IMM-4693-96

BETWEEN:

VIKTOR ANISIMOV
ALEXANDRA ANISIMOVA
ALEXEI ANISIMOV
ALEXANDRE ANISIMOV,

Applicants,

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION,

Respondent.

REASONS FOR ORDER

DUBÉ J:

This is an application to review a decision of the Convention Refugee Determination Division of the Immigration and Refugee Board ("the Board") dated November 26, 1996, wherein it was determined that the applicants were not convention refugees.

The applicants (husband, wife and two children) are citizens of Kazakhstan. Their claim is based on a fear of persecution for reasons of race and religion. The husband is Christian by religion and Russian by birth whereas his wife is of the Jewish nationality.

In its decision, the Board reviewed several allegations of incidents suffered by members of the Anisimov family. However, the Board concluded that the applicants were not credible. In so doing, the Board relied heavily on documentation to

the effect that Russians and Jews, although at times victims of discrimination, were not subjected to persecution in Kazakhstan. Moreover, the Board held that there was an internal flight alternative open to them in other areas of the country.

Counsel for the applicants relied on a recent decision of this Court, *Vladimir Komarnitski and The M.C.I.*[1], holding that the Board committed a reviewable error when it based its credibility finding on external contradictions or inconsistencies, contrary to the principles articulated by MacGuigan J.A. in *Luis Fernando Soto Y Giron v. M.E.I.*[2], wherein the learned judge said as follows:

> The Convention Refugee Determination Division of the Immigration and Refugee Board ("the Board") chose to base its finding of lack of credibility here for the most part, not on internal contradictions, inconsistencies, and evasions, which is the heartland of the discretion of triers of fact, but rather on the implausibility of the claimant's account in light of extrinsic criteria such as rationality, common sense, and judicial knowledge, all of which involve the drawing of inferences, which triers of fact are in little, if any, better position than others to draw.

However, that decision was referred to by the Federal Court of Appeal in *Aguebor v. M.E.I.*[3] and held that the *Giron* decision[4] did not reduce the burden of showing on judicial review that the inferences drawn by the Board could not reasonably have been drawn. Decary J.A. said as follows:

> ...The Court did not, in saying this, exclude the issue of the plausibility of an account from the Board's field of expertise, nor did it lay down a different test for intervention depending on whether the issue is "plausibility" or "credibility".
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> ...
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> ...As long as the inferences drawn by the tribunal are not so unreasonable as to warrant our intervention, its findings are not open to judicial review.
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> ...
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> ...In our opinion, Giron in no way reduces the burden that rests on an appellant, of showing that the inferences drawn by the Refugee Division could not reasonably have been drawn. In this case, the appellant has not discharged this burden.

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[1] IMM-502-96, June 6, 1997 (F.C.T.D.).

[2] A-387-89, May 28, 1992 (F.C.A.).

[3] A-1116-91, July 16, 1993 (F.C.A.).

[4] *supra*, no. 2.

Whether or not the evidence adduced by the applicants was credible and sufficient to establish persecution as opposed to mere discrimination was a decision for the Board to make under the circumstances. It is not for the Court to intervene in the absence of an overriding error on the part of the Board.

As to the internal flight alternative, the onus of proof rests on the applicants to show, on a balance of probabilities, that there is a serious possibility of persecution throughout the country, including the areas specified by the documentation as being safe havens affording internal flight alternatives. The applicants have not satisfied the Board that such a serious possibility exists[5].

Consequently, the application is dismissed.

O T T A W A

October 27, 1997

Judge

[5]See decision of the Federal Court of Appeal in *Thirunavukkauasu v. M.E.I.* (1993), 109 D.L.R. (4th) 682.