

Federal Court



Cour fédérale

Date: 20131113

Docket: IMM-11305-12

Citation: 2013 FC 1150

Ottawa, Ontario, November 13, 2013

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Applicant

and

EMRE TOKTOK

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] In 2012, a panel of the Immigration and Refugee Board concluded that Mr Emre Toktok should be granted refugee status in Canada based on his fear of religious and ethnic persecution in Turkey. It also found that Mr Toktok should not be excluded from refugee status even though in 2009 a Turkish court had convicted him, in absentia, of writing a false cheque.

[2] The applicant, the Minister of Citizenship and Immigration, maintains that the Board's conclusion on the issue of exclusion was unreasonable. The Minister argues that the Board should have found that there were "serious reasons for considering" that Mr Toktok had committed a "serious non-political crime" and, therefore, should have been excluded under Article 1F(b) of the Refugee Convention. The Minister asks me to quash the Board's decision and order another panel of the Board to reconsider Mr Toktok's application.

[3] I can find no grounds for overturning the Board's decision. The Board had good reason to doubt the authenticity of the Turkish record of conviction. I must, therefore, dismiss this application for judicial review.

[4] The sole issue is whether the Board's decision on exclusion was unreasonable.

II. The Board's Decision

[5] The Board found Mr Toktok to be credible. There is no dispute about his claim of persecution.

[6] The Minister presented the Board with a record of conviction against Mr Toktok from 2009. He was found guilty of writing a bad cheque on December 30, 2008, even though he had left Turkey nine days earlier. Still, the parties agreed, and the Board found, that the record of conviction was genuine.

[7] The question was then whether, given the record of conviction, there were serious reasons for considering that Mr Toktok was guilty. The Board accepted Mr Toktok's claim that the charges were trumped up by his persecutors in Turkey, noting that the judiciary in Turkey is "fairly corrupt" (citing *Altun v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1034).

III. Was the Board's decision on exclusion unreasonable?

[8] The Minister argues that the Board's assessment of Mr Toktok's credibility was not a valid basis for discounting the genuineness of the record of conviction against him. In fact, there was no evidence that the document was the product of collusion or corruption. Nor was there any reason to believe that Mr Toktok was prevented from defending himself against the charge or appealing the conviction.

[9] In my view, the Board was entitled to go behind the record of conviction to consider whether there was evidence that Mr Toktok had actually committed a serious, non-political crime. The Board noted that the allegedly fraudulent cheque was written after Mr Toktok had arrived in Canada; he had received no benefit from it; no arrest warrant or Interpol warrant had been issued against him; the conviction was consistent with his claim that he had been persecuted by Turkish police; he had voluntarily disclosed the existence of the conviction to the Board; documentary evidence confirmed that the Turkish court system is corrupt; and, because the proceedings took place in absentia, Mr Toktok had no opportunity to defend himself.

[10] In these circumstances, the Board had an obligation to consider whether the conviction was genuine (*Altun*, above; *Hernandez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1323).

[11] In light of the evidence before it, I find that the Board's decision fell within the range of possible, acceptable outcomes based on the facts and the law. It was not unreasonable.

IV. Conclusion and Disposition

[12] The Board properly considered all the evidence before it, including the record of conviction, in determining whether there were serious reasons for considering whether Mr Toktok had committed a serious, non-political crime. Its conclusion that Mr Toktok should not be excluded from refugee protection was not unreasonable in the circumstances. I must, therefore, dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

"James W. O'Reilly"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-11305-12

STYLE OF CAUSE: THE MINISTER OF CITIZENSHIP AND IMMIGRATION
v EMRE TOKTOK

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 8, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: NOVEMBER 13, 2013

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