Ahmed v. Canada (Minister of Citizenship and Immigration)

Between
Ali Ahmed, Delara Ahmed and Ali Rahsan Raju, applicants, and
The Minister of Citizenship and Immigration, respondent

[2000] F.C.J. No. 651
Court File No. IMM-2868-99

Federal Court of Canada - Trial Division
Montréal, Quebec
Pinard J.

Heard: April 11, 2000.
Judgment: May 17, 2000.
(9 paras.)

Aliens and immigration — Admission, refugees — Grounds, well-founded fear of persecution — Particular social group defined.

Application by Ahmed and others for judicial review of a decision of the Immigration and Refugee Board denying the applicants Convention refugee status. The principal applicant, Ahmed, was a public prosecutor in Bangladesh who claimed that he became the target of reprisals by criminals he had helped to convict after he lost his post. Only some of the criminals were politically motivated. Most were common criminals. Ahmed claimed that the police refused to assist him because of his membership in a particular political party. The Board found that his persecution was not linked to any of the grounds listed in the Convention and that it amounted to a personal vendetta. He was not threatened because of political opinion or membership in a particular social group.

HELD: Application dismissed. The Board committed no error in finding that the requisite nexus was not established between the persecution and a Convention ground. The persecution which precipitated the demand for police protection was personal only and was not by reason of his membership in a particular social group. He was threatened by reason of what he did as an individual, and not because he was a member of a group of assistant public prosecutors affiliated with a particular political party.

Statutes, Regulations and Rules Cited:

Federal Court Act, R.S.C. 1985, c. F-7, s. 18.1(4)(d).

Immigration Act, R.S.C. 1985, c. I-2, ss. 2(1), 83(1).

Counsel:

Pia Zambelli, for the applicant.
Caroline Doyon, for the respondent.

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1 **PINARD J.** (Reasons for Order):— The applicants seek judicial review of a decision of the Refugee Division of the Immigration and Refugee Board (the Board) dated May 5, 1999, determining that the applicants are not Convention refugees as defined in subsection 2(1) of the Immigration Act, R.S.C. 1985, c. I-2 (the Act).

2 Ali Ahmed, the principal applicant, his wife Delara Ahmed and their minor son Ali Rahsan Raju are citizens of Bangladesh. They claim to have a well-founded fear of persecution by reason of the principal applicant's political opinion and membership in a particular social group.

3 The Board decided that the applicants' claim was not linked to any of the grounds for persecution set out in the definition of Convention refugee. The relevant paragraphs of its decision read as follows:

> We do not want to sound callous and we know that violence in Bangladesh is an ever present fact. However, retaliation against a public prosecutor in our view does not make the principal claimant a "Convention refugee". He did the work that he was appointed to do, obtained sentences against criminals and later on became the object of their vengeance as this can and does happen anywhere. Although he wrote in his PIF that most accused prosecuted by him were politically motivated, he changed his declaration and said during his oral testimony that some were so motivated. He prosecuted common criminals and having lost his post, became a target to these same common criminals. We cannot conclude that the principal claimant was threatened because of his political opinion.
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> Nor can we find that the principal claimant would be persecuted due to his membership in a particular social group as defined in the Ward decision. [Footnote omitted.]

4 To the extent that the applicants' arguments are based on the Board's appreciation of the facts, I am not satisfied, upon reviewing the evidence, that the Board based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it at the hearing (see paragraph 18.1(4)(d) of the Federal Court Act, R.S.C. 1985, c. F-7, and Aguebor v. Minister of Employment and Immigration (1993), 160 N.R. 315).

5 With respect to the law, I disagree with the applicants' argument that the authorities' refusal to assist them because of their Bangladesh Nationalist Party (BNP) affiliation satisfies the two-part test in part (a) of the definition of a Convention refugee under subsection 2(1) of the Act. This argument ignores the first part of the test, which demands that a nexus be established between the persecution suffered by the applicants - here, the persecution which precipitated the plea for police protection - and the grounds for persecution enumerated in the Act. Once this link is established, the refusal of the police to protect the applicants could go to the second part of the definition. Therefore, this application turns on whether such a link exists.

6 The applicants argue that the nexus between the persecution and the enumerated grounds in the definition of Convention refugee is the principal applicant's political opinion and membership in a particular social group. The principal applicant was placed in the circumstances that led to his fear by his membership in the group of assistant public prosecutors affiliated with the BNP. However, he was threatened because of what he did as an individual, and not specifically because of his membership in that group. The principal applicant's testimony indicates that he was targeted by men whom he himself had prosecuted, rather than by men who were tried by other assistant public prosecutors. Therefore, the persecution was based on his actions, rather than on his political opinion or his membership in the group. Furthermore, it has been established that "[t]he fear of personal vengeance is not a fear of persecution." (Marincas v. Minister of Employment and Immigration, [1994] F.C.J. No. 1254, (August 23, 1994), IMM-5737-93 (F.C.T.D.)). In this context, I do not think that the Board erred in law when it concluded that the principal applicant was not persecuted due to his political opinion and membership in a particular social group (see Canada (Attorney General) v. Ward, [1993] 2 S.C.R. 689, at page 745).

7 Finally, I agree with the respondent that the Board was functus when the applicants faxed their post-hearing evidence on May 17, 1999. In Tambwe-Lubemba v. Minister of Citizenship and Immigration, [1999] F.C.J. No. 511, (April 15, 1999), IMM-1979-98, Justice McKeown concluded that the date of the Notice of Decision is irrelevant to the question of when the decision was actually rendered. He wrote:

> [3] With regard to whether the Board was functus, the relevant facts are as follows. The hearing took place on January 19, 1998. The Board's decision is dated March 13, 1998. The applicants' counsel, shortly after that date, was told erroneously by an employee of the Board that the decision had not yet been given; the applicants' counsel then delivered to the Board by hand, on March 25, 1998, a document entitled "Guidelines for Refugees and Asylum Seekers from the Democratic Republic of Congo". This document contained information with respect to the "risk faced by private ex-Zaïrian prosperous businessmen" and the male applicant submits that he fell into this category. The Notice of Decision was signed and sent to the applicants on April 3, 1998.
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> [4] I agree with Justice Nadon in Keita v. Minister of Employment and

> Immigration, [1994] F.C.J. No. 620, (IMM-343-93, April 29, 1994) and find that the Board had no obligation to consider the additional evidence after it had signed its written reasons dated March 13, 1998. The Board was functus; there was no request to reopen the hearing. It is regrettable that the Board's decision was not communicated to the applicants earlier but that has no impact or consequence for the decision made on March 13, 1998. In my view the date of April 3, 1998 is irrelevant to the question of when the decision was actually rendered at which point the Refugee Division became functus officio. Section 69.1(9) stipulates that the Refugee Division "shall render its decision as soon as possible after completion of the hearing and send a written notice of the decision to the person and to the Minister". As this wording indicates, the rendering of the decision is distinct from the sending of the Notice of Decision.
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> [5] Shairp v. MNR (1989) 1 F.C. 562 is clearly distinguishable because in that case the Federal Court of Appeal was dealing with an oral opinion delivered by a judge prior to the actual "filing and entering of written decision". In my view, in the case before me, the Board was functus after it signed the reasons on March 13, 1998.

(See, also, Stambouli v. Minister of Citizenship and Immigration, [1999] F.C.J. No. 1245, (August 12, 1999), IMM-4456-98.)

8 For all the above reasons, the application for judicial review is dismissed.

9 Concerning the applicants' request for certification under subsection 83(1) of the Act, it is dismissed on the basis of the written "Observations du défendeur relativement aux questions que les demandeurs demandent à cette Cour de certifier" filed herein on April 25, 2000.

PINARD J.