Date: 19980814

Docket: IMM-1861-97

**OTTAWA, ONTARIO, AUGUST 14, 1998**

**Present: JOYAL J.**

**Between:**

**YURI MAXIMILOK**

**MARIANA MAXIMILOK**

**VLADLENA SOKOLOVSKI**

**ELENA MAXIMILOK**

**Applicants**

**- and -**

**MINISTER OF CITIZENSHIP**

**AND IMMIGRATION**

**Respondent**

**ORDER**

The application for judicial review in this case is dismissed.

L-Marcel Joyal

JUDGE

Certified true translation

Bernard Olivier

Date: 19980814

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**Between:**

**YURI MAXIMILOK**

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**REASONS FOR ORDER**

**JOYAL J.**

[1] This is an application for judicial review of a decision of the Immigration and Refugee Board (hereinafter "the panel") dated April 10, 1997. In that decision, the panel determined that the applicants were not refugees within the meaning of subsection 2(1) of the *Immigration Act*.

***The facts***

[2] The applicants"father, mother and their two daughters"are Ukrainian by origin and immigrated to Israel under the *Law of Return* in 1991. The mother and the two daughters are Jewish, while the father's religion is Christian.

[3] On his personal information form, the father gives an exhaustive account of the incidents that led him and his family to claim refugee status in Canada. Since the description of those events is very detailed, I shall simply give a succinct summary of the facts on which the panel relied in making its decision.

[4] From the time they arrived, the applicants experienced various incidents of discrimination, whether at the children's school or the father's place of work. They filed an initial complaint with the police in January 1992, when neighbours allegedly threw stones through the windows of the family home during Christmas and New Year's celebrations. The sight of their Christmas tree apparently provoked this attack. The police allegedly responded in a cavalier manner that during this period of the year drunken Russians often broke windows. The applicants were frustrated at not receiving more protection from the authorities.

[5] The second complaint that the applicants filed with the police was in response to an assault on their older daughter by some classmates, who allegedly attacked the girl as school was getting out, insulted her and touched her in a sexual manner. The applicant and his wife then accompanied their daughter to the police station to file a complaint. Again, they say, the police refused to open a file, contending that Russians made complaints for all sorts of "childish pranks". The applicants' testimony indicated that they were convinced that the police did not act because they are of Russian origin and the father is not Jewish.

[6] A psychological assessment that was done in March 1996 and filed in this case indicates that the older daughter suffers from severe psychological disturbances that are related to her experience in Israel. The psychologist in the case does not recommend returning to that country.

[7] In 1993, after he was unjustly dismissed and his salary was not paid, the father consulted a lawyer of Russian origin. After learning that the applicant was working without a contract and that his co-workers would not testify on his behalf, the lawyer refused to start proceedings for a case he considered doomed to failure.

[8] In 1995, the applicant and his family were threatened with death by some neighbours and decided at that time to leave Israel and come to Canada. They arrived here in September 1995 and claimed refugee status at that time.

***Decision of the panel***

[9] From the outset, the panel doubted the truth of the applicants' written account, which it felt was exaggerated. After comparing the applicants' testimony with the written documentation in the Commission's file, the panel concluded that the state of Israel offered the applicants numerous courses of action to obtain physical and civil protection. The panel felt that the applicants had not made every effort they should have made, if in fact they were in need of some protection or redress.

***Arguments of the parties***

***(a) The applicants***

[10] The applicants argue that the panel erred in preferring the documentary evidence to the applicants' testimony. They contend that the panel's conclusions as to their lack of credibility are without basis and therefore unreasonable. They submit that the Federal Court of Appeal has held that a panel may not doubt the credibility of a claimant without stating valid reasons, and so the panel in this case therefore could not have doubted the applicants' credibility solely on the basis of the documentation filed by the Commission.

[11] In addition, the applicants argue that the panel erred in saying that they made no effort to obtain the protection of the state. They submit that it is in evidence that they did not obtain the protection they wanted, despite their numerous requests, and they cite the examples of the meetings with and complaints to school officials, the complaint to the director of the union and the visit to the lawyer.

[12] Lastly, the applicants argue that the panel erred in relying on the decision in *MCI v. Kadenko*, October 15, 1996, A-388-95 (F.C.A.), which imposes a higher burden of proof for Israeli nationals than for other refugee claimants. The panel should instead have relied on the decision in *Ward v. A.G.C.*, [1993] 2 S.C.R. 689, a decision of the Supreme Court of Canada which is the final word in this matter. The applicants contend that, in any event, the evidence established that the repeated efforts they made meet the burden laid down in *Kadenko, supra*.

***(b) The respondent***

[13] With respect to the applicants' credibility, the respondent contends that the panel evaluated their allegations of persecution and quite simply found them inconsistent with the documentary evidence, and that according to the case law a panel is entitled to do this. It is further submitted that a panel has no duty to give reasons for its findings of implausibility, and that it may base its decision on the evidence it considers to be most credible. It is up to the applicants to establish that the panel in this case ignored evidence, a burden which the applicants were unable to discharge. It is therefore presumed that the panel took all of the evidence into consideration.

[14] With respect to the applicants' argument that the panel erred in concluding that they had not established how it was that they could not have obtained the protection of the Israeli authorities, the respondent contends that there is no basis for this allegation.

[15] Lastly, contrary to what the applicants argue, the respondent contends that the decision of the Federal Court of Appeal in *Kadenko, supra*, does not conflict with the decision of the Supreme Court of Canada in *Ward, supra*. This is demonstrated by the decision of this Court in *Menaker v. M.C.I.*, October 27, 1997, IMM-3837-96, in which Mr. Justice Dubé relied on those two decisions in defining the burden of proof that rests on any applicant who argues that the state was incapable of protecting him or her.

***Analysis***

[16] In *Rajudeen v. M.E.I.* (1984), 55 N.R. 129 (F.C.A.), at 134, Mr. Justice Heald stated the test that a claimant must meet in order to establish fear of persecution as follows:

> The subjective component relates to the existence of the fear of persecution in the mind of the refugee. The objective component requires that the refugee's fear be evaluated objectively to determine if there is a valid basis for that fear.

[17] The subjective basis for the fear of persecution rests solely on the credibility of the applicants. Where the applicants swear that their allegations are true, those allegations are then presumed to be true. In the instant case, the panel doubted the applicants' credibility in clear and precise terms. We can therefore conclude that the applicants were unable to demonstrate a subjective fear of persecution.

[18] Since the panel doubted the applicants' credibility, it properly placed greater weight on the documentary evidence filed in this case. The case law that applies here indicates that the panel may do so, if it explains its reasons in clear and precise terms. In the instant case, I find that the decision in issue meets the tests laid down in the case law.

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[19] Granting Convention refugee status is an alternative form of protection which becomes necessary only when the claimant's state of origin cannot or will not protect the claimant. As long as the state continues to exist, it is presumed to be capable of protecting its citizens. To rebut that presumption, the claimant must prove that the state is incapable of protecting him or her, either through an admission by the authorities of the state in question or by proof of prior personal incidents in which the state did not protect him or her, or by evidence establishing that state protection measures were unable to provide protection for similarly situated individuals.

[20] In *Kadenko, supra*, the Court of Appeal, relying on the decision of the Supreme Court in *Ward, supra*, said that the burden of proof that rests on the claimant is directly proportional to the level of democracy in the state in question. The higher the level of democracy in a particular state, the more the claimant must have done to exhaust all the courses of action open to him or her before claiming the protection of another state.

[21] In the instant case, the panel concluded that the applicants had not exhausted all the resources available to them before leaving Israel. Having regard to the documentary evidence submitted, that decision is not unreasonable.

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***Conclusion***

[22] The decision in issue is not vitiated by any error of fact or of law which would permit this Court to intervene. The application for judicial review must therefore be dismissed.

L-Marcel Joyal

JUDGE

O T T A W A, ONTARIO

August 14, 1998.

Certified true translation

Bernard Olivier

FEDERAL COURT OF CANADA

TRIAL DIVISION

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT NO: IMM-1861-97

STYLE OF CAUSE: Yuri Maximilok et al. v. M.C.I.

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: June 30, 1998

REASONS FOR ORDER OF JOYAL J.

DATED: August 14, 1998

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