

Date: 20080306

Docket: IMM-2590-07

Citation: 2008 FC 309

Toronto, Ontario, March 6, 2008

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

**Haidar Zayat
Hanin Zayat and
Fouad Zayat**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application challenges a Pre-Removal Risk Assessment (PRRA) decision respecting an interfaith family in which the father is Muslim and his two children, ages 9 and 12, are baptised Catholic. It is not contested that the decision under review properly decides *IRPA* s.96 and s.97 concerns with respect to the father and the two children.

[2] The unrepresented father's submissions on the PRRA highlight problems faced by interfaith couples in Lebanon and, with respect to his children, he argues as follows:

Because of my interfaith marriage, I have now, two baptized children who may be at the same risk of persecution at the environment in my own country (Lebanon). They are the result of a mixed culture, mixed race, and mixed religions. [sic]

(Applicant's Application Record, p.42).

[3] In the decision under review, the PRRA Officer did a detailed critical analysis of the s.96 and s.97 persecution and risk concerns of the father, but with respect to his American born children only said as follows:

The onus is on the Minor Applicants to provide sufficient evidence to establish that there is more than a mere possibility that they are at a risk of persecution in the USA for reasons set out in Section 96 IRPA. I reviewed the copy of the provincial report cards and kindergarten report cards of Hanin and Fouad and I give the reports cards little weight because they do not provide sufficient evidence of risk of harm of a serious nature if they were to return to the USA. I considered the article "Christian Women take Heed" and I give the article little weight because it does not provide sufficient evidence or risk of harm of a serious nature if the Minor Applicants were to return to the USA.

Further, I note that the Minor Applicants have provided no submissions outlining the ground(s) for protection under Section 96 IRPA or provided a reason for fear of returning to the USA. I find on a balance of probabilities that the Minor Applicants have provided insufficient evidence to establish what they fear if they were to return to the USA to one of the five grounds within section 96 IRPA. I therefore find that there is less than a reasonable chance that the Minor Applicants would suffer persecution if they were to be removed to USA.

...

I note that the Minor Applicants as citizens of the USA have provided no submissions outlining the need for protection under

Section 97 IRPA if they were to return to the USA or provided a reason for fear of returning to the USA. I find on a balance of probabilities that the Minor Applicants have provided insufficient evidence to establish what they fear if they were to return to the USA. I therefore find on a balance of probabilities that there is insufficient evidence to establish that the Minor Applicants personally face a danger of torture within the meaning of Article 1 of the Convention Against Torture (CAT) or be subjected personally to a risk to their lives or to a risk of cruel and unusual treatment or punishment if they were to be removed to the USA.

[Emphasis added]

(Tribunal Record, pp. 235 and 237-238)

[4] There is no dispute that, if the father in the present case is required to leave Canada, he will return to Lebanon with his two children. It is important to note that the two children were independent applicants for the Pre-Removal Risk Assessment, and as a result, were entitled to a determination of the s.96 and s.97 concerns as Catholics who will return with their Muslim father to Lebanon. In my opinion, the PRRA Officer erred in making the s.96 and s.97 determinations with respect to their return to the United States. There has never been a contemplated return to that country and, consequently, I find that the decision under review is made in reviewable error.

ORDER

Accordingly, I set aside the decision under review and refer the matter back to a different PRRA officer for re-determination, but on the following direction:

1. The re-determination is limited to in-country evidence and argument respecting s.96 and s.97 persecution and risk concerns that an interfaith family composed of a Muslim father and his two baptised Catholic children would experience if returned to Lebanon.

With respect to the present application I find no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-2590-07

STYLE OF CAUSE: Haidar Zayat, Hanin Zayat and Fouad Zayat v. The Minister of Citizenship and Immigration

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: March 4, 2008

REASONS FOR ORDER AND ORDER BY: Campbell J.

DATED: March 6, 2008

APPEARANCES:

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Michael Butterfield FOR THE RESPONDENT

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