



IMM-3132-96

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BETWEEN :

**OLGA ROUDATCHENKO  
VADIM ROUDATCHENKO  
KONSTANTIN ROUDATCHENKO  
IGOR ROUDATCHENKO,**

Applicants,

- and -

**MINISTER OF CITIZENSHIP AND IMMIGRATION,**

Respondent.

**REASONS FOR ORDER**

**LUTFY J.**

The applicants are the parents and two minor children of a single family. The Convention Refugee Determination Division (the panel) found that the parents' testimony was not credible and determined that they were not Convention refugees.

The applicants lived in Kazakhstan immediately before coming to Canada. The mother is of Russian origin and the father of Chechen origin. On their Personal Information Forms (PIFs), the parents referred to about seven incidents of serious physical and verbal assault committed against them by other citizens of Kazakhstan. They attribute those

incidents to the fact that they are not Kazakhs and claim refugee status for reasons of nationality and membership in a particular social group.

The applicants contest the panel's adverse finding as to their credibility, primarily on the ground that the panel failed to consider certain documents that they feel tend to corroborate their version of certain incidents. These documents include a police report and a hospital report attesting that one of the children was injured in an incident that took place in 1991, and a second hospital report attesting that the father was injured in February 1995 when, according to the family members, a group of Kazakh thugs attacked them in their home. The applicants also rely on a resolution adopted by the Russian Parliament denouncing human rights violations committed against Russians in Kazakhstan.

The respondent submits that it was proper for the panel to rely on documentary evidence originating in other countries and that it committed no errors in its reasons that would warrant the Court's intervention. I agree that the panel is not required to mention all the relevant documents in its reasons and that it has a discretion to choose those on which it intends to rely. However, I conclude that the panel's decision must be set aside because it failed to explain its reasons for disbelieving the applicants' oral evidence concerning the incidents that forced them to flee Kazakhstan.

The panel heard this case on January 18, 1996 in the absence of counsel for the applicants. The hearing took place despite counsel's absence because the appropriate notices had been sent to all interested parties.

It can be seen from the transcript that the parents referred to at least five of the incidents mentioned in their PIFs. After the hearing, the panel reserved its decision.

At the request of counsel for the applicants, who had not attended on January 18, 1996, the panel reopened the hearing on March 27, 1996. The purpose of this new hearing was to permit the filing of certain documents, including the police and hospital reports to which, according to the applicants, the panel failed to give consideration.

As a consequence, the panel heard the applicants' testimony concerning the incidents in question on January 18, 1996 without the benefit of consulting the related documents. Their testimony concerning these incidents was not repeated when the documents were filed on March 27, 1996. Although not necessarily inconsistent with the principles of natural justice and procedural fairness, this process ought in my view to have prompted the panel to be twice as careful to set out its adverse finding as to credibility in "clear and unmistakable terms" within the meaning of *Hilo v. Canada (Minister of Employment and Immigration)* (1991), 15 Imm. L.R. (2d) 199 (F.C.A.).

The panel's reasons are brief. The passages relating to credibility are the following:

[TRANSLATION] Mr. and Mrs. Roudatchenko claim to have been beaten by groups of Kazakhs, attacked in their apartment, denied hospital medical services and, finally, told by almost everyone to leave Kazakhstan.

At the hearing, the claimants were confronted with the fact that the documentary evidence before the panel mentioned no systematically organized campaign of violence against Russian speakers designed to get them to leave Kazakhstan. They were also confronted with the fact that a high concentration of Russian speakers constitutes a majority in the northern part of the country, where they have powerful organizations, and that according to the same document, the western part of the country has recently served as a sanctuary for over 50,000 Russians and Ukrainians who have settled there.

The documentary evidence also shows that the *AZAT* group, to which the claimants vaguely referred, commits aggressive acts against no one and that its activities are limited to denunciations and protests directed at the government.

The claimants have impeached neither the integrity and truthfulness of the information contained in the documentary evidence nor the balance of probabilities emerging therefrom.

...

The claimants' story is in no respect plausible, and the inferences they draw from it are in no respect credible.

After reviewing the transcript and the panel's reasons, it is my view that the panel relied on the documentary evidence provided by the country to find that the applicants' basic claim that they were persecuted in Kazakhstan was groundless. However, no reasons were given in support of the finding that "the claimants' story is in no respect plausible. . . ." In light of the decision in *Hilo, supra*, the panel had to give clear and unmistakable reasons for disbelieving the applicants with respect to the incidents described in their PIFs that were mentioned in their testimony, which it failed to do.

It is unnecessary for me to assess the validity of the panel's adverse finding as to credibility or its decision on the merits that the applicants have no grounds for fearing persecution in Kazakhstan. My decision to allow this application for judicial review is based solely on the panel's failure to explain the reasons that led it to disbelieve the parents' testimony concerning the incidents in question. It was not sufficient to rely on the documentary evidence from the country concerning the validity of the refugee claim without dealing specifically with the applicants' evidence.

For these reasons, the panel's decision is set aside and the matter is referred back to a new panel of the Convention Refugee Determination Division for rehearing on the basis of these reasons.

Neither of the parties has asked to have a question certified.

Allan Lufty  
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Judge

Ottawa, Ontario  
September 19, 1997

Certified true translation

  
Stephen Balogh

FEDERAL COURT OF CANADA  
TRIAL DIVISION

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT NO.: IMM-3132-96

STYLE OF CAUSE OLGA ROUDATCHENKO *ET AL.* v.  
MINISTER OF CITIZENSHIP AND  
IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JULY 29, 1997

REASONS FOR ORDER BY LUTFY J.

DATED: SEPTEMBER 19, 1997

APPEARANCES:

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**THE FEDERAL COURT  
OF CANADA**

**LA COUR FÉDÉRALE  
DU CANADA**

Court No.: IMM-3132-96

No. de la cause:

Let the attached certified translation of the following document in this cause be utilized to comply with Section 20 of the Official Languages Act.

Je requiers que la traduction ci-annexée du document suivant telle que certifiée par le traducteur soit utilisée pour satisfaire aux exigences de l'article 20 de la Loi sur les langues officielles.

Reasons for Order

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06 29 1996

**DATE**

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