

Federal Court



Cour fédérale

Date: 20110311

Docket: IMM-3209-10

Citation: 2011 FC 300

Toronto, Ontario, March 11, 2010

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

HAM YOON

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] Although the claimant, a citizen of Pakistan, who lived in the Swat District in the North West Frontier Province, had a credible risk of persecution and was found to be at risk of cruel or unusual punishment and of torture where he lived, his claim for refugee status and international protection was dismissed on the grounds that he had a viable internal flight alternative, Karachi. This is a judicial review of that decision.

[2] Matters turned for the worse in Swat with the rise of TSMN (Tehrik-i-Nafaz-i-Shariat-e-Mohammadi) in the 1990s. By 2002, local mullahs began enforcing Islamic law (Sharia) by attacking video and music stores and denouncing the participation of women in society.

[3] Mr. Yoon, a school teacher, held a press conference in 2007 to protest the actions of the mullahs in his area. He was threatened on a number of occasions. Armed men attacked his home when he was not present and stated that they would kill him when he was found. He fled to Canada.

[4] The country conditions in the National Documentation Package indicate clearly that since the incidents described, Islamic fanatics have been routed from towns, villages and main transportation routes in Swat. However, some surviving fanatics remain and so the member found there was more than a mere possibility that he would be at risk were he to return to his village in Swat.

[5] The member acknowledged that extremist Islamists existed in all parts of the country but found there was no objective evidence to support the proposition that the TSMN, which was not nor had ever been an national organization with national reach, was privy to a sophisticated level of command, control and communication which could put Mr. Yoon at risk in Karachi.

[6] Furthermore, no First Information Report or arrest warrant was ever issued against him and there is no evidence that the police in the Swat valley villages are under the sway of militants now.

[7] The concept of a viable internal flight alternative is inherent in the determination of whether a person is a refugee or in need of protection. The burden rests with the applicant (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (FCA); *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (FCA)).

[8] It was reasonably open for the member to determine that Mr. Yoon was not a convention refugee and not a person in need of Canada's protection in accordance with the standard of review set forth in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at paragraph 47:

Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

ORDER

THIS COURT ORDERS that:

1. The application for judicial review is dismissed.
2. There is no serious question of general importance to certify.

“Sean Harrington”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3209-10

STYLE OF CAUSE: HAM YOON v MCI

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: MARCH 3, 2011

**REASONS FOR ORDER
AND ORDER:** HARRINGTON J.

DATED: MARCH 11, 2011

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