

Federal Court



Cour fédérale

**Date: 20181212**

**Docket: IMM-2580-18**

**Citation: 2018 FC 1258**

**Toronto, Ontario, December 12, 2018**

**PRESENT: The Honourable Mr. Justice Southcott**

**BETWEEN:**

**ALI TURAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] This is an application for judicial review of the decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB], dated May 2, 2018, rejecting the Applicant's claim for refugee protection.

[2] As explained in more detail below, this application is allowed, because the RPD failed to conduct a reasonable analysis of the Applicant's allegations of persecution or the availability of state protection in Turkey.

## II. Background

[3] The Applicant, Ali Turan, is a 63-year-old citizen of Turkey of Armenian descent who came to Canada seeking refugee protection in 2012. He sought protection on the basis of religious persecution in Turkey, claiming that he was unable to freely practice his Christian faith (to which he had converted from Islam in the 1980s), and that he was repeatedly threatened by his ex-wife's radical Muslim family.

[4] Mr. Turan married his first wife in 1981, and they had two daughters. He states that historically his family were Christians, and he began to be interested in Christianity in the mid-1980s and eventually decided to convert. His then-wife was opposed to this, and her family threatened him. They divorced in 1993, after which she took their children with her to Istanbul and refused to let Mr. Turan see them. When he tried to visit them, he was beaten and threatened by his ex-wife's family.

[5] Mr. Turan states that he continued to practice Christianity but was shunned by his friends and community as a result. He was also forced to leave his teaching job. Mr. Turan remarried in 1998. He and his second wife had two sons, and he ran a small store for several years. However, he states that his first wife returned to the area and she and her brother harassed him at his store, vandalizing the shop and assaulting him. Mr. Turan left Turkey for Australia in 2005, following

which his second wife divorced him. He returned to Turkey in 2010 to finalize his divorce. Once he had returned to Turkey, his first wife's family resumed threatening and harassing him. While the police were called, Mr. Turan says that they told the parties to resolve the matter amongst themselves.

[6] Mr. Turan states that he feared for his life and safety and that he was unable to work and was afraid to approach the authorities for help, as his first wife's family had government connections. He also says that the Turkish police and other authorities discriminate against converts to Christianity. He left Turkey for Canada on February 29, 2012 and claimed refugee protection. Mr. Turan also alleges that his second wife was threatened and his son was attacked in 2018 by men who asked about his whereabouts.

[7] In the decision under review, the RPD accepted that Mr. Turan is a Turkish national of Armenian Christian descent and religion. The RPD did not impugn his credibility and found him to have a subjective fear of persecution. However, it also held that his subjective fear was not consistent with the country condition documentation relating to the situation of Christian Turks of Armenian descent in Turkey.

[8] The RPD also found that Mr. Turan's first wife's family would not still be interested in pursuing him after a lapse of 25 years, and it concluded that Mr. Turan had failed to establish that effective state protection would not be forthcoming.

[9] For these reasons, the RPD found that Mr. Turan had failed to establish that there was a reasonable chance of persecution if he were to return to Turkey and therefore concluded that he is not a Convention refugee.

### III. Issues and Standard of Review

[10] The Applicant raises the following three issues for the Court's consideration:

- A. Did the RPD fail to have regard to all of the evidence?
- B. Did the RPD fail to consider whether the restrictions on the free practice of the Applicant's Christian faith would amount to persecution?
- C. Did the RPD conduct a deficient state protection analysis?

[11] The parties agree, and I concur, that these issues are to be reviewed on the standard of reasonableness.

### IV. Analysis

- A. *Did the RPD conduct a deficient state protection analysis?*

[12] I address this issue first, as the Respondent submits, and the Applicant agrees, that the state protection finding is determinative. If the RPD reasonably concluded that Mr. Turan had failed to rebut the presumption of the availability of state protection, then his refugee claim could not succeed (see *Dawidowicz v Canada (Minister of Citizenship and Immigration)*, 2014 FC 115 at para 27), and he cannot succeed on this application for judicial review.

[13] Mr. Turan submits that the RPD's state protection analysis is limited to the following two paragraphs of its decision:

According to the claimant, he sought state protection after his first ex-wife's family destroyed his store. However, he stated that the police asked them to resolve their differences and live peacefully.

In the opinion of the panel, the claimant has failed to establish that effective state protection would not be forthcoming.

[14] Mr. Turan submits that this analysis is deficient, because the RPD provided no explanation as to why he failed to meet the burden upon him to establish that effective state protection would not be forthcoming, given that the one piece of evidence referenced by the RPD demonstrated the police failing to provide him with any assistance. He also argues that the RPD's conclusion was reached without regard to the documentary evidence as to the availability of state protection for Christians in Turkey.

[15] The Respondent's position is that the RPD's state protection analysis is intelligible, representing a conclusion that Mr. Turan failed to meet the burden because he contacted the police on only one occasion and therefore failed to take reasonable steps to exhaust all courses of action available to him to obtain protection in Turkey (see, e.g. *Ruszo v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1004 at para 33). The Respondent submits that the RPD's conclusion is reasonable, given Mr. Turan's limited efforts to seek state protection and the documentary evidence canvassed by the RPD surrounding the conditions for Armenian Christians in Turkey.

[16] I accept that the RPD's conclusion can potentially be understood as turning on Mr. Turan's limited efforts to access state protection in Turkey. However, I find the state protection analysis deficient in its engagement with the documentary evidence.

[17] The Respondent correctly submits that the RPD reviewed country condition documentation explaining that freedom of religion is protected by the Turkish constitution, that Armenian Christians are one of the three minority groups recognized by the Turkish government, that Armenian Christians had the freedom to practice their faith, and that Armenian Turks had run for political seats and served in the Turkish administration. The RPD also noted that, while there is no overt official repression of Armenians in Turkey, this group does face discrimination, marginalization and threats. However, these observations are all derived from an IRB Response to Information Request dating to April 2015.

[18] In contrast, Mr. Turan emphasizes documentary evidence addressing the circumstances in Turkey following the failed coup which attempted to overthrow President Erdogan's government in 2016. Country condition documentation dating to 2017 and 2018 refers to deterioration in the circumstances of Turkey's Christian minority following the coup, including violence, state seizure of religious properties and incitement of hatred by government-held rallies and pro-government media.

[19] Mr. Turan concedes that that this documentary evidence is not determinative of the question whether state protection is available to Christians in Turkey, but he submits that, because it represents the current state of affairs in Turkey and is suggestive of complicity on the

part of the Turkish state in persecution of Christians, the RPD was required to consider and analyse it in order to conduct a reasonable state protection analysis. I agree with this submission. The RPD engaged briefly with this evidence at the end of its decision. However, as Mr. Turan submits, it did so in the context of its analysis as to whether he would face persecution if he returned to Turkey, now that his family and community are aware of his religious beliefs and he is no longer married to an Islamic woman. The decision does not demonstrate any engagement by the RPD with the documentary evidence, related to country conditions following the 2016 attempted coup, in connection with its state protection analysis. Mr. Turan's refugee claim clearly asserted that Turkish police and authorities discriminate against converts to Christianity, and the failure of the RPD to engage with the current documentary evidence on this issue renders its state protection analysis unreasonable.

[20] Having found a reviewable error in the RPD's state protection analysis, it is necessary to consider the other issues raised by Mr. Turan.

B. *Did the RPD fail to consider whether the restrictions on the free practice of the Applicant's Christian faith would amount to persecution?*

[21] I similarly find a reviewable error in the RPD's consideration of whether Mr. Turan would face persecution as a result of his Christian faith. The Respondent submits that the RPD reasonably determined that Mr. Turan would not be denied the right to practice his faith. However, as explained above, the decision demonstrates no consideration by the RPD of the current country conditions other than in connection its conclusion that Mr. Turan would not face persecution because his family and community members are aware of his religious beliefs and he

is no longer married to an Islamic woman. This conclusion appears to have been drawn in connection with the RPD's finding that Mr. Turan's first wife's family would not still be interested in pursuing him after a lapse of 25 years. As Mr. Turan submits, it is not responsive to the question whether he will nevertheless face restrictions on the practice of his faith that would amount to persecution.

C. *Did the RPD fail to have regard to all of the evidence?*

[22] Finally, I agree with Mr. Turan's position that the RPD's finding, that his first wife's family would not still be interested in pursuing him after a lapse of 25 years, was made without regard to all the evidence relevant to this issue.

[23] The RPD noted that Mr. Turan has not been a member of his first wife's family since 1993 and that he subsequently married his second wife with whom he had two sons. He has had no access to the daughters from his first marriage, who are now adults. The RPD therefore concluded that it was unreasonable to expect that the family of his first wife, whom he divorced in 1993, would still be interested in pursuing him.

[24] The RPD's reasons do not demonstrate any consideration of Mr. Turan's evidence that the family of his first wife attacked him in 2010, seventeen years after his divorce. Nor is there any consideration of his evidence that his wife and son were threatened and his son attacked in 2018. Mr. Turan's counsel acknowledged that the evidence does not expressly link the 2018 threats and attack to the family of Mr. Turan's first wife. However, his evidence before the RPD clearly alleged this connection. In my view, the RPD's finding, that the first wife's family would



not still be interested in pursuing Mr. Turan after a lapse of 25 year, cannot be considered reasonable without having addressed the evidence of the attacks in 2010 and 2018.

V. Conclusion

[25] Having found reviewable errors in connection with the issues raised by the Applicant, this application for judicial review must be allowed and the matter returned to the RPD for redetermination.

[26] Neither party raised any question for certification for appeal, and none is stated.

**JUDGMENT in IMM-2580-18**

**THIS COURT'S JUDGMENT is that** this application for judicial review is allowed, and the matter is remitted back to a differently constituted panel of the Refugee Protection Division for redetermination. No question is certified for appeal.

"Richard F. Southcott"

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2580-18

**STYLE OF CAUSE:** ALI TURAN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** DECEMBER 10, 2018

**JUDGMENT AND REASONS** SOUTHCOTT J.

**DATED:** DECEMBER 12, 2018

**APPEARANCES:**

Michael Korman FOR THE APPLICANT

Brad Gotkin FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Korman & Korman LLP FOR THE APPLICANT  
Barrister and Solicitor  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario