

Federal Court



Cour fédérale

**Date: 20130925**

**Docket: IMM-10069-12**

**Citation: 2013 FC 982**

**Ottawa, Ontario, September 25, 2013**

**PRESENT: The Honourable Mr. Justice Phelan**

**BETWEEN:**

**QAZIME TALO  
JURGEN TALO**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. INTRODUCTION**

[1] This is the second judicial review proceeding involving the Applicants. In *Talo v Canada (Minister of Citizenship and Immigration)*, 2012 FC 478 (CanLII), Justice Campbell quashed the first negative decision of the Immigration and Refugee Board [Board] and ordered a redetermination with the following direction:

Because of her vulnerability, Dejana should not be placed in the position of having to prove her innocence and credibility a second

time, and, therefore, the redetermination will be conducted on the evidence in the present record accepted as credible and on an application of the *Chairperson's Gender Guidelines*. The Applicants are at liberty to supply further evidence and argument on the issue of state protection in Albania.

## II. BACKGROUND

[2] The Applicants in this judicial review are a mother Quazime Talo and her son Jurgen. In the first judicial review, matters focused on the daughter Dejana. All are citizens of Albania.

[3] The family made their refugee claim in 2009 predicated on what had happened to Dejana in Albania. Dejana feared that she would be kidnapped and forced into prostitution by human traffickers. She had been approached numerous times by these traffickers and ultimately she was raped by two men.

[4] The mother continually expressed fear of these human traffickers particularly if any of the family tries to interfere with them.

[5] The Board denied their first claim and this decision was overturned by Justice Campbell on judicial review. Prior to issuing his Direction, Justice Campbell made two important statements for his decision:

[8] I find that the evidence quoted by both the RPD in its decision and tendered by Counsel for the Applicants raises a grave doubt that state protection exists for women in Albania.

[9] In the result, I find that the decision under review is made in [*sic*] reviewable error for two reasons: no proper application was conducted of the *Chairperson's Gender Guidelines*, and no fair analysis was given to the available evidence.

[6] In the subsequent Board hearing, the Applicants (the mother and her son) called no evidence. Applicants' counsel had written to the Board indicating that "these claimants will not need to testify against [*sic*] as there are no issues as to credibility". Counsel again wrote that since Dejana's evidence was credible, the only issue to be addressed is that of state protection in Albania.

[7] At the hearing, the Board concluded that the only issue was whether state protection would be forthcoming to the claimants.

[8] In the second decision, the Board essentially found that there was no basis for the mother or son's fear of return to Albania.

### III. ANALYSIS

[9] The Applicants argue that there has been a breach of procedural fairness because the Board did not question the mother and did not consider all the evidence. As such, it is subject to a correctness standard of review.

[10] The Respondent submits that the real issue is the Board's conclusion on state protection; an issue which is governed by a reasonableness standard of review (*Adoni v Canada (Minister of Citizenship and Immigration)*, 2012 FC 516 (CanLII)).

[11] While the record of the hearing is not entirely clear, it was the Applicants who chose not to call evidence on the issue of fear because the Direction referred only to the issue of state protection.

[12] However, the issue in this case is whether state protection would be available to these particular individuals. This cannot be a purely generic consideration of the availability of state protection to all individuals in Albania.

[13] Given that Justice Campbell indicated that the Applicants “were at liberty to supply further evidence and argument on the issue of state protection in Albania”, and that Applicants’ counsel chose not to supply additional evidence, I cannot find that the Board erred in respect of procedural fairness.

[14] The real issue in this judicial review is the Board’s decision that state protection was available to the Applicants. In this regard the Board made findings inconsistent with a finding of available state protection.

[15] In considering this issue, the Board refers to a report entitled “Trafficking in Persons report 2011” and makes the following key conclusion:

The state’s efforts, its capacity and the will to effectively implement that procedural framework cannot be gleaned from the country documentation cited above.

[16] Having reached that conclusion, the Board makes no further analysis of state protection. It is not possible to reconcile the above finding with the Board’s ultimate conclusion.

[17] While the Court should not find ways to undermine a decision (*Alberta (Information and Privacy Commissioner) v Alberta Teachers’ Association*, 2011 SCC 61, [2011] 3 SCR 654), the Court cannot be left to guess at the basis for the state protection conclusion. This type of problem

has been addressed by this Court (see *Contreras v Canada (Citizenship and Immigration)*, 2007 FC 589 (CanLII)) and found to constitute grounds to quash a decision.

IV. CONCLUSION

[18] Therefore, I am prepared to grant judicial review, quash the Board's decision and refer the the Applicants' claim back to be determined by a different Member of the Board. I am not going to issue a Direction (it may have caused more unintended problems in this case). The Member is, after notice to the parties, to determine the issues to be addressed and the procedures to be followed.

[19] There is no question for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is granted, the Board's decision is quashed and the matter of the Applicants' claim is referred back to be determined by a different Member of the Board.

"Michael L. Phelan"

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Judge

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

**DOCKET:** IMM-10069-12

**STYLE OF CAUSE:** QAZIME TALO, JURGEN TALO v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 16, 2013

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

**DATED:** SEPTEMBER 25, 2013

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