

Federal Court



Cour fédérale

**Date: 20100930**

**Docket: IMM-1812-10**

**Citation: 2010 FC 981**

**Vancouver, British Columbia, September 30, 2010**

**PRESENT: The Honourable Mr. Justice Beaudry**

**BETWEEN:**

**PROMILLA, DINESH JALAN  
and RAVI JALAN**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review under s. 72(1) of the *Immigration and Refugee Protection Act* (the “Act”), of a decision by the Refugee Protection Division of the Immigration and Refugee Board (the “Board”), dated March 11, 2010, whereby it was held that the applicants are not Convention refugees and are not persons in need of protection.

[2] Promilla, Dinesh and Ravi Jalan (the applicants) are citizens of India. The female applicant (Promilla) is the mother of the other two applicants who are adult males.

[3] They are fleeing India for fear of a woman (Rekha) who is having an affair with the female applicant's husband (Ashok), who also is the father of the two other applicants. Rekha moved in with them and began to make the life of the applicants very difficult. She even burnt the female applicant with hot oil. She is also alleged to have sent some men to beat up the two sons.

[4] The applicants came to Canada with Ashok in June 2008. The female applicant testified that her husband brought them to Canada on the condition that they would remain here and would not follow him to India. The applicants have not heard from him since that time.

[5] They fear Rekha and the Indian police. They allege that Rekha wants them dead and that she is very influential in India.

[6] As a single woman, the female applicant and her two sons with disabilities (both sons have hearing and speech impediments) fear the Indian society as a whole because it does not take kindly to "these types of people".

[7] The Board found that the applicants are neither Convention refugees nor persons in need of protection and that they had an internal flight alternative (IFA). Credibility was not an issue.

[8] The standard of review applicable to issues relating to an IFA is reasonableness, *Dunsmuir* (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190). Consequently, the Court will only

intervene if the decision does not fall within "a range of possible, acceptable outcomes which are defensible in respect of the facts and the law" (*Dunsmuir*, at para. 47).

[9] As for issues of procedural fairness, they are reviewable according to the correctness standard (*CUPE v. Ontario (Minister of Labour)*, 2003 SCC 29, [2003] S.C.J. No. 28 (S.C.C.) at para. 100; *Sketchley v. Canada (Attorney General)*, 2005 FCA 404, [2005] F.C.J. No. 2056 (F.C.A.) at para. 54).

[10] The applicants take issue with paragraph 2 of the decision claiming that the Board applied the wrong test to interpret the definition of convention refugee. The Court is of the opinion that, combined with paragraphs 4 and 19, there is no reviewable error when reading the contested paragraph:

The duty of this panel is to find if there is sufficient credible or trustworthy evidence to determine that there is a "serious possibility" that the claimants would be persecuted, or that there are substantial grounds to believe that they would be tortured, or at risk of losing their lives or being subjected to cruel and unusual treatment or punishment if they return to India ....

[11] With regard to the applicants' arguments on gender-related persecution, I find that the Board did reasonably examine the possibility that the female applicant could face gender-related persecution if returned to India, but concluded that the female applicant does not meet the profile of an abandoned woman who would face destitution in a large city (para. 18 of the decision). This conclusion was based on the fact that the female applicant had two adult sons by her side, as well as the support of her other family members. The Court's intervention is not warranted.

[12] With respect to the alleged procedural fairness issue concerning vulnerable claimants, the Board inquired as to the hearing disabilities of the two male applicants and asked whether they were wearing hearing aids, then took a break to determine how to proceed and reviewed the applicable rules. Upon resuming, the Board satisfied itself that the two male applicants knew what the hearing was for and that all three claimants were basing their claims on the same facts.

[13] The Board member also stated that she was prepared to accept the truth of what was stated in the Personal Information Forms (“PIFs”), but requested that the two male applicants still affirm the truth of these documents. In reading the transcripts, it is clear that the Board member proceeded in this way for the benefit and convenience of the applicants, and not in order to deprive them of the opportunity to testify.

[14] At no time did the applicants or their counsel object to this manner of proceeding.

[15] As a result, I cannot find that there was a breach of procedural fairness. The Board was attentive and accommodated the applicants.

[16] The Board's analysis and conclusions on an IFA are also reasonable. It found that the applicants could live safely anywhere in India outside of Jalandhar, the city where Ashok and Rekha live. Large cities were suggested such as Ludiana and Jammu where the female applicant's sisters live, as well as other large cities such as New Delhi and Mumbai.

[17] The onus is on the applicants to show that there was a serious possibility of being persecuted everywhere in India and that it was objectively unreasonable for them to avail themselves of an IFA (*Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589, 163 N.R. 232; *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706; (1991), 140 N.R. 138 (F.C.A.)). I find that the Board's findings on this question do fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law.

[18] No question of general importance was submitted and none arises.

**JUDGMENT**

**THIS COURT ORDERS that** the application for judicial review be dismissed.

No question is certified.

“Michel Beaudry”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1812-10

**STYLE OF CAUSE:** PROMILLA, DINESH JALAN and RAVI JALAN v.  
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Vancouver, British Columbia

**DATE OF HEARING:** September 29, 2010

**REASONS FOR JUDGMENT  
AND JUDGMENT:** BEAUDRY J.

**DATED:** September 31, 2010

**APPEARANCES:**

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