

**Date: 20070912**

**Docket: IMM-4453-06**

**Citation: 2007 FC 904**

**Toronto, Ontario, September 12, 2007**

**PRESENT: The Honourable Mr. Justice Hughes**

**BETWEEN:**

**VOLODYMYR VYNNYK**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The Applicant is an adult male citizen of the Ukraine. He claims to be Jewish and that he suffered persecution in the Ukraine for that reason. He seeks refugee status in Canada. By a decision of a Member of the Immigration and Refugee Board of Canada, Refugee Protection Division dated July 31, 2006 he was denied that status. Judicial review of that decision is sought and for the Reasons set out below, I am rejecting the application to have that decision quashed and refuse to remit the matter to the Board for a new hearing.

[2] The Applicant is self-represented; no lawyer appears on the Court records as acting on his behalf. Neither the Applicant nor any lawyer or other person purporting to act on his behalf

appeared at the hearing before me. The Respondent appeared by counsel. I am satisfied that the Registry officers took all reasonable steps, to no avail, to contact the Applicant so as to advise him as to the time and place of this hearing. The Court usher, as instructed, called the Applicant's name in the hall several times without response. I have, therefore, decided this matter based on the written material in the Court record. Respondent's Counsel advised that she had nothing to add in respect of that material.

[3] The issue before the Board was whether the Applicant had internal flight alternatives available to him in the Ukraine, namely Kiev, such that he could not properly claim refugee status in Canada. The Federal Court of Appeal in *Thirunavukkarasu v. Canada* (MCI), [1994] 1 F.C. 589 stated that a person claiming to be a convention refugee has the onus of proof to show, on the balance of probabilities, on an objective standard, that there is a serious possibility of persecution throughout the country (here the Ukraine) including areas alleged to afford internal flight alternatives. The alternative must be reasonably accessible to the person in question and it must be objectively reasonable to live in such place without fear of persecution. That case, however, at paragraph 8 noted that the Minister has an obligation to warn the Applicant that the issue of an internal flight alternative will be raised.

[4] In *Rasaratnam v. Canada* (MCI), [1992] 1 F.C. 706, the Federal Court of Appeal at paragraph 9 stated that the question of an internal flight alternative must be expressly raised at the hearing by the Refugee Hearing Officer or the Board and the claimant afforded an opportunity to address it with evidence and argument.

[5] A review of the transcript of the hearing before the Board in this case indicates that the Member and Counsel for the Applicant at one point engaged in what appears to have been a shouting match with Counsel accusing the Member of bias. They seem to have cooled off however and, at page 26 of the transcript, it is indicated that that particular Member and particular Counsel had pending before them another case also involving the Ukraine in which, that Counsel had submitted some evidence. The Member allowed Counsel to submit that same evidence in this case. At pages 33 and following of the transcript the Member is reported as providing that further argument could be submitted in writing by the Applicant's counsel. There is nothing in the Tribunal Record to indicate that such submissions were made.

[6] I am satisfied that, after the heat of this moment, the Member afforded the Applicant, and his Counsel, adequate opportunity to address the internal flight alternative issue. I am also satisfied that, in his reasons, the Member addressed the appropriate issues respecting an internal flight alternative. The decision made by the Member is not unreasonable and will not be disturbed on judicial review.

[7] There is no question for certification.

**JUDGMENT**

**FOR THE REASONS PROVIDED:**

**THIS COURT ORDERS AND ADJUDGES that:**

1. The application is dismissed;
2. There is no question for certification;
3. No order as to costs.

“Roger T. Hughes”

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Judge

**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** IMM-4453-06

**STYLE OF CAUSE:** VOLODYMYR VYNNYK v.  
THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** September. 12, 2007

**REASONS FOR JUDGMENT  
AND JUDGMENT:** Hughes J.

**DATED:** September 12, 2007

**APPEARANCES:**

NO ONE APPEARING FOR THE APPLICANT

LEANNE BRISCOE FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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