

Federal Court



Cour fédérale

**Date: 20100706**

**Docket: IMM-2183-10**

**Citation: 2010 FC 730**

**Vancouver, British Columbia, July 6, 2010**

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

**BETWEEN:**

**FABIAN VAKSMAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The Applicant Fabian Vaksman is of Russian origin and is a citizen of both the United States of America and Israel. He is currently in detention in Canada having been placed there by officials of the Minister of Citizenship and Immigration. That detention has been the subject of reviews on previous occasions and a further review is scheduled to take place shortly. The reviews that have taken place have resulted in continued detention of the Applicant.

[2] The Applicant was convicted by a United States court of uttering threats to a public official under the provision of Title 18, section 875(c) of the *United States Code*. That conviction brought

with it a term of imprisonment. The Applicant, however, was given a period of time before he was required to report for imprisonment. Instead of reporting, the Applicant collected some of his belongings and money and drove to the Canadian border in British Columbia where he sought entry into Canada claiming refugee status. Initially, the Applicant did not reveal the fact of his conviction and imminent incarceration. It was only upon subsequent questioning that this became known. At the hearing of this motion, the Applicant advised that an appeal had been taken from the conviction, its status is unknown.

[3] As a result, the Minister's officials placed the Applicant in detention subject to the various reviews as discussed. The Applicant requests that he be released from detention, subject if necessary to frequent reporting and electronic monitoring, and that he be removed not to the United States but to Israel. The Applicant has produced a letter from an Israeli consular official to the effect that Israel is prepared to receive him upon receipt of appropriate travel documents.

[4] The Respondent, properly named the Minister of Citizenship and Immigration, objects to this motion on a number of grounds. The first is that the Applicant's detention is the subject of a continuing review process, a hearing is scheduled to take place shortly and until a determination is made the Court lacks jurisdiction to entertain the Applicant's request.

[5] Another ground for objection to the Applicant's motion is that the choice of country of removal in circumstances such as this is, the Minister argues, that of the Minister. The Minister's counsel argues that where section 241(1) of the *Immigration and Refugee Protection Act*, S.C. 2001.

c. 27 (IRPA) is silent as to who makes the choice of country of removal if a choice is available, section 238(2) gives the Minister a discretion to approve or not a choice made by a person to be removed based on, among other things, whether the foreign national is a fugitive from justice from another country or is seeking to evade or frustrate the cause of justice in another country.

[6] The Applicant argues that he was wrongly convicted in the United States, that an appeal is pending and that Israel is prepared to receive him. Therefore, he, the Applicant, should be allowed to choose Israel.

[7] I agree with the Minister's counsel. In circumstances such as the present, the choice of country of removal is that of the Minister. Further, since the Applicant's continued detention is currently under review, it is premature for this Court to entertain a motion for release. Each decision is a fresh review: *Feimi v. Canada (Minister of Citizenship and Immigration)*, Feb. 27, 2006, 2006 FC 256 at para. 14.

**ORDER**

ACCORDINGLY,

**THIS COURT ORDERS that:**

1. The style of cause is amended to name the Minister of Citizenship and Immigration as the Respondent;
2. The motion is dismissed.
3. No Order as to costs.

“Roger T. Hughes”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2183-10

**STYLE OF CAUSE:** FABIAN VAKSMAN v. IRB

**PLACE OF HEARING:** Vancouver, BC

**DATE OF HEARING:** July 5, 2010

**REASONS FOR ORDER  
AND ORDER:** HUGHES J.

**DATED:** July 6, 2010

**APPEARANCES:**

Mr. Fabian Vaksman	FOR THE APPLICANT On his own behalf
Ms. Hilla Aharon	FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

n/a	FOR THE APPLICANT On his own behalf
Myles J. Kirvan Deputy Attorney General of Canada Vancouver, BC	FOR THE RESPONDENT