

Algamal v. Canada (Minister of Citizenship and Immigration), 2004 FC 1586 (CanLII)

Date: 2004-11-10

File IMM-4682-04

number:

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Date: 20041110

Docket: IMM-4682-04

Citation: 2004 FC 1586

Toronto, Ontario, November 10th, 2004

Present: The Honourable Mr. Justice Campbell

BETWEEN:

ABDUL ALGAMAL, REEMA ABDE, QADER, NADA AGAMAL,

NORE ALGAMAL, WASEEM ALGAMAL

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] This is a proceeding pursuant to [s.72](#) of the *Immigration and Refugee Protection Act, S.C. 2001, c. 27* ("the [IRPA](#)") for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board, dated 19 April, 2004, wherein the Member, Ms. Kathleen Freeman (the "Tribunal Member"), did not find that the Applicants to be Convention refugees nor persons in need of protection within the meaning of [s.96](#) and [s.97](#) of the [IRPA](#).

[2] The male Applicant, Abdul Algamal, is a stateless Palestinian who has a valid Egyptian travel document issued to Palestinian refugees. The Applicant has never lived in Palestine, but is identified on his travel document as a Palestinian from Gaza due to his parentage. His Egyptian travel document is only for the purpose of facilitating international travel and does not grant any permission for residence or work. The Applicant was born in Saudi Arabia where his father was under a work permit, but his father has since died, and the Applicant has no further ties to that country. He went to the United States in 1990 to study and has lived there ever since, even though his visa expired and his refugee application was closed due to non-appearance in 1997.

[3] The male Applicant is married to the female Applicant who is, a Palestinian and a citizen of Jordan. The female Applicant has never lived in Jordan, and has lived in the United States since 1989. She arrived from Kuwait, overstayed her tourist visa, and was unable to reunite with her family because of the Gulf War. She then married the male Applicant and joined him in the now closed asylum claim. She has no right under Jordanian law to sponsor her husband or her children in Jordan. The three minor children are all American born and have no right to sponsor their parents in the United States.

[4] With respect to the female Applicant and the minor children, I find no reviewable error in the Tribunal Member's decision; as a result, the application with respect to each is dismissed.

[5] However, with respect to the male Applicant, Abdul Algamal, I find that the Tribunal Member rendered her decision in breach of natural justice for failing to address in her Reasons for Decision the rationale in respect to his claim against Gaza.

ORDER

Accordingly, I set aside the Tribunal Member's decision with respect to the Applicant Abdul Algamal, and refer the matter back to the Tribunal Member for redetermination on the following directions:

The redetermination is limited to answering the following questions:

1. Is Gaza a "Country of Former Habitual Residence" in respect to the Applicant Abdul Algamal? If the answer is "yes",
2. Has the Applicant, Abdul Algamal established his claim against Gaza?

In reaching the answer to the questions, I further direct that the Tribunal Member's decision be based on the evidentiary record originally before her, but also on further evidence and argument to be supplied by both Counsel for the Applicant and Respondent.

"Douglas R. Campbell"

J.F.C

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-4682-04

STYLE OF CAUSE: ABDUL ALGAMAL, REEMA ABDEL QADER,

NADA ALGAMAL NORE ALGAMAL,

WASEEM ALGAMAL

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PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 10, 2004

REASONS FOR ORDER

AND ORDER BY: CAMPBELL J.

DATED: NOVEMBER 10, 2004

APPEARANCES:

Edward C. Corrigan FOR APPLICANTS

Stephen H. Gold FOR RESPONDENT

SOLICITORS OF RECORD:

Edward C. Corrigan

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Toronto, Ontario FOR RESPONDENT

FEDERAL COURT

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