

Federal Court



Cour fédérale

Date: 20150511

Docket: IMM-581-14

Citation: 2015 FC 618

Ottawa, Ontario, May 11, 2015

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

CELAL YENER

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 the November 25, 2013 decision of the Immigration and Refugee Board of Canada, Refugee Protection Division (RPD), wherein the RPD determined that the applicant is neither a Convention refugee nor a person in need of protection pursuant to section 96 and subsection 97(1) of the *IRPA*.

II. Facts

[2] The applicant is a citizen of Turkey of Kurdish ethnicity and of Alevi faith. He alleges that both Turkish nationalists and Turkish police persecuted him due to his faith, his ethnicity, his political positions, and his membership in a particular social group (his family and the Kurdish Alevi community). The applicant alleges that his family are well-known Kurdish and Alevi leftists. In 2005, the applicant's brother, a leftist reporter, came to Canada and was found to be a Convention refugee. Also, the applicant's father and his family left their country for England where they were found to be Convention refugees.

[3] Based on the applicant's allegations, the facts are as follows.

[4] From 1993 to 2011, the applicant has been involved as a leftist political activist with different organizations in Turkey. During that period, several of his activist comrades were detained, beaten, and tortured. One of them was even shot at.

[5] In March 1995, a group of armed men fired their guns at three cafés known for being frequented by members of the Kurdish Alevi community. Following this attack, the applicant participated in a protest where the police fired on the crowd, killing 17 protesters and injuring others. As a result of this event, the applicant reasoned that as a leftist and a member of the Kurdish Alevi community he could be persecuted no matter where he was in Turkey.

[6] In May 2003, the applicant participated in a leftist political gathering. After the meeting, when the activists were headed home, the police attacked the group with sticks after slogans were shouted. The applicant was arrested and brought to the police station. During his detention, the applicant could hear other people screaming while they were tortured. The applicant was finally brought to an interrogation room where he was asked why he had shouted slogans. When he denied shouting slogans he was beaten. The applicant was released without charges the day after.

[7] In March 2009, the applicant participated in *Newroz* celebrations (the Iranian New Year, celebrated by Kurds). After the event, the applicant was arrested and taken into custody by three plainclothes police officers due to the fact that he was wearing a scarf with the Kurdish national colours. While the applicant was in the police car, the police officers punched him in the stomach and crushed his toe. One of the police officers accused him of being a terrorist separatist due to the scarf he was wearing, and his Kurdish ethnicity. At the detention center the applicant was questioned, beaten, tortured with electric shocks on sensitive parts of his body, and subjected to *falaka* (foot whipping) before being forced to walk through salted water. The police officers repeated the same treatment four times over two days. The applicant's life was also threatened during his detention. Finally, after the two days of detention, the applicant was released without charges.

[8] About three days later, a plainclothes police officer passed by the applicant's workplace and told him that "it was not finished" and that they "will be always on [his] neck," and that one day he would be killed.

[9] In December 2011, the applicant and other activists gathered at Taksim Square to commemorate the Maras massacre in 1978 during which more than a hundred Alevi were murdered. After telling the protesters to disperse, the police attacked them with tear gas. The applicant tried to escape, but he was arrested by the police along with other protesters. The applicant was detained, beaten, and threatened with death because he had participated in too many protests. The police also insulted his beliefs by implying that Alevis engage in incestuous relations. For a third time, the applicant was released without charges.

[10] After his release, the applicant received a threatening phone call. The anonymous caller told him that he was “finished” and that he would be killed.

[11] The applicant obtained a passport in November 2011, and sold his business at the end of December 2011. He lived alternately in Istanbul and Iskenderun to avoid extremist nationalists and the police while awaiting a visa for the United States. The applicant applied for a U.S. visa because he thought that it would be easier to obtain than a Canadian visa. Once in the United States, the applicant went to Canada and claimed refugee protection on February 9, 2012.

III. Decision

[12] The RPD found that the determinative issue was the applicant’s lack of credibility. The main adverse credibility findings by the RPD can be divided into the following five categories:

1. The failure of the applicant at the time of his entry into Canada to mention the mistreatment he now alleges (the point-of-entry (POE) notes refer instead to the treatment of Kurds and Alevis generally).

2. The failure of the applicant to mention in his Personal Information Form (PIF) the smuggler he now alleges assisted with his departure from Turkey;
3. The ease with which the applicant (i) was released from custody; (ii) obtained a Turkish passport; and (iii) left Turkey using his passport;
4. The applicant's delay in leaving Turkey even after repeated mistreatment at the hands of Turkish authorities; and
5. The absence of certain corroborating documents, including medical evidence of the beatings he alleges.

[13] A number of the applicant's allegations appear to have been considered by the RPD to be later embellishments to the applicant's refugee claim. These include:

1. An attempt to retain a smuggler in 2009 to obtain travel documents to leave Turkey (this attempt allegedly failed because the smuggler disappeared with the applicant's money);
2. The use of a smuggler in 2011 (as mentioned above) to obtain his United States visa;
3. A move by the applicant's wife and children in August 2013 due to police harassment; and
4. An attack on the applicant's eldest son at university by Turkish nationalists in September 2013, as well as the psychological effect of that event on the applicant which prompted a postponement of the applicant's RPD hearing.

IV. Issue

[14] This matter raises the following issue:

1. Did the RPD err in assessing the credibility of the applicant?

V. Analysis

A. *Standard of review*

[15] Findings of credibility are the heartland of the RPD's discretion on issues of fact: *Giron v Canada (Minister of Employment and Immigration)* (1992), 143 NR 238 at 239 (FCA). Hence, it is trite law that the standard of reasonableness applies to adverse credibility findings: *Alvizuris v Canada (Citizenship and Immigration)*, 2015 FC 351 at para 4; *AB v Canada (Citizenship and Immigration)*, 2014 FC 899 at para 21.

B. *The Applicant's credibility*

[16] This analysis considers each of the RPD's above-listed credibility conclusions in turn, and then deals with the apparent embellishments.

(1) Failure to mention mistreatment at POE

[17] In my view, it was reasonable for the RPD to draw a negative inference from the failure of the applicant to mention, at the time of his entry into Canada, the mistreatment he now alleges.

[18] The applicant argues that it was inappropriate to draw any sort of conclusion from this failure. The applicant argues that, before reaching such a conclusion concerning credibility, the RPD should have asked the applicant to explain the omission. I am not convinced that this is an inconsistency of the type that required the RPD to question the applicant about it. This is not a case like *Kumara v Canada (Citizenship and Immigration)*, 2010 FC 1172 [*Kumara*], in which

the decision turns solely on that inconsistency. As argued by the respondent, the RPD asked many questions of the applicant and was not lying in the weeds, as alluded to in *Kumara* at para 3.

[19] I am satisfied that the RPD's conclusion on this point may stand.

(2) Failure to mention use of smuggler in PIF

[20] The RPD was reasonable to draw a negative inference from the failure of the applicant to mention his use of a smuggler in his PIF. The applicant was also quite vague about what the smuggler did for him and the RPD was also reasonable to be concerned about this.

[21] The applicant argues that this issue is peripheral to the applicant's claim in that it does not directly concern the alleged persecution and mistreatment cited by the applicant, or the ease of his departure from Turkey. However, this argument goes to the weight to be given to the evidence, not its reasonableness. I am not prepared to interfere with the RPD's decision in this respect.

(3) Ease of release from detention, obtaining passport, and leaving Turkey

[22] The RPD apparently drew a negative inference from the fact that the applicant did not describe any particular difficulties in getting released from detention, obtaining a passport, or using his passport to leave Turkey.

[23] The National Document Package materials cited by the RPD relate to people who are being sought by the authorities. They do not readily apply to a person like the applicant who was detained but then released without charge. Even if the applicant was under surveillance, the applicant does not allege, or even suggest, that the authorities were seeking to arrest him or to prevent his departure from Turkey.

[24] In view of the facts in evidence, I do not see any inconsistency resulting from the ease of the applicant's release from detention, obtaining a passport, or leaving Turkey. It appears to me that the applicant was no more than a minor irritant to authorities, who was detained when he acted in ways that were particularly irritating to those authorities, such as when he participated in demonstrations. The authorities were apparently unable to identify any crime that the applicant had committed, so they were obliged to release him after each detention. There is no suggestion that they even wanted to prevent him from leaving Turkey. There is no pending criminal charge or arrest warrant that would interfere with the applicant getting a passport or leaving Turkey.

[25] Therefore, it does not seem reasonable to conclude that there is any lack of credibility based on the authorities' low level of interest in the applicant. In light of the preceding paragraph, however, it is reasonable to ask whether the authorities' low level of interest indicates that the applicant was not at risk of persecution and not in need of protection. The RPD does find that, if the applicant had been of interest to the authorities in Turkey, he would have had difficulty obtaining his passport or leaving Turkey.

[26] To the extent that the applicant's allegations of mistreatment while in detention are believed, the applicant would indeed appear to be at risk of further such mistreatment if he were returned to Turkey. It follows then that the reasonableness of the RPD's conclusions in this category of credibility findings depends on whether the applicant's allegations of mistreatment are credible. This is discussed below in the section concerning the absence of corroborating documents.

(4) Delay in leaving Turkey

[27] There are points for and against the applicant on the issue of his delay in leaving Turkey. The RPD drew an inference adverse to the applicant from the fact that he did not leave Turkey in 2009 after he was allegedly beaten and tortured. The RPD did not accept the applicant's explanation that he decided to stay because he thought the situation in Turkey would improve.

[28] In favour of the applicant, the statement in para 28 of the RPD's decision that the applicant was "unable to explain why he thought things would improve" fails to acknowledge the applicant's explanation that government reforms had been introduced that made him believe the situation would improve. The existence of those government programs is corroborated in the documentation in evidence.

[29] However, in favour of the respondent, the applicant's statement that he tried to use a smuggler back in 2009 (though the smuggler allegedly disappeared with his money), suggests that he did want to leave then and did not make a decision to stay in Turkey. This seems to be an

inconsistency that undermines the applicant's explanation for delaying his departure, and permits the RPD to draw an adverse inference.

[30] On balance, I am not prepared to find that this aspect of the RPD's decision is unreasonable.

(5) Absence of corroborating documents

[31] The RPD cites at least three issues on which it expected to see corroborative documents and drew a negative inference from their absence:

1. The allegation that the applicant's wife and son moved in August 2013, because of police harassment;
2. The allegation that the applicant's eldest son was attacked in September 2013; and
3. Evidence of medical treatment following the alleged mistreatments of the applicant in 2003, 2009, and 2011.

[32] In my view, the inference is clearly reasonable on the first two points. These events are important to the applicant's claim of persecution, but there is no documentation to corroborate that they occurred. Without corroboration, the applicant's allegations on these two issues appear to be examples of embellishment by the applicant.

[33] With regard to the absence of evidence of medical treatment, the RPD takes note of the applicant's statement that he did not get medical treatment. This explains the absence of any medical report. However, it begs the question whether the applicant's injuries were as severe as

he alleges. The applicant explained that he did require medical treatment, but he was afraid to seek it. It is not clear that the RPD considered this explanation. The RPD did not indicate that it disbelieved the explanation. On the other hand, the applicant gave no indication as to why he would have been afraid to seek medical treatment.

[34] I am not prepared to find that the RPD's reasoning surrounding the absence of medical treatment was unreasonable. Given the number and severity of the beatings alleged by the applicant, a negative inference was reasonable.

[35] Moreover, in view of the RPD's negative inference concerning the applicant's alleged mistreatments during his detentions, and further to the discussion above concerning the ease with which the applicant gained his release from detention, it follows that the applicant does not appear to be at risk of any further such mistreatment if he were returned to Turkey.

(6) Embellishments

[36] As discussed above, the possible embellishments in this case are from (i) the unsuccessful attempt to retain a smuggler to obtain travel documents in 2009; (ii) the use of a smuggler in 2011, to obtain a United States visa; (iii) the move by the applicant's wife and children in August 2013, due to police harassment; and (iv) the attack on the applicant's eldest son.

[37] Each of these allegations can reasonably be seen as an embellishment. These are all allegations that were not included in the applicant's PIF. Without using the word

“embellishment” the RPD comments in respect of each of these allegations that they are not credible.

[38] A follow-up question is what sort of inference can be drawn from finding that these are embellishments. Is the RPD limited to simply disregarding the embellishments themselves, or can the RPD find that these embellishments negatively affect the credibility of other allegations made by the applicant? Though it is clear that the RPD is obliged to look past the embellishments and consider the remaining evidence (*Attakora v Canada (Minister of Employment and Immigration)* (1989), 99 NR 168 (FCA); *Supiramaniam v Canada (Citizenship and Immigration)*, 2007 FC 287 at para 5), I have not seen any authority that prevents the RPD from concluding that embellishments affect the credibility of other allegations.

VI. Conclusions

[39] I conclude that the present application should be dismissed and the RPD’s decision should stand.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The present application for judicial review is dismissed.
2. No serious question of general importance is certified.

“George R. Locke”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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