Federal Court  Cour fédérale

Date: 20190116

Docket: IMM-3254-18

Citation: 2019 FC 62

St. John's, Newfoundland and Labrador, January 16, 2019

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

FATIH BEYCAN SABUNCU
HARIYE OZTEKIN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Mr. Faith Beycan Sabuncu (the "Principal Applicant") and his wife Ms. Hariye Oztekin (collectively the "Applicants") seek judicial review of a decision of the Immigration and Refugee Board, Refugee Protection Division (the "RPD"), allowing the application of the Minister of Citizenship and Immigration (the "Respondent") made pursuant to the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act"), section 108. The Respondent applied to cease the refugee status granted to the Applicants.

[2] Paragraph 108(1)(a), subsection 108(2) and subsection 108(3) are relevant to the within application and provide as follows:

Cessation of Refugee Protection	**Perte de l'asile**
Rejection	**Rejet**
108 (1) A claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection, in any of the following circumstances:	**108 (1)** Est rejetée la demande d'asile et le demandeur n'a pas qualité de réfugié ou de personne à protéger dans tel des cas suivants :
(a) the person has voluntarily reavailed themself of the protection of their country of nationality;	**a)** il se réclame de nouveau et volontairement de la protection du pays dont il a la nationalité;
Cessation of refugee protection	**Perte de l'asile**
(2) On application by the Minister, the Refugee Protection Division may determine that refugee protection referred to in subsection 95(1) has ceased for any of the reasons described in subsection (1).	**(2)** L'asile visé au paragraphe 95(1) est perdu, à la demande du ministre, sur constat par la Section de protection des réfugiés, de tels des faits mentionnés au paragraphe (1).
Effect of decision	**Effet de la décision**
(3) If the application is allowed, the claim of the person is deemed to be rejected.	**(3)** Le constat est assimilé au rejet de la demande d'asile.

[3] The Applicants are citizens of Turkey. They obtained Convention refugee status in Canada in July 2010, following a hearing before the RPD. They claimed protection on the basis

of fear of persecution from Ms. Oztekin's family who opposed the Applicants' relationship on religious grounds. The Principal Applicant also claimed that he was a conscientious objector to mandatory military service and feared conscription.

[4] The Applicants returned to Turkey on three separate occasions between January 2012 and October 2014. The purpose of their travels was to access fertility treatments at a hospital in Istanbul.

[5] The Applicants travelled to Turkey separately. Ms. Oztekin first travelled to Turkey in January 2012 to obtain fertility testing; she remained there until April 2012. She returned to Turkey for fertility treatment from November 2012 to March 2013. She went back to Turkey again in August 2014 for implantation of an embryo.

[6] The Principal Applicant travelled to Turkey in March 2012 for fertility testing and remained there until April 2012. He travelled to Turkey again in December 2012 for more fertility treatments and returned to Canada later that month. The Principal Applicant last travelled to Turkey in October 2014 for embryo implantation. The Applicants' son was born August 18, 2013, in Edmonton, Alberta.

[7] In its decision, the Board acknowledged that the Applicants had applied for and received Turkish passports. It found that the Applicants had already undertaken fertility treatments in Canada but without success, and that they could not afford to take another course of such treatments in Canada.

[8] The Board found that, although the Applicants were aware that fertility treatments were available in Mexico, Thailand and Germany, they ruled out going to those countries due to the associated costs and language difficulties.

[9] The Board noted that the Applicants stayed in accommodations in Istanbul that had been arranged by the hospital where they undertook treatment and that they did not travel beyond a few kilometers of the hotel.

[10] The Board acknowledged that the Applicants thought they were safe in Turley since they did not reside there and they were not registered. Further, their sense of security was supported by the fact that Istanbul is more than 1000 kilometers from the city where the agents of persecution live, that is the family of the Principal Applicant's wife.

[11] The decision of the RPD raises a question of mixed fact and law and is reviewable on the standard of reasonableness; see the decision in *Yuan v. Canada (Minister of Citizenship and Immigration)* (2015), 37 Imm. L.R. (4th) 253. In judicial review proceedings, the reasonableness standard requires that a decision be justifiable, intelligible and transparent, and fall within a range of possible, acceptable outcomes; see the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at paragraph 47.

[12] The Board considered the three elements of reavailment that are addressed in the *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status*, issued by the Office of the United Nations High Commissioner for Refugees, necessary to show

reavailment. These elements are that the refugee acted voluntarily in returning to the country of nationality; that the refugee showed an intention to reavail; and that the refugee actually obtained the protection of his or her country of nationality. I refer, too, to the decision in *Balouch v. Canada (Public Safety and Emergency Preparedness)*, 2015 FC 765.

[13] The Board said that the Applicants, by their actions, showed that their return to Turkey was voluntary.

[14] The Board found that intention to reavail was shown by the actions of the Applicants in acquiring Turkish passports and using them to enter Turkey, not once, but six times over several months.

[15] The Board found that the Applicants' contact with the Turkish authorities was not incidental.

[16] While the Board accepted that the Applicants' desire to start a family was reasonable and that they were entitled to pursue fertility treatments outside of Canada, it did not accept their explanation that their return to Turkey for fertility treatments was reasonable.

[17] The Board found that unlike the circumstances of a refugee returning to the country of nationality to visit a dying parent, the availability of fertility treatments was not exclusive to Turkey. At paragraph 19 of the decision the Board said that the Applicants failed "to establish

with sufficient evidence that Turkey was the only option in the world". It went on the say that "Cost and language do not justify the risk of reavailment".

[18] In my opinion, the decision here meets the standard of reasonableness. The Board's findings of fact are supported by the evidence, including the oral testimony of the Applicants. The Board's conclusions meet the standard of reasonableness cited above. There is no basis for judicial intervention.

[19] In the result, this application for judicial review is dismissed. There is no question for certification arising.

JUDGMENT in IMM-3254-18

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed; no question for certification arising.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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