

Federal Court



Cour fédérale

**Date: 20150116**

**Docket: IMM-5781-13**

**Citation: 2015 FC 56**

**Ottawa, Ontario, January 16, 2015**

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

**BETWEEN:**

**EMIR SONMEZ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Nature of the Matter and Relief Sought

[1] The Refugee Protection Division [the RPD] of the Immigration and Refugee Board of Canada refused Mr. Sonmez's request for protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the *Act*]. He now applies for judicial review pursuant to section 72(1) of the *Act*, asking the Court to set aside the RPD's decision and return the matter to the RPD for reconsideration.

## II. Background

[2] Emir Sonmez [the Applicant] is a 50 year old citizen of Turkey who arrived in Canada on January 3, 2012, and immediately sought refugee protection. He claimed that he fears persecution for being Kurdish Alevi and a leftist who has publicly supported pro-Kurdish parties and, as such, that he has been discriminated against, detained and tortured for these reasons on a number of occasions.

[3] The Applicant's claim was heard before the RPD over four separate dates: September 13, 2012; October 18, 2012; November 30, 2012; and February 14, 2013. During the first three dates, the Applicant was represented by an acquaintance from Toronto's Turkish community, but each hearing was eventually adjourned: in the first, because the Applicant had a health emergency; in the second, because the Applicant could not understand the interpreter; and in the third, because of a late start and delays in the hearing. For the last hearing, the Applicant's representative was unable to attend, but the Applicant was prepared to proceed without his representative and the hearing concluded that day.

## III. Decision under Review

[4] The RPD rejected the Applicant's claim in a decision dated August 12, 2013.

[5] The RPD first addressed some procedural issues arising out of the adjourned hearings, and it was satisfied that: (1) any interpretation issues aside from those resulting in the dismissal of an interpreter during the second hearing were inconsequential; (2) although the Applicant had

some difficulties with his hearing, his ability to testify and respond to questions was not hindered; and (3) the Applicant did not suffer from the absence of a representative at the last hearing.

[6] The RPD next considered the substance of the Applicant's claim, for which the determinative issue was the Applicant's credibility. The RPD found that the Applicant's testimony was vague and evasive, that he had failed to provide documentation that would have corroborated his allegations, and that he had not demonstrated any subjective fear.

[7] The RPD identified the following reasons for doubting the Applicant's story:

- The Applicant did not describe the reason for his departure consistently. He had said that the most serious threat against him happened in 1996, but then claimed that it was only in October, 2011, that the risk became so severe that he realized that he had to leave Turkey. On the other hand, he stated in his personal information form narrative that the event precipitating his departure was a police raid on his home in November, 2011.
- He reconciled with his ex-wife and re-married her around the same time, but the Applicant was unable to situate these events within the timelines for the alleged beatings and raid unless they were specifically highlighted for him by date. Also, he gave conflicting reasons for moving to Belen, saying at times it was because of the threats he received and at other times saying it was to reconcile with his wife.
- He was confused about the details of the alleged raid in November, 2011. Originally he said that his wife and children were with him in the home at the

time. When the RPD pointed out that he was divorced at the time, he said he was visiting his wife and children at her home, and then later that they were visiting him instead.

- The Applicant had said that the police demanded that he provide a list of members of Kova Civaken Kurdistan, but he was evasive when the RPD asked whether the demand was made verbally or in writing.
- The Applicant gave off-topic answers when asked about the problems he faced in 2011.
- The Applicant was unable to spontaneously reply to basic questions about the events that allegedly happened to him.
- The Applicant did not supply credible documentation to support his claim. Specifically, the RPD expected to see medical evidence from Turkey and police reports documenting his alleged arrests and detentions, and it did not accept his excuses for not approaching the police or prosecutors for that information. As well, there was no evidence to support the alleged detention of the Applicant's brother.
- Although the Applicant originally said that he did not leave Turkey in 1996 because he did not have the resources to do so, he later said that he did not leave then because he had to help his family.

[8] The RPD thus rejected the Applicant's primary allegations, but nonetheless considered whether there was any residual evidence to support the Applicant's claim for refugee protection.

[9] The RPD accepted that the Applicant is Kurdish Alevi and participated in activities of the Peace and Democracy Party [BDP]. However, these factors alone were insufficient to afford him protection. Although some leaders of the BDP faced problems, the RPD determined that mere supporters like the Applicant are not persecuted. Furthermore, the RPD found that the Applicant's connection to the Alevi faith did not appear to be strong, and the Turkish government generally respected religious freedom. Although the Applicant might face some discrimination on the basis of his religion, it would not be so great as to amount to persecution. Kurds may also face some serious problems, but the RPD agreed with the United Kingdom Home Office's assessment that such problems do not amount to persecution.

[10] Finally, while the Applicant had mentioned an explosion in his family's neighbourhood that injured 37 people and that he was also concerned about the presence of Syrians who had escaped the civil war, the RPD found that these events did not have anything to do with a fear of persecution. As for section 97 of the *Act*, any risk to the Applicant's life as a result of these events was less than likely and would be generalized risk in any event.

#### IV. The Parties' Submissions

##### A. *The Applicant's Arguments*

[11] The Applicant submits that the RPD made improper findings with respect to the Applicant's credibility. In particular, the Applicant says that it was unreasonable for the RPD to decide that the Applicant's testimony was vague and evasive, with a lack of corroborating

evidence. Furthermore, the Applicant states that the RPD improperly determined that the Applicant had no subjective fear of persecution.

[12] With respect to the vague and evasive nature of the Applicant's testimony, the Applicant argues that the RPD was insensitive to the Applicant's health problems. According to the Applicant, the repeated interruptions led to difficulties with respect to the Applicant's testimony and his personal problems were such that the RPD should have been on notice and alert to the Applicant's situation. The Applicant states that he could not focus directly in response to the RPD's questions since he was asked questions by the RPD which were ambiguous, and that the RPD should have asked clearer questions.

[13] On the issue of corroboration, the Applicant cites the decisions in *Lin v Canada (Citizenship and Immigration)*, 2008 FC 381 at paras 14-16 (available on CanLII) [*Lin*], and in *Maldonado v Canada (Minister of Employment and Immigration)* (1979), [1980] 2 FCR 302 at 305, 31 NR 34 (CA) [*Maldonado*], arguing that the RPD should have presumed the Applicant's testimony to be true and that the exception to require corroboration does not apply. The Applicant states that it was unreasonable for the RPD to request a corroborating medical report from a Turkish physician. Furthermore, the Applicant argues that the RPD improperly looked for police reports from Turkey when such reports would be from the very persons who had detained and tortured him.

[14] On the matter of subjective fear, the Applicant submits that the most serious incident was not in 1996 but, rather, was in October-November, 2011; this later incident, the Applicant says,

was the proverbial straw that broke the camel's back and caused the Applicant to flee from Turkey. The Applicant states that the RPD unreasonably used the lack of the Applicant's credibility to defeat his claim concerning the risk to his life.

B. *The Respondent's Arguments*

[15] The Respondent submits that the RPD's decision was reasonable. The determination of the Applicant's credibility was clearly within the purview of the RPD. The Respondent acknowledges that there were some interruptions, but these were not such that they affected the overall outcome which was within the range of reasonable outcomes.

[16] The Respondent states that the Applicant understood the questions posed to him by the RPD and that the RPD was sensitive to his health issues.

[17] With respect to the lack of corroboration, the Respondent states that the RPD can consider this when credibility is already in issue. Clearly, the Respondent says, the RPD had concerns about the Applicant's credibility, so it was proper for the RPD to look for a prosecutor's report, especially since the prosecutor had allegedly sided with the Applicant. Furthermore, the Respondent notes that the Applicant failed to provide the RPD with any documentation about his attempts to get police reports from Turkey. According to the Respondent, it was reasonable for the RPD to look for Turkish medical documentation rather than that which was supplied by the Applicant.

[18] As to the Applicant's lack of subjective fear, the Respondent submits that it was reasonable for the RPD to question the Applicant as to why he did not leave in 1996 when his brother had left the country. After being questioned by the RPD in this regard, the Respondent says the Applicant changed his story from one where he lacked the necessary resources to one where he was looking out for his family.

[19] Moreover, the Respondent states that the absence of any objective fear was dispositive of the Applicant's claim. The Respondent notes that the RPD found that the Applicant had a very low level of political activity and was not generally aware of issues facing the Alevi, and that discrimination against the Alevi was not widespread.

[20] The RPD's decision, according to the Respondent, is reasonable and within the range of acceptable outcomes.

## V. Analysis

### A. *Standard of Review*

[21] The RPD's assessment of the Applicant's credibility is to be reviewed on a standard of reasonableness (*Aguebor v Canada (Minister of Employment and Immigration)*, 160 NR 315 at para 4, [1993] FCJ No 732 (QL) (CA)).

[22] Credibility findings have been described as the "heartland of the Board's jurisdiction", in that they are essentially pure findings of fact (*Lubana v Canada (Minister of Citizenship and*



*Immigration*), 2003 FCT 116 at para 7, 228 FTR 43; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 46, [2009] 1 SCR 339 [*Khosa*]). Likewise, the interpretation and assessment of evidence by the RPD is reviewable on a standard of reasonableness (*Oluwafemi v Canada (Citizenship and Immigration)*, 2009 FC 1045 at para 38, [2009] FCJ No 1286 (QL); *Lin* at paras 13-14). Furthermore, the RPD's factual findings should be given significant deference (*Lin* at paras 13-14).

[23] Consequently, this Court should not intervene so long as the RPD came to a conclusion that is transparent, justifiable, intelligible, and within the range of possible, acceptable outcomes based on the law and the facts before it (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190; *Khosa* at para 59). A reviewing court can neither substitute its own view of a preferable outcome nor can it reweigh the evidence (*Khosa* at paras 59, 61).

#### B. *The Applicant's Credibility*

[24] The Applicant argues that it was unreasonable for the RPD to find that his testimony was vague, evasive, and uncorroborated, and thus lacked credibility. The Respondent claims the opposite, stating that the Applicant understood the questions posed to him and that the RPD's inferences were justified.

[25] As noted above, the Board's findings with respect to credibility warrant deference. In this case, the RPD did not arrive at a generalized, imprecise and vague credibility conclusion without particulars (see e.g. *Hilo v Canada (Minister of Employment and Immigration)* (1991), 130 NR 236 at para 6, 15 Imm LR (2d) 199 (FCA)). On the contrary, the RPD listed many examples of

inconsistencies in the Applicant's testimony, notably as to what was the most serious threat against him, why he did not flee Turkey when his brother did in 1996, and where the alleged police raid occurred in 2011. Also, the RPD's decision refers to several confused or unfocused responses by the Applicant as to, for example, the injuries he suffered in the alleged 1996 and 2011 beatings by the police. In my view, the RPD reasonably found the Applicant lacked credibility and this Court should defer to that determination.

[26] Furthermore, notwithstanding the Applicant's argument based on *Maldonado* and *Lin*, I agree with the Respondent that it was reasonable for the RPD in this case to look for some evidence to corroborate the Applicant's claims. The RPD did not accept the Applicant's claim that there would be no police or legal documents available from Turkey to corroborate his claims. Furthermore, it was reasonable for the RPD to look for documents from the prosecutor's office in Turkey, especially since such documents, according to the Applicant's testimony, might have assisted his claim. As Mr. Justice David Near stated in *Guzun v Canada (Citizenship and Immigration)*, 2011 FC 1324 at para 20 (available on CanLII): "[i]t is not unreasonable to require documentary corroboration of critical aspects of the Applicant's claim, including additional information related to the attacks he claimed to have been subjected to...".

### C. *Fear of Persecution*

[27] The Applicant states that the RPD unreasonably used the lack of the Applicant's credibility to defeat his claim concerning the risk to his life. The Respondent says it was reasonable for the RPD to find the Applicant was not credible and lacked a subjective fear of

persecution. Furthermore, the Respondent states that the absence of any objective fear of persecution was dispositive of the Applicant's claim.

[28] The RPD found that the Applicant had not satisfied the onus upon him to establish that he had a well-founded fear of persecution. Also, although the RPD accepted that the Applicant is Kurdish Alevi and participated in activities of the BDP, these factors alone were insufficient to establish that the Applicant had a well-founded fear of persecution or a foundation for establishing a personal risk to life, or cruel and unusual treatment or punishment, or danger of torture for the Applicant.

[29] The RPD's finding that the Applicant did not have a well-founded fear of persecution was reasonably open to it in view of the Applicant's overall lack of credibility and failure to provide credible documentation to support the allegations central to his claim. For the same reason, it was reasonable for the RPD to determine that the Applicant did not have a subjective fear of persecution. It was also reasonable for the RPD, based upon its detailed review and analysis of conditions affecting Kurdish Alevi in Turkey, to determine that there was no objective foundation to find a personal risk to the Applicant's life.

## VI. Conclusion

[30] In the result, I find that there is no basis upon which this Court should intervene with the decision of the RPD. The RPD came to a conclusion that is transparent, justified, intelligible, and within the range of possible, acceptable outcomes based on the law and the facts before it.

[31] Accordingly, the application for judicial review is dismissed. Neither party proposed a question of general importance, so none is certified.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. the application for judicial review is dismissed; and
2. no question of general importance is certified.

"Keith M. Boswell"

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Judge

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

**DOCKET:** IMM-5781-13

**STYLE OF CAUSE:** EMIR SONMEZ v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 21, 2014

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**DATED:** JANUARY 16, 2015

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