

Federal Court



Cour fédérale

Date: 20120829

Docket: IMM-5854-11

Citation: 2012 FC 1034

Calgary, Alberta, August 29, 2012

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

ALI ALTUN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The Applicant, Mr. Ali Altun, a Turkish citizen of Kurdish descent, submitted a refugee claim based on alleged persecution, stemming from a criminal court conviction and sentence in Turkey. According to the Applicant, this was due to an alleged forgery of a document which the Applicant, a medical doctor and one other medical doctor, had prepared and signed. Both individuals were sentenced to two and a half years in prison in regard to a certificate of sick leave to which the two had attested for a teacher whose identity had allegedly not been adequately verified.

The Applicant has appealed the conviction in his country of origin but left before his appeal could be heard.

[2] The Applicant requests of this Court that the matter be returned to the Refugee Protection Division [RPD] to be heard anew due to evidence which requires analysis as to whether the charges were false, motivated by ethnic persecution in his regard.

[3] After having read and heard the pleadings subsequent to having analyzed the documentary evidence of both parties, both of a subjective and objective documentary nature, the Court considers that the RPD did not consider the evidence, as a whole, and, thus, it had not rendered a reasonable decision, both in light of the significant personal evidence and its country condition documentary context. It is recognized by this Court that, if all the documents had been adequately considered, the reasons would have demonstrated, at the very least, a logical inference derived from the analysis of significant, pertinent, detailed evidence, thus, within a framework of potential outcomes as set out by the Supreme Court in the *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 and *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 decisions; however, the evidence in respect of the “forgery”, itself, central to the very core of the Applicant’s claim, cannot be said to have been assessed.

[4] The RPD did not examine the specific evidence in its particularities but rather assessed the evidence in generalities without an adequate assessment of most pertinent detailed evidence.

[5] The RPD stated the matter was credible and expressed sympathy for the case. In addition, the RPD stated the allegations were trustworthy. It is difficult to understand how the RPD was of the opinion that there was not enough evidence. The tribunal member considered the matter as one of prosecution rather than persecution; however, a prosecution can be persecutory if clear evidence exists that the prosecution is not fair.

[6] Reference is made to the *Hernandez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1323 wherein the applicant was convicted in Columbia; she was convicted because she refused to cooperate with a prosecutor; and, the conviction was considered to have been politically motivated

[40] In this case, as will be discussed below, there were serious questions about corruption in Colombia's legal system at the time of the arrest and conviction of the principal applicant. Therefore, in light of the fact that the applicant was alleging a wrongful conviction, she merited for her case to be further analyzed, especially considering that she comes from a country in which the respect for the rule of law was questionable.

[7] In regard to country condition evidence, reference is made to the Transparency International Report (an independent report recognized as reliable without country self-interest in respect of respective international needs, expectations or diplomatic subtlety) which states:

The relatively low level of recognised corruption in the judiciary in the first 60 years of the Turkish Republic has increased in the past 20 years to the point where opinion surveys signal a growing lack of public trust in the institution. According to TI's Global Corruption Barometer 2005, respondents gave the judiciary a score of 4 on a scale of 1 to 5 (where 5 is highly corrupt).

The increasing number of scandals in the media that involve judges and prosecutors informs this perception. This may reflect increased corruption rather than the increased ability of the press to report corruption, since press freedom has not significantly increased in recent years.

Judicial corruption exists in spite of the fact that Turkey's constitution specifically identifies 'equality under the law' and 'independence of the court and justice for all' as the governing principles of the rule of law. The increased level of perceived corruption has prompted the public to view the judicial system as the second most corrupt sector in Turkey after the tax department.

Some evidence exists to back up these perceptions. In a 1999 survey by Professor Hayrettin Ökçesiz of Akdeniz University in cooperation with the Istanbul Bar, 631 out of 666 lawyers surveyed (95 per cent) said that there was corruption in the judiciary. Professor Ökçesiz was later subjected to investigation and no one has dared do further research. [Emphasis added].

A Court must specify that which is the evidence. Also, recognizing that it is a renowned fact that Turkey has never acknowledged the Armenian genocide of a million and a half Armenians perpetrated in that country, thus, the Transparency International Report is in the same vein as is seen in the last lines underlined above of a denial of the present as is the Armenian genocide a denial of the past.

[8] For all of the above reasons, the Applicant's application for judicial review is granted and the matter is returned for a hearing anew (*de novo*) before a differently constituted panel.

ORDER

THIS COURT ORDERS that the Applicant's application for judicial review be granted and the matter be returned for a hearing anew (*de novo*) before a differently constituted panel of the Refugee Protection Division. No question for certification.

"Michel M.J. Shore"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5854-11

STYLE OF CAUSE: ALI ALTUN v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

**APPLICATION FOR JUDICIAL REVIEW HELD VIA VIDEOCONFERENCE ON
AUGUST 28, 2012 FROM CALGARY, ALBERTA AND EDMONTON, ALBERTA**

**REASONS FOR ORDER
AND ORDER:** SHORE J.

DATED: August 29, 2012

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