



RPD File No. / N° de dossier de SPR : VB1-01229

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	XXXXXX XXXXX	Demandeur(e)(s) d'asile
Date(s) of Hearing	14 November 2011	Date(s) de l'audience
Place of Hearing	Vancouver, BC	Lieu de l'audience
Date of Decision	29 November 2011	Date de la décision
Panel	B. Dhillon	Tribunal
Counsel for the Claimant(s)	N/A	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	N/A	Agent(e) des tribunaux
Designated Representative(s)	N/A	Représentant(e)(s) Désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre

REASONS FOR DECISION

[1] These are the reasons in the decision in the claim of **XXXXXX XXXXXX** (the “principal claimant”), who claims to be a citizen of Japan, and is claiming refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (the “Act”).¹

ALLEGATIONS

[2] A synopsis of the claimant’s allegations as taken from his Personal Information Form (PIF) is as follows:

[3] The claimant is a 30 year old woman from **XXXXXX**, Japan. The claimant arrived in Canada on **XXXXXX**, 2009. The claimant made an inland refugee claim on April 27, 2011.

[4] The claimant is a **XXXXXX** and knows the risks of exposure to radiation. The claimant fears returning to Japan due to the excessive levels of radiation leaking from the damaged nuclear reactors in Fukushima. A severe earthquake and resulting tsunami on 11 March 2011 resulted in damage to the Fukushima nuclear reactors. The claimant fears the ill effects the leaking radiation will have on her health. The claimant believes the wind has carried the radiation across the whole of Japan and the falling rains have contaminated the soils. The radiation has seeped into the ground water. Food grown in Japan and seafood caught in and around Japan is contaminated.

[5] The claimant believes the Japanese government is trying to keep the public calm by downplaying the risks. The claimant believes that the radiation is dangerous and her health and life will be in danger if she returns to Japan.

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

DECISION

[6] The panel finds that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that, on a balance of probabilities, she would personally be subjected to a risk to life or a risk of cruel and unusual treatment or punishment or a danger of torture upon return to her country. The panel's reasons are as follows.

ANALYSIS

[7] The determinative issue for the section 96 claim is nexus, or the lack of persecution for a Convention reason.

[8] The determinative issue for the section 97 claim is the generalized risk exception.

Identity

[9] The claimant's identity as a national of Japan is established by her testimony and the supporting documentation filed. A copy of her passport from Japan is in disclosure.²

Credibility and testimony

[10] The panel found the claimant to be a generally credible witness.

[11] The claimant testified with genuine emotion regarding her fear of going back to Japan due to the potential adverse health risks that the radiation from Fukushima may cause.

[12] The claimant testified that the Japanese government is doing their best to deal with the disaster and is trying to solve the problem. However, the claimant does not feel that her government's established safety standards are sufficient. She testified that, for example, the amount of radiation allowed in the drinking water in Japan is significantly higher than in North

² Exhibit 2.

American countries. She testified that the Japanese government has told persons that there are no immediate health concerns outside of a 30 kilometer zone near Fukushima, but that this assurance does not take into account the long-term effects of exposure to even low levels of radiation. She testified that the radiation in Japan would be impossible to avoid as it is in the air, food, and water.

[13] The claimant testified that her fear of radiation and cancer is due, in part, to a history of cancer in her family. The claimant testified that her maternal grandfather died of **XXXXXX** - cancer several years ago in Japan. The claimant testified that he had received medical treatment in Japan for the cancer. As well, the claimant testified that, last month, her mother had surgery in Japan for **XXXXXX** -cancer. The claimant testified that her mother was able to access medical care in Japan and is now recovering.

[14] The claimant testified that due to the history of cancer in her family, she pursued a healthy lifestyle to prevent any onset of cancer. She does not smoke, maintains a healthy weight, and monitors her blood pressure. The claimant testified that she feels fortunate that she was in Canada, and not in Japan, at the time of the Fukushima disaster in March 2011.

[15] The claimant testified that her mother and father live in **XXXXXX**, Japan. She testified that they are not overly concerned about the radiation risk in **XXXXXX**, as they have been assured of their safety by the Japanese government. The claimant testified that her brother, who had been in Canada, returned to **XXXXXX** in **XXXXXX** 2011. She testified that his views about the radiation risks are the same as her parents. The claimant testified that she has a **XXXXXX** background as a **XXXXXX** and has worked in Canada as a **XXXXXX XXXXXX**. She testified that she has done considerable reading, including on the internet, regarding the effects of radiation exposure and whether it is safe to live in Japan due to the Fukushima disaster. She testified that, unlike her parents and brother, she is not convinced by the Japanese government's assurances of the safety from radiation in Japan. The claimant has filed internet articles that discuss the varying opinions regarding the risks of radiation exposure and the safety of living in Japan subsequent to the Fukushima disaster.³

³ Exhibits 6 and 7.

Nexus

[16] The panel finds that the claimant is not a Convention refugee as her fear of persecution is not by reason of any of the five grounds set out in the definition – race, religion, nationality, membership in a particular social group, or political opinion.

[17] The claimant’s fears returning to Japan because radiation from the damaged Fukushima nuclear reactors will negatively impact her health.

[18] The Supreme Court of Canada (SCC) in *Ward*⁴ discussed the built-in limitations regarding the obligations of the international community to offer surrogate protection to those fearing harm in their home country:

...the international role was qualified by built-in limitations. These restricting mechanisms reflect the fact that the international community did not intend to offer a haven for all suffering individuals. The need for “persecution” in order to warrant international protection, for example, results in the exclusion of such pleas as those of economic migrants, i.e., individuals in search of better living conditions, and those of victims of natural disasters, even when the home state is unable to provide assistance, although both of these cases might seem deserving of international sanctuary.⁵

[19] In the case at hand, the claimant’s fear of persecution is not by reason of any of the enumerated Convention refugee grounds. Rather, the claimant fears being a victim of hazards that emanate from a combined natural and man-made disaster - the March 11, 2011 earthquake/tsunami and the resulting radiation leak at Fukushima. Her fear of persecution is not by reason of her race, religion, nationality, membership in a particular social group, or political opinion.

⁴ *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689.

⁵ *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689.

Generalized risk

[20] According to section 97(1)(b)(ii) of the *Act*, protection is limited to those who face a specific risk that is not faced generally by others in or from the country. The evidence must establish that the claimant would face a risk different from those faced by the general population. The panel finds that the risk of harm feared by the claimant is one faced generally by others in her country. The panel's reasons are as follows.

[21] The claimant was asked if the risk she faces from exposure to radiation would be any different than the risk faced by other persons in Japan. The claimant pointed out that she may face a heightened risk from the radiation exposure, due to the history of cancer in her family, but candidly conceded that the risk she faces is not different in any other way.

[22] The panel accepts, without making an explicit finding, that the claimant may be genetically at more risk of harm from radiation exposure than many other persons in Japan. However, this distinction does not remove the risk from being a generalized risk. The claimant testified that the radiation from Fukushima is in the air, water, soil, and food in Japan. As conceded by her, all persons in Japan may be at risk of potential harm from the radiation from Fukushima. Being in the subgroup of persons who may be at a heightened potential risk of harm from exposure to radiation due to a genetic predisposition, a poor diet, an existing medical condition, or other reasons does not remove the generalized nature of the risk. Such a subgroup of persons is sufficiently large that the risk can reasonably be characterized as being widespread or prevalent in the country.⁶

[23] Again, the panel notes that the claimant was candid and sincere in her testimony, and expressed a genuine fear of returning to Japan due to the potential impact on her health from radiation exposure. However, the claimant is facing a risk which is also faced generally by others in Japan and thus the panel cannot extend protection to her under the limited scope of the legislation it must work under.

⁶ *Paz Guifarro v. Canada (Citizenship and Immigration)*, 2011 FC 182.

CONCLUSION

[24] For the foregoing reasons, the panel concludes that the claimant is not a Convention refugee under section 96 of the *Act* or a person in need of protection within the meaning of section 97 (1)(a) or (b) of the *Act*. Accordingly, the panel rejects her claim.

(signed) **“B. Dhillon”**

B. Dhillon

29 November 2011

Date