Date: 20080206

Docket: IMM-7-06

Citation: 2008 FC 152

Ottawa, Ontario, February 6, 2008

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

AFENDY TJUHANDA (A.K.A. TJUHANDA, AFENDY)
FRANSISCA HANAFI WANAJASA (A.K.A. WANAJASA, FRANSISCA HANAFI; WANAJASA, FRANSISCA HANAF)
JOSHUA BRIAN TJUHANDA (A.K.A. TJUHANDA, JOSHUA BRIAN)
DAVID MANUEL TJUHANDA (A.K.A. TJUHANDA, DAVID MANUEL)

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Afendy Tjuhanda, his wife Fransisca Hanafi Wanajasa and their son David Manuel Tjuhanda (collectively the "Applicants") seek judicial review of the decision of the Immigration and Refugee Board, Refugee Protection Division (the "Board"). In its decision, dated December 14, 2005, the Board determined that the Applicants are neither Convention refugees nor persons in need of protection pursuant to section 96 and subsection 97(1), respectively of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, as amended (the "Act").

[2] The Principal Applicant and his wife are citizens of Indonesia and Christians of Chinese descent. Their son David is also a citizen of Indonesia. Their son Joshua was born in the United States of America and has the right to return to that country. No evidence was submitted to the Board respecting fear of persecution against him in either the United States or Indonesia. The Principal Applicant is a minister in a church of the Christian denomination. He, his wife and their son claimed refugee status on the basis of their fear of persecution by Muslim extremists in Indonesia.

[3] The Board found that the Applicants were credible but rejected their claim because it found that an Internal Flight Alternative ("IFA") was available in North Sulawesi. It found that the Applicants do not face a serious possibility of persecution in that region of Indonesia and that it is not unreasonable for them to seek refuge there. The Board also found that the Applicants are not at risk of losing their lives or being subjected to cruel and unusual treatment, punishment or torture in Indonesia.

[4] The first matter to be addressed is the applicable standard of review, having regard to a pragmatic and functional analysis. Four factors are to be considered: the presence or absence of a privative clause; the expertise of the tribunal; the purpose of the legislation and the nature of the question.

[5] There is no privative clause in the Act. No full right of appeal is provided but judicial review is available, if leave is granted. Accordingly, the first factor is neutral.

[6] The Board is a specialized tribunal and this favours deference to its decision. The broad purpose of the Act is to regulate the admission of immigrants into Canada and to maintain the security of Canadian society. This involves consideration of many interests that may be in conflict with each other. Decisions made in a polycentric context tend to attract judicial deference.

[7] The final factor is the nature of the question. The existence of an IFA is essentially a question of fact. Upon balancing the four factors, I conclude that the appropriate standard of review is patent unreasonableness since the Board was required to assess the evidence with respect to a viable IFA.

[8] In *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (F.C.A.) the Federal Court of Appeal described an IFA as follows:

> In my opinion, in finding the IFA, the Board was required to be satisfied, on a balance of probabilities, that there was no serious possibility of the appellant being persecuted in Colombo and that, in all the circumstances including circumstances particular to him, conditions in Colombo were such that it would not be unreasonable for the appellant to seek refuge there.

[9] In *Rasaratnam*, the Court commented upon the requirement that the availability of an IFA be raised in the hearing before the Board. The transcript of the proceedings before the Board shows that this condition was met in this case.

[10] Having regard to the evidence that was submitted to the Board, in particular the evidence of the adult Applicants about their work in Indonesia as Christian missionaries, a viable IFA is available in North Sulawesi. The conclusions of the Board are not patently unreasonable and there is no basis for judicial intervention.

[11] In the result, the application for judicial review is dismissed. There is no question for certification arising.

JUDGMENT

The application for judicial review is dismissed. There is no question for certification arising.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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