Date: 20150709

Docket: IMM-4019-14

Citation: 2015 FC 834

Calgary, Alberta, July 9, 2015

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

EMRULLAH AKGUL

Respondent

JUDGMENT AND REASONS

[1]   The Refugee Protection Division [RPD] found that Mr. Akgul is a Convention refugee as he met the requirements of section 96 of the *Immigration and Refugee Protection Act*, SC 2001 c 27. The Minister challenges that decision and asks that it be set aside.

[2]   Mr. Akgul, a 33 year old Kurdish Sunni Muslim, is a citizen of Turkey. He sought Canada's protection claiming that he feared returning to Turkey because he is a conscientious

objector and will not accept forced military service, which is a requirement in Turkey. He alleged that he would be imprisoned and treated very harshly for refusing to serve in the military.

[3]   The decision under review is brief. That is perhaps not surprising as the claim was allowed and the Minister took no part in the hearing.

[4]   The RPD found Mr. Akgul credible and states that it "finds that he is a conscientious objector based on his personal religious or spiritual beliefs." Further, the RPD:

> … finds that the claimant has met both the subjective and objective elements of the claim. The documentary evidence supports his allegations that he will be imprisoned for three months at a time should he return to Turkey and refuse to complete his military service at which time he would be released and forced to complete it or be imprisoned again for a longer duration.
>
> The panel has taken into consideration also the numerous documents with regard to the treatment of conscientious objectors in Turkey by the Turkish authorities.

[5]   The Minister submits that the RPD erred in that it either made no assessment of the risk of persecution or failed to apply the governing jurisprudence in that regard.

[6]   In my view, the Minister's application must fail.

[7]   The RPD made a clear and unchallenged finding that Mr. Akgul is a conscientious objector. He testified that it is his belief that killing is always wrong and for that reason he is opposed to military service. It is also not challenged that the RPD correctly found that the law in Turkey is that those who do not accept their military service are imprisoned, and repeatedly so.

[8]   In *Ates v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 322, the Federal Court of Appeal held that in a country where military service is compulsory, and there is no alternative thereto, repeated prosecutions and incarcerations of a conscientious objector for the offence of refusing to do his military service, does not constitute persecution based on a Convention ground. The Minister properly concedes that "repeat prosecutions for conscientious objection <u>could</u> give rise to persecution but that an individual inquiry is always necessary [emphasis in original]."

[9]   The Minister also concedes that "it is possible that a conscientious objector might face a risk of persecution in this context if, for example, he faced a longer sentence or worse prison conditions than other evaders, but this is a matter that requires assessment by the RPD – which assessment is nowhere evidenced [in] the RPD's reasons in this case."

[10]   In my view, it is not correct in law to suggest that a claimant found to be a conscientious objector can only establish a risk of persecution if he can show that his treatment in prison will be worse than other conscientious objectors. The issue is whether the treatment of conscientious objectors is worse than that experienced by others who have been convicted of an offence. If worse treatment is found then that may amount to persecution and not mere prosecution of a crime of general application.

[11]   In the decision under review, the RPD stated that it had taken into consideration the documentary evidence "with regard to the treatment of conscientious objectors in Turkey by the Turkish authorities." It does not, as the Minister notes, identify precisely what evidence in the

package of documents it relied upon in finding that Mr. Akgul would face persecution. However, I agree with his counsel that the decision in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board),* 2011 SCC 62, mandates that the decision not be set aside if the reasons allow the reviewing court to understand why the decision-maker made its decision and to determine whether the conclusion is within the range of acceptable outcomes.

[12]   In this case, the reasons do permit the court to appreciate why the RPD found that the treatment in Turkey would amount to persecution; namely, the treatment that conscientious objectors receive from the authorities. The relevant treatment is not simply repeated terms of imprisonment. Rather, the record shows that conscientious objectors are viciously assaulted and inhumanely treated by authorities and others at the encouragement of the authorities simply because they have refused military service. Accordingly, the RPD's decision is well within the range of reasonable outcomes.

[13]   Neither party proposed a question for certification, nor is there one on these facts.

<u>JUDGMENT</u>

THIS COURT'S JUDGMENT is that the application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-4109-14

STYLE OF CAUSE: THE MINISTER OF CITIZENSHIP AND IMMIGRATION v EMRULLAH AKGUL

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: JULY 6, 2015

JUDGMENT AND REASONS: ZINN J.

DATED: JULY 9, 2015

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