

Federal Court



Cour fédérale

**Date: 20150619**

**Docket: IMM-5506-14**

**Citation: 2015 FC 772**

**Ottawa, Ontario, June 19, 2015**

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

**BETWEEN:**

**MURAT BUYUKSAHIN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Mr. Murat Buyuksahin is a citizen of Turkey. He is an ethnic Kurd and an Alevi. He was detained and severely mistreated on numerous occasions by the police and also assaulted by civilians in Turkey. He claimed refugee status in Canada based on his ethnic-religious background.

[2] In 2002, he was campaigning for a relative, Veli Buyuksahin, and the People's Democratic Party [DEHAP] in his hometown of Adiyaman. He was detained and interrogated by police. When he failed to provide the information the police were looking for he was tortured and held for three days.

[3] In March 2006, he was detained by police after distributing flyers. He was accused of having ties to the Kurdistan Workers' Party [PKK], interrogated and mistreated for 48 hours.

[4] In 2009, while travelling with others to commemorate the Sivas massacre, the applicant's minibus was stopped and searched. When he questioned why the soldiers were searching them, he was struck and the group was forced to wait ten hours, thus missing the event.

[5] During the 2011 elections, the applicant again was working for his relative, Veli, who was running as an independent Peace and Democracy Party (BDP) candidate. Leading up to the election, the police visited the BDP office, searched it, and arrested five people including the applicant. He was interrogated and detained for one day.

[6] In February 2012, the applicant saw two men, one he recognized as a member of the Turkish nationalist party [MHP], vandalizing and drawing a symbol on a building inhabited by Kurdish Alevis. The applicant questioned the men about their actions. He was beaten and told that the men did not want Alevis in Turkey and that they were going to kill them all. The following day, he learned that all of the buildings in which his Alevi relatives lived had been similarly marked – reminiscent of the 1978 Alevi massacre in Maras.

[7] The applicant reported the incident to police and identified one of the men by name. The police took his telephone number and said they would contact him after their investigation.

[8] The same day he saw five to six people outside his house. Fearing an attack, he called the police, but they never arrived. The next day the applicant was confronted by three individuals (including the two who were involved in marking the building). He was pulled from his house and beaten by them; as they left they threatened to eliminate him.

[9] The applicant's mother called the police who came and took him to the police station where he was left waiting for five hours. While waiting, the individuals who had assaulted him arrived and again beat him in the presence of the police who did not intervene right away. The police drove the applicant home, asked him to be an informer and told him not to tell anyone what happened at the police station.

[10] Fearing for his life, and being convinced the police would not protect him, the applicant left his hometown and soon thereafter his country of nationality, travelling through the USA before arriving in Canada three days later.

[11] The Refugee Protection Division [RPD] found that the applicant was not a Convention refugee or a person in need of protection. The determinative issues were whether he had a well-founded fear and whether he had an available internal flight alternative [IFA].

[12] The RPD was not persuaded that the applicant had a well-founded fear of persecution. In this regard, the RPD made the following findings:

- Each time the applicant was detained; he was released and not charged.
- The applicant was able to leave the country on his own passport without difficulty.
- No evidence of a summons or warrant has been issued for the applicant.
- There was no evidence that the individuals that beat up the applicant were members of the MHP and not just bullies and racists.
- When the police failed to break up the beating that the applicant faced at the police station, it was the failings of one officer, not general police complicity with Turkish nationals.
- The last time the applicant faced issues with his political opinion was in 2011, and his relative Veli has not faced any problems.
- After 2011, the applicant appears to have disengaged from political activities.
- The applicant also identified extremist Muslims as a group he fears, but there is no mention of them in his PIF narrative.
- The applicant failed to claim asylum in the USA.

[13] The RPD also found that the applicant had a viable IFA in Ankara or Istanbul, and made the following findings in that regard:

- The applicant is from a small town where he is very well known.
- The problems the applicant faced were almost exclusively in his home area.
- The fact that he was able to leave the country was evidence that the Turkish authorities were not actively pursuing him.

- When asked if he could go to Ankara or Istanbul, the applicant stated he would have to register in both cities and his home address would be revealed and the same problems will come up.
- The RPD found that there was insufficient evidence to indicate he would face persecution in Ankara or Istanbul.

[14] The RPD also made the following findings with regards to the documentary evidence submitted by the applicant:

- The applicant submitted a Psychiatric Report concluding that he has major depressive disorder, and a letter from a medical doctor concluding that his crooked nose, nasal septum deviation and scarring at his left eardrum are consistent with a history of trauma in Turkey.
- The RPD concluded the medical documents were not persuasive evidence that the applicant would be persecuted should he be returned to Turkey.
- The applicant submitted letters from the Canadian Alevi Culture Centre, the Toronto Kurdish Community & Information Centre and the BDP Party, attesting that he is a member of each of the respective groups.
- The applicant also submitted a letter from his uncle Dede, who spoke to the targeting of the applicant by Sunni zealots and security forces. The RPD noted that this was not in the applicant's PIF narrative.
- Lastly, the RPD noted (wrongly) that a letter from the applicant's relative Veli was not included and the RPD made a negative inference from this fact.

[15] For the reasons that follow, I find the decision unreasonable and it must be set aside.

[16] The RPD, which made no specific credibility finding with respect to the interactions between the applicant and the state actors; however, it drew an adverse inference from the applicant's apparent failure to submit a letter from his relative, Veli. As admitted by the respondent, the applicant did in fact provide such a letter. The respondent submits that this is an "immaterial" error, which did not impact the finding that the applicant had no subjective fear and had an IFA. Had that been the only error in the resonating of the RPD, the court might have accepted that submission and dismissed the application; however, in the court's view it is but one of several errors made by the RPD.

[17] The RPD concludes that the applicant's relative, Veli, has not faced any problems in Turkey, suggesting that the applicant, who had a lower profile, would not have any. However, the RPD made this finding without ever questioning the applicant on the issue and without any evidence in that regard. Moreover, the finding is contrary to evidence in the record regarding the arrests and imprisonment of all executive members of the BDP. In light of the perverse finding made, one can only conclude that the RPD failed to engage with the documentary evidence of country conditions for Kurds and Alevi in Turkey.

[18] As noted above, the RPD accepted that the applicant had been detained multiple times by the police and had been victimized by them; however, it found that he is not specifically wanted by them. The applicant submits, and I agree, that the issue the panel was required to address had nothing to do with whether the applicant had been charged or was a wanted man – he never said

that he was. I agree with the applicant that the situation here is akin to that in *Basbaydar v Canada (Minister of Citizenship and Immigration)*, 2014 FC 158, where I wrote, at paragraph 14:

The RPD focused on the fact that Mr. Basbaydar had not demonstrated that he was a person of interest for the police. This was not what he was required to show. He simply had to show that he has a well-founded fear of persecution by reason of his political opinions or nationality and, in my view, this well-founded fear is borne out in the documentary evidence. The evidence shows that even peaceful demonstrators and ordinary activists are at risk of disproportionate punishment and specifically that there is increasing persecution of Kurdish demonstrators. In attempting to impugn the Applicant's credibility, the RPD itself observed that "many young and ordinary activists" are arrested in Turkey.

[19] As was recently stated by Justice Mactavish in *Boyraz v Canada (Minister of Citizenship and Immigration)*, unreported, April 15, 2015, IMM-1049-14: "The question for the Board was not, however, whether the evidence established that the Turkish authorities were looking for Mr. Boyraz, but whether there was more than a mere possibility that he would face persecution in Turkey."

[20] The RPD concluded, notwithstanding the testimony of the applicant, that there was insufficient evidence to conclude that his attackers were part of the MHP. The RPD failed to appreciate that the political affiliation of the attackers is irrelevant. It only matters that the applicant is being attacked for his political opinion.

[21] The RPD found that the failure of the police to stop the applicant's beating in the police station was not a failure to provide protection but only one police officer's failing. That finding may have been reasonable had there not been abundant documentary evidence that points to a

general failure of the police in Turkey to protect persons like the applicant. The analysis of state protection done by the RPD failed to consider the documentary evidence.

[22] The RPD rejected the applicant's testimony that if he were to return to Turkey he would again become involved in pro-Kurdish and Alevi human rights protests and activities for three reasons: (i) because he had disengaged in political activities after his release from police custody in 2011, (ii) because "one must consider why he would choose to leave [Turkey] if he was strongly committed to the Kurdish-Alevi case" and (iii) he had only attended Kurdish and Alevi centres in Canada which the panel described as "hardly what one would depict as political activism."

[23] With respect to the first reason offered by the RPD, the disengagement in political activities, the RPD fails to engage with the applicant's evidence that he did so following detention by the police during which he was told "if I continued my avid interest in the party, they would 'finish me'." He attests that "their threats worked on my mind so that I could not do any more for the party before the election via intimidation, detention, interrogation, torture, threats, slander and most importantly threats to harm my family."

[24] With respect to the second reason offered by the RPD, that he would not likely have left Turkey if he was a political activist, ignores the fact that he had been detained, tortured, and threatened with death by the authorities if he continued his actions. The fact that he sought refuge in Canada and did not stay in Turkey is equally consistent with his testimony that he feared he would be killed if he remained in Turkey. If that was a reasonable fear (and it appears

to the court on the record here that it was), then the steps taken by the applicant are not at all inconsistent with him being a political activist. If all activists were required to remain in their country and die to prove their political beliefs, there would be no need of surrogate protection under the Convention for political refugees.

[25] With respect to the third reason offered by the RPD, that his Canadian activities were “hardly what one would depict as political activism,” this ignores the fact that he has had a short tenure in Canada, that he has joined Canadian organizations supporting the same goals he supported in Turkey, and fails to indicate what more he could be expected to do here to establish his political views.

[26] The RPD inferred that that the applicant would not continue his political activities if he returned to Turkey, notwithstanding his evidence to the contrary. The inference of the RPD is unreasonable because it fails to recognize that the applicant has a history for advocating for many years. He stopped only because he feared for his life and his family. To suggest that a claimant can safely return because he will have abandoned his political views in order not to be persecuted, is to turn the refugee system on its head.

[27] Lastly, the RPD found there was no subjective fear because the applicant failed to claim asylum in the USA. This ignores that he was in transit to Canada which was always his destination where he intended to seek refuge, and that he was only in the USA for three days. He testified that he was going to Canada because he has family here and there is a higher chance of

acceptance. A failure to claim after a few days in a third country is not detrimental: *Jarma v Canada (Minister of Citizenship and Immigration)*, 2011 FC 265.

[28] In addition to these errors that led to the finding that the applicant did not have a subjective fear, the RPD erred in its IFA analysis.

[29] First, I agree with the submission of the applicant, that an IFA analysis is appropriate only when the agent of persecution is not the state. Here the agents of persecution were alleged to include state authorities. Indeed there is evidence in the record that throughout Turkey (including the two cities specifically found to be an IFA) persons situated similarly to the applicant in terms of their ethnic-religious background and political activities in support thereof are regularly detained, threatened, and assaulted by state authorities. As was stated by counsel, this is not a situation that is a local police issue – it is a country wide issue, because the persecution is occurring on a state-wide basis.

[30] If the RPD finds that the agent of persecution is the state then, in my view, the burden to establish that there is an IFA within that country where the state persecution is not happening or where a claimant would be protected by the state must surely rest on the party asserting it and not on the claimant.

[31] For these reasons, this claim for protection must be re-assessed by a different Board member. Neither party proposed a question to be certified nor is there one on these facts.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is allowed, the decision of the Refugee Protection Division is set aside, the claim for protection is referred back to the Refugee Protection Division for determination by a differently constituted panel, and no question is certified.

"Russel W. Zinn"

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Judge

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

**DOCKET:** IMM-5506-14

**STYLE OF CAUSE:** MURAT BUYUKSAHIN v THE MINISTER OF  
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