

Ali v. Canada (Minister of Citizenship and Immigration)

Between
Shysta-Ameer Ali (a.k.a. Shasta Ameri Ali; Shasta Ameer Ali),
Amina Ali, Belal Ali, Soliman Ali (a.k.a. Solaiman Ali),
Appellants, and
The Minister of Citizenship and Immigration, respondent

[1999] F.C.J. No. 63
Court File No. A-772-96

**Federal Court of Appeal
Toronto, Ontario
Stone, Strayer and Décary JJ.**

Heard: January 12, 1999
Oral judgment: January 12, 1999
(4 pp.)

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

This was an appeal by Ali and others from a decision of the court upholding a decision by the Board regarding their found Convention refugee claims. The Board certified the question as to whether refugee claimants were excluded from the definition of Convention refugee where all groups in the country were victims and perpetrators of human rights violations in the context of civil war. Counsel agreed that the question had to be answered in the negative.

HELD: Appeal dismissed. The Board essentially applied the proper test and therefore there was no ground for judicial intervention. In determining whether a claimant met the Convention definition of persecution, the Board was required to use a non-comparative approach and consider the claimant's personal circumstances. The test was whether the risk to the claim was a risk of sufficiently serious harm and was linked to a Convention reason as oppose to the general consequences of civil war.

Statutes, Regulations and Rules Cited:

Immigration Act, ss. 65(3), 83.

Counsel:

Michael Crane, for the appellants.
Jeremiah Eastman, for the respondent.

The judgment of the Court was delivered orally by

1 **DÉCARY J.**— The question at issue in this appeal under section 83 of the Immigration Act is that certified by McKeown J. in the following terms:

Are refugee claimants excluded from the definition of Convention refugee if all groups in their country, including the group of which they are members, are both victims and perpetrators of human rights violations in the context of civil war?¹

2 Counsel for both parties agree that the question as framed cannot but be answered in the negative. The question as posed implies a rationale which, in the view of the Motions Judge, the Board did not employ. In fact, the rationale it puts into question was adopted by neither the Board, the Motions Judge, nor by either counsel and an answer therefore cannot in any way be determinative of this case.

3 The test for persecution in a civil war context has been set out by this Court in *Salibian v. Canada (Minister of Employment and Immigration)*², and in *Rizkallah v. Canada (Minister of Employment and Immigration)*.³

4 That test has been described as the "non-comparative approach" by the Chairperson of the Immigration and Refugee Board in Guidelines issued on March 7, 1996 pursuant to subsection 65(3) of the Immigration Act. These Guidelines address "refugee claims related to civilian non-combatants fearing persecution in civil war situations" and the relevant passages, with which we agree, are found at page 6:

Non-comparative Approach

The non-comparative approach to the assessment of a claim is the approach advocated in these Guidelines. This approach is more in accord with the third principle set out in *Salibian*, the decisions of the Court of Appeal in *Rizkallah* and *Hersi, Nur Dirie*, as well as the wording of the Convention refugee definition. With this approach, instead of an emphasis on comparing the level of risk of persecution between the claimant and other individuals (including individuals in the claimant's own group) or other groups, the Court examines the claimant's particular situation, and that of her group, in a manner similar to any other claim for Convention refugee status.

The issue is not a comparison between the claimant's risk and the risk faced by other individuals or groups at risk for a Convention reason, but

¹ Reported at (1996) 199 F.T.R. 258

² [1990] 3 F.C. 250 (C.A.)

³ (1992), 156 N.R. 1(F.C.A.)

whether the claimant's risk is a risk of sufficiently serious harm and is linked to a Convention reason as opposed to the general, indiscriminate consequences of civil war. A claimant should not be labelled as a "general victim" of civil war without full analysis of her personal circumstances and that of any group to which she may belong. Using a non-comparative approach results in a focusing of attention on whether the claimant's fear of persecution is by reason of a Convention ground.

5 The Board's decision was made before the issuance of these Guidelines. While one might question some of the wording used by the Board in its reasons, we are of the view, as was McKeown J., that the Board essentially applied the proper test and that there was no ground for judicial intervention.

6 The appeal will be dismissed.

DÉCARY J.