

Federal Court



Cour fédérale

Date: 20140228

Docket: IMM-10471-12

Citation: 2014 FC 203

Ottawa, Ontario, February 28, 2014

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

**ADEL, BISMILLAH
ADEL, MAHJAN**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

**REASONS FOR ORDER AND ORDER
(Delivered orally on November 20, 2013)**

[1] The Applicants are a husband and wife, their 6 children and the husband's widowed mother.

[2] The family history includes a tragic event which occurred in Afghanistan in 1997. At that time their home was destroyed by a rocket, the husband's father was killed and the husband was seriously injured and still suffers a partially paralyzed leg.

[3] After the attack, the Applicants fled to Pakistan where they have lived for many years.

[4] The husband and wife have made applications for permanent residence in Canada covering all the Applicants. On January 12, 2012, following an interview, at which the husband was questioned, a visa officer (the Officer) denied their applications and they have applied for judicial review of that decision.

Issue 1

[5] Did the Officer breach the principles of natural justice by not interviewing the wife and adult children? In this regard I note that there is no affidavit evidence before me showing that these individuals asked to speak and were refused an opportunity. Further there is no evidence before me indicating that they had evidence to offer the Officer that was different from or expanded on the statements made by the husband and wife in their applications for permanent residence or the statements made by the husband in the interview.

[6] In these circumstances and given that there was nothing before the Officer to suggest that the wife or adult children would offer different evidence, I am not persuaded that the Officer's failure to interview them was a failure of natural justice.

Issue 2

[7] Was it reasonable for the Officer to conclude that the Applicants did not qualify as permanent residents under the country of asylum class as set out in section 147 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 which states:

147. A foreign national is a member of the country of asylum class if they have been determined by an officer to be in need of resettlement because

(a) they are outside all of their countries of nationality and habitual residence; and

(b) they have been, and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights in each of those countries.

147. Appartient à la catégorie de personnes de pays d'accueil l'étranger considéré par un agent comme ayant besoin de se réinstaller en raison des circonstances suivantes :

a) il se trouve hors de tout pays dont il a la nationalité ou dans lequel il avait sa résidence habituelle;

b) une guerre civile, un conflit armé ou une violation massive des droits de la personne dans chacun des pays en cause ont eu et continuent d'avoir des conséquences graves et personnelles pour lui.

[8] As background on this issue I will quote a paragraph from a decision by Madam Justice Tremblay-Lamer in *Sivakumaran v Canada (Minister of Citizenship and Immigration)*, 2011 FC 590 at paragraph 28:

... section 147 requires that in order for a foreign national to be considered a member of the country of asylum class, the foreign national must "have been, and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights" in their home country. Citizenship and Immigration Canada's "OP 5 - Overseas Selection and Processing of Convention Refugees Abroad Class and Members of the Humanitarian-protected Persons Abroad Classes" (2009-08-13) operations manual instructs at section 6.9 that the words "seriously and personally affected" require there to have been a "sustained, effective denial of basic human rights." The burden of proof in this regard rests with the applicant (*Qurbani v Canada (Minister of Citizenship and Immigration)*, 2009 FC 127, [2009] FCJ No 152, at para 17).

[9] In this case the evidence at the interview and in the application forms filed by both the husband and wife made it clear that they were still troubled by the rocket attack and affected by the injuries and death that it caused. However, there was no evidence to show that they continue to be seriously and personally affected as that term is defined. For this reason the decision is reasonable.

Certification

[10] No question was posed for certification.

ORDER

THIS COURT ORDERS that:

This application is hereby dismissed.

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10471-12

STYLE OF CAUSE: ADEL, BISMILLAH, ADEL, MAHJAN v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 20, 2013

**REASONS FOR ORDER AND
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DATED: FEBRUARY 28, 2014

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