Student No.

**Part A**  2500 words

**Immigration and Refugee Board**

Library Square, 300 West Georgia Street

1600, Vancouver,

BC V6B 6C9

March 25, 2016

Our ref NT/333/16

Dear Sir, Madam

 **Re Clients Phobas, aged 40 and Deimos aged 16 (minor).**

We represent the above named client(s) with reference to their refugee claim under Section 96 of The "Immigration and Refugee Protection Act", S.C. 2001, c. 27, ("**IRPA**") and The Convention relating to the Status of refugees also known as the 1951 **Refugee Convention**.

 Article 1 of the Convention defines a refugee as, “A person who owing to a well- founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or Political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.”

 Our Clients wish to apply for refugee status or as a protected person on the basis that they fear persecution from their Country of Nationality.

We confirm that our clients have not made a refugee claim in any other country under s.101 IRPA and have directly travelled from Mars to Canada. There is no removal order or proceedings against them under s.99 of IRPA. We note, on arrival at Vancouver Airport, our clients proceeded to make a refugee claim.

Our client, Phobos has appointed herself as the designated representative for her only child, Deimos who is a minor, and we request that he is recognised under Paragraph 3(3)(f) of IRPA in compliance with International human rights and the Convention on the Rights of the Child.

The claimants are Phobas, and her only child Deimos, aged 16 years of age. We confirm that they are Nationals of the Democratic Republic of Mars. The claimants owned a bed and breakfast hotel in the Village of Olympia in the Northern Province, which is a ‘bastion’ of Martianism. In 2014 Phobos father became ill, both Phobos and Demos began to practice the Way of Ares, in the hope that the Demos grandfather would recover. Due to their practising of Way of Ares, the family became ostracized by the local people and their neighbours. Patronage at the Bed and breakfast declined significantly, and some of the suppliers to the Inn refused to undertake business with them.

**Police Protection**

On four occasions the inn was vandalised, anti, Ares slogans and inscriptions were spray painted on the walls, and windows were broken. On one occasion, the family returned from an outing and found a threating sign on the door, which read “We don’t need you and your Ares filth – get out or we will get you “

Since the publication of the Chronicles, there has been upheaval and tensions. Mars Police have been called to control the violent incidents between the two separate groups. In 2015, a sect of followers of the Way of Ares, called itself “Red Planet Army “ (“RPA”) emerged in Mars. Their demands were to set up an autonomous Province in Mars, in violation of the new anti-mobility legislation by the Martians. The group intention was to concentrate enough followers in a region, in the hope that the government would grant them autonomy.

Based on this, Our clients are of the opinion that they will not have state protection from the authorities or the Police. They no longer feel safe in Mars, and fear for their safety. Our Client Phobos confirms that the incidents were reported to the police and the authorities, but the officers concerned took a report and no action was taken against the aggressors or investigated.

Our client informs us that the Mars legislators have passed legislation to restrict the mobility of followers of the Way of Ares, requiring compulsory registration with the government. They are forbidden from changing their Province of residence, resulting in a criminal offence of 5 years imprisonment to breach the legislation, and assist any member of Ayres.

In ***Canada v Ward***  [1993] 2 S.C.R. 689, a Convention case, it was decided by the Supreme Court on a test determining a "well-founded fear of persecution, that persecution need not originate from the state, and that mere inability to provide protection is sufficient to establish a claim for persecution.

**Minors**

We wish to reiterate that our client Deimos was a minor at the date of his refugee application, and request that his case is considered with Canada obligations under the Convention on the Rights of the Child, and the “ best interest of the child “ are considered. Under S.25 (1) discretion maybe exercised by the Minister or Immigration Officer both on Humanitarian and Compassionate Grounds and Public Policy,and that ministerial decisions in cases concerning children should follow the principles laid out in International law. **Baker v MCI ?**

International Law and UN Reports based on children have indicated that separating a child who has refugee status from a parent causes serious and potential harm to the child.

Article 3 and Article 9 of the Convention on the Rights of the Child advise that any actions undertaken, by public or private welfare institutions including courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a paramount consideration, and a child should not be separated from his or her parents against their will.

**Military Service**

Since our client has arrived, the latest news release and country reports indicate that Mars legislature has passed laws requiring male citizens over the age of 15 perform at least one year mandatory service in the army. This is in conflict to our clients beliefs. Our client belongs to the Way of Ares, which forbids conscription and joining the military. In the Verses in the Chronicle, which encourages Pacifism and not to engage in any military activity. If our client is returned to Mars, he would face conscription and criminal charges if he refuses to do so. In **Zolfagharkani** the issues of Persecution against Prosecution were analysed in the case. It was held ……

**Gender Guidelines**

We request our client is Phobos is recognised under the gender guidelines issued by RPD as a vulnerable person. Our client Phobos has a “ well-founded fear of persecution for reasons of religion and a member of a social group, and is being punished for her membership and her activities in the Way of Ares. Our client has fled Mars with her son in fear of being persecuted, beaten up or shot from the RPA group and the Mars authorities who fail to recognise the Way of Ares religion and social group. The authorities have imposed anti- mobility laws on the followers of Way of Ares. Our client has no other family members in Olympia, apart from an elderly father and cousin. Our client no longer feels safe in Mars due to several incidents of violence, and threats against her and her son. On four occasions their personal property has been vandalised, with windows broken, threating signs stating “ we don’t need you and your Ares filth”

 They feel extremely vulnerable and request that this application is also considered with discretion under the Gender guidelines under S.65 (3) of the Act. Section 3(3) of the guidelines allows a claim for women who fear persecution from severe discrimination on gender grounds by acts of violence, by public authorities or private citizens, whereby the state is unwilling to adequately protect the woman or individual.

**In flight Alternative (IFA)**

Our client is of the opinion that IFA is not an alternative on the basis that wherever they are likely to relocate, they will still be in fear, and will not have the protection from the authorities. The RPA have several members located in the Southern region, our client and her young son if returned to Mars, would face violence, death threats, or possibility of being killed, particularly as her son has been a witness to the killing of the minister by the Jupiter and the RPA group.

Phobos was a prominent member and sympathiser of the RPA faction of the group, her face

In **Thirunavukkarasu**, it was held

**Country Reports**

The Country Reports have indicated Way of Ares face widespread discrimination in employment, education and curtailed religious, social freedoms. These conditions are likely to continue, and we have reasonable grounds including the reports from Human rights organizations including **Amnesty International** that repetition, further threats, violence, killings are likely against the “Way of Ares” particularly in the Southern region as they are a minority group.

Country conditions indicate that this violence and harassment will continue against members and that they are at a risk of persecution. There are reasonable grounds to fear that repetition is likely, and on the balance of probabilities that state protection is inadequate, **Carrillo**.

**Credibility**

 There have been several incidents of discrimination and persecution experienced by both applicants, for their beliefs in the Way of Ares. There is widespread discrimination against them in employment, education, curtailing of their religious, social freedoms, physically assaults by members of the Mars communities against them for their beliefs.

 Our clients under the s.96 threshold have a “well- founded fear” and more than a “ mere possibility” that they will be persecuted if they are returned to Mars.

 Under Convention grounds. The applicants would be subjected to danger, torture and face death or a risk of cruel treatment and punishment upon their return and will not receive any protection from the authorities or police.

We attach copy and extracts of the Country reports for your consideration, We will shortly forward you letters, membership identification documents for the RPA.

Finally, we attach copy and extracts of Amnesty and Country reports for your consideration.

We await to hear from you.

Yours faithfully

Articled Student

 **Additional Information requested from our clients.**

1. Copies of their original ID/Nationality documents
2. Nationality Card and ID card for membership of RPA
3. Have they declared Phobos father and cousin as remaining family member in Mars ?
4. Olympia Police Reports
5. Statement from the grandfather confirming RPA threats to kill claimants.
6. Letter from the Mars authorities confirming mandatory conscription of Deimos, copy to be forwarded to the National War Crimes Unit in accordance with the guidelines.

ONTARIO REFUGEE BOARD – CHECKED FILE SAVED.

**2.**

**LEAVE, no appeal rights on credibility, best interests of child. Mother to be deported, criminal assisted. PRAA**

**Appeal to Refugee Appeal Division (RAD) based on New evidence – READ BLUE BOOK AGAIN ON MONDAY pm AFTER research.**

The claimant application has been refused by the RPD, on the basis that the RPD do not believe that there evidence is credible.

Since the negative decision, Our client Deimos informs us that Jupiter’s men came to the family home, and beat his grandfather up, demanding information concerning the claimants and their whereabouts.

We can file an appeal to the RAD based on this new evidence, **Singh v MCI, 2014 FC 1022**

WHAT IS NEW EVIDENCE - CHECK

Deimos Grandfather has also informed Deimos that he has received a notice from the Mars authorities requiring that Deimos registers in the army by 2016 or face criminal proceedings of one year. We request that Deimos grandfather forwards us the original copy of this letter, in order that it can be submitted with the appeal to the RAD as evidence confirming that Deimos as a minor would face criminal prosecution if i he does not join the army, if he is returned back to Mars.

**Military Service- Zolfagharkani**

Since our client has arrived, the latest news release and country reports indicate that Mars legislature has passed laws requiring male citizens over the age of 15 perform at least one year mandatory service, this is contrary to our clients beliefs. Our client belongs to the Way of Ares, which forbids conscription and joining the military. If our client is returned to Mars, he would face conscription. This is contrary to Canada’s

This is confirmed in a series of verses in the Chronicles which advocates Pacifism and encourages followers not to engage in any military activity.

**Application to the Refugee Appeal Division.**

Not everyone has a right of appeal, **Y.Z. v MCI, 2015 FC 892**

**Pre- Removal Risk Assessment (PRAA)**

Phobos and Deimos are advised that they could also apply to PRAA, this process is not an appeal to RPD or RAD, but a further assessment of new or unreviewed risks that were not available at the time of the refusal decision. The PRAA process has to be submitted in writing, and there is a restriction on claimants providing new evidence, the claimants could submit the letter from the army and a letter or a witness statement from the grandfather with medical evidence that he has been beaten up by Jupiter, and that Phobos and Deimos would be at risk of cruel treatment or death if they were returned to Mars however recent changes in PRAA applications, IRPA s.112 states that eligible refugee protection claimants cannot apply for PRAA until one year has passed since their claim was refused, either by RPD or RAD. (36 months for DCO countries). There have been Charter challenges, **Peter v Canada (Public Safety and Emergency Preparedness) 2014** is currently at the appeal stage in Federal Court.

**Humanitarian and Compassionate Grounds**

Phobos and Deimos could also appeal to the minister, under Humanitarian and compassionate grounds (H&C), again similar to PRAA, these applications can only be submitted until 1 year has passed from the RPD or RAD decision. The minister cannot consider S.96 or S.97, but can only consider S.25 H& C grounds. “elements related to the hardships that effect the foreign national” The Minister’s decision is discretionary, he has the power and discretion to review the decision, and overturn the decision, particularly where there are humanitarian considerations and significant impact on an individual or family. The decision is under appeal in the case of **Jeyakannan Kanthasamy v MCI**

**Judicial Review Proceedings**

If unsuccessful at RAD, the claimants can apply to the Federal Court for Judicial Review of their application, there is a leave requirement for JR proceedings, IRPA S.72 The Judicial Review hearing allows the court to consider the entire decision making process, and law in accordance with legislation and common law. The court can send the case back to the RPD or to Minister to redetermination of the decision. The courts will only review any decisions after all other appeals and procedures have been exhaustive.

**Conclude**

Deimos application could be successful based on the new evidence from the Grandfather, on the fact that as a minor he could face criminal proceedings if he returns to Mars, and refuses to join the army., If Deimos is returned to Mars, his life will be in danger. He will be persecuted or killed by groups he was a witness to the shooting of the Minister and practices, observes and belongs to the group Way of Ares.

 as Deimos was not involved in the plot to kidnap and kill the minister, his application could be successful at appeal to the RAD or Minister may grant him protected status under his discretion. Phobos application unlikely to be unsuccessful under S.35 of IRPA in that she assisted a political organisation by acts of terrorism, assisted Shelter food, computer equipment to manufacture false documents, shelter for groups against the law violations, makeshift hospital. kId napping and shooting of minister in her basement. Section 98 of IRPA is the exclusion clause from the Refugee Convention. Article 1F states that RC shall not apply to persons who have committed certain crimes. The family could attempt to file an application to the minister after one year on the basis that Deimos is still under 18, and that they should not be separated as a family under the Child convention and H& C grounds as outlined earlier.

Poosibility under the Charter, exclusion of the parents of refugees who are minors from the definition of “family member”, arguing that this exclusion contravenes the child rights to “security of the person” under section 7 the Charter.

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**Humanitarian and compassionate grounds S,25 ?**

The Supreme Court in **Baker** held that the principle of Procedural fairness required the decision-maker to consider the humanitarian and compassionate grounds and human rights of Baker’s children, the matter was returned to the decision maker, the Minister for a re- determination T

The court added in Baker that

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In accordance with subsection 35 (1) IRPA, a foreign national or a permanent resident is inadmissible if there has been any involvement in any crimes against humanity, or war crimes inside and outside of Canada.

References

Immigration and Refugee Protection Act 0 CanLII

Case law from CanLII Lexus Nexis and Westlaw.

 Galloway, Grey and Macklin : Immigration and Refugee Law: cases, materials and commentary.(New York: Cambridge University Press)

Notes from lectures conducted by Ms Sokhansanj