

Date: 20070830

Docket: IMM-3691-06

Citation: 2007 FC 872

Ottawa, Ontario, August 30th, 2007

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**WAHIDULLAH SALIMI
AHMADULLAH SALIMI**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Wahidullah Salimi and his brother Mr. Ahmadullah Salimi are both citizens of Afghanistan. Currently, they are living with their parents and siblings in a refugee camp in Peshawar, Pakistan. They left Kabul in 1992. A group of friends and family members wish to sponsor them for permanent residence in Canada.

[2] In 2006, an immigration officer at the Canadian High Commission in Islamabad determined that the applicants were not eligible for resettlement in Canada because they had failed to show that they continue to be seriously and personally affected by civil war, armed conflict or a massive violation of human rights in their country of nationality. The officer noted that the applicants could

return to Afghanistan under a repatriation program supported by the United Nations High Commissioner for Refugees (UNHCR).

[3] The applicants argue that the officer failed to treat them fairly by not giving them a chance to respond to the documentary evidence on which he relied. Further, they argue that the officer failed to consider the actual circumstances that would await them if they returned to Afghanistan.

[4] I can find no basis for overturning the officer's decision and must, therefore, dismiss this application for judicial review.

I. Issue

[5] Did the officer fail to treat the applicants fairly or to consider the actual circumstances in Afghanistan?

II. Analysis

[6] I can overturn the officer's decision only if I find that he treated the applicants unfairly, or if his decision was out of keeping with the evidence.

(a) Legislative framework

[7] To succeed in their application, the applicants had to establish that they had “no reasonable prospect, within a reasonable period, of a durable solution in a country other than Canada” (*Immigration and Refugee Protection Regulations*, SOR/2002-227, s. 139(1)(d) – relevant provisions are set out in an Annex). They also had to show that they were members of the “country of asylum class”, which comprises persons who are in need of resettlement because they are outside their country of nationality and “have been and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights” (s. 146(1)(a), s. 147).

(b) The Officer’s Decision

[8] The officer concluded that the applicants had failed to show that they met the requirements of the Regulations. In particular, he found that their concerns about returning to Kabul were economic and social, not based on any concerns about civil war, armed conflict or human rights violations. They mentioned the lack of health care, family support, education, jobs, water and electricity in Kabul. The officer concluded that the applicants’ circumstances were no different than those of the millions of others who had left Afghanistan during the civil war. Further, they had available to them a “durable solution” in the form of repatriation to Kabul under the UNHCR program. The officer stated in an affidavit that he informed the applicants of this program and invited them to make submissions on the issue of repatriation. The UNHCR program involved repatriation of almost 3 million Afghans from Pakistan since 2002, including about 70,000 who returned to Kabul.

(c) Have the applicants shown that the officer treated them unfairly or ignored important evidence?

[9] I am not satisfied that the officer treated the applicants unfairly. They had an opportunity to present their case and answer the officer's concerns.

[10] Nor am I satisfied that the officer failed to consider important evidence relating to the UNHCR repatriation program. The documentary evidence on which the officer relied showed that millions of persons in circumstances similar to the applicants' had returned to Afghanistan under the UNHCR program. It is true that there continues to be a reverse flow of Afghans back to Pakistan for economic reasons. Indeed, the UNHCR program, supported by the European Commission's Humanitarian Aid Office, only provides a minimum amount of financial assistance. However, the vast majority of repatriated persons stay in Afghanistan.

[11] I agree with the applicants that the officer must consider the basis of their claim and the actual circumstances in the country where they are alleged to have a durable alternative solution: *Velautham v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1113, [2005] F.C.J. No. 1385 (F.C.) (QL). However, I am satisfied that the officer considered the applicants' submissions and responded to them. Further, his conclusion that a durable solution was available to the applicants in Afghanistan was supported by the documentary evidence before him.

[12] Therefore, I must dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT IS THAT:

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

Annex

*Immigration and Refugee Protection Regulations, SOR/2002-227**Règlements sur l'immigration et la protection des réfugiés, DORS/2002-227*

General requirements

Exigences générales

139. (1) A permanent resident visa shall be issued to a foreign national in need of refugee protection, and their accompanying family members, if following an examination it is established that

139. (1) Un visa de résident permanent est délivré à l'étranger qui a besoin de protection et aux membres de sa famille qui l'accompagnent si, à l'issue d'un contrôle, les éléments suivants sont établis :

...

[...]

(d) the foreign national is a person in respect of whom there is no reasonable prospect, within a reasonable period, of a durable solution in a country other than Canada, namely

d) aucune possibilité raisonnable de solution durable n'est, à son égard, réalisable dans un délai raisonnable dans un pays autre que le Canada, à savoir :

(i) voluntary repatriation or resettlement in their country of nationality or habitual residence, or

(i) soit le rapatriement volontaire ou la réinstallation dans le pays dont il a la nationalité ou dans lequel il avait sa résidence habituelle,

(ii) resettlement or an offer of resettlement in another country;

(ii) soit la réinstallation ou une offre de réinstallation dans un autre pays;

Humanitarian-protected persons abroad

Personnes protégées à titre humanitaire outre-frontières

146. (1) For the purposes of subsection 12(3) of the Act, a person in similar circumstances to those of a Convention refugee is a member of one of the following humanitarian-protected persons abroad classes:

146. (1) Pour l'application du paragraphe 12(3) de la Loi, la personne dans une situation semblable à celle d'un réfugié au sens de la Convention appartient à l'une des catégories de personnes protégées à titre humanitaire outre-frontières suivantes :

(a) the country of asylum class;

b) la catégorie de personnes de

pays d'accueil;

Member of country of asylum class

147. A foreign national is a member of the country of asylum class if they have been determined by an officer to be in need of resettlement because

(a) they are outside all of their countries of nationality and habitual residence; and

(b) they have been, and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights in each of those countries.

Catégorie de personnes de pays d'accueil

147. Appartient à la catégorie de personnes de pays d'accueil l'étranger considéré par un agent comme ayant besoin de se réinstaller en raison des circonstances suivantes :

a) il se trouve hors de tout pays dont il a la nationalité ou dans lequel il avait sa résidence habituelle;

b) une guerre civile, un conflit armé ou une violation massive des droits de la personne dans chacun des pays en cause ont eu et continuent d'avoir des conséquences graves et personnelles pour lui.

FEDERAL COURT
SOLICITORS OF RECORD

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