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Docket: IMM-B612

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, January 21, 2011

**PRESENT: The Honourable Mr. Justice Shore
With the close collaboration of Geneviève Ladouceur**

BETWEEN:

LITTLE PRINCE

Applicant

and

**CANADA (MINISTER OF CITIZENSHIP AND
IMMIGRATION)**

Respondent

**(DECISION FOR LAW STUDENTS AS A LEARNING EXERCISE REGARDING THE
LITTLE PRINCE WHO IS CLAIMING REFUGEE STATUS)**

Preliminary

[1] *I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character.*

Martin Luther King Jr.

[2] “Children are not the people of tomorrow, but people today. They are entitled to be taken seriously. They have a right to be treated by adults with tenderness and respect, as equals. They should be allowed to grow into whoever they were meant to be - The unknown person inside each

of them is the hope for the future”, Janusz Korczak, as cited by the Court in *Kim v. Canada (Minister of Citizenship and Immigration)* 2010 FC 149, [2010] F.C.J. No. 177, at paragraph 1.

[3] [TRANSLATION] “The planet Earth is very odd. There are so many places to go, so much space, but nowhere to take me in, no corner of the earth that I could consider my home until the time I’m given the opportunity to live at an address, on a street, in a country that has nothing against me and that wants me and would like to welcome me. A path to go to school, a journey to become what I could become to contribute and become an inhabitant, a resident instead of a traveller, stateless, instead of a person from the Kingdom of Oz. Oz could have been nice with me and my family, but my family was taken away from me, and I was hurt, and I will never know the answer to why don’t adults answer the most important questions children ask them?” [Applicant’s Personal Information Form, p. 2]

[4] “Everyone has the right to seek and to enjoy in other countries asylum from persecution” [The Universal Declaration of Human Rights, Article 14.1].

Introduction

[5] According to the definition in the United Nations *Convention on the Rights of the Child* (1989), half of the world’s refugees and displaced persons are children, defined as persons under 18 years of age (Parliamentary Assembly of the Council of Europe, Recommendation 1703 (2005), Protection and assistance for separated children seeking asylum).

[6] We are dealing with us a specific case involving a child who was persecuted by reason of his social group, the Roma. Most of the evidence was based on the child’s testimony, whose credibility was not challenged by the decision-maker at first instance. In this type of case, the quasi-judicial and judicial system becomes the voice of those who have no voice.

Children are vulnerable. They are susceptible to disease, malnutrition and physical injury.

Children are dependent. They need the support of adults, not only for physical survival, particularly in the early years of childhood, but also for their psychological and social well-being.

Children are developing. They grow in developmental sequences, like a tower of bricks, each layer depending on the one below it. Serious delays interrupting these sequences can severely disrupt development.

Refugee children face far greater dangers to their safety and well being than the average child. The sudden and violent onset of emergencies, the disruption of families and community structures as well as the acute shortage of resources with which most refugees are confronted, deeply affect the physical and psychological well being of refugee children. It is a sad fact that infants and young children are often the earliest and most frequent victims of violence, disease and malnutrition which accompany population displacement and refugee outflows. In the aftermath of emergencies and in the search for solutions, the separation of families and familiar structures continue to affect adversely refugee children of all ages. Thus, helping refugee children to meet their physical and social needs often means providing support . . .
[Not underlined in the original.]

(United Nations High Commissioner for Refugees, *Refugee Children: Guidelines on Protection and Care*, 1994, as cited in *Canada (Minister of Citizenship and Immigration) v. Patel* 2008 FC 747, [2009] 2 F.C.R. 196, 330 F.T.R. 152)

[7] *Guideline 3 – Child Refugee Claimants: Procedural and Evidentiary Issues*, Immigration and Refugee Board, Ottawa, Canada, effective date September 30, 1996, is an example of rules that must be considered in assessing a child’s testimony. It complements the Act and thus enables Canada to comply with its international obligations such as those in the United Nations *Convention on the Rights of the Child* (CRC). The CRC was adopted by the United Nations General Assembly on November 20, 1989, signed by Canada on May 28, 1990, and ratified on December 13, 1991. It came into force on January 12, 1992. The Guidelines address procedural and evidentiary issues related to a child’s claim.

[8] Under Guideline 3, the applicant, Little Prince, is considered to be a child in the third category, an “unaccompanied” child. The treatment of claims of unaccompanied children warrants special attention. The issue of whether an unaccompanied minor qualifies for refugee status is also examined in the *Handbook on Procedures and Criteria for Determining Refugee Status under the*

1951 Convention and the 1967 Protocol relating to the Status of Refugees (UNHCR (1979) re-edited, Geneva, January 1992) (the UNHCR Handbook):

(2) Unaccompanied minors

213. There is no special provision in the 1951 Convention regarding the refugee status of persons under age. The same definition of a refugee applies to all individuals, regardless of their age. When it is necessary to determine the refugee status of a minor, problems may arise due to the difficulty of applying the criteria of “well-founded fear” in his case. If a minor is accompanied by one (or both) of his parents, or another family member on whom he is dependent, who requests refugee status, the minor’s own refugee status will be determined according to the principle of family unity (paragraphs 181 to 188 above).

214. The question of whether an unaccompanied minor may qualify for refugee status must be determined in the first instance according to the degree of his mental development and maturity. In the case of children, it will generally be necessary to enrol the services of experts conversant with child mentality. A child—and for that matter, an adolescent—not being legally independent should, if appropriate, have a guardian appointed whose task it would be to promote a decision that will be in the minor’s best interests. In the absence of parents or of a legally appointed guardian, it is for the authorities to ensure that the interest of an applicant for refugee status who is a minor are fully safeguarded.

215. Where a minor is no longer a child but an adolescent, it will be easier to determine refugee status as in the case of an adult, although this again will depend upon the actual degree of the adolescent’s maturity. It can be assumed that—in the absence of indications to the contrary—a person of 16 or over may be regarded as sufficiently mature to have a well-founded fear of persecution. Minors under 16 years of age may normally be assumed not to be sufficiently mature. They may have fear and a will of their own, but these may not have the same significance as in the case of an adult.

216. It should, however, be stressed that these are only general guidelines and that a minor’s mental maturity must normally be determined in the light of his personal, family and cultural background.

217. Where the minor has not reached a sufficient degree of maturity to make it possible to establish well-founded fear in the same way as for an adult, it may be necessary to have greater regard to certain objective factors. Thus, if an unaccompanied minor finds himself in the company of a group of refugees, this may—depending on the circumstances—indicate that the minor is also a refugee.

218. The circumstances of the parents and other family members, including their situation in the minor’s country of origin, will have to be taken into account. If

there is reason to believe that the parents wish their child to be outside the country of origin on grounds of well-founded fear of persecution, the child himself may be presumed to have such fear.

219. If the will of the parents cannot be ascertained or if such will is in doubt or in conflict with the will of the child, then the examiner, in cooperation with the experts assisting him, will have to come to a decision as to the well-foundedness of the minor's fear on the basis of all the known circumstances, which may call for a liberal application of the benefit of the doubt.

[9] The Refugee Protection Division (RPD) automatically appointed a representative for the applicant, who is also his legal guardian, Antoine de Saint-Exupéry. This is a case involving a vulnerable person who is in a foreign country from which he is claiming refugee status and who is separated from his parents, who died in violent events that resulted in the legal guardian, Mr. de Saint-Exupéry, filing an application for protection in Canada on behalf of the applicant under the auspices of a non-governmental organization (NGO), HOPE.

[10] This is the context in which our Court is being asked to review the RPD's decision.

Legal proceeding

[11] This is an application based on subsection 72(1) of the *Immigration and Refugee Protection Act*, 2001, c. 27 (Act) for judicial review of a decision issued on October 14, 2010, in which the RPD determined that the applicant, Little Prince, was neither a refugee under section 96 of the Act nor a person in need of protection under section 97 of the same Act.

Facts giving rise to the dispute

[12] The applicant's name is Little Prince, and he is eight years old. He is a Roma and a citizen of the Kingdom of Oz.

[13] The night of April 12-13, 2009, during an attack by a group of hate-mongers at the Prince family's home, their house was set on fire with Molotov cocktails. The people who attacked Little Prince's house were drinking from bottles of alcohol that they then threw into the fire to feed the flames.

[14] The parents of the young Little Prince along with his brother and sister died in the fire as the applicant watched. He is the only survivor of the fire. After inhaling a large amount of smoke, he was saved from the flames *in extremis* by the team of firefighters who had been dispatched to the scene. Little Prince also sustained third degree burns.

[15] As a result of his injuries, the applicant was in a coma for a month. During that time, he had a dream, which he described when he testified before the RPD.

[16] Subsequent to the attack, three men were arrested and sentenced to prison by the courts in Oz on October 20, 2010.

[17] The NGO HOPE brought the sole survivor, Little Prince, to Canada. A legal representative, Mr. de Saint-Exupéry, was appointed, and he filed a refugee claim on behalf of the minor applicant.

[18] In a decision dated October 14, 2010, the RPD determined that the applicant did not qualify as a Convention refugee or a person in need of protection. An application for leave to appeal to the Federal Court was filed on November 13, 2010.

[19] On December 12, 2010, the application for leave to appeal the decision was allowed.

Decision that is the subject of this review

[20] The RPD determined that the applicant did not qualify as a refugee under section 96 of the Act on the ground that he failed to rebut the presumption of state protection. The RPD found the applicant's testimony credible; nonetheless, it concluded that the Kingdom of Oz offered adequate protection to the applicant. Relying on the Federal Court of Appeal judgment in *Canada (Minister of Citizenship and Immigration) v. Carrillo*, 2008 FCA 94, 2008 4 F.C.R. 636, the RPD pointed out that refugee claimants have the burden of proving on a balance of probabilities that state protection is inadequate in their country of origin, which the applicant failed to do. As the RPD concluded, [TRANSLATION] "the documentary evidence

establishes that, even if the applicant was a victim of violence and aggression because of his Roma origin, he could have obtained state protection. The Kingdom of Oz takes all necessary measures to protect its Roma minority.” (RPD decision, p. 3)

Issues

[21] The Court is addressing three questions:

1. Did the RPD properly apply the Guidelines on Child Refugee Claimants (Guideline 3) in its decision and its assessment of the applicant’s testimony?
2. Did the RPD err in assessing the documentary evidence on the protection offered by the Kingdom of Oz to persons who are members of the Roma ethnic group?
3. Did the RPD consider the issue of whether Little Prince is stateless?

Relevant statutory provisions

[22] Sections 96 and 97 of the Act define what constitutes a refugee within the meaning of the Act:

Convention refugee	Définition de « réfugié »
<p>96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion, (a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or (b) not having a country of nationality, is outside the country of their former habitual</p>	<p>96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques: a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays; b) soit, si elle n’a pas de nationalité et se trouve hors du</p>

residence and is unable or, by reason of that fear, unwilling to return to that country.

pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

Personne à protéger

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally (a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or (b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if (i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée:

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture; b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant: (i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins

Person in need of protection

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

médicaux ou de santé adéquats.

Personne à protéger

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

Appropriate standard of review

[23] The *Kim* decision, above, applied the standard of review for state protection:

[28] The parties agree that questions relating to the adequacy of state protection are to be reviewed on a standard of reasonableness . . .

[29] When applying the standard of reasonableness, a court must show deference to the reasoning of the agency under review and must be cognizant to the fact that certain questions that come before administrative tribunals do not lend themselves to one specific result. As the Supreme Court of Canada explained, reasonableness is concerned mostly with “the existence of justification, transparency and intelligibility within the decision-making process”, as well as “whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v. New Brunswick*, [2008] SCC 9, [2008] 1 S.C.R. 190 at paragraph 47).

[24] Thus, the reasonableness standard should be applied in this case. The jurisprudence also applies the reasonableness standard to the issue of whether there are compelling reasons in a given situation:

[18] In *Isacko v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 1128 (F.C.T.D.) (QL) at paragraph 8, the issue as to whether there are “compelling reasons” in a given case has been considered as a question of fact (*Rasanayagam v. Canada (Minister of Citizenship and Immigration)*, [1995] F.C.J. No. 1080 (F.C.T.D.) (QL)). It is the Board, with its expertise and experience that is best able to assess whether the Applicant falls within the ambit of the “compelling reasons” provision (*Hassan v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 630 (F.C.T.D.) (QL)).

Questions of fact are recognized to imply more deference. However, the delineation of the concept of “compelling reasons” is a question of law for which the Board has no specific expertise.

[*Kotorri v. Canada (Minister of Citizenship and Immigration)* 2005 FC 1195, 279 F.T.R. 149]

Submissions of parties

[25] The applicant submits that the RPD’s decision that the protection is adequate on a balance of probabilities is not reasonable. The applicant argues that the Board’s findings do not take into account the specific circumstances of the child’s situation. Furthermore, the member did not sufficiently consider and apply Guideline 3 during the child’s testimony before the RPD, and the RPD did not examine the issue of “compelling reasons” despite the fact that Mr. de Saint-Exupéry raised it.

[26] The respondent submits that the RPD’s decision is reasonable in light of the evidence that was before it. In support of his application, the applicant filed

- 1-a Personal Information Form (PIF);
- 2-the applicant’s testimony before the RPD, testimony that primarily contains a description of the applicant’s dream when he was in a coma. An interpreter at the hearing translated what the Little Prince said;
- 3-the Immigration Board’s documentation package on the Kingdom of Oz;
- 4-Dr. Rose Petal’s psychiatric report describing the child’s state of mind, along with an analysis of the events the child experienced through a recurring dream when he was in a coma.

[27] The RPD did not determine that the applicant’s evidence was insufficient but that the state where the child is from is able or should be able to protect him under its statutory provisions. The respondent submits that the RPD reviewed all the evidence and made a reasonable decision and that the Court has no reason to intervene in this matter.

Analysis

1. Did the RPD properly apply the Guidelines on Child Refugee Claimants (Guideline 3) in its decision and its assessment of the applicant's testimony?

[28] In this case, the applicant filed a refugee claim based on persecution he suffered as a member of a social group, i.e. the Roma group in the Kingdom of Oz. First, it must be determined what constitutes persecution under the Act. According to the UNHCR Handbook:

(b) Persecution

51. There is no universally accepted definition of “persecution”, and various attempts to formulate such a definition have met with little success. From Article 33 of the 1951 Convention, it may be inferred that a threat to life or freedom on account of race, religion, nationality, political opinion or membership of a particular social group is always persecution. Other serious violations of human rights—for the same reasons—would also constitute persecution.

52. Whether other prejudicial actions or threats would amount to persecution will depend on the circumstances of each case, including the subjective element to which reference has been made in the preceding paragraphs. The subjective character of fear of persecution requires on evaluation of the opinions and feelings of the person concerned. It is also in the light of such opinions and feelings that any actual or anticipated measures against him must necessarily be viewed. Due to variations in the psychological make-up of individuals and in the circumstances of each case, interpretations of what amounts to persecution are bound to vary.

53. In addition, an applicant may have been subjected to various measures not in themselves amounting to persecution (e.g. discrimination in different forms), in some cases combined with other adverse factors (e.g. general atmosphere of insecurity in the country of origin). In such situations, the various elements involved may, if taken together, produce an effect on the mind of the applicant that can reasonably justify a claim to well-founded fear of persecution on “cumulative grounds”. Needless to say, it is not possible to lay down a general rule as to what cumulative reasons can give rise to a valid claim to refugee status. This will necessarily depend on all the circumstances, including the particular geographical, historical and ethnological context.

[29] Claimants have the onus of establishing that they were persecuted. They must prove not only that they subjectively fear being persecuted in their country of origin but also that their fear is

well-founded in an objective sense: *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, 103 D.L.R. (4th) 1, (this test was confirmed in *Chan v. Canada (Minister of Employment and Immigration)*, [1995] 3 S.C.R. 593, 128 D.L.R. (4th) 213):

[119] More generally, what exactly must a claimant do to establish fear of persecution? As has been alluded to above, the test is bipartite: (1) the claimant must subjectively fear persecution; and (2) this fear must be well-founded in an objective sense. This test was articulated and applied by Heald J.A. in *Rajudeen* [(1984), 55 N.R. 129 (F.C.A.)], at p. 134:

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.

Subjective fear

[30] In its decision-making process, the RPD reviewed the applicant's testimony and Personal Information Form as a basis for analyzing the subjective fear aspect of the persecution. The RPD determined that the child's testimony was credible and did not reject the claim on the basis of the testimony. Essentially, Little Prince testified before the RPD that he needed a country or a planet [TRANSLATION] "where [he could] find peace" (Personal Information Form, p. 1). Little Prince's Personal Information Form begins this way:

[TRANSLATION]

"Once upon a time there was a little prince who lived on a planet hardly any bigger than he was, and who needed a friend . . ." For those who understand life, that would sound much truer.

...

If I try to describe my story here, it's so I won't forget it.

...

I'm sure to get some important details all wrong. But here you'll have to forgive me. [Where I come from, in my dream, I didn't have to explain anything.]

[*The Little Prince*, Harcourt, Inc., 2000, pp. 12-13]

[31] In testifying as Little Prince's legal representative, counsel for the applicant, Mr. de Saint-Exupéry, made these introductory statements to explain how he met the applicant while he was in the Kingdom of Oz:

...

The first night, then, I went to sleep on the sand a thousand miles from any inhabited country. I was more isolated than a man shipwrecked on a raft in the middle of the ocean. So you can imagine my surprise when I was awakened at daybreak by a funny little voice saying, "Please . . . draw me a sheep . . ." I leaped up as if I had been struck by lightning. I rubbed my eyes hard. I stared. And I saw an extraordinary little fellow staring back at me very seriously. . . .

So I stared wide-eyed at this apparition. Don't forget that I was a thousand miles from any inhabited territory. Yet this little fellow seemed to be neither lost nor dying of exhaustion, hunger or thirst; nor did he seem scared to death. There was nothing in his appearance that suggested a child lost in the middle of the desert a thousand miles from any inhabited territory. . . .

[However, that was what he was, a child lost in the middle of the desert.]

[*The Little Prince*, Harcourt, Inc., 2000, pp. 3-4]

[32] Mr. de Saint-Exupéry also had difficulty communicating with Little Prince. Counsel described to the Board the conversation he had with Little Prince when he asked him to describe the country that he came from:

It took me a long time to understand where he came from. The little prince, who asked me so many questions, never seemed to hear the ones I asked him. It was things he said quite at random that, bit by bit, explained everything.

...

"So you fell out of the sky, too. What planet are you from?"

That was when I had the first clue to the mystery of his presence, and I questioned him sharply, "Do you come from another planet?"

But he made no answer. He shook his head a little, still staring at my airplane.

"Of course, *that* couldn't have brought you from very far . . ." And he fell into a reverie that lasted a long while. Then, taking my sheep out of his pocket, he plunged into contemplation of his treasure.

You can imagine how intrigued I was by this hint about "other planets." I tried to learn more: "Where do you come from, little fellow? Where is this 'where I live' of yours? Where will you be taking my sheep?"

After a thoughtful silence, he answered, "The good thing about the crate you've given me is that he can use it for a house after dark."

"Of course. And if you're good, I'll give you a rope to tie him up during the day. And a stake to tie him to."

This proposition seemed to shock the little prince:

"Tie him up? What a funny idea!"

“But if you don’t tie him up, he’ll wander off somewhere and get lost.”
My friend burst out laughing again. “Where could he go?”
“Anywhere. Straight ahead . . .”
Then the little prince remarked quite seriously, “Even if he did, everything’s so small where I live!”
. . .

[*The Little Prince*, Harcourt, Inc., 2000, pp. 7-8]

[33] The process of determining the refugee claims of unaccompanied children raises many concerns. Guideline 3, above, recognizes that this category of minors warrants special attention:

III. PROCESSING CLAIMS OF UNACCOMPANIED CHILDREN

. . .
6. In determining what evidence the child is able to provide and the best way to elicit this evidence, the panel should consider, in addition to any other relevant factors, the following: the age and mental development of the child both at the time of the hearing and at the time of the events about which they might have information; the capacity of the child to recall past events and the time that has elapsed since the events; and the capacity of the child to communicate his or her experiences.

[34] Moreover, with respect to evidentiary issues, Guideline 3 states:

In general, children are not able to present evidence with the same degree of precision as adults with respect to context, timing, importance and details. They may be unable, for example, to provide evidence about the circumstances surrounding their past experiences or their fear of future persecution. In addition, children may manifest their fears differently from adults. (in B. Evidentiary Issues)

[35] Indeed, the applicant’s testimony highlights the fact that the child did not fully comprehend what happened to him. This is an excerpt of the applicant’s testimony at the RPD hearing:

[TRANSLATION]

Q: Can you tell me more about what happened to you, Little Prince?

A: Grown-ups always need explanations . . .

Q: Yes, you need to explain clearly to the Board what happened to you in your country . . .

A: Can I draw my story instead of telling it to you?

Q: Just tell me in your own words.

A: Please be patient. I'll explain my dream to you with a drawing. Grown-ups don't know how to draw, but children do.

Q: A dream you say? What did you dream about?

[Here, the child did not answer and began to draw. The member gave him time to finish his drawing.]

A: Look, do you like my first drawing?

[The child had drawn a planet crowded with three enormous volcanoes that were erupting.]

Q: Explain your drawing to me, Little Prince.

A: These are volcanoes that are erupting. They burned me, look, I still have the scars. In my dream, I didn't have any scars.

Q: Did you have this dream when you were in the coma, Little Prince?

A: I remember that I dreamed. I dreamed, and in my dream I was trying to find a country while I was flying, but I couldn't find one . . .

Q: What do you think of Canada, Little Prince?

A: The snow shines like the sand in the desert where I was . . . but, sir, I don't think you're dressed for winter. It's cold in Canada!

Q: Not all the time, Little Prince.

A: Do you have sheep in Canada?

Q: Why do you want to know if we have sheep in Canada?

A: Sheep don't hurt anyone, they like children. I would like someone to draw me a sheep . . .

Q: Little Prince, can we talk about serious things now? What I'm talking to you about is very important . . .

A: Grown-ups confuse everything. I *am* talking to you about serious things. On my planet, I could see 44 sunsets a day. You have an astronaut in Canada, Marc Garneau, could he see 44 sunsets in one day while flying around the Earth? Isn't it serious that your astronaut Marc Garneau could have seen 44 sunsets?

Mr. de Saint-Exupéry: You see, sir, out of the mouths of babes . . . !

...

[36] In his decision, the RPD member wrote: [TRANSLATION] “[W]hen Little Prince was testifying, I understood that I had to listen to everything the child was saying so as not to break the bond of trust. There were, in fact, connections between the child’s dream and reality demonstrating that Dr. Rose Petal’s psychiatric analysis was taken into consideration with respect to Little Prince’s state of mind through his dream that he considered his reality and that his counsel, Mr. de Saint-Exupéry, submitted as evidence of his subjective fear.” (RPD decision, p.2)

[37] Guideline 3 supports the principle of the best interests of the child. On this subject, Justice Michel Shore in *Kim*, above, cited and commented on a passage from the Supreme Court of

Canada's decision in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, 174 D.L.R. (4th) 193 [Baker] on the rights of children:

[50] In the eyes of the law, children have long been voiceless citizens. Even after all of the progress that has been made in empowering groups that used to be voiceless, such as women and ethnic and religious minorities, children remain largely silenced. That being said, the CRC recognizes the individual rights that children possess. The Supreme Court of Canada recognized this in the case of *Baker*, above, when it stated:

[71] The values and principles of the Convention recognize the importance of being attentive to the rights and best interests of children when decisions are made that relate to and affect their future. In addition, the preamble, recalling the *Universal Declaration of Human Rights*, recognizes that “childhood is entitled to special care and assistance”. A similar emphasis on the importance of placing considerable value on the protection of children and their needs and interests is also contained in other international instruments. The United Nations *Declaration of the Rights of the Child* (1959), in its preamble, states that the child “needs special safeguards and care”. The principles of the Convention and other international instruments place special importance on protections for children and childhood, and on particular consideration of their interests, needs, and rights. They help show the values that are central in determining whether this decision was a reasonable exercise of the H & C power. (Not underlined in the original).

...

[58] In addition to recognizing the rights of children, the RPD should also be aware of the particular vulnerabilities of children when assessing whether particular acts amount to “persecution” of a child. The Preamble to the CRC states “[b]earing in mind that, as indicated in the Declaration of the Rights of the Child, ‘the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth’”. Since the CRC recognizes the vulnerabilities of children, it is appropriate for the RPD to consider their physical and mental development when assessing whether the harm feared by a claimant amounts to persecution. Children, because of their distinct vulnerabilities, may be persecuted in ways that would not amount to persecution of an adult. It is incumbent on the RPD to be empathetic to a child’s physical and mental state and to be aware of the fact that harming a child may have greater consequences than harming an adult.

[38] It should be noted that *Baker*, above, was a decision on an application for humanitarian and compassionate considerations. As the *Kim* decision, above, established, the best interests of the child must be taken into account only in terms of procedure, not with respect to the substance of the decision on a refugee protection claim to the Board:

[76] . . . It is under section 25 that a substantive and thorough analysis of the best interests of the child is performed. At the stage of a section 96 application, it is sufficient that the best interests of the child are taken into account procedurally, as directed by the Guidelines. The Court must reiterate that the best interests of the child cannot shoehorn a refugee claimant into the section 96 definition if the child's claim would otherwise be rejected, but it can influence the process which leads to that decision.

[39] It appears to the Court that the RPD properly applied Guideline 3 with respect to the child's testimony. Certainly, it was difficult for the child to express his subjective fear of persecution. In assessing the evidence, Guideline 3 states that the RPD should take note of the following:

1. If the child has given oral testimony, then the weight to be given to the testimony must be assessed. In determining the weight to be given, the panel should consider the opportunity the child had for observation, the capacity of the child to observe accurately and to express what he or she has observed, and the ability of the child to remember the facts as observed. These factors may be influenced by the age, gender and cultural background of the child as well as other factors such as fear, memory difficulties, post-traumatic stress disorder and the child's perception of the process at the CRDD.
2. A child claimant may not be able to express a subjective fear of persecution in the same manner as an adult claimant. Therefore, it may be necessary to put more weight on the objective rather than the subjective elements of the claim. The Federal Court of Canada (Appeal Division) has said the following on this issue:

I am loath to believe that a refugee status claim could be dismissed solely on the ground that as the claimant is a young child he or she was incapable of experiencing fear the reasons for which clearly exist in objective terms.

3. When assessing the evidence presented in the claim of a child refugee claimant, the panel may encounter gaps in the evidence. For example: a child may indicate that men in uniforms came to the house but not know what type of uniforms they were wearing or a child may not know the political views of his or

her family. The child may, due to age, gender, cultural background or other circumstances, be unable to present evidence concerning every fact in support of the claim. In these situations, the panel should consider whether it is able to infer the details of the claim from the evidence presented.

[40] The jurisprudence cautions against the risk of dismissing a refugee claim solely because the applicant is incapable of expressing or even experiencing fear. In *Yusuf v. Canada (MCI)*, [1992] 1 FC 629, 31 A.C.W.S. (3d) 138 [*Yusuf*], Justice James Hugessen of the Federal Court of Appeal stated the following:

[5] . . . It is true, of course, that the definition of a Convention refugee has always been interpreted as including a subjective and an objective aspect. The value of this dichotomy lies in the fact that a person may often subjectively fear persecution while that fear is not supported by fact, that is, it is objectively groundless. However, the reverse is much more doubtful. I find it hard to see in what circumstances it could be said that a person who, we must not forget, is by definition claiming refugee status could be right in fearing persecution and still be rejected because it is said that fear does not actually exist in his conscience. The definition of a refugee is certainly not designed to exclude brave or simply stupid persons in favour of those who are more timid or more intelligent. Moreover, I am loath to believe that a refugee status claim could be dismissed solely on the ground that as the claimant is a young child or a person suffering from a mental disability, he or she was incapable of experiencing fear the reasons for which clearly exist in objective terms.

[41] This case, however, is distinguishable from the *Yusuf* decision, above, in the sense that the member in this case did not make disparaging comments to Little Prince and showed patience in actively listening to the child's story. It can be seen from the testimony that was given, the member's attitude and the questions he asked, as well as the interaction with the child, that the member took the time to listen to the witness, as the following excerpt, *inter alia*, shows:

[TRANSLATION]

A: You're writing all the time, sir. Are you really listening to me when you take notes? I'm talking to you about serious things, real serious things. Are you taking my misfortunes seriously?

Q: Of course, yes, I'm really listening to you. I'm taking notes to make sure I remember everything you told me today, Little Prince.

A: Are you the person who's going to decide whether I can stay in Canada, sir? Are you interested in numbers or in human beings, sir? Do you count human beings or do you believe human beings count? I knew someone who did nothing but count . . . he didn't know the value of any thing, just their price.

Little Prince remembered a part of his dream in which he met a businessman:

...

“How can someone own the stars?”

“To whom do they belong?” retorted the businessman grumpily.

“I don’t know. To nobody.”

“Then they belong to me, because I thought of it first.”

“And that’s all it takes?”

“Of course. When you find a diamond that belongs to nobody in particular, it’s yours. When you’re the first person to have an idea, you patent it and it’s yours. Now I own the stars, since no one before me ever thought of owning them.”

“That’s true enough,” the little prince said. “And what do you do with them?”

“I manage them. I count them and then count them again,” the businessman said. “It’s difficult work. But I’m a serious person!”

The little prince was still not satisfied. “If I own a scarf, I can tie it around my neck and take it away. If I own a flower, I can pick it and take it away. But you can’t pick the stars!”

“No, but I can put them in the bank.”

“What does that mean?”

“That means that I write the number of my stars on a slip of paper. And then I lock that slip of paper in a drawer.”

“And that’s all?”

“That’s enough!”

That’s amusing, thought the little prince. And even poetic. But not very serious. The little prince had very different ideas about serious things from those of the grown-ups. “I own a flower myself,” he continued, “which I water every day. I own three volcanoes, which I rake out every week. I even rake out the extinct one. You never know. So it’s of some use to my volcanoes, and it’s useful to my flower, that I own them. But you’re not useful to the stars.”

The businessman opened his mouth but found nothing to say in reply, and the little prince went on his way.

...

[*The Little Prince*, Harcourt, Inc., 2000, pp.38-40]

Q: . . . yes, I’m the person who’ll decide whether you can stay and live in Canada.

A: Are you a king, sir? Since you’re deciding what will happen to me, am I your subject? Are you an absolute monarch? Is everyone the same for you?

[Little Prince then fell into a reverie, and the member awaited his response.]

In Little Prince's dream, there was a king. ". . . the king insisted that his authority be universally respected. He would tolerate no disobedience, being an absolute monarch. But since he was a kindly man, all his commands were reasonable."

[*The Little Prince*, Harcourt, Inc., 2000, p. 29]

Q: . . . no, I'm not an absolute monarch. I'm a decision-maker so I make decisions, but they must be reasonable.

[The child fell into a reverie again; the member allowed him 15-20 seconds to think.]

Little Prince remembered a part of his dream where he asked a king for a sunset. Nothing gave him greater pleasure than sunsets, they were the opposite of fiery volcanoes. And when the sunlight is gone, the stars can take their rightful place and shine in the sky.

"I'd like to see a sunset . . . Do me a favor. . . Command the sun to set . . ."
"If I commanded a general to fly from one flower to the next like a butterfly, or to write a tragedy, or to turn into a seagull, and if the general did not carry out my command, which of us would be in the wrong, the general or me?"

"You would be," said the little prince, quite firmly.

"Exactly. One must command from each other what each can perform," the king went on. "Authority is based first of all upon reason. If you command your subjects to jump in the ocean, there will be a revolution. I am entitled to command obedience because my orders are reasonable."

"Then my sunset?" insisted the little prince, who never let go of a question once he had asked it.

"You shall have your sunset. I shall command it. But I shall wait, according to my science of government, until conditions are favorable."

"And when will that be?" inquired the little prince.

[*The Little Prince*, Harcourt, Inc., 2000, pp. 30-31]

While he was in a coma, Little Prince was in a dark room (because his eyes had been too damaged by the fire and smoke): he was eager to see a sunrise.

Q: . . . the only thing I need from you is to help me understand your story. That's why I'm asking you questions, and you must try to answer as best you can.

A: Are you going to make me wait a long time for the decision, sir? . . . Canada is a big country. If you let me live in Canada, I won't take up much space, I'll go to the Great North to live. There's less risk of volcanoes there.

Q: But what are you saying? You would live by yourself?

A: Better to live alone than with volcanoes that scared me in my dream . . .

Q: You don't know anyone here?

A: Until now, I only have my rose and Mr. de Saint-Exupéry. If you let me live in Canada, I'll always water a flower that will belong to me and that will always be my friend . . .

Q: So you're looking for friends?

A: How many people can come into Canada every year? If there are thirty million people in Canada, can't it accept one more small person?

[42] The *Patel* decision, above, adopted the principle in *Yusuf*, above, and granted refugee status to a minor from India:

[28] The upshot of the applicant's submission is that all persons who are incompetent will, by reason of that incompetence, be unable to qualify as Convention refugees. This will include most children and anyone who is incompetent by reason of mental disability (including those whose mental disability was due to trauma caused by persecution).

[29] Where a claimant is deemed incompetent whether by age or disability, the claimant may not be able to articulate their fear in a rational manner. Moreover, most children cannot be required to swear an oath to tell the truth, because it is presumed that a child is not able to understand the nature of an oath. Although children can give evidence in legal proceedings, their evidence is to be approached with care. Under such circumstances, even if a child did testify that he/she is afraid, that testimony would be subject to care by the decision maker and may be significantly discounted if the child does not have a full appreciation of the circumstances (*Yusuf*, above).

[Emphasis added.]

[43] Moreover, in his decision, the member wrote: [TRANSLATION] "I realize Little Prince's testimony is genuine. He is a child, and with all his spontaneity, he did not lie to me. I find his testimony credible." However, the member proceeded as follows to justify rejecting his claim for protection: [TRANSLATION] ". . . nevertheless, there is nothing in the evidence to support a finding that the Kingdom of Oz does not provide adequate protection for Roma children who are in Little Prince's situation." (RPD decision, p. 2) Accordingly, the Court must now review whether the RPD's decision on this point was reasonable.

2. Did the RPD err in assessing the documentary evidence on the protection offered by the Kingdom of Oz to persons who are members of the Roma ethnic group?

[44] As Guideline 3 notes, it is sometimes necessary to examine objective factors in more detail than the child's testimony:

27. The UNHCR document *Refugee Children - Guidelines on Protection and Care*, endnote 5 above, provides that where a child is not mature enough to establish a well-founded fear of persecution in the same way as an adult it is necessary to examine in more detail objective factors, such as the characteristics of the group the child left with[,] the situation prevailing in the country of origin and the circumstances of family members, inside or outside the country of origin. (Page 100 - 101.) The same point is made in the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* (Geneva, January 1979) which states in paragraph 217 that it may be necessary to have a greater regard to certain objective factors.

Situation of Roma in the Kingdom of Oz

[45] The documentary evidence filed with the RPD contained the most recent complete package entitled "National Documentation Package, Kingdom of Oz", published by the Immigration and Refugee Board, March 31, 2010. The package contains, *inter alia*, two documents that were filed entitled "Kingdom of Oz: Fact-Finding Mission Report on State Protection", Canada, June 2009, Immigration and Refugee Board (IRB) and "Kingdom of Oz: Fact-Finding Mission Report on the Situation and Treatment of Roma and Potential for Internal Relocation", Canada, July 2009, Immigration and Refugee Board (IRB). It is noted that the department of the interior for the Kingdom of Oz stated that it would provide ongoing training to police officers on how to combat extremism, racism, anti-Semitism and xenophobia. Generally, it is difficult for Roma to access education in the country, they face various forms of discrimination and live in housing described as "mediocre".

[46] In its decision, the RPD noted two improvements to the situation of the Roma that, in its view, supported a finding that state protection was adequate. First, strategies to combat extremism began to be implemented in the form of investigation offices in the mid-1990's, and campaigns to educate the public were introduced. A newspaper article was also filed stating that the people suspected of

killing Little Prince's family had been apprehended and convicted in a state court, which convicted three hate-mongers. However, the Court notes from the documentary evidence that hate crimes against Roma in the Kingdom of Oz are not included in the statistics on racially motivated violence:

[TRANSLATION]

No interlocutors could provide reliable statistics on racially motivated violence specifically targeting Roma, since figures on extremist crime are not disaggregated by ethnicity, nor is there an official monitoring body recording cases of anti-Romani crime. NGO interlocutors provided their observations on the level of anti-Romani crime by relying on data collected through media monitoring and reports by staff in the field.

[4. Treatment of Roma, July 2009, at paragraph 1]

[47] The RPD could not reasonably find that attacks against Roma have likely stopped, without analyzing the contradictory documentary evidence, supported by the package and the testimony of the applicant and his legal representative. In *Kovacs v. Canada (Citizenship and Immigration)* 2010 FC 1003, [2010] F.C.J. No. 1241, a decision on a PRRA application, the Court cited and applied the decision in *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1988), 157 F.T.R. 35, 83 A.C.W.S. (3d) 264, at paragraphs 16 and 17, which state that the decision must reflect that the evidence was considered:

[57] The PRRA officer has no obligation to mention or rebut each piece of evidence in her decision. It is within the PRRA officer's jurisdiction to give more weight to one part of the documentary evidence than to another. The decision must nevertheless reflect that this evidence was considered. In *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1425 (QL), 157 F.T.R. 35, the Federal Court states that:

[15] The Court may infer that the administrative agency under review made the erroneous finding of fact "without regard to the evidence" from the agency's failure to mention in its reasons some evidence before it that was relevant to the finding, and pointed to a different conclusion from that reached by the agency. . . .

. . .

[17] However, the more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact "without regard to the evidence": *Bains v. Canada (Minister of*

Employment and Immigration) (1993), 63 F.T.R. 312 (F.C.T.D.). In other words, the agency's burden of explanation increases with the relevance of the evidence in question to the disputed facts. Thus, a blanket statement that the agency has considered all the evidence will not suffice when the evidence omitted from any discussion in the reasons appears squarely to contradict the agency's finding of fact. Moreover, when the agency refers in some detail to evidence supporting its finding, but is silent on evidence pointing to the opposite conclusion, it may be easier to infer that the agency overlooked the contradictory evidence when making its finding of fact.

[48] The RPD's decision did not mention the testimony of the legal representative, Mr. de Saint-Exupéry. This type of testimony had, however, been decisive in determining subjective and objective fear in the *Patel* decision, above, which also dealt with a child's refugee claim and in which the Court gave probative value to the legal representative's testimony, describing him as "an excellent witness' who 'has been very forthright [and] clearly understands the claim'. It described him as a 'professional witness'." (at paragraph 40)

[49] Mr. de Saint-Exupéry testified about the situation in the Kingdom of Oz for unaccompanied minors based on the subjective feelings of his client, Little Prince:

Every day I'd learn something about the little prince's planet, about his departure, about his journey. It would come quite gradually, in the course of his remarks. This was how I learned, on the third day, about the drama of the baobabs.

This time, too, I had the sheep to thank, for suddenly the little prince asked me a question, as if overcome by grave doubt.

"Isn't it true that sheep eat bushes?"

"Yes, that's right."

"Ah! I'm glad."

I didn't understand why it was so important that sheep should eat bushes. But the little prince added:

"And therefore they eat baobabs, too?"

I pointed out to the little prince that baobabs are not bushes, but trees as tall as churches, and that even if he took a whole herd of elephants back to his planet, that herd couldn't finish off a single baobab.

The idea of the herd of elephants made the little prince laugh.

"We'd have to pile them on top of one another."

But he observed perceptively:

"Before they grow big, baobabs start out by being little."

"True enough! But why do you want your sheep to eat little baobabs?"

He answered, “Oh, come on! You know!” as if we were talking about something quite obvious. And I was forced to make a great mental effort to understand this problem all by myself.

And, in fact, on the little prince’s planet there were—as on all planets—good plants and bad plants. The good plants come from good seeds, and the bad plants from bad seeds. But the seeds are invisible. They sleep in the secrecy of the ground until one of them decides to wake up. Then it stretches and begins to sprout, quite timidly at first, a charming, harmless little twig reaching toward the sun. If it’s a radish seed, or a rosebush seed, you can let it sprout all it likes. But if it’s the seed of a bad plant, you must pull the plant up right away, as soon as you can recognize it. As it happens, there were terrible seeds on the little prince’s planet . . . baobab seeds. The planet’s soil was infested with them. Now if you attend to a baobab too late, you can never get rid of it again. It overgrows the whole planet. Its roots pierce right through. And if the planet is too small, and if there are too many baobabs, they make it burst into pieces.

...

I don’t much like assuming the tone of a moralist. But the danger of baobabs is so little recognized, and the risks run by anyone who might get lost on an asteroid are so considerable, that for once I am making an exception to my habitual reserve. I say, “Children, watch out for baobabs!” It’s to warn my friends of a danger of which they, like myself, have long been unaware that I worked so hard on this drawing. The lesson I’m teaching is worth the trouble. You may be asking, “Why are there no other drawings in this book as big as the drawing of the baobabs?” There’s a simple answer: I tried but I couldn’t manage it. When I drew the baobabs, I was inspired by a sense of urgency.

...

O! Little Prince! Gradually, this was how I came to understand your sad little life.

[*The Little Prince*, Harcourt, Inc., 2000, pp. 13-16]

[50] In order to come to a reasonable decision, the RPD had to review the probative evidence aimed at rebutting the presumption that state protection was adequate. The RPD’s decision does not reflect that it considered the totality of the evidence.

Compelling reasons

[51] In its decision, the RPD listed the changes that the Kingdom of Oz claimed to have made in recent years. On that basis, the RPD seemed to conclude that circumstances in the Kingdom of Oz had changed. The refugee claimant argues that the RPD should have conducted a “compelling

reasons” assessment, as Mr. de Saint-Exupéry submitted to the RPD. Section 108 of the Act deals with the exception for compelling reasons:

Cessation of Refugee Protection

Rejection

108. (1) A claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection, in any of the following circumstances:

...

(e) the reasons for which the person sought refugee protection have ceased to exist.

Cessation of refugee protection

...

Exception

(4) Paragraph (1)(e) does not apply to a person who establishes that there are compelling reasons arising out of previous persecution, torture, treatment or punishment for refusing to avail themselves of the protection of the country which they left, or outside of which they remained, due to such previous persecution, torture, treatment or punishment.

[52] The decision in *Canada (Minister of Employment and Immigration) v. Obstoj* (1992), 93 D.L.R. (4th) 144 (F.C.A.), (1992) 142 N.R. 81 (F.C.A.) (at paragraph 18) used the word “appalling” to describe persecution that could amount to a compelling reason:

... [subsection 2(3)] should also be read as requiring Canadian authorities to give recognition of refugee status on humanitarian grounds to ... those who have suffered such appalling persecution that their experience alone is a compelling reason not to return them, even though they may no longer have any reason to fear further persecution.

The decision in *Suleiman v. Canada (Minister of Citizenship and Immigration)* 2004 FC 1125, 256 F.T.R. 308 describes the compelling reasons exception:

[13] Speaking of Article 1 C(5), James C. Hathaway, in his monograph *The Law of Refugee Status* (Markham: Butterworths, 1991) at pages 203-204, notes: “[T]he intention of the drafters was twofold: first, to recognize the legitimacy of the psychological hardship that would be faced by the victims of persecution were they to be returned to the country responsible for their maltreatment; and second, to protect the victims of past atrocities from harm at the hands of private citizens, whose attitudes may not have reformed in tandem with the political structure”. The express reference to Article 1 A(1) indicates that the exception applies only to statutory refugees, as noted in the *Handbook on procedures and criteria for determining refugee status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (Office of the United Nations High Commissioner for Refugees, Geneva, January 1988) (the Handbook). The exception, however, reflects a more general humanitarian principle, which could also be applied to refugees other than statutory refugees as indicated at paragraph 136:

It is frequently recognized that a person who - or whose family - has suffered under atrocious forms of persecution should not be expected to repatriate. Even though there may have been a change of régime in his country, this may not always produce a complete change in the attitude of the population, nor, in view of his past experiences, in the mind of the refugee.

[53] When the member questioned him about the maltreatment he had suffered, Little Prince replied as follows:

[TRANSLATION]

Q: What do you remember, Little Prince? Do you remember the people that harmed you and harmed your family?

A: Do you let children grow like trees here? Are the people baobabs or are they nice? Where I come from, and in my dream, there were volcanoes and baobabs. It was them who took away what mattered to me, who destroyed my house. If I have to go back to where I came from, in the Kingdom of Oz, I'll have to retrace my steps in the desert and ask the snake from my dream to help me go back there. Poison is the only thing that can send me back there.

I know that some people are temperamental, like my rose. She asks me for a screen when she only wants attention. As for me, I know what I'm asking for, it's not a whim. I don't have any thorns to protect me, I don't have any claws either. I can only leave to see whether the world is better for children elsewhere.

In my dream, the planet was destroyed, and a sheep ate the flower. In the end, thorns were useless.

Are you going to send me back to the volcanoes, sir? Nothing can protect me from them . . . to think that something can protect me from them would be like saying that the thorns on a rose could protect against a tiger's claws.

Q: Do you know what happened to your family, Little Prince?

A: I remember, at the opening of your Vancouver Games in 2010, I heard words on the television in front of the screen that was in a big field behind our house.

Mr. de Saint-Exupéry stated what the child had told him:

Who has seen the wind:

I would walk to the end of the street and over the prairie with the clickety grasshoppers bunging in arcs ahead of me, and I could hear the hum and twang of wind in the great prairie harp of telephone wires. Standing there with the total thrust of prairie sun on my vulnerable head, I guess I learned – at a very young age – that I was mortal.

[Who Has Seen the Wind, W.O. Mitchell, 1947]

[55] Moreover, it will be up to the Board to redetermine whether the circumstances in the country have changed, taking into consideration all the requisite factors to establish whether state protection is adequate. The *Kovacs* decision, above, dealt with the issue of improvements made by a state:

[66] Thus, it cannot be sufficient to show the changes and improvements in the Hungarian state, including a number of options for recourse and the possibility to obtain state protection. It still remains to be proven that the changes have been effectively implemented in practice. Proof of the state's willingness to improve and its progress should not be, for the decision-maker, a decisive indication that the potential measures amount to effective protection in the country under consideration. As the case law above shows, willingness, as sincere as it may be, does not amount to action.

[56] If the RPD determined in its analysis that the reasons for which the applicant sought refugee protection had ceased to exist, it should have at the very least examined the factors that could open the door to the compelling reasons exception, considering Little Prince's exceptional situation.

Accordingly, even if the country is capable of protecting him, which is not clear, what Little Prince suffered is so appalling and hateful that there would be compelling reasons to not send him back there after having lost his whole family, knowing that he experienced persecution there that

frightened him so much that the return in itself would be a living nightmare, which the psychiatric report characterizes as torture for his young mind.

3. Did the RPD consider the issue of whether Little Prince is stateless?

[57] In his dream, Little Prince knew what he wanted. It seemed clear to him that he needed a place to live:

“What a hurry they’re in,” said the little prince. “What are they looking for?”
“Not even the engineer on the locomotive knows,” the switchman said.
And another brightly lit express train thundered by in the opposite direction.
“Are they coming back already?” asked the little prince.
“No one is ever satisfied where he is,” the switchman said.
And a third brightly lit express train thundered past.
“Are they chasing the first travelers?” asked the little prince.
“They’re not chasing anything,” the switchman said. “They’re sleeping in there,
or else they’re yawning. Only the children are pressing their noses against the
windowpanes.”
“Only the children know what they’re looking for,” said the little prince. They
spend their time on a rag doll and it becomes very important, and if it’s taken
away from them, they cry . . .”
“They’re lucky,” the switchman said.

[*The Little Prince*, Harcourt, Inc., 2000, pp. 64-65]

[58] It could be assumed from certain passages in the applicant’s testimony that he was stateless:

[TRANSLATION]

A: If I can’t stay in Canada, can I have an airplane so I can fly somewhere else?

Q: Where would you like to go with a plane?

A: I would go straight ahead. (the child took a few moments to think) But, like Mr. de Saint-Exupéry told me, straight ahead, you can’t go very far . . . in my dream, I tried to find another planet where I could live.

[59] Although Little Prince’s dream could suggest that he is stateless because he is in search of a planet, a place on earth where he could live, the applicant is not, in fact, stateless. In *Reza v. Canada (Citizenship and Immigration)* 2009 FC 606, 362 F.T.R. 67, Justice Max M. Teitelbaum explained the principle that statelessness is not an optional status for a refugee claimant:

[29] . . . As noted by Mr. Justice Rothstein when he sat on this Court, “the status of statelessness is not one that is optional for an applicant” (*Bouianova v. Canada (M.E.I.)*, [1993] F.C.J. No. 576, at paragraph 12). It is thus well established that the status of statelessness must be beyond an applicant’s control. At paragraphs 22 and 23 of *Williams v. Canada (M.C.I.)*, [2005] F.C.J. No. 603, 2005 FCA 126, Mr. Justice Décaré wrote for the Federal Court of Appeal:

[22] . . . The true test, in my view, is the following: if it is within the control of the applicant to acquire the citizenship of a country with respect to which he has no well-founded fear of persecution, the claim for refugee status will be denied. . . .

[60] If he had been stateless, that could have, in fact, changed the RPD’s decision on the issue of state protection because no state could or would have been able to protect him. That remains a hypothetical question in this case.

Conclusion

[61] The Board’s decision was not reasonable in the circumstances. The application for judicial review is therefore allowed. Last, the parties did not submit a question of general importance for certification. Accordingly, no question will be certified.

JUDGMENT

THE COURT RULES that

1. the application for judicial review is allowed;
2. no serious question of general importance is certified.

“Michel M.J. Shore”

Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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