Act, and that the Board should have applied the standard set out in *Li v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 1 (QL) [Li].

[18] The respondent acknowledges that the standard of review is correctness when considering if a tribunal has applied the proper legal test to section 97 of the Act, but submits that the issue as to whether the Board applied the proper test when they determined the minor child to be a person in need of protection is moot. Furthermore, they note that the standard set out in *Li* only applies to section 97 of the Act, while here the minor child was found to be a Convention refugee pursuant to s. 96 of the Act.

[19] When referring to persecution, the Board refers in fact specifically to s. 96 of the Act, for which the correct legal test is in fact “reasonable chance” or “serious possibility”. Therefore, this Court finds that the Board applies in its decision the correct test with respect to s. 96.

[20] In order to qualify as a “protected person” the respondent needs to satisfy the Board only that he meets the requirements of either s. 96 or s. 97, not both. If he meets the legal threshold required for s. 96, then any error with respect to s. 97 is moot.

## VIII. Analysis

### A. *No Evidence of Subjective Fear*

[21] The applicant submits that there cannot be finding that a person is a refugee under section 96 unless that person demonstrates that he/she has subjective fear of persecution and that his/her fear is objectively well-grounded. In finding that the minor child “meets the standard under both sections of the Act [...] on the basis of being a member of a particular social group, an abandoned child [and] a child at risk of cruel and unusual treatment or punishment”, according to the applicant the Board erroneously did not “expect that the [minor child] would have a subjective fear of returning” because, until he left, he had lived with his grandmother without any problems.

[22] Furthermore, the applicant’s submits that the Board has no basis in law to find that the minor child is a Convention refugee, as described in section 96 of the Act, if there is no evidence of subjective fear of persecution until he left India, and if the Board is unprepared to ascertain whether he has any such fears if returned in the future.

[23] The applicant also insists that it is not open to the Board to simply assume, without any evidence, that the minor child fears going back to India; and that it is one thing for the Board to be more flexible when assessing the subjective fear element of a child’s claim, as recommended by the Guideline on Children Refugee Claimants (the Guideline) [*“Child Refugee Claimants, Procedural and Evidentiary Issues”*, 30 September 1996, *Guidelines on Children Refugee Claimants*], and the jurisprudence, and another to assume, without evidence, the existence of subjective fear. Consequently, the applicant submits that the Board errs in making that unfounded assumption.



[24] The respondent submits that as a matter of fact, the minor child is thirteen years old, and it is not reasonable to expect a child of that age to:

- a. comprehend the circumstances that he would find upon his return to India;
- b. understand the consequences of returning to India;
- c. be able to articulate such factors;
- d. be able to articulate his fear.

[25] These concerns are addressed in the Guidelines, as follows:

In general, children are not able to present evidence with the same degree of precision as adults with respect to context, timing, importance and details. They may be unable, for example, to provide evidence about the circumstances surrounding their past experiences or their fear of future persecution. In addition, children may manifest their fears differently from adults.

[And]

2. A child claimant may not be able to express a subjective fear of persecution in the same manner as an adult claimant. Therefore, it may be necessary to put more weight on the objective rather than the subjective elements of the claim the Federal Court of Canada (Appeal Division), in *Yusuf v. Canada (Minister of Employment and Immigration)* (C.A.), [1992] 1 F.C. 629 (QL) [*Yusuf*], at paragraph 5, has said the following on this issue:

... I am loath to believe that a refugee status claim could be dismissed solely on the ground that as the claimant is a young child ... he or she was incapable of experiencing fear the reasons for which clearly exist in objective terms.

[26] Although there is a great deal of case law addressing the requirement that a claimant must show that he has both a subjective and an objective fear of persecution, this jurisprudence is overwhelmingly directed to situations where a claimant has not been able to establish that the fear is objectively well-founded. In such a circumstance the Court, and the Board, have stated that it is not

enough for the applicant to be afraid, there must be an objective reason for him or her to be afraid.

In such cases, the subjective fear is at best a secondary consideration.

[27] It is a much rarer case where a claimant has good reason to be afraid, but is not. In such cases the claimant would have to be incompetent, exceptionally committed to a cause, or foolhardy. It is unlikely that many people who fit the latter two categories would make a refugee claim in the first place.

[28] The upshot of the applicant's submission is that all persons who are incompetent will, by reason of that incompetence, be unable to qualify as Convention refugees. This will include most children and anyone who is incompetent by reason of mental disability (including those whose mental disability was due to trauma caused by persecution).

[29] Where a claimant is deemed incompetent whether by age or disability, the claimant may not be able to articulate their fear in a rational manner. Moreover, most children cannot be required to swear an oath to tell the truth, because it is presumed that a child is not able to understand the nature of an oath. Although children can give evidence in legal proceedings, their evidence is to be approached with care. Under such circumstances, even if a child did testify that he/she is afraid, that testimony would be subject to care by the decision maker and may be significantly discounted if the child does not have a full appreciation of the circumstances (*Yusuf*, above).

[30] In the context of persecution it may be contrary to the child's interests and health to inform the child of the risks the child faces upon return to his home country. It may also be injurious to the child to require the child to anticipate the harms that could be visited upon the child should he/she return to the home country.

[31] The Board addresses this issue squarely:

The child was not asked whether he had a fear of returning to India to live in an orphanage, which is what he would be required to do should he be returned to India. Neither should a child be expected to contemplate such changed circumstances. An unaccompanied child claimant is by virtue of that status a child who may be at risk. In assessing the evidentiary issues in the claim, I rely on the objective component of the claim and the documentary evidence, rather than any subjective elements of fear.

[32] The Immigration and Refugee Tribunal has been accepting child refugees for many years without requiring them to specifically articulate a subjective fear. In most such cases, a child's subjective fear is articulated, on their behalf, by parents who are present and acts as the child's designated representative, or the fear is inferred from the evidence. This is what happened in the case at bar, except that the designated representative was not a parent but rather a professional child protection worker.

[33] Where a claimant is not competent, whether by age or disability, and the evidence establishes an objective basis for his fear, it is sufficient that the designated representative establish a subjective fear in his role as designated representative (*in loco parentis*), or that the subjective fear be inferred from the evidence.

[34] The argument set forward by the applicant would result in a circumstance where children must be routinely rejected as Convention refugees even where the risk to the child has been clearly established. It would create an absurd result.

[35] Moreover, children would be routinely rejected even if their older family members had been accepted on the same facts.

[36] As noted above, the case law requiring both subjective and objective fear overwhelmingly address circumstances opposite to the case at bar. In those cases the claimant does have a subjective fear, but the case law makes it clear that that is not enough. The claimant must establish an objective basis. Those cases do not address the scenario where the claimant's fear has an objective basis but does not have a subjective fear. Therefore, the findings of the Court in those cases with respect to subjective fear are *obiter dicta*.

[37] The issue was addressed by the Federal Court of Appeal in *Yusuf* above at paragraph 5 as follows:

.... It is true, of course, that the definition of a Convention refugee has always been interpreted as including a subjective and an objective aspect. The value of this dichotomy lies in the fact that a person may often subjectively fear persecution while that fear is not supported by fact, that is, it is objectively groundless. However, the reverse is much more doubtful. I find it hard to see in what circumstances it could be said that a person who, we must not forget, is by definition claiming refugee status could be right in fearing persecution and still be rejected because it is said that fear does not actually exist in his conscience. The definition of a refugee is certainly not designed to exclude brave or simply stupid persons in favor of those who are more timid or more intelligent. Moreover, I am loath to believe that a

refugee status claim could be dismissed solely on the ground that as the claimant is a young child or a person suffering from a mental disability, he or she was incapable of experiencing fear the reasons for which clearly exist in objective terms.

[38] The Court therefore finds that the Board is not unreasonable or incorrect when it fails to explicitly address the subjective fear of the minor child. It was open to the Board to infer the subjective fear of the minor child from the evidence presented, including the testimony of the child's designated representative who was speaking on his behalf.

#### *B. Persecution*

[39] The applicant submits that the Board refers to irrelevant considerations when assessing "persecution", and in support of this issue focuses upon the Board's references to education and health care.

[40] But these factors cannot be considered in the abstract as the applicant does, but rather in the context of the specific case at bar. And the Board here does not rely solely upon education and health care, but upon the evidence of a CASP's worker who also acted as the minor child's designated representative. The Board found him to be "an excellent witness" who "has been very forthright [and] clearly understands the claim". It described him as a "professional witness".

[41] On the basis of the evidence before it, the Board made the following findings about the situation the minor child would face upon his return to India:

...the Children's Aid Society believes that the child would be at risk should be returned to India in that he would have no care giver, no emotional support and no access to the necessities of life.

...there is no child protection and, as such, a child would not be sent into "the unknown".

... [documentary evidence] report abuse of children in both public and private educational institutions [and]...point to a general malaise in India toward its treatment of the most vulnerable in its society, its children.

[42] Although the applicant focuses on the Board's use of the words "decent education and adequate health care", such comments cannot be read out of context. The Board's concern is that in all of the circumstances of this case, there is a serious possibility that the child would be deprived of "the necessities of life".

[43] As stated above, the Board is required to consider the cumulative effect of the various harms faced by a claimant, and also to consider the harms in the specific context of the claimant, including his age, and a failure to do so could constitute a reviewable error.

[44] The applicant's submissions are formalistic. The word "persecution" is not defined in the definition of a "Convention refugee". Although many decisions of the Court have clarified the meaning of "persecution", these decisions do not encourage a formalistic approach for this term.

[45] The Court has constantly recognized that a tribunal is required to assess the cumulative impact of the hardships faced by the claimant. Therefore, even if none of the individual harms feared by the applicant are persecutory when viewed individually, the combined or cumulative

effect of these harms may be persecutory. In this way, the cumulative effect of “merely” discriminatory acts can amount to persecution. The tribunal is required to assess the circumstances of the claimant, including the claimant’s age, when assessing whether or not the harm feared amounts to persecution.

[46] The Court has also stated that the label applied to the harm is not decisive. A tribunal is required to have substantive regard to the seriousness of the specific harm faced, and sometime the cumulative nature of the persecution suffered by a claimant. (*Vellupillai v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 301 (QL); *Sarmis v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 109 (QL); *Soto v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 1033 (QL)).

[47] When assessing whether or not the Board’s finding on persecution is “unreasonable”, the applicant asks the Court to consider the difficulty of making a distinction between discriminatory acts that amount to persecution and those that do not.

[48] Although the Federal Court of Appeal has observed in *Sagharichi v. Canada (Minister of Employment and Immigration) (F.C.A.)*, [1993] F.C.J. No. 796 (QL) that “the dividing line between persecution and discrimination or harassment is difficult to establish”, this Court has observed, in *Nejad v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 1168 (QL), paragraph 3-4 that:

The case of *Yusuf*, which is a decision of the Federal Court of Appeal, is most important here for the very quotation of Mr. Justice

Hugessen there, *Yusuf v. Minister of Employment and Immigration*, [1992] 1 F.C. 629, in which Mr. Justice Hugessen, at p. 632, is reported as saying:

[...] The CRDD did recognize and the Court agrees that there may be certain circumstances in which the particular characteristics or circumstances of a claimant again, other than those covered by the Convention grounds, might affect the assessment of whether certain acts or treatments are persecutory [...]

[...] One must look at the act and the effect. And in this case, in particular, because of the old age of the applicants, it should have been more obvious to the CRDD panel that the effect upon them was that of persecution.

[49] The Court's decisions in these cases are consistent with the direction provided by the UNHCR Handbook, above, at paragraphs 51 -53 which, under the heading "persecution" sets out the following:

**(b) Persecution**

51. There is no universally accepted definition of "persecution", and various attempts to formulate such a definition have met with little success....

52. Whether other prejudicial actions or threats would amount to persecution will depend on the circumstances of each case, including the subjective element to which reference has been made in the preceding paragraph and the subjective character of fear of persecution requires an evaluation of the opinions and feelings of the person concerned. It is also in the light of such opinions and feelings that any actual or anticipated measures against him must necessarily be viewed. Due to variations in the psychological make-up of individuals and in the circumstances of each case, interpretations of what amounts to persecution are bound to vary.

53. In addition, an applicant may have been subjected to various measures not in themselves amounting to persecution (e.g. discrimination in different forms), in some cases combined with



other adverse factors (e.g. general atmosphere of insecurity in the country of origin). In such situations, the various elements involved may, if taken together, produce an effect on the mind of the applicant that can reasonably justify a claim to well-founded fear of persecution on “cumulative grounds”. Needless to say, it is not possible to lay down a general rule as to what cumulative reasons can give rise to a valid claim to refugee status. This will necessarily depend on all the circumstances, including the particular geographical, historical and ethnological context.

[50] The applicant submits that the Board is required to make a determination based on the evidence, that the CASP’s unsubstantiated belief as to what will happen in India is not determinative of the issues raised by the claim, and that the important issue is whether the evidence shows that the minor child would either be persecuted on a Convention ground, whether he faces a risk of life or torture, or whether he faces the prospect of cruel and unusual treatment or punishment in India. He further submits that there is no evidence to support both findings, and that the Board simply accepted the unsubstantiated and uncorroborated testimony of the designated representative, who in turn claims to have been informed by a “colleague from India”.

[51] First, this is not completely true since the minor child did express, although briefly, his fear of being returned to his home country. Second, the applicant is seeking to have specific harms dealt with in the abstract, although admitting in his Memorandum that “the (Board) was not unreasonable in considering the cumulative effect of the various hardships and the particular circumstances of the respondent, most notably his age and the fact that he has no apparent means of support in India”.

[52] In addition and contrary to the applicant's contention, the Board does not abdicate its duties to the designated representative. Rather the designated representative provided testimony that was subjected to examination by the Board's member.

[53] In addition, the 2007 U.S. Department of State Country Reports on Human Rights Practices notes the following with respect to children in India:

In August 2006 Parliament passed the Juvenile Justice (Care and Protection of Children) Amendment Bill, which is the primary law for not only the care and protection of children but also for the adjudication and disposition of matters relating to children in conflict with law. In 2005, the juvenile justice court ruled that any failure by school management or teachers to protect students from sexual abuse or provide them with a safe school environment is punishable with a prison term of up to six months. Despite these legal protections, there were societal patterns of neglect and physical, sexual, and emotional abuse of children, and child labor was a problem.

In April, the Ministry of Women and Child Development released its first study of child abuse; according to the comprehensive two-year survey, two out of three children were physically abused with a higher percentage reported among children aged five to 12. The states of Andhra Pradesh, Assam, Bihar, and Delhi consistently reported the highest rates of abuse in all forms. Sixty five percent of school-going children reported facing corporal punishment. Fifty-three percent of children reported experiencing one or more forms of sexual abuse; and 22 percent experienced severe sexual abuse.

Trafficking and commercial sexual exploitation of children was a serious problem. According to UNICEF, in 2004 the country supplied half of the one million children worldwide who entered the sex trade.

[54] The evidence before the Board also addresses the life of over 100,000 children in India living on the streets:

Street children are not a new phenomenon. There have always been **children who have been abandoned** or who have run away from home and have turned to the street as a means of survival.

Children end up on the streets for a variety of reasons, often interlinked. Some children have been abandoned, and some have found themselves on the streets because of circumstances. Reasons include the need to work, neglect and/or violence at home, and loss of family contact because of conflict, natural disasters or HIV/AIDS. [Emphasis added]

[55] During the hearing before the Board, the minor child's designated representative confirmed that "there is no caregiver who can provide the care for Dhruv" and that "there is no child protection in India similar to [Canada's]". And when questioned as to whether the minor child's parents could and would be able to have the child sent, with a CASP's representative, to live in the United States he noted that unless the child had a legal status they would not be able to cross the border to the States.

[56] The Board gave weight to the minor child's designated representative's evidence, as it was entitled to do. It explained why it accepted this evidence and why it attributed weight to it. Accepting and giving weight to that type of evidence, far from being an abdication as the applicant argues, constitutes on the contrary an assessment of the proof, and is at the very heart of the role of the decision maker.

[57] For the foregoing, this Court finds that the Board's decision is far from being unreasonable.

*C. Humanitarian and Compassionate Considerations*

[58] The applicant submits that humanitarian and compassionate considerations have no place in the determination of whether or not a claimant is a Convention refugee or a person in need of protection. And that the Board is required to make a determination on the basis of the factors set out in sections 96 and 97 of the Act. Any humanitarian and compassionate factors raised by a particular claimant, such as the best interest of the child, can only be fully considered once a determination is made on the issue whether a claimant merits protection in Canada.

[59] However, the words “humanitarian and compassionate” are not found in the Board’s reasons, although references are made on the other hand to “the best interests of the child”. But as the applicant has acknowledged, the “best interests of the child” are relevant to the procedures followed in such a case.

[60] The Court finds that it is reasonable for the Board in the circumstances of the case at bar to consider the best interests of the child when assessing whether or not he would be required to testify. Under the circumstances the Board concludes that the best reasonably available evidence was that of the minor child’s designated representative, and that assessment was open to the Board.

*D. Chairperson’s Guidelines*

[61] The applicant submits that the Board errs in its application of the *Chairperson’s Guidelines on Child Refugee Claimants*. In that, although it purports to apply these Guidelines, the Board would misunderstand the fact that the Guidelines are designed to deal with procedural and

evidentiary issues; and they are not intended to fill in gaps in a claim or rehabilitate an otherwise unsubstantiated claim simply because the claimant is a child.

[62] On this issue the applicant is simply repeating the submissions made previously, particularly with respect to “subjective fear” and “humanitarian and compassionate” factors, with the attribution of a motive to the alleged error concerning “subjective fear”, namely the Board’s concern about the best interest of the child. This argument does not stand, as a result of this Court finding that the Board’s conclusion with respect to subjective fear is not reviewable.

[63] In addition, the *Guidelines on Children Refugee Claimants* clearly states that “refugee children have different requirements from adult refugees when they are seeking refugee status”. For instance, the Guidelines provide that in determining the procedure to follow when considering the refugee claim of a child, the Board should give primary consideration to the “best interests of the child”. It also states that: “the “best interests of the child” should be given primary consideration at all stages of the processing of these claims”.

[64] This Court finds that the Board’s application of the Guidelines when assessing the minor child’s claim is reasonable.

[65] The parties have submitted no question of general interest to certify. Therefore, no question will be certified.

**JUDGMENT**

**FOR THE FOREGOING REASONS, THIS COURT** dismisses the application.

“Maurice E. Lagacé”

---

Deputy Judge

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

**DOCKET:** IMM-2482-07

**STYLE OF CAUSE:** THE MINISTER OF CITIZENSHIP AND IMMIGRATION  
v. DHRUV NAVICHANDRA PATEL

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 4, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT BY:** LAGACÉ D.J.

**DATED:** JUNE 17, 2008

**APPEARANCES:**

Bernard Assan FOR THE APPLICANT

Gregory James FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

John H. Sims, Q.C.  
Deputy Attorney General of Canada  
Toronto, Ontario FOR THE APPLICANT

Gregory James  
Barrister & Solicitor  
Toronto, Ontario FOR THE RESPONDENT