Federal Court  Cour fédérale

Ottawa, July 4, 2014 – A decision was issued today by the Honourable Anne L. Mactavish of the Federal Court in file T-356-13:

IN THE MATTER OF CANADIAN DOCTORS FOR REFUGEE CARE and others v. ATTORNEY GENERAL OF CANADA and MINISTER OF CITIZENSHIP AND IMMIGRATION

Summary: This proceeding concerns an application for judicial review of the federal government's decision to significantly reduce, and in some cases eliminate, the health care coverage available to many refugee claimants and other individuals who came to Canada seeking its protection.

The Applicants assert that the 2012 modifications to the Interim Federal Health Program [IFHP] are unlawful as the Orders in Council are beyond the powers of the executive branch. They also say that prior consultations and past practice created a legitimate expectation on the part of stakeholders that substantive changes would not be made to the IFHP without prior notice and consultation with interested parties. According to the Applicants, the Government breached its duty of procedural fairness by making radical changes to the IFHP without any advance notice or consultation. The Applicants further submit that the 2012 changes to the IFHP breach Canada's obligations under the 1951 *Convention Relating to the Status of Refugees* and the *Convention on the Rights of the Child*. In addition, the Applicants say, the changes violate sections 7, 12 and 15 of the *Canadian Charter of Rights and Freedoms* in a manner that cannot be saved under section 1.

Upon review, the Court has concluded that the Orders in Council are not beyond the powers of the executive branch, nor has there been a denial of procedural fairness in this case. The Court has also concluded that the Applicants' section 7 Charter claim cannot succeed as what they seek is to impose a positive obligation on the Government of Canada to fund health care for individuals seeking the protection of Canada. The current state of the law in Canada is that section 7's guarantees to life, liberty and security of the person do not include a positive right to state funding for health care.

The Court has, however, concluded that the affected individuals are being subjected to "treatment" as contemplated by section 12 of the Charter, and that this treatment is "cruel and unusual". This is particularly, but not exclusively, so as it affects children who have been brought to this country by their parents. The 2012 modifications to the IFHP potentially jeopardize the health, and indeed the very lives, of these innocent and vulnerable children in a manner that shocks the conscience and outrages Canadian standards of decency. The Court finds, therefore, that they violate section 12 of the Charter.

The Court has also concluded that the IFHP violates section 15 of the Charter inasmuch as it provides a lesser level of health insurance coverage to refugee claimants from "Designated Country of Origin" [DCO] countries in comparison to that provided to refugee claimants from non-DCO countries. This distinction is based upon the national origin of the refugee claimants, and does not form part of an ameliorative program.

The Court has not, however, concluded that the IFHP violates subsection 15(1) of the Charter based upon the immigration status of those seeking the protection of Canada, as "immigration status" cannot be considered to be an analogous ground for the purposes of section 15. Consequently, this aspect of the Applicants' section 15 claim is dismissed.

Finally, the Respondents have not demonstrated that the 2012 changes to the IFHP are justified under section 1 of the Charter.

Consequently, the Applicants' application is granted.

A copy of the decision can be obtained via the Web site of the Federal Court: http://cas-ncr-nter03.cas-satj.gc.ca/portal/page/portal/fc_cf_en/Index

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Andrew Baumberg
Media Contact / Liaison avec les Médias
Federal Court / Cour fédérale
Tel. / Tél. : (613) 947-3177