

Wajid v. Canada (Minister of Citizenship and Immigration)

Between
Rham Wajid, applicant, and
The Minister of Citizenship and Immigration, respondent

[2000] F.C.J. No. 736
Court File No. IMM-1706-99

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

Heard: March 1, 2000.
Oral judgment: May 25, 2000.
(9 paras.)

Aliens and Immigration — Admission, refugees — Disqualifications, crimes against humanity — International crimes.

Application for judicial review by Wajid from a decision of the Convention Refugee Determination Division which found that he was not a Convention refugee. The basis for the decision was that there were serious reasons to consider that Wajid committed crimes against peace, war crimes or crimes against humanity. Wajid was the General Secretary of an organization in his village which described itself as a peaceful movement seeking the imposition of traditional islamic law in his area of Pakistan. Peaceful protests were held, which broke out in violence during which Wajid was arrested and threatened with death. A warrant was later issued for his arrest for his participation in another demonstration. The panel concluded that as General Secretary in his village of the group he had to know of the violent activities which it undertook and which constituted international crimes.

HELD: Application was allowed. Not every domestic crime was in international crime, nor was every act of violence an act of international crime. The panel failed to identify the crime in question and show that it was an international crime instead of merely domestic. At its highest, the organization in question had as its aim the goal of armed opposition to the state to compel it to comply with its objectives. It was not shown that any international crime was committed and in the absence of any complicity in international crimes, no basis for finding that Wajid was excluded from admission was warranted. It was also an error to find that in his capacity as General Secretary he must have known of the presence of arms amongst the supporters. The panel did not state that it disbelieved Wajid in his denial of the presence of arms, in which case the issue of his office as General Secretary was irrelevant.

Statutes, Regulations and Rules Cited:

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

United Nations Convention relating to the status of Refugees, Section F, Article 1.

Counsel:

Harry Blank, for the applicant.

Josée Paquin, for the respondent.

1 **PELLETIER J.** (Reasons for Order and Order, orally):— Rham Wajid was the General Secretary of the TNSM-Nafaz-e-Shariat-M ("TNSM") in his village. The TNSM describes itself as a peaceful movement seeking the imposition of traditional Islamic law, Shari'a, upon certain administrative units of the North West Frontier in Pakistan. This is a troubled area of Pakistan which borders upon Afghanistan, a country to which misery and violence are not strangers. The TNSM organized peaceful demonstrations in May 1994 seeking to force the central government to comply with its demands. The central government promised that it would and the demonstrators returned to their villages. Time passed and nothing happened. More demonstrations were organized in November 1994. The applicant helped to organize a blockade of the Kanju Road. For three days the protest was peaceful and then violence broke out. Other demonstrations in other areas also became violent. The applicant was arrested, put into a camp where he was starved and threatened with death. Ultimately, he was released on the promise that he would take no further part in such activities.

2 The central government attempted to satisfy the TNSM's demands by appointing Islamic judges to hear cases but they were not recognized as such by the local people. More militant activity resulted in the course of which hostages were taken, the local airport was seized and closed and, unfortunately, people were killed. None of these events occurred in the applicant's immediate area and he was not party to any of them. A warrant was issued for the applicant's arrest as a result of his known participation in a protest at Kabal Crossing in which he gave a speech which was thought to endanger the peace and stability of the country. The applicant went into hiding in Karachi but the police found him there so he fled to Canada where he made a refugee claim.

3 The Convention Refugee Determination Division (CRDD) found that the applicant was excluded from being considered a Convention Refugee because there were "serious reasons to consider that he has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes". These words are taken from Section F of Article 1 of the United Nations Convention relating to the Status of Refugees, which lists the grounds upon which persons can be ruled ineligible for international protection. These provisions are incorporated by reference into the Immigration Act, R.S.C. 1985 c. I-2 ("the Act") by the definition of "convention refugee" in section 2 of the Act. The basis of the

exclusion was that as General Secretary of the TNSM in his village, he had to know the violent activities which the TNSM undertook and which constituted "international crimes", a phrase coined by MacGuigan J.A. in *Ramirez v. Canada*, [1992] 2 F.C. 306 to describe the type of crimes referred in Section F.

4 In *Ramirez*, supra, the Federal Court of Appeal dealt with the issue of complicity of non-participants in criminal acts: persons such as passive bystanders or individuals who are implicated in organizations which carry out criminal acts. The Court concluded that:

...mere membership in an organization which from time to time commits international offences is not normally sufficient for exclusion from refugee status...It seems apparent, however, that where an organization is principally directed to a limited, brutal purpose, such as secret police activity, mere membership may by necessity involve personal and knowing participation in persecutorial acts.

...

At bottom, complicity rests in such cases, I believe, on the existence of a shared common purpose and the knowledge that all of the parties in question may have of it."

5 The CRDD found that violence was inherent to the goals of the TNSM and that the actions which occurred in the course of the TNSM's campaign for the imposition of Shari'a were international crimes. It went on to find the applicant "must have known that people were armed within his organization and that the aims justified all means including a violent uprising in order to force the Pakistani government to implement Sharia Law".

6 The CRDD's decision is flawed in two respects. Not every domestic crime is an international crime. Not every act of violence, or every use of violence to achieve domestic political objectives, is an international crime. In *The Law of Refugee Status*, Professor James Hathaway summarizes the types of offences which are contemplated by Section F of Article 1 of the Convention:

First, a "crime against peace" comprises the planning of or participation in an unlawful war. Second, a "war crime" involves the violation of a law of war, including the mistreatment of civilians and prisoners of war, or the infliction of unjustified property damage during wartime. Third, a "crime against humanity" consists of fundamentally inhumane conduct, often grounded in political, racial, religious or other bias. Genocide, slavery, torture and apartheid are examples of crimes within this category."

7 In *Ramirez*, supra, the crime was torture which is clearly within the definition of one or more of these "international" crimes. In this case, there was, to put it at its highest, armed opposition to the state in order to compel it to comply with the TNSM's objective in the course of which hostages were taken and civilians killed. It has not been shown by

whom the civilians were killed. If the CRDD's opinion was that there are serious reasons to consider that the applicant had considered an international crime, it was incumbent upon it to identify the crime in question and to show what made it an international crime instead of a merely domestic crime. As pointed out in Ramirez, supra, the onus of establishing that a person is excluded lies on the person asserting the exclusion. It is not for the applicant to show that the acts in question did not constitute "international" crimes. It is for the propounder to identify which acts constitute "international" crimes and to show that there are serious reasons for believing that the applicant "committed" those crimes.

8 This leads to the second flaw in the decision which is the CRDD's finding that as General Secretary of the TNSM in his village, the applicant must be taken to have knowledge of the presence of arms among the group's supporters and "that the aims justified all means including a violent uprising in order to force the Pakistani government to implement Sharia Law." If the CRDD's intention is to say that it does not believe the applicant when he says he had no actual knowledge of the presence of arms among supporters of the TNSM, the issue of his office as General Secretary is irrelevant. He either saw them or he did not and the CRDD is entitled to make findings of fact on that score. The significance of that knowledge is another issue. As General Secretary of the TNSM in his areas, the applicant could fall within the class of persons who are so implicated in the work of the organization that they must be taken to have knowledge of all the activities of the organization. The assertion that the aims justified all means including an armed uprising may have been intended to suggest that the TNSM is an organization with a single brutal purpose so that membership, let alone executive membership, would carry with it complicity for the crimes of the organization. With respect, there has been no showing that any international crime has been committed by the TNSM, or that the objectives of the TNSM are "limited to a single brutal purpose". As a result, in the absence of actual complicity in international crimes (as opposed to merely domestic crimes), there is no basis for finding that the applicant is excluded by virtue of Section F of Article 1 of the Convention.

9 For these reasons, the decision of the CRDD will be set aside and the matter remitted for determination according to law by a differently constituted panel.

ORDER

9a The decision of the Convention Refugee Determination Division dated March 24, 1999, reasons for which are dated March 17, 1999, is hereby set aside and the matter is remitted to be decided by a differently constituted panel. [The Court did not number this paragraph. Quicklaw has assigned the number 9a.]

PELLETIER J.