

Federal Court



Cour fédérale

Date: 20080117

Docket: IMM-7818-05

Ottawa, Ontario, January 17, 2008

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

CANADIAN COUNCIL FOR REFUGEES
CANADIAN COUNCIL OF CHURCHES
AMNESTY INTERNATIONAL, and JOHN DOE

Applicants

and

HER MAJESTY THE QUEEN

Respondent

JUDGMENT

UPON READING the further submissions of the parties in respect to the Reasons for Judgment of November 29, 2007 and as to the form and content of this Order;

IT IS ORDERED THAT this application for judicial review is granted and the designation of the United States of America as a "safe third country" is quashed.

IT IS DECLARED THAT:

1. Paragraphs 159.1 to 159.7 (inclusive) of the *Immigration and Refugee Protection Regulations* and the Safe Third Country Agreement between Canada and the United States of America are *ultra vires* and of no legal force and effect.
2. The Governor-in-Council acted unreasonably in concluding that the United States of America complied with Article 33 of the Refugee Convention and Article 3 of the Convention Against Torture.
3. The Governor-in-Council failed to ensure the continuing review of the designation of the United States of America as a "safe third country" as required by paragraph 102(2) of the *Immigration and Refugee Protection Act*.
4. Paragraphs 159.1 to 159.7 (inclusive) of the *Immigration and Refugee Protection Regulations* and the operation of the Safe Third Country Agreement between Canada and the United States of America violate sections 7 and 15 of the *Canadian Charter of Rights and Freedoms* and are not justified under section 1 thereof.

IT IS FURTHER ORDERED THAT this Order shall take effect on February 1, 2008.

THE FOLLOWING QUESTIONS are certified as serious questions of general importance:

1. Are paragraphs 159.1 to 159.7 (inclusive) of the *Immigration and Refugee Protection Regulations* and the Safe Third Country Agreement between Canada and the United States of America *ultra vires* and of no legal force and effect?
2. What is the appropriate standard of review in respect of the Governor-in-Council's decision to designate the United States of America as a "safe third country" pursuant to s. 102 of the *Immigration and Refugee Protection Act*?
3. Does the designation of the United States of America as a "safe third country" alone or in combination with the ineligibility provision of clause 101(1)(e) of the *Immigration and Refugee Protection Act* violate sections 7 and 15 of the *Canadian Charter of Rights and Freedoms* and is such violation justified under section 1?

IT IS FURTHER ORDERED THAT, the parties having agreed as to costs, no costs award will be made.

"Michael L. Phelan"

Judge