

IMM-1732-96

OTTAWA, ONTARIO, THIS 27th DAY OF MARCH 1997

PRESENT: THE HONOURABLE MR. JUSTICE YVON PINARD

**BETWEEN:**

**HANUKASHVILI, VALERI,  
HANUKASHVILI, RAFAEL,  
HANUKASHVILI, MAYA,  
HANUKASHVILI, NINO,  
HANUKASHVILI, ILANA,**

Applicants,

- and -

**MINISTER OF CITIZENSHIP AND IMMIGRATION,**

Respondent.

**ORDER**

The application for judicial review of the decision of the Refugee Division dated May 1, 1996, determining that the applicants are not Convention refugees, is dismissed.

Judge

Certified true translation

C. Delon, LL.L.

**BETWEEN:**

**HANUKASHVILI, VALERI,  
HANUKASHVILI, RAFAEL,  
HANUKASHVILI, MAYA,  
HANUKASHVILI, NINO,  
HANUKASHVILI, ILANA,**

Applicants,

- and -

**MINISTER OF CITIZENSHIP AND IMMIGRATION,**

Respondent.

**REASONS FOR ORDER**

This is an application for judicial review of the decision of the Refugee Division dated May 1, 1996, determining that the applicant and his family are not Convention refugees.

The applicants are natives of Georgia, which was part of the former Soviet Union. Valeri Hanukashvili is the principal claimant, and the other members of his family referred to the account filed by him in response to question 37 of the Personal Information Form (PIF). According to the birth certificates filed at the hearing, Valeri's father is Jewish and his mother is Russian, while Ilana's mother is Jewish and her father Georgian.

In 1992, as an ultra-nationalist movement was arising in Georgia and a civil war was being set off, the applicants decided to leave the country. The family went to Moscow where they attended at the Israeli consulate to obtain the papers they needed in order to move to Israel. According to Mr. Hanukashvili's PIF, [TRANSLATION] "[I]n Moscow, we were told that all our papers were in order and that we could leave for Israel." The family left Georgia for Israel on August 4, 1992.

When they arrived in Israel, the State of Israel's Department of the Interior did not recognize the applicants as Jewish because the documents they submitted were not originals. Accordingly, their "teoudat zeut" (identity card issued by the Department of the Interior) gives their nationality as "unidentified".

The applicants left Israel for Canada on August 27, 1994. They claimed refugee status on August 30, 1994.

Essentially, the applicants contend that the Refugee Division erred in examining their claims solely as they related to Israel, when the Board acknowledged that the Israeli government had not accorded them Jewish nationality. They submit that when they left Georgia in August 1992 they did not have Georgian citizenship, but rather had the citizenship of the former Soviet Union. They therefore assert that, as a result of the dissolution of the Soviet Union, they were stateless when they arrived in Israel.

The nationality of a claimant is a question of fact. It is important to recall the definition of "Convention refugee" set out in subsection 2(1) of the *Immigration Act*:

2(1) "Convention refugee" means any person who

(a) by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(i) is outside the country of his nationality and is unable or, by reason of that fear, is unwilling to avail himself of the protection of that country, or

(ii) not having a country of nationality, is outside the country of his former habitual residence and is unable or, by reason of that fear, is unwilling to return to that country, and

(b) has not ceased to be a Convention refugee by virtue of subsection (2),

but does not include any person to whom the Convention does not apply pursuant to section E or F of Article I thereof, which sections are set out in the schedule to this Act.

The concept of "nationality" as that expression is used to describe one of the five grounds on which a person may base a refugee claim must not be confused with the concept of nationality as it is used in subparagraph 2(1)(a)(i) of the Act. While "nationality" does not mean the same thing as citizenship, when the word "nationality" is used as one of the five grounds, on the other hand, it means the same thing as citizenship for the purposes of subparagraph 2(1)(a)(i) of the Act. On this point, Lorne Waldman writes, at paragraph 8.126 of his book *Immigration Law and Practice*:<sup>1</sup>

---

<sup>1</sup>Toronto: Butterworths, 1992.

§ 8.126 The notion of nationality as one of the five grounds for claiming refugee status was discussed at §8.104. While it was suggested there that the context required a broad definition of nationality, such is not the case here. **It seems clear that, in the present context, nationality means citizenship.** This is so particularly because the definition distinguishes between persons who have a country of nationality, and individuals who do not. The latter must prove their claims with reference to their country of former habitual residence. It is submitted that the country of former habitual residence is intended to provide a country of reference for stateless persons, i.e., persons who are not citizens of any state. This construction was adopted by the Supreme Court of Canada in the leading decision of *Canada (Attorney General) v. Ward*,<sup>2</sup> where the Court equated "country of nationality" with "country of citizenship".

---

<sup>2</sup>[1993] 2 S.C.R. 689.

(Emphasis mine)

In the instant case, the passports and identity cards indicate that the applicants' nationality/citizenship is Israeli. They did not assert, either at the hearing or in this application, that those documents are not valid or genuine. In fact, in their Personal Information Forms, the applicants clearly indicate that they have Israeli citizenship to the exclusion of any other, and further state that they are not in the situation of having no country of citizenship. Lastly, on the same forms, when they were asked about the country or countries in which they fear persecution, they stated simply "Israel".

Thus, since the Refugee Division had no claim in respect of Georgia before it, and had in fact determined that the applicants were all citizens of Israel, it had to consider the applicants' claims only in respect of Israel. In this respect, its conclusion that the applicants had no well-founded fear of persecution in that country has not been challenged.

Accordingly, the application for judicial review must be dismissed.

Like counsel for the parties, I find that there is no question to be certified here.

O T T A W A  
March 27, 1997

Judge

Certified true translation

C. Delon, LL.L.

FEDERAL COURT OF CANADA  
TRIAL DIVISION

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT FILE NO: IMM-1732-96

KASHVILI, VALERI *et al.* v. MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: MARCH 19, 1997

REASONS FOR ORDER OF PINARD J.

DATED: MARCH 27, 1997

APPEARANCES:

Michel Lebrun FOR THE APPLICANTS

Ian Hicks FOR THE RESPONDENT

SOLICITORS OF RECORD:

Michel Lebrun FOR THE APPLICANTS  
Montréal, Quebec

George Thomson FOR THE RESPONDENT  
Deputy Attorney General of Canada