Federal Court  Cour fédérale

Date: 20091023

Docket: IMM-5086-08

Citation: 2009 FC 1084

Ottawa, Ontario, October 23, 2009

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

ALEXEY CHEKHOVSKIY
OLGA ANATOLIEVNA BOYKO
DARIA ALEKSEEVNA CHEKHOVSKAYA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

FURTHER REASONS FOR ORDER AND ORDER

[1] On September 25, 2009, I issued reasons in this matter. At the request of counsel at the hearing, I agreed to give them an opportunity to review my reasons in order to decide whether to request that I certify questions for consideration in a possible appeal to the Federal Court of Appeal.

[2] On October 1, 2009, counsel for the applicants requested that I certify the following two questions:

i. Is it the law that a vocational group can not, under any circumstances, pertain to the concept of "particular social group" within the Convention Refugee definition?

ii. Can the Federal Court on judicial review uphold a tribunal decision where

1. the relevant standard of review is reasonableness,

2. the tribunal makes an error of fact in the reasoning which led to its conclusion, and

3. the outcome remains reasonable based on other factual considerations,

or must the Court, in order to uphold the decision, find that the decision would not have and could not have been different absent the error?

[3] On October 8, 2009, counsel for the respondent made submissions opposing the certification of that question.

[4] Paragraph 74*(d)* of the *Immigration and Refugee Protection Act* requires that only serious questions of general importance be certified. It is well established that in order for a question to be certified, it must be one which "transcends the interests of the immediate parties to the litigation and contemplates issues of broad significance or general application". In addition, in order to be certified, the question must also be one that is determinative of the appeal. The certification process is not "to be equated with the reference process established by section 18.3 of the *Federal Courts Act*". Nor is it to be used as a tool to obtain "declaratory judgments on fine questions which need not be decided in order to dispose of a particular case": *Canada (Minister of Citizenship and*

Immigration) v. *Liyanagamage* (1994), 176 N.R. 4 (F.C.A.), at para. 4; *Chu* v. *Canada (Minister of Citizenship and Immigration)* (1996), 116 F.T.R. 68 (F.C.), at para. 2.

[5] I agree with the respondent that the first question proposed by the applicants is neither determinative of this appeal nor a question of general importance. Even if the main applicant had been recognized as a member of a particular social group for the purposes of the Convention Refugee definition, it would most likely not have affected the outcome of his case. Indeed, it is clear that the main applicant's fear of persecution did not stem first and foremost from his membership in the group of "builders in Russia", whether this group is considered a particular social group or not, but by reason of his personal activities. As for the importance of the question, I believe that the Supreme Court of Canada has already provided substantial guidance on the meaning of "particular social group" in *Canada (Attorney General)* v. *Ward*, [1993] 2 S.C.R. 689, such that further guidance from the Federal Court of Appeal is not required or warranted.

[6] I also agree with the respondent that the second question proposed by the applicants is not a serious question that transcends the interests of the immediate parties. The scenario described by the applicants merely reflects an application of the reasonableness standard of review, as described by the Supreme Court of Canada in *Dunsmuir* v. *New Brunswick*, [2008] 1 S.C.R. 190, 2008 SCC 9 and in *Canada (Citizenship and Immigration)* v. *Khosa*, [2009] 1 S.C.R. 339, 2009 SCC 12. There are numerous precedents for the proposition that a decision of the Refugee Board ought not to be disturbed, despite a factual error, if the decision is nevertheless reasonable when read as a whole. Accordingly, no further clarification or guidance is required in that respect.

[7] There will therefore be no question certified for the Court of Appeal.

ORDER

THIS COURT ORDERS that there will be no question certified for the Court of Appeal.

"Yves de Montigny"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5086-08
STYLE OF CAUSE:	Alexey Cherkhovskiy, Olga Anatolievna Boyko, Daria Alekseevna Chekhovskaya and The Minister of Citizenship and Immigration
PLACE OF HEARING:	Winnipeg, Manitoba
DATE OF HEARING:	June 8, 2009
FURTHER REASONS FOR ORDER AND ORDER:	de Montigny J.
DATED:	October 23, 2009

APPEARANCES:

Mr. David Matas	FOR THE APPLICANTS
Ms. Sharlene Telles-Langdon	FOR THE RESPONDENT

SOLICITORS OF RECORD:

MR. DAVID MATAS Barrister & Solicitor Winnipeg, MB	FOR THE APPLICANTS
MR. JOHN H. SIMS, Q.C. Deputy Attorney General of Canada Winnipeg, Manitoba	FOR THE RESPONDENT