

207-01

L.C.A., on behalf of minor children, C.A.L.A., :
D.S.L.A. AND B.A.L.A., :

PETITIONER, :

V. :

COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE :
BOROUGH OF FORT LEE, BERGEN :
COUNTY, :

DECISION

RESPONDENT. :
_____ :

SYNOPSIS

Petitioner challenged the Board’s determination that his three nephews, who reside with him, are not entitled to a free education in the Fort Lee School District. Petitioner sought to admit his nephews pursuant to *N.J.S.A.* 18A:38-1(b) because of a family and economic hardship.

The ALJ determined that petitioner’s nephews are entitled to a free education in the Fort Lee School District because of family and economic hardship. The ALJ concluded that both the parent’s economic situation and the danger to the health and safety of petitioner’s nephews if they continue to reside with their parents in Columbia compelled a determination that petitioner’s nephews are entitled to a free education in the Fort Lee School District.

The Commissioner affirmed the determination of the ALJ, agreeing that the specific facts of this case demonstrate that petitioner’s nephews reside with him because of family or economic hardship, and not solely for educational purposes.

July 2, 2001

OAL DKT. NO. EDU 9016-00
AGENCY DKT. NO. 312-9/00

L.C.A., on behalf of minor children, C.A.L.A., D.S.L.A. AND B.A.L.A.,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE BOROUGH OF FORT LEE, BERGEN COUNTY,	:	DECISION
	:	
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_____	:	

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The Board's exceptions were timely filed in accordance with *N.J.A.C.* 1:1-18.4, and were considered by the Commissioner in reaching his decision.

The Board excepts, *inter alia*, to the characterization of the father's employment as an itinerant paint salesman by the Administrative Law Judge (ALJ), arguing that petitioner's testimony clearly described the father's work as a regional salesman for a paint wholesaler whose job requires periodic absence from home like many other salesmen in other parts of the world. (Board's Exceptions at 2) The Board also argues that, while the mother's earnings were disclosed at hearing, there was no information provided on the father's earnings except testimony that he earns much less than the mother, and that there was no evidence presented showing the relationship between the parents' income and the standard of living in Columbia. (*Ibid.*)

Moreover, the Board objects to the ALJ's reliance on *D.K.S. and K.S.S., on behalf of minor child, H.I.L. v. Board of Education of the Borough of Fort Lee, Bergen County*, decided

by the Commissioner August 25, 1999, claiming that the instant matter is distinguishable from that case, which involved Christian missionaries assigned to Uzbekistan, where the family was the target of religious and physical persecution, including threats, in an Islamic country openly hostile to Christians and that the child was “overwhelmed physically and emotionally***.” (Slip Op. at 3) The Board posits that petitioner in this matter offers only generalized statements with respect to conditions in the children’s native country and that there is no evidence of personal hardship in the matter *sub judice* in contrast to *D.K.S., supra*.¹ (Board’s Exceptions at 3)

Upon careful and independent review of the record in this matter, the Commissioner concurs that, under the particular circumstances of this case, petitioner has demonstrated that C.A.L.A., D.S.L.A. and B.A.L.A. are entitled to a free education in the Board’s District pursuant to *N.J.S.A.* 18A:38-1(b)1. As observed by the ALJ, the children’s mother works seven days a week, and the children must travel with her 100 miles each way on weekends to a small village through areas inhabited by guerrilla groups. Because the mother is a dentist and a government employee, she is particularly susceptible to kidnapping by guerrillas and paramilitary groups who do not have adequate health facilities, and who specifically target government employees. (Initial Decision at 5) The father is unable to care for his children on weekends because, unable to find work in Bogotá, he works in Cali, a distance of 235 miles from Bogotá, where the children resided prior to their move to Fort Lee.

¹ The Commissioner notes that, as in this instance, the Fort Lee School District was the respondent in *D.K.S., supra*, a matter in which the petitioners therein challenged the district’s determination that the student in question was ineligible for a free public education in the district’s schools as an affidavit student. The Commissioner in that matter determined that the student *was* entitled to attend school free of charge as an affidavit student due to family hardship.

The Commissioner, therefore, finds that C.A.L.A., D.S.L.A. and B.A.L.A. are residing with their uncle in Fort Lee because their parents are unable to care for them “due to family or economic hardship,” and, not solely for educational purposes. *N.J.S.A.* 18A:38-1(b)1.

Accordingly, the Initial Decision of the OAL is adopted for the reasons expressed therein.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: July 2, 2001

Date of Mailing: July 3, 2001

² This decision, as the Commissioner’s final determination, may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.