



FEDERAL COURT OF CANADA
(TRIAL DIVISION)

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BETWEEN:

IMM-1511-96

SALIM SARWARI et al,

Applicants

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION,

Respondent

Held before the Honourable Associate Chief Justice
Jerome in the Federal Court of Canada, Courtroom No. 7,
330 University Avenue, Toronto, Ontario, on Wednesday,
April 23, 1997.

REASONS FOR JUDGMENT

(Delivered orally from the Bench
at Toronto, Ontario on April 23, 1997)

APPEARANCES:

Lorne Waldman for the Applicant

Kathryn Hucal for the Respondent

Deborah Mombourquette - Registrar

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Per: Sarah Nicholson, CVR.



1 HIS LORDSHIP: Mr. Waldman, I don't need
2 to call you any further.

3 I have a couple of concerns, having
4 examined the reasons of the Board, and where they have
5 found that these people are refugees that they
6 certainly did a very thorough piece of work and,
7 therefore, the only thing that's in play here is their
8 finding about the internal flight alternative. And I
9 think, just to be safe, we ought to have it
10 reconsidered by either -- and we can discuss this now
11 -- this panel or a freshly constituted panel.
12 Because I understand that the requirement with respect
13 to an internal flight alternative is that they must at
14 least personalize it for this person. And where they
15 have left open the issue of whether this person could
16 get to the...

17 First of all, they do appear to have
18 said that he's at risk in Kabul where he taught; he
19 can't go there. And if he doesn't go in that way,
20 though, he can get in through some other country. This
21 raises a question about whether he can be deported
22 there legally; and that's a legal question.

23 And I think it should go back to them,
24 therefore, on both issues about whether there really is
25 a safe alternative and, if there is, it is appropriate



1 for them to just simply assume that you can be deported
2 to a country and to permit entry into the north when,
3 in fact, that may be beyond their jurisdiction or may
4 be beyond the Minister's jurisdiction to order.

5 And, therefore, I want to do brief oral
6 reasons on both issues.

7 And I assume as well that when the
8 matter is referred back that the documentary evidence
9 will have to be scrutinized anyway.

10 MR. WALDMAN: I'm not sure... My only
11 concern about going back to the same panel is I don't
12 know --

13 HIS LORDSHIP: I've never ordered that--

14 MR. WALDMAN: -- I don't know if the
15 same panel -- Mr. Davidson's term, he's been around for
16 a long time and --

17 HIS LORDSHIP: He may not be there?

18 MR. WALDMAN: -- he may not be there.

19 HIS LORDSHIP: All right. The order that
20 I usually make is that it just goes to a freshly
21 constituted panel, and they certainly don't have to
22 redo the issue of the refugee status, only whether
23 there is an alternative and, if so, can they assume
24 that the way into it is through another country where
25 this person may not be legally deported.



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MR. WALDMAN: Thank you, my Lord.

HIS LORDSHIP: And I'll transform these into brief written reasons probably within about a week.

MS HUCAL: Question for certification. I don't have one.

MR. WALDMAN: No question, my Lord.

HIS LORDSHIP: Okay, thank you.

Then I will make an endorsement that, as indicated in oral reasons, this matter should be returned to the board, not to deal with the status but to deal only with the internal flight alternative and whether it can be done in such a way as to assure that there is deportation through another country to get into a safe flight alternative. These reasons will be filed shortly.

CERTIFIED CORRECT:

Sarah Nicholson, CVR.
Reporter.