Federal Court  Cour fédérale

**Date: 20150203**

**Docket: IMM-4142-13**

**Citation: 2015 FC 139**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Ottawa, Ontario, February, 3, 2015**

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

**BETWEEN:**

**BLERIM SKORO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review pursuant to subsection 72 (1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), of a decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated May 16, 2013, rejecting the

applicant's claim for refugee protection under section 98 of the IRPA on the basis that the applicant had committed serious non-political crimes within the meaning of paragraph 1F(*b*) of the *1951 United Nations Convention Relating to the Status of Refugees* (the Convention).

II. Facts

[2] The applicant claims that during the early 1990s he left Kosovo after having deserted the army before subsequently traveling to the United States.

[3] In the mid-1990s, the applicant apparently joined up with other criminals in the international trafficking of heroin and cocaine. During this period, the applicant made five or six trips carrying at least 14 kg of heroin and cocaine and laundered approximately 670,000 U.S. dollars from the sale of narcotics.

[4] In May 2000, the applicant was charged in the United States with importing heroin and money laundering and in June of that year he was sentenced to a term of 84 months in prison for his crimes. The applicant obtained a lighter sentence for having provided authorities with information on other drug traffickers and for testifying against them.

[5] The applicant alleges that a number of U.S. agencies, including the CIA, contacted him while he was in prison in order to have him infiltrate Islamic terrorist groups and that in exchange for his cooperation the U.S. authorities had promised him that he would be released before the end of his sentence and that he would later be allowed to remain in the United States. Thus, he contends that he collaborated with U.S. authorities by infiltrating Islamic terrorist cells.

The applicant was released before the end of his sentence in accordance with his agreement with the U.S. authorities, but was nonetheless deported to Kosovo.

[6] The applicant claims that in March 2010, jihadists from Kosovo tried to kill him as they had discovered that he had been a spy for the CIA and he purportedly received a bullet wound. In order to escape this threat, the applicant left Kosovo in October 2010 and arrived in Canada on November 2, 2010.

## III. Issue

[7] One issue arises:

1. Did the RPD err in finding that the applicant was subject to paragraph 1F(*b*) of the Convention?

[8] The sole argument raised by the applicant is in relation to the interpretation of Article 1F(*b*) and now runs counter to the findings of the Supreme Court of Canada in *Febles v Canada (Citizenship and Immigration)*, 2014 SCC 68 (*Febles*). This decision of the Supreme Court of Canada was issued in between the filing of the applicant's memorandum and the hearing of this matter before this Court.

## IV. Decision

[9] The RPD noted that according to the Minister's advice, an exclusion under paragraph 1F(*b*) must be considered by virtue of the fact that the applicant was found guilty in the United

States of "Conspiracy to import one kilogram of heroin – Title 21" under sections 963, 960 (a)(1) and 960 (b)(1)(a) of the U.S. Criminal Code and that such a crime is punishable by a minimum sentence of 10 years in prison.

[10] The RPD pointed out that during the hearing the applicant made no attempt to minimize the crimes he had committed.

[11] According to the RPD, in considering the facts and principles in *Jayasekara v Canada (Citizenship and Immigration)*, 2008 FCA 404 (*Jayasekara*), in particular the criteria established at paragraph 44 of that decision with respect to the seriousness of the crime committed, there are serious grounds to believe that the applicant committed a serious non-political crime within the meaning of Article 1F(*b*) of the Convention. Paragraph 44 of *Jayasekara* states that "the interpretation of the exclusion clause in Article 1F(*b*) of the Convention, as regards the seriousness of a crime, requires an evaluation of the elements of the crime, the mode of prosecution, the penalty prescribed, the facts and the mitigating and aggravating circumstances underlying the conviction", but that "[t]here is no balancing, however, with factors extraneous to the facts and circumstances underlying the conviction such as, for example, the risk of persecution in the state of origin."

[12] In addition, despite the words of Justice La Forest in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 (*Ward*), which initially appear to limit the application of Article 1F(*b*) to fugitives from justice, the RPD was of the view that in accordance with *Jayasekara*, the application of paragraph 1F(*b*) of the Convention applies not only to fugitives, but also to those

who have served their sentence. The RPD therefore concluded that the exclusion set out in section 98 of the IRPA and in paragraph 1F(*b*) of the Convention could be applied to the applicant even though he had served his sentence and had cooperated with U.S. authorities.

[13] In support of its analysis, the RPD specifically considered the fact that the crimes committed by the applicant in the United States would be punishable by a minimum sentence of 10 years' imprisonment had they been committed in Canada. The RPD also considered the evidence that the applicant had served his sentence and cooperated with U.S. authorities, evidence filed by the applicant on the situation in Kosovo, and the applicant's allegations that his life would be at risk unless he obtained Canada's protection.

[14] Relying on *Feimi v Canada (Citizenship and Immigration)*, 2012 FCA 325 (*Feimi*) and *Hernandez Febles v Canada (Citizenship and Immigration)*, 2012 FCA 324 (*Hernandez Febles*), the RPD was of the view that the level of danger currently posed by the applicant and his rehabilitation were not factors worthy of consideration and therefore concluded that it must restrict its analysis to determining whether there were serious reasons to believe that the applicant had committed a serious non-political crime. As noted above, the RPD found this to be the case.

[15] Lastly, on the basis of paragraph 27 of *Feimi*, the RPD noted that in spite of its decision, the applicant could eventually have an opportunity to convince the respondent, in a pre-removal risk assessment, that he would face a number of risks if he were to be denied protection from

Canada and the respondent could then weigh the risks he would potentially face if he were to be deported from Canada with any danger the applicant might pose to the public.

## V. Relevant provisions

[16] The standard of review applicable to determining whether the RPD erred in its interpretation of Article 1F(*b*) of the Convention is that of correctness (*Feimi*, at para 14; *Hernandez Febles*, at para 25; *Febles*).

## VI. Analysis

[17] At the outset, the applicant points out in his memorandum that he had already served his sentence in the United States prior to arriving in Canada, that he has not committed any crimes since, and that he is not a fugitive. Relying on the position of Justice La Forest in *Ward*, the applicant argues in his memorandum that the application of paragraph 1F(*b*) of the Convention is limited to fugitives from justice and that he was therefore not subject to that paragraph. Furthermore, the applicant submits that the RPD breached the rule of *stare decisis* by following the Federal Court of Appeal's interpretation of Article 1F(*b*) of the Convention in *Jayasekara* rather than the following passage in *Ward*:

> Hathaway would appear to confine paragraph (b) to accused persons who are fugitives from prosecution. The interpretation of this amendment was not argued before us. I note, however, that Professor Hathaway's interpretation seems to be consistent with the views expressed in the *Travaux préparatoires*, regarding the need for congruence between the Convention and extradition law.

[18] However, as the parties noted at the hearing of this case, the Supreme Court of Canada recently rejected the interpretation of Article 1F(*b*) of the Convention initially suggested in *Ward*. Indeed, in *Febles*, at para 60, Chief Justice McLachlin, writing for the majority, settled the debate revived by the applicant with regard to the interpretation of Article 1F(*b*) of the Convention:

> Article 1F(*b*) excludes anyone who has ever committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee. Its application is not limited to fugitives, and neither is the seriousness of the crime to be balanced against factors extraneous to the crime such as present or future danger to the host society or post-crime rehabilitation or expiation.

[19] Furthermore, in *Febles* Chief Justice McLachlin noted at paras 46-49 the obiter remarks of Justices La Forest and Bastarache in *Ward* and *Pushpanathan v Canada (Citizenship and Immigration)*, [1998] 1 SRC 982, respectively, as to the interpretation of Article 1F(*b*) of the Convention. In light of *Febles*, I have no difficulty dismissing the sole argument raised by the applicant in support of his application for judicial review.

## VII. Conclusions

[20] The application for judicial review is dismissed.

**JUDGMENT**

**THE COURT OREDERS that:**

1. The application for judicial review is dismissed.

2. No question is certified.

"George R. Locke"
Judge

Certified true translation
Sebastian Desbarats, Translator

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-4142-13 |
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| **JUDGMENT AND REASONS:** | LOCKE J. |
| **DATED:** | FEBRUARY 3, 2015 |

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