Federal Court  Cour fédérale

Date: 20150928

Docket: IMM-1660-15

Citation: 2015 FC 1124

Ottawa, Ontario, September 28, 2015

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

HASAN KORKMAZ

Applicant

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review under subsection 72(1) of *the Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] regarding Citizenship and Immigration Canada's [CIC] decision, dated February 12, 2015, to reject the Applicant's application for a pre-removal risk assessment [PRRA] made pursuant to section 112 of the Act.

I. Background

[2] The Applicant is a citizen of Turkey. He came to Canada in June 2009 and sought refugee protection one month later alleging he faced a risk of persecution if he were to return to Turkey on the grounds of his Kurdish ethnicity and Alevi faith. His claim for refugee protection was denied on August 9, 2011 by the Refugee Protection Division of the Immigration and Refugee Board of Canada [the RPD], which found that the Applicant lacked credibility and moreover, had an internal flight alternative in Istanbul.

[3] The RPD noted the following at paragraphs 7 and 8 of its decision:

> Furthermore, the claimant is the very definition of a forum shopper. The claimant secured a US visa and had relations in Rochester where he landed on May 9, 2009. The claimant stayed in the US for more than a month before approaching the border to make an asylum request in Canada. The claimant stated that he set out to make a request for asylum in Canada when he left Turkey in May which is why he did not apply for asylum in the US. The claimant is certainly familiar with asylum policy. The claimant is himself a failed claimant (Germany) and has numerous relations who have status in other countries including the US, Canada, Germany, and Norway. Of course in a sense claiming in Canada is a rational decision. In 2009 UNHCR statistics Canada received 242 asylum claims from Turkey and had a 77% positive decision rate for those which were adjudicated. In this document the US rate is not mentioned because they received under 100 claims.
>
> Although the claimant has alleged that he has constantly faced persecution as an Alevi and a Kurd, the claimant has over the past number of years traveled widely in Europe. All of the countries he has visited have signed the 1951 Convention on the Status of Refugees. Since 2000 the claimant has secured visas to Finland, Austria, Norway, Moldova and even a 10 year B1 US visa issued in 2009.

[4] On November 16, 2011, the Applicant's application for leave and judicial review of the RPD's decision was denied. He then applied for permanent residency based on humanitarian and compassionate considerations and that application was rejected on February 12, 2014.

[5] In June 2014, the Applicant claims that he tried to obtain a passport at the Turkish Embassy and learned then that there were three warrants out for his arrest in Turkey. The Applicant believes that the Turkish government fabricated these charges because it believes that he has connections with the Kurdish cause.

[6] On July 23, 2014, the Applicant applied for a PRRA on the basis that he now fears he would face further persecution should he return to Turkey because of what he learned while applying for a new passport. In support of his PRAA application, he presented a letter from his lawyer in Turkey and copies of the three arrest warrants and a number of other Turkish court documents. The Applicant also claims that since he will be arrested as soon as he lands in Turkey, he no longer has the option of an internal flight alternative in Istanbul.

[7] The Applicant's PRRA application was dismissed on the ground that this new evidence did not establish the existence of a well-founded fear of persecution under section 96 of the Act or the establishment of a risk pursuant to section 97 of the Act. In particular, the PRRA Officer found that the Applicant does not have the profile of a militant of the Kurdish cause for whom the authorities in Turkey would have an interest. The PRRA Officer also had concerns with the poor quality and probative value of the documentary evidence filed by the Applicant. He noted

in this respect that the lawyer's letter was undated and did not indicate its mode of transmission to the Applicant

II. Issues and Standard of Review

[8] The sole issue to be determined in this case is whether the PRRA Officer committed a reviewable error in placing little or no probative value to the new evidence submitted by the Applicant in support of his PRRA application.

[9] As is well-established, PRRA applications are fact-driven inquiries warranting the application of the reasonableness standard of review (*New Brunswick (Board of Management) v Dunsmuir*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*]; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339, at para 46 [*Khosa*]; *Chowdhury v Canada (Citizenship and Immigration)*, 2012 FC 944, at para 10 [*Chowdhury*]). The assessment conducted by the PRRA Officer, including his or her conclusions regarding the proper weight to be accorded to the evidence, warrants considerable deference because of the officer's specialized expertise in risk assessment (*Adetunji v Canada (Minister of Citizenship and Immigration)*, 2012 FC 708, 431 FTR 71, at para 22 [*Adetunji*]; *Raza v Canada (Citizenship and Immigration)*, 2006 FC 1385, 304 FTR 46, at para 10 [*Raza*]; *Malshi v Canada (Citizenship and Immigration)*, 2007 FC 1273, at para 17; *Mikhno v Canada (Citizenship and Immigration)*, 2010 FC 385, at para 27).

[10] Thus, the role of the Court is to review the impugned decision and only interfere if it lacks justification, transparency, intelligibility, and falls outside the range of possible, acceptable outcomes, defensible in fact and in law (*Dunsmuir*, above at para 47). In doing so, the Court

must be careful not to reweigh the evidence before the PRRA Officer (*Kim v Canada (Minister of Citizenship and Immigration*), 2005 FC 437, 272 FTR 62, at para 47; *Chowdhury*, above at para 19).

III. Analysis

[11] The statutory authority for a pre-removal risk assessment is set out in section 112 of the Act, which enables the Minister or his delegate to determine whether a person who faces a removal order is in need of protection. It is now well established that in reviewing new evidence pursuant to section 113(a) of the Act, the role of the PRRA Officer is to consider the Applicant's present situation rather than sit as an appeal tribunal to revisit the RPD's factual and credibility findings (*Raza*, above at para 22).

[12] In light of the fact that the PRRA Officer considered the Applicant's application for protection pursuant to both sections 96 and 97 of the Act, I must keep in mind the relevant tests under both sections in the present application for judicial review.

[13] Under either section 96 or 97 of the Act, the Applicant bears the onus of establishing, on a balance of probabilities, that he is in need of Canada's protection (*Adetunji*, above at para 19; *Ferguson v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067, at para 22; *Adjei v Canada (Minister of Employment & Immigration)*, (1989) 2 FC 680, at para 5 [*Adjei*]). As I previously articulated in *Kioko v Canada (Citizenship and Immigration)* 2014 FC 717, the Applicant must also demonstrate under section 97 of the Act that removal to his country of nationality would subject him to a personal risk to his life, or to a risk of cruel and unusual

treatment or punishment. The risk must be forward-looking and it is considered personalized if the risk is more significant than the ones generally faced by the population of the country of nationality *(Campos v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1244, at para 9; *Andrade v Canada (Minister of Citizenship and Immigration)* 2010 FC 1074, at para 48). In contrast, in the context of an assessment pursuant to section 96 of the Act, the Applicant has the burden of demonstrating that there is a serious possibility of persecution if he were to return to Turkey (*Adjei*, above at para 8).

[14] The Applicant submits that the PRRA Officer unreasonably gave little or no evidentiary value to the letter from his Turkish lawyer and to the three arrest warrants. The Respondent contends that the PRRA Officer's decision is reasonable and that the Applicant merely disagrees with the PRRA Officer's assessment of the evidence and is asking this Court to reweigh the evidence that was before the PRRA Officer.

[15] Given the amount of deference owed to the PRRA Officer in his assessment of documentary evidence, I am of the view that it was entirely within the PRRA Officer's purview to reject the lawyer's letter since the document was undated and the Applicant did not provide any details as to how he obtained the letter.

[16] Moreover, it was also entirely within the PRRA Officer's purview to give a low evidentiary value to the arrest warrants. The arrest warrants present several anomalies which were noted by the PRRA Officer. Firstly, the warrants do not reconcile with their translated versions so that it is unclear whether the Applicant was actually charged for attending a *cemevi*.

Secondly, the three arrest warrants were issued after the Applicant had already left Turkey and the warrants do not indicate the date on which the offenses were committed. Thirdly, another document submitted by the Applicant, namely, a record of an undated hearing, which the PRRA Officer granted no weight, does not correspond to any of the file numbers on the arrest warrants. Lastly, the Applicant was charged with offenses that do not resemble charges usually laid against Kurdish nationalists or militants in Turkey.

[17] Despite these anomalies, the PRRA Officer considered the Applicant's PRRA application in its entirety and gave a lengthy explanation as to why the new evidence was insufficient to establish the existence of a new risk or the possibility of persecution if the Applicant were to return to Turkey.

[18] Given the country documentary evidence on the persecution of Kurds in Turkey, it was not unreasonable for the PRRA Officer to find that the Applicant did not fit the profile of Kurds normally targeted in Turkey. The PRRA Officer correctly noted, in my view, that Kurds who do not openly support Kurdish rights or who do not "parade their Kurdish identity too brazenly" are not targeted by the Turkish government. The PRRA Officer stressed that the Applicant did not indicate in his RPD or PRRA applications that he supported Kurdish nationalist causes or that state actors perceived him to be a supporter of Kurdish nationalist causes.

[19] The PRRA Officer also noted that the charges laid against the Applicant were not the same types of charges laid against persons persecuted for being involved in Kurdish nationalist causes. The PRRA Officer pointed to country documentation evidence indicating that Kurdish

intellectuals and political activists are often charged with terrorism related offences or for offenses related to being connected with "illegal organizations." The PRRA Officer noted in this respect that the charges against the Applicant were laid pursuant to sections 157 and 207(1) of the Turkish Penal Code, which relate to fraud and counterfeiting a personal certificate respectively. Thus, it was open to the PRRA Officer to find that the charges laid against the Applicant did not correspond with charges normally laid against Kurdish nationalists. This finding is well within the range of acceptable outcomes.

[20] Moreover, the PRRA Officer found that the country documentation evidence does not support the Applicant's claim that the Turkish government persecutes or lays charges against Alevis who practice their faith in *cemevis*. The PRRA Officer pointed to documentary evidence demonstrating that Alevis do not face persecution in Turkey, but instead are subjected to a certain amount of discrimination by the state since *cemevis* do not have legal status as worship houses in Turkey, the state does not fund the construction of *cemevis*, and some municipalities in Turkey do not permit the construction of new *cemevis*.

[21] Given the foregoing, I find that the PRRA Officer's decision not to give any evidentiary value to the new evidence submitted by the Applicant falls within a range of acceptable outcomes, defensible in fact and law. Therefore, I see no reason to interfere with this decision.

[22] No question of general importance has been proposed by the parties. None will be certified.

ORDER

THIS COURT ORDERS that:

1. The application for judicial review is dismissed; and

2. No question is certified.

"René LeBlanc"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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