

Date: 20080111

Docket: IMM-4810-06

Citation: 2008 FC 40

Ottawa, Ontario, January 11, 2008

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

SUKRU ARTUS

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This Refugee Protection Division (RPD) decision under review contained three serious flaws which require that it be quashed.

[2] The Applicant, a citizen of Turkey, based his refugee claim on the fact that as a Kurd he had been persecuted by police and nationalist groups, that he practised the Alevi religion and that he was a “leftist” – a member of the Freedom and Solidarity Party (ODP).

[3] The errors in this decision are:

1. The RPD acknowledge that the only reason for the late filing of his documentary evidence was the illness of his counsel and then the RPD drew an adverse inference as to his credibility because of lateness. This is both unreasonable and unfair.
2. The RPD held that there was no documentary evidence indicating that ODP members were persecuted whereas the record had numerous references to such persecution. It may have been open to conclude that there was not enough evidence to conclude on persecution but a statement that there is no evidence is so obviously wrong.
3. The Board found that the Applicant's brother living in Turkey was evidence that he would not be persecuted as an Alevi/Kurd. There is no brother.

[4] This application for judicial review is granted, the decision quashed and the matter referred back for a new decision by a different panel.

[5] There is no question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is granted, the RPD decision is quashed and the matter is to be referred back for a new decision by a different panel.

“Michael L. Phelan”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-4810-06

STYLE OF CAUSE: SUKRU ARTUS

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 15, 2007

**REASONS FOR JUDGMENT
AND JUDGMENT:** Phelan J.

DATED: January 11, 2008

APPEARANCES:

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FOR THE RESPONDENT

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