

Dcruze v. Canada (Minister of Citizenship and Immigration)

Between
Jacob Ranjit Dcruze, applicant, and
The Minister [of Citizenship and Immigration], respondent

[1999] F.C.J. No. 987
Court File No. IMM-2910-98

Federal Court of Canada - Trial Division
Ottawa, Ontario
Rouleau J.

Heard: June 2, 1999
Judgment: June 17, 1999
(6 pp.)

Aliens and immigration — Admission, refugees — Grounds, well-founded fear of persecution — Appeals or judicial review, scope of review.

Application by Dcruze for judicial review of a decision by the Convention Refugee Determination Division that he was not a Convention refugee. The applicant was a citizen of Bangladesh. He claimed he was persecuted by Muslim fundamentalists because of his Christian religion and his membership in the Bangladesh Hindu Buddhist Christian Unity Council. Fearing for his life, he obtained a US visa. He arrived in the US on April 1, 1994. Two months later, he applied for refugee status in the US. In September 1996, he left the US to come to Canada where he claimed refugee status upon his arrival. He stated that no hearing for his refugee claim had been scheduled in the US and he was attacked on two occasions by armed hoodlums who beat and robbed him. He never reported the attacks to the police for fear of reprisals from the thugs. The Board did not believe the reasons given by the applicant for leaving the US.

The Board concluded that the applicant did not have a subjective fear of persecution in Bangladesh because his behaviour in the US was incompatible with the behaviour of a genuine refugee claimant. In issue was whether the Board erred in not examining whether the applicant had a well-founded fear of persecution in Bangladesh.

HELD: Application allowed, and matter remitted for reconsideration by a differently constituted panel. Delays in seeking asylum negated evidence of a fear of persecution in some cases. However, in this instance, the applicant never return to Bangladesh. Furthermore, the delay of two years and six months was not extreme, and was not determinative of the matter.

Counsel:

Rachel Benaroch, for the applicant.

Patricia Deslauriers, for the respondent.

1 **ROULEAU J.** (Reasons for Order):— This is an application for judicial review of the decision of the Convention Refugee Determination Division of the Immigration and Refugee Board (the Board) dated April 17, 1998, wherein it was determined that the applicant is not a Convention refugee.

2 The applicant is a citizen of Bangladesh. He claims he was persecuted by Muslim fundamentalists because of his Christian religion and his membership in the Bangladesh Hindu Buddhist Christian Unity Council. Fearing for his life, he obtained a U.S. visa and fled his country on March 31, 1994. He arrived in the United States on April 1, 1994. Two months later, in June 1994, he applied for refugee status in the United States. In September 1996, he left the United States to come to Canada where he claimed refugee status upon arrival. At his refugee hearing in Canada the applicant gave two reasons for leaving the United States. First, from June 1994 to September 1996, no hearing for his refugee claim had been scheduled. Second, he had been attacked on two occasions, in December 1995 and March 1996, by armed hoodlums who beat and robbed him. He never reported the attacks to the police for fear of reprisals from the thugs.

3 The Board did not believe the reasons given by the applicant for leaving the United States. He had told the panel that he left the United States out of fear, yet he waited six months after the last incident to leave. He never reported the beatings to the police. He never mentioned the United States incidents in his PIF. The Board concluded that the applicant did not have a subjective fear of persecution in Bangladesh, because his behaviour in the United States was incompatible with the behaviour expected of a genuine refugee claimant. The Board relied on the following excerpt written by Rothstein J. in *Hibo Farah Mohamed v. M.C.I.* (April 9, 1997), IMM-2248-96 (F.C.T.D.):

The object of the Geneva Convention is to help people who are in dire need of protection, and not to help people who simply prefer requesting asylum in one country in preference to another. The Convention and the Immigration Act should be interpreted in the light of the true objective of both convention and the law.

4 Having reached this conclusion, the Board ended the hearing. It never examined whether the applicant had a well-founded fear of persecution in Bangladesh.

5 The Board erred in relying on the *Hibo Farah Mohamed* case. In that case, the applicants were granted landing in Sweden. They then came to Canada and claimed refugee status. The Court was justified in refusing to grant them refugee status in

Canada, since they already benefited from the protection of a safe country. In the present case, there is no evidence the applicant has any permanent status in the United States.

6 The Board decided that the applicant did not have a subjective fear of returning to Bangladesh since his behaviour was incompatible with the behaviour expected from a genuine refugee claimant. Indeed, he waited two months after arriving in the United States to request refugee status. He further delayed his chance to obtain asylum by coming to Canada, when his U.S. application would have likely been processed in the near future. Delays in seeking asylum negate evidence of a fear of persecution and it is open to the Board to impugn the credibility of claimants on that basis. However, the tribunal cannot ignore the explanations offered and the credibility can only be impugned if the explanations are unsatisfactory; see *Hue v. Canada (M.E.I.)* (March 8, 1988) A-196-87 (F.C.A.). Even if the explanations for the delay lack credibility, such a finding is generally not determinative of the claim; see *Huerta v. Canada (M.E.I.)* (1993), 157 N.R. 225 (F.C.A.).

7 Nevertheless, the Court has upheld decisions of the Board rejecting a claim on the basis that an applicant's behaviour is totally incompatible with a genuine fear of persecution. For instance, in *Cruz v. Canada (M.E.I.)* (June 16, 1994), IMM-3848-93 (F.C.T.D.), the applicant had not made a claim for refugee status until seven years after his departure from his native country and some two years and three months after his arrival in Canada. Simpson J. held that the delay was so significant, it was dispositive of the claim. In the absence of any credible evidence as to the reason for the delay, it was open to the Board to conclude that he lacked the required subjective fear of persecution.

8 Counsel for the respondent relied on the following passage written by Linden J.A. in *Pan v. Canada (M.E.I.)* (July 21, 1994) A-859-91 (F.C.A.):

In this case, the Refugee Division found that the claimant's behaviour was "inconsistent with a genuine subjective fear of persecution". Even though this may be an unusual conclusion, it is one that is open to the Board in appropriate cases. Here the Board was entitled to find that the conduct of the claimant, travelling around China for several months with what appeared to the Board to be minimal precautions, was not the conduct of one who feared persecution.

9 The Pan case is distinguishable from the case at bar. A full reading of the decision reveals that Mr. Pan's claim was also rejected on the ground that his fear was objectively groundless. Counsel also relied on *Safakhoo v. Canada (M.C.I.)* (April 11, 1997) IMM-455-96. In that case, the claimants had left Iran and lived in France for five years without requesting refugee status. When their status in France ran out, they returned to Iran. Later, they claimed refugee status in Canada. The Board rejected their claim on the basis that their behaviour was inconsistent with that of genuine refugees. Pinard J. upheld the decision of the Board. He first noted that the claimants' sojourn in France was not in itself determinative of the validity of the claim, as delay in making a refugee claim is not a decisive factor. However, the delay, combined with the return to Iran which, I

assume, was also unsatisfactorily explained, showed that they did not have a subjective fear of persecution in that country.

10 In the present case, the applicant never returned to Bangladesh. There is a delay of approximately two years and six months between his departure from Bangladesh and his refugee application in Canada. He sought refugee status upon arrival in this country. The delay was not as extreme as in the Cruz case and should not have been determinative of the matter. The Board should have examined the claim on its merits.

11 The application for judicial review is granted and the matter is remitted for reconsideration by a differently constituted panel.

ROULEAU J.