

Date: 20080311

Docket: IMM-2589-07

Citation: 2008 FC 334

Ottawa, Ontario, March 11, 2008

PRESENT: The Honourable Madam Justice Dawson

BETWEEN:

EMINE ELER

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Emine Eler is a citizen of Turkey who sought refugee protection. She testified before the Refugee Protection Division of the Immigration and Refugee Board (Board) that she feared serious harm, amounting to persecution, at the hands of her younger brother who persistently demanded money from her and used force to obtain that money.

[2] The Board made no finding with respect to the credibility of Ms. Eler's testimony. Thus, it is presumed to be true. The Board dismissed Ms. Eler's claim for protection on the sole ground that she had failed to rebut the presumption of state protection.

[3] Critical to the Board's conclusion was its reliance upon "The Law for the Protection of the Family in Turkey" which came into force in 1998. The Board described the effect of this legislation as follows: "[u]nder the law, a woman or a family member or a family friend or the prosecutor can ask the justice of the peace to take measures to protect the woman from violence. The judge must immediately grant a protection order on receipt of the application; it is not a request to prosecute the offender but a request for the protection of the spouse or woman. It requires the alleged perpetrator of violence to leave the home and to comply with other requirements of the order, such as not approaching the victim, or face imprisonment. It gives the police the right to confiscate the alleged perpetrator's weapons."

[4] The legislation was not in evidence before the Board. Instead, the Board relied upon a description of the legislation contained in an Amnesty International report. That report went on to express Amnesty International's concern that "the Law provides protection only to women married in a civil ceremony and living under the same roof as their husband."

[5] Based on this characterization of the legislation, which was the only evidence before the Board, the legislation could provide no redress or protection to Ms. Eler.

[6] The Board's conclusion about the adequacy of state protection was, and remains, reviewable against the standard of reasonableness. See: *Hinzman v. Canada (Minister of Citizenship and*

Immigration) (2007), 362 N.R. 1 at paragraph 38 (F.C.A.), and *Dunsmuir v. New Brunswick*, 2008 SCC 9 at paragraphs 55, 57, 62, and 64.

[7] Reasonableness requires consideration of the existence of justification, transparency, and intelligibility of the decision-making process. It is also concerned with whether the decision falls within a range of acceptable outcomes, which are defensible in respect of the facts and law. See: *Dunsmuir* at paragraph 47.

[8] Where the Board relies upon the existence of certain legislation to provide protection, but the evidence before the Board is to the effect that the legislation has no application to the claim before it, the Board's reasons are not reasonable as they are insufficiently justified.

[9] It follows that the application for judicial review is allowed.

[10] Counsel for the Minister, Ms. Jaakkimainen, is commended and thanked for her customary candour to the Court with respect to the contents of the tribunal record.

[11] Counsel posed no question for certification, and I agree that no question arises on this record.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is allowed, and the decision of the Refugee Protection Division dated June 5, 2007, is hereby set aside.
2. The matter is remitted for redetermination in accordance with these reasons by a differently constituted panel of the Refugee Protection Division.

“Eleanor R. Dawson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2589-07

STYLE OF CAUSE: EMINE ELER, Applicant

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION, Respondent

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 4, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** DAWSON, J.

DATED: MARCH 11, 2008

APPEARANCES:

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A. LEENA JAAKKIMAINEN	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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JOHN H. SIMS, Q.C. DEPUTY ATTORNEY GENERAL OF CANADA	FOR THE RESPONDENT