

BETWEEN:

JOSE ALONSO NAJERA REUL,

EVA NAJERA ARVIZU,

DEISY ELIZABETH NAJERA ARVIZU,

ALONSO ISRAEL NAJERA ARVIZU and

SHAMMAI NAJERA ARVIZU,

Applicants

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

GIBSON J.:

[1] These reasons out of a decision of the Convention Refugee Determination Division (the "CRDD") of the Immigration and Refugee Board wherein the CRDD determined the applicants not to be Convention refugees within the meaning assigned to that expression in subsection 2(1) of the *Immigration Act*¹. The decision of the CRDD is dated the 5th of January, 2000.

[2] The applicants are husband and wife and three of their children. All are citizens of Mexico. They base their claim to Convention refugee status on an alleged well-founded fear of persecution if they are required to return to Mexico by reason of their religious beliefs. All five applicants are Jehovah's Witnesses.

[3] The background to the applicants' alleged fear arises out of the death of the mother of José Alonso Najera Reul (the "principal applicant"). The principal applicant's mother was also a Jehovah's Witness. During her final illness, she and the principal applicant received advice that she required blood transfusion. The principal applicant's mother, based on her religious beliefs, declined to accept blood transfusion. The principal applicant supported her in this decision. In the event, the principal applicant's mother died. The principal applicant's siblings apparently accused the principal applicant of causing their mother's death. They sent threatening letters and made threatening phone calls to the principal applicant. The principal applicant alleges that on three separate occasions he and his children were threatened by his siblings. On one occasion, the threat was reported to the police. According to the principal applicant, the police took no action.

[4] The principal applicant and his family moved to a home that he had owned for some ten (10) years the location of which was known to his siblings and was in a neighbourhood where one of his sisters had a business in which the principal applicant was employed. He continued in his employment in that business where he regularly encountered some of his siblings.

[5] The CRDD concluded:

Based on these allegations, this panel has found that you are not Convention refugees. Your fear is based on a family dispute which does not bring your situation within the ambit of the Convention refugee definition.

[6] Counsel for the applicant urged that the CRDD erred in a reviewable manner in three respects: first, and these errors are not presented in the order in which they were urged by counsel for the applicant, in finding that there was no well-founded fear of persecution on the part of the applicant; second, in determining that there was no nexus between the applicants' fear and a ground of persecution specified in the definition "Convention refugee"; and finally, by finding or at least implying that, to bring the applicants within the definition of "Convention refugee", the actions which led them to flee Mexico must emanate from state authorities.

[7] I conclude that this application for judicial review should be allowed.

[8] My reading of the reasons for decision of the CRDD does not disclose that the CRDD found that the applicants had no subjectively and objectively well-founded fear of persecution in Mexico. It wrote in its reasons:

Your fear of persecution is not well-founded with relation to religious persecution by the state or government of Mexico.

Further, it wrote:

It can not be said that you have a well-founded fear of persecution in Mexico because of your religion simply because your siblings do not like it. There is no more than a mere possibility that any of you would suffer persecution within the meaning of the Convention refugee definition in Mexico.

[9] The first of the foregoing quotations clearly focusses, not on the applicant's fear of persecution in Mexico on a Convention ground, but only of their fear of persecution in Mexico on the ground of their religion and with respect to persecution by the state or government of Mexico. The second quotation, if the two sentences are read together, and I conclude that they must be, is also restricted to a finding regarding fear of persecution on the basis of religion, a Convention ground, but is not restricted to a fear at the hands of the Mexican state or government. I conclude that neither of the quoted passages amounts to a generalized finding that the applicants had no subjectively and objectively a well-founded fear of persecution on any Convention ground throughout Mexico. Thus, I conclude that the first issue recited above does not arise on the facts of this matter.

[10] The second issue arises out of the first conclusion by the CRDD recited earlier in these reasons. I repeat it here for ease of reference:

Your fear is based on a family dispute which does not bring your situation within the ambit of the Convention refugee definition.

[11] Counsel for the applicants urged that this finding represents an error of law in that the root-cause of the applicants' difficulties with the principal applicant's siblings was the principal applicant's action based on his and his mother's religious principles that, at least in the eyes of the siblings, resulted in their mother's death.

[12] Counsel referred me to the following authorities for the proposition that fear arising out of a determination to live by religious convictions is itself a fear of persecution on religious grounds. Professor James C. Hathaway wrote at page 146 in *The Law of Refugee Status*²:

Because religion encompasses both the beliefs that one may choose to hold and behaviour which stems from those beliefs, religion as a ground for refugee status similarly includes two dimensions. First, is the protection of persons who are in serious jeopardy because they are adherents of a particular religion ... Alternatively, because religion includes also behaviour which flows from belief, it is appropriate to recognize as refugees persons at risk for choosing to live their convictions. [emphasis added]

Counsel urged that the situation of the applicants here is precisely that referred to by Professor Hathaway as the alternative basis to a claim to Convention refugee status on religious grounds.

[13] In *Immigration Law and Practice*³, Lorne Waldman wrote:

The more restrictive view, which requires that the persecution be directed at the person's religion in order to sustain a claim on that ground, has been adopted by a number of members of the Convention Refugee Determination Division of the Immigration and Refugee Board. They will, when dealing with claims based on a fear of persecution by reason of the claimant's religion, reject the claim on that ground once it has been established that the claimant was not denied the right to practise his or her religion. This analysis would appear to be a misinterpretation of the Convention Refugee Definition since the definition requires that the person have a well-founded fear of persecution *by reason of the claimant's race, religion, etc.* Persecution can take many forms. The fact that a person who makes a claim based on his or her religion is allowed to worship is irrelevant to the analysis of whether he or she has a well-founded fear of *persecution by reason of his or her religion*. [emphasis in the original]

[14] The first of the foregoing quotations, that from Professor Hathaway, is more directly relevant on the facts of this matter. Here, counsel urged, the principal applicant and his family members fear persecution by reason of the principal applicant's choice to live his conviction, flowing from his religious beliefs, a conviction shared by his mother based also on her religious beliefs, that it is inappropriate to receive blood transfusions. The latter quotation, from Lorne Waldman, I find to be less helpful to the position of the applicants.

[15] I am satisfied that, to the extent that the applicants would be at risk of persecution if required to return to Mexico, to paraphrase the words of Professor Hathaway, by reason of the principal applicant's choosing to live his religious convictions by supporting his mother when her own religious convictions, the same as his, led her to reject a blood transfusion when if she had accepted it, or her son had required her to accept it, it might have saved her life, they have established a subjectively and objectively well-founded fear of persecution in Mexico on the ground of religious belief.

[16] I accept the interpretation of persecution on the ground of religious belief put forward by Professor Hathaway. At the same time, neither counsel put forward authority from either division of this Court that has clearly either rejected or affirmed that interpretation.

[17] Finally, on the third issue raised on behalf of the applicants, I find no basis to conclude that the CRDD in fact adopted the position that, in order for persecution to fall within the Convention refugee definition, it must emanate from state authorities.

[18] Based on the foregoing analysis, this application for judicial review will be allowed, the decision of the Convention Refugee Determination Division that is under review will be set aside and the applicants' application for Convention refugee status will be referred back to the Immigration and Refugee Board for rehearing and redetermination by a differently constituted panel.

[19] Counsel for the applicant urged certification of a question if my decision, which I reserved at the end of the hearing of this matter, were to go against the applicants. Counsel for the respondent urged against certification of a question. In light of the outcome, no question will be certified.

J. F.C.C.

Ottawa, Ontario

October 2, 2000

¹ R.S.C. 1985, c. I-2.

² Toronto: Butterworths, 1991.

³ Volume I, Toronto: Butterworths, 1992 at para. 8.103.

