

**Date: 20080303**

**Docket: IMM-2779-07**

**Citation: 2008 FC 272**

**Ottawa, Ontario, March 3<sup>rd</sup>, 2008**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**ADNAN DECEVIC**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Mr. Adnan Decevic is a citizen of Serbia and Montenegro. He arrived in Canada in 2003 claiming refugee protection on the basis that he had been persecuted because of his sexual orientation. A panel of the Immigration and Refugee Board found that Mr. Decevic did indeed have a well-founded fear of persecution. However, the Board also found that Mr. Decevic was excluded from refugee protection because of alleged criminal activity in Norway, for which there was an outstanding warrant against him.

[2] Mr. Decevic argues that the Board treated him unfairly by denying him an adequate opportunity to respond to the allegations against him. He also submits that the Board made serious

factual errors. He asks me to order a new hearing. I agree that Mr. Decevic was treated unfairly and must, therefore, allow this application for judicial review. I need not address his submissions relating to the Board's fact-finding because a different panel will have to make fresh findings of fact.

## I. Issue

[3] Did the Board treat Mr. Decevic unfairly?

## II. Analysis

### 1. Factual Background

[4] The Minister of Citizenship and Immigration notified the Board in January 2005 that the Minister intended to participate in the hearing of Mr. Decevic's refugee claim. In particular, the Minister contended that Mr. Decevic should be excluded from refugee protection based on Article 1(F)(b) of the Refugee Convention. That provision states that the Convention does not apply to those for whom there are serious reasons for considering that they have committed serious non-political crimes. Here, the Minister submitted that Mr. Decevic should be excluded because he had been convicted of drug trafficking in Norway and sentenced to 10 years' imprisonment. Attached to the Minister's written submission to the Board was a copy of an Interpol warrant which referred to a

warrant that had been issued in Norway in 2003 for Mr. Decevic's arrest. Counsel for the Minister did not appear at the hearing.

[5] Just prior to the hearing, counsel for Mr. Decevic responded to the Minister's allegations with documentary evidence indicating that Mr. Decevic could not have been convicted of anything because accused persons in Norway cannot be convicted in their absence. The Board accepted that evidence, but also stated that it would be prepared to receive further evidence from the Minister after the hearing. The Board also informed counsel for Mr. Decevic that she would be given a chance to respond to any additional evidence either in writing or by reconvening the hearing. At that point, the Minister provided a statutory declaration of an immigration officer indicating that Mr. Decevic had been charged and indicted, not convicted, of drug offences in Norway. Still, the Minister submitted that there remained serious reasons to believe that Mr. Decevic had committed serious non-political crimes in Norway.

[6] After receiving the Minister's submissions, Mr. Decevic's counsel notified the Board that she wished an opportunity to respond. Shortly thereafter, she provided the Board with written submissions arguing against the admission of the Minister's supplementary evidence. The Board responded by indicating that it had accepted the Minister's new evidence and that Mr. Decevic could respond either in writing or by requesting a re-opening of the hearing. Counsel for Mr. Decevic replied by asking the Board to provide reasons for its decision to accept the Minister's new evidence. The Board declined to provide written reasons, but allowed Mr. Decevic to submit further written evidence. In addition, the Board again noted that Mr. Decevic was entitled to request that the

hearing be re-opened. Counsel for Mr. Decevic responded by formally requesting the Board to reconvene the hearing to allow him to respond to the Minister's supplementary evidence. Counsel for the Minister stated that she had no objection to reconvening the hearing, so long as Mr. Decevic would consent to the release of further information from Norwegian authorities. Counsel for Mr. Decevic indicated that she was attempting to obtain further information from Norway, but her position was that there was no indictment against Mr. Decevic.

## 2. The Board's Decision

[7] Without reconvening the hearing, the Board issued its reasons in which it concluded that Mr. Decevic was excluded from refugee protection on the basis of the Minister's supplementary evidence. In its reasons, the Board specifically referred to its invitation to Mr. Decevic to request a resumption of the hearing. The Board implied that, given that Mr. Decevic had not made such a request, it should accept the uncontradicted evidence in the Minister's supplementary submission.

The Board stated:

The panel had the Refugee Protection Officer inform counsel that the panel did not consider that recalling the claimant would add probative evidence to the case, but left it open to counsel to call for a resumption. Therefore, on a balance of probabilities, I find the evidence of the Statutory Declaration to be probative and credible.

...

Counsel points out that the rules of disclosure are designed to provide for fairness, to which the panel agrees. However, the panel accepted the claimant's late disclosure and gave the Minister the opportunity to respond. On a balance of probabilities, I find that the

panel would have accepted counsel's submission to reconvene, if that was desired.

[8] It appears that the Board was not aware of Mr. Decevic's request to re-open the hearing in order to respond to the Minister's post-hearing evidence. Further, the Board seems to have concluded that it was bound to accept that evidence in the absence of any responding evidence from Mr. Decevic.

### 3. Discussion and Conclusion

[9] In my view, these circumstances amount to unfair treatment of Mr. Decevic. He requested an opportunity, through counsel, to address the additional submissions of the Minister and was denied that opportunity. The Board wrongly, probably through no fault of its own, concluded that Mr. Decevic had nothing further to say on the matter and made findings against him accordingly. This was clearly unfair to him, given that his counsel had specifically requested a re-opening of the hearing to address the Minister's evidence.

[10] This matter should be referred back to a differently constituted panel of the Board for a new hearing solely on the issue of exclusion. Neither party proposed a question of general importance for me to certify, and none is stated.

**JUDGMENT**

**THIS COURT'S JUDGMENT IS that**

1. The application for Judicial review is allowed;
2. A new hearing is ordered solely on the issue of exclusion, to be heard by a different constituted panel;
3. No question of general importance is stated.

“James W. O’Reilly”

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Judge

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

**DOCKET:** IMM-2779-07

**STYLE OF CAUSE:** ADNAN DECEVIC v. MCI

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** February 26, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT:** O'REILLY J.

**DATED:** March 3, 2008

**APPEARANCES:**

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