

# **Cho v. Canada (Minister of Citizenship and Immigration)**

Between  
Soon Ja Cho, Ha Nul Kang, Dan Bee Kang and Hat Sal Kang,  
applicants, and  
The Minister of Citizenship and Immigration, respondent

[2000] F.C.J. No. 1371  
Docket IMM-4029-99

**Federal Court of Canada - Trial Division  
Toronto, Ontario  
Gibson J.**

Heard: July 14, 2000.  
Judgment: August 9, 2000.  
(18 paras.)

*Aliens and immigration — Admission, refugees — Grounds, well-founded fear of persecution.*

Application by Cho for judicial review of a decision of the Refugee Board that she was not a Convention refugee. Cho was a citizen of South Korea. Her three children also claimed refugee status. Cho's claim was based on a well-founded fear of persecution if required to return to South Korea based on her membership in a social group, being women subject to spousal abuse. Cho stated that her husband was an alcoholic who physically and verbally abused her and her oldest child when he was drunk. She sought police protection once. The police attempted to mediate. When the husband fell asleep, the police recommended that she let him sleep off his alcoholic state and solve the matter internally. She never again sought police protection. She provided an expert opinion that her self esteem was eroded and that her only choice was to stay and be seriously harmed or leave. The Board accepted this opinion, but found that Cho had state protection available to assist her. It acknowledged that there were imperfections in the training of police in the implementation of laws, but that the government had adequate mechanisms to protect victims of domestic abuse.

**HELD:** Application dismissed. The Board made no reviewable error. Its analysis involved no capricious findings of fact and represented a reasonable and thorough analysis of current country conditions in South Korea for the protection of victims of spousal abuse and their children.

**Statutes, Regulations and Rules Cited:**

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

**Counsel:**

S. Preevanda, for the applicant.  
M. Zoric, for the respondent.

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1 **GIBSON J.** (Reasons for Order):— These reasons arise out of an application for judicial review of a decision of the Convention Refugee Determination Division (the "CRDD") of the Immigration and Refugee Board wherein the CRDD determined the applicants not to be Convention refugees within the meaning assigned to that phrase in subsection 2(1) of the Immigration Act<sup>1</sup>. The decision of the CRDD is dated the 12th of July, 1999.

2 Soon Ja Cho (the "principal applicant") is a citizen of South Korea. The other three (3) applicants are her children who, at the time of the hearing of their claim to Convention refugee status before the CRDD, were all minors (the "minor claimants"). The applicants based their claims to a well-founded fear of persecution if they were required to return to South Korea on their membership in a particular social group, that group being, in the case of the principal applicant, women who are victims of spousal abuse in South Korea, and in the case of the minor applicants, children of women who are victims of spousal abuse in South Korea.

3 The factual background to this matter can be briefly summarized as follows.

4 The principal applicant alleges that her second husband, the father of the second and third of her children, is an alcoholic who verbally and physically abused her whenever he was drunk. Further she alleges, her oldest child, the product of her first marriage, was also the victim of verbal and physical violence.

5 On one occasion in 1996, the principal applicant sought police protection. The police attended at her home and attempted to mediate between the principal applicant and her husband. When the husband fell asleep, the police recommended to the principal applicant that she let him "sleep-off" his alcoholic state and that she should try to solve the matter with her husband as an internal family matter. The principal applicant never again sought police protection.

6 The CRDD had before it a psychological report related to the principal applicant which provided the following diagnosis and commentary:

The clinical diagnostic evidence reveals Ms. Cho to be suffering from symptoms of anxiety and major depression. Both conditions are secondary

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<sup>1</sup> R.S.C. 1985, c. I-2.

to her experience of abuse.

It should be recognized that Ms. Cho had a difficult time verbalizing her emotions and feelings: at times, she appeared almost numb. Her low energy level and flatness of affect however, suggest that her depression is substantial and quite entrenched.

Women who are battered hold several common traits and Ms. Cho is no exception. Often, there is an unending belief in the sanctity of marriage and the need of children to have a father. There is frequently a distorted sense that the batterer will change and a tendency to select only those incidents in the marriage which are suggestive of positive change (such as, in this case, the fact that Ms. Cho's husband was not abusive when he was sober). These attributions are maintained regardless of the intensity and frequency of the abuse (thus reenforcing the propensity to stay in the marriage). Almost all battered women suffer from a substantially diminished sense of self efficacy and self esteem - perceptions which are often formulated as determinations about the world in general, for example, "No-one can help me"; "I have no choice but to stay", etc.

In Ms. Cho's case, so eroded was her self esteem that it was difficult for her to hold on to the kind of convictions and sense of self worth that would have helped propel her out of the relationship. As with most battered women, Ms. Cho's situation became so intolerable that she finally felt that she had no choice; or that, at least, the choice was between being seriously harmed or killed, or leaving. It is important to recognize that ambivalence in particular, is a trait that many battered women share<sup>2</sup>.

- 7 The CRDD acknowledged the foregoing expert opinion in the following terms:

The panel is willing to accept that the claimant had suffered from a pattern of abuse at the hands of her husband, particularly whenever he was drunk. The panel further recognizes that domestic violence has impacted negatively on the claimant's self-esteem, resulting in periods of ambivalence, anxiety and major depression. The panel, however, finds that state protection is available and accessible to the claimant and her children<sup>3</sup>.

- 8 The CRDD acknowledged the principal applicant's one effort to seek police protection against her husband. It wrote:

The panel finds that this is not sufficient persuasive evidence to show that the police are not able to provide protection to victims of spousal

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<sup>2</sup> Tribunal Record, pages 91-92.

<sup>3</sup> Tribunal Record, page 5.

abuse. While people from other countries - Canada included - who claim to have advanced knowledge of the dynamics of domestic abuse and to have highly developed psycho-social intervention programs might view the South Korean police as very naïve in not doing any more intrusive intervention than what they had done in those circumstances, it is not reasonable for anyone to condemn the police attempt at what seemed to be some kind of conflict resolution. The panel notes, at this juncture, that even in Canada - with all its legitimate claim to a more sophisticated level of understanding of the complex phenomenon of spousal abuse - social scientists, criminologists and other experts on the breakdown of human relationships continue to debate the question of when an intervention in cases involving domestic violence should be more intrusive or when some alternative conflict resolution should be applied first. The panel finds that, in the case of the claimant, there is insufficient persuasive evidence to show that the police did not consider the claimant's fight with her husband very seriously<sup>4</sup>.

9 The CRDD went on to consider documentary evidence before it that, it noted, "...shows that just about the time that claimant left for Canada, two South Korean laws with the objective of the elimination of the domestic violence came into effect - one relating to the punishment of the offender and the other relating to prevention and the safety of victims." It noted that the law relating to the safety of victims extended to children as well as to spouses. The CRDD noted the limitations of the changes in law. It wrote: On the other hand, the panel is willing to accept that the Government of South Korea still faces the major challenge of injecting further improvements into its groundbreaking set of legislation and regulations for the prevention of domestic violence, given its most recent brush with economic bankruptcy and concomitant International Monetary [sic] Fund-imposed fiscal restraints. The panel further acknowledges that the police have to continue their intensive training on the effective implementation of the laws. However, the panel finds that these imperfections do not, in any way, detract from the fact that the Government has adequate mechanisms to protect victims, or potential victims, of domestic abuse. State protection, after all, does not need to be perfect; it only needs to be adequate. Significantly enough, documentary evidence further shows that South Korea's women's groups have praised South Korea's domestic violence-related laws as a significant step forward in combating [sic] domestic violence<sup>5</sup>.

10 The CRDD concluded in the following terms:

After considering all of the evidence, the panel is satisfied that, on a balance of probabilities, there is not a reasonable chance nor a serious possibility that the claimant [the principal applicant] would be persecuted if she were to return to South Korea, by reason of membership in a

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<sup>4</sup> Tribunal Record, page 6.

<sup>5</sup> Tribunal Record, pages 8 and 9.

particular social group (victims of spousal abuse in South Korea) or any of the other grounds set out in the Convention refugee definition. ...

On a similar vein, after considering all of the evidence, the panel is satisfied that, on a balance of probabilities, there is not a reasonable chance nor a serious possibility that the minor claimants would be persecuted if they were to return to South Korea, by reason of membership in a particular social group (family of victims of spousal abuse in South Korea) or any of the other grounds set out in the Convention refugee definition<sup>6</sup>.

11 The applicants urged in their Memorandum of Fact and Law filed on this application that the CRDD erred in making capricious findings of fact, in not applying the "meaningful, effective and durable test" in regard to state protection and in failing to properly consider the psychological report that was before it.

12 I conclude that the CRDD made no reviewable error.

13 Counsel for the applicant relied on my decision in *D'Mello v. Canada (Minister of Citizenship and Immigration)*<sup>7</sup> where I noted that the CRDD, in the decision there under review, failed to make reference to documentary evidence before it that reflected on difficulties encountered by women in India in relying on a legislative and procedural framework to which women subject to domestic violence could have recourse. I further noted that the CRDD, on the facts of that matter, reached its conclusion "...largely from a selective use of documentary evidence concerning country conditions...". I am satisfied that the same cannot be said here. As noted above, the CRDD, in its decision here under review, acknowledged implementation difficulties faced in South Korea both by government officials and the police. Further, I am satisfied that its reliance on documentary evidence could not be considered to be "selective".

14 Counsel further referred me to my decision in *Elcock v. Canada (Minister of Citizenship and Immigration)*<sup>8</sup> where I wrote at paragraph

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In both *Cuffy* and *D'Mello*, the decisions of the CRDD that were under review, relying as they did on a conclusion that the applicant or applicants had failed to meet the onus on them to establish a lack of state protection, were quashed. I am satisfied that the same result must follow here and that the CRDD committed a reviewable error in failing to effectively analyse, not merely whether a legislative and procedural framework for protection existed, but also whether the state, through the police, was willing to effectively implement any such framework. Ability of a state to protect

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<sup>6</sup> Tribunal Record, page 10.

<sup>7</sup> [1998] F.C. J. No. 72 (Q.L.)(F.C.T.D.).

<sup>8</sup> (1999), 175 F.T.R. 116 (F.C.T.D.).

must be seen to comprehend not only the existence of an effective legislative and procedural framework but the capacity and the will to effectively implement that framework.

15 I reach a different conclusion here. I am satisfied that the analysis of the CRDD in the decision here under review involved no capricious findings of fact and represented a reasonable and thorough analysis of current country conditions in South Korea both as to its legislative and regulatory framework for protection of victims of spousal abuse and their children and the capacity and will to effectively implement that framework. Further, the acknowledgement by the CRDD of the psychological report that was before it was entirely adequate and appropriate.

16 In *Canada (Minister of Employment and Immigration) v. Villafranca*<sup>9</sup>, Mr. Justice Hugessen wrote:

No government that makes any claim to democratic values or protection of human rights can guarantee the protection of all of its citizens at all times. Thus, it is not enough for a claimant merely to show that his government has not always been effective at protecting persons in his particular situation. Terrorism in the name of one warped ideology or another is a scourge afflicting many societies today; its victims, however much they may merit our sympathy, do not become Convention refugees simply because their governments have been unable to suppress the evil.

Precisely the same must be said about the evil of family violence.

17 Based upon the foregoing analysis, with regret, I conclude that this application for judicial review must be dismissed. The applicants may have alternative bases on which to seek to remain in Canada. The reasoning of the CRDD in here concluding that Convention refugee protection is not available to the applicants was sufficient to support in a conclusion that was reasonably open to the CRDD.

18 This application for judicial review will be dismissed. Neither counsel recommended certification of a question. No question will be certified.

GIBSON J.

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<sup>9</sup> (1992), 18 Imm. L.R. (2d) 130 (F.C.T.D.).