

Federal Court



Cour fédérale

**Date: 20161020**

**Docket: IMM-742-16**

**Citation: 2016 FC 1163**

**Ottawa, Ontario, October 20, 2016**

**PRESENT: The Honourable Madam Justice McDonald**

**BETWEEN:**

**NEDIM ELIK**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review of a negative Pre-Removal Risk Assessment (PRRA) decision made by the PRRA Officer on January 11, 2016, concluding Mr. Elik would not face harm if he was returned to Turkey. Mr. Elik fears persecution in Turkey because of his Kurdish ethnicity and his political activism as a supporter of the BPD, a pro-Kurdish party.

[2] Mr. Elik arrived in Canada on February 10, 2012 and claimed refugee protection on March 5, 2012. In October 2013, the Refugee Protection Division (RPD) denied his refugee claim, finding that there was insufficient evidence that the Turkish authorities continued to be interested in Mr. Elik. While the RPD accepted that the events described by Mr. Elik of being arrested and beaten had taken place, it concluded that there was no evidence that he would be arrested and harmed for past actions if he returned to Turkey. The PRRA Officer reached the same conclusion.

[3] For the reasons that follow, this judicial review is granted.

I. Issue

[4] The determinative issue is the PRRA Officer's treatment of the evidence relating to Mr. Elik's risk profile. As this raises questions of mixed fact and law it will be reviewed on the standard of reasonableness: *Dunsmuir v New Brunswick*, 2008 SCC at para 47.

II. Analysis

A. *Mr. Elik's risk profile*

[5] The PRRA Officer reviewed the country condition evidence and noted that the response by the Turkish authorities to pro-Kurdish protestors is not systemic. The Officer found that there had not been a material change in country conditions in Turkey since Mr. Elik's RPD hearing in August 2013.

[6] The PRRA Officer had evidence that Mr. Elik suffered numerous detentions and physical attacks by the Turkish authorities as follows:

- In August 2008, he was accused of assisting terrorists and was taken to a police station, where he was detained, beaten, and then released without charges.
- In June 2011, he was arrested while protesting. He was questioned about his connections to the PKK, a Kurdish separatist party, and beaten. He was warned that he would be charged for membership in a separatist organization if he continued to support the BPD.
- In November 2011, the Applicant was attacked by ultra-nationalists while at the BDP office. The police assisted the nationalists, and the Applicant was arrested after he tried to defend himself. The Applicant was taken to the police station, where he was beaten and threatened.
- In January 2012, the Applicant was involved in another protest, and was attacked by the police and arrested. He was taken to the police station where he was interrogated, tortured, and told that he would be killed. He was released and fled to Turkey two days later.

[7] The PRRA Officer also had additional evidence of authorities visiting Mr. Elik's home in Turkey and harassing and harming his family members. However, the PRRA Officer was not satisfied that the totality of this evidence established that the Turkish government would suspect that Mr. Elik had links to the pro-Kurdish PKK movement or that the authorities would persecute him for his involvement in the BPD. The PRRA Officer noted the lack of an arrest warrant or

summons, and noted that the Applicant's family members had not been arrested by authorities outside of protests.

[8] The facts of this case are similar to those in *Basbaydar v Canada (Citizenship and Immigration)*, 2014 FC 158 at para 14 [*Basbaydar*], where the Court concluded that pro-Kurdish political activity can be viewed by the Turkish authorities as associated with the PKK and terrorism. The Court stated:

[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.

[9] This issue was further considered by the Court in *Mamis v Canada (Citizenship and Immigration)*, 2015 FC 203 [*Mamis*]. In *Mamis*, the Officer concluded that there was insufficient evidence that the authorities would continue to be interested in the Applicant. The Court found this to be irreconcilable with the undisputed fact that the Applicant, in that case, had been illegally detained, threatened, and beaten on numerous occasions, and was otherwise credible. The Officer failed to consider whether these circumstances were sufficient to bring the Applicant to the attention of the authorities, and whether his continued pro-Kurdish political activities could attract the ire of the police and place the Applicant at risk, if he were to return.

[10] Similarly to *Basbaydar* and *Mamis*, the PRRA Officer here failed to consider the undisputed evidence of the past arrests and beatings against the new evidence of a continued interest on the part of the Turkish authorities in Mr. Elik. Instead, the PRRA Officer states that there is no evidence that the authorities would continue to be interested in Mr. Elik. That finding is not in keeping with the evidence before the PRRA Officer.

[11] Considering the evidence of Mr. Elik's political involvement in pro-Kurdish movements, which prompted actions against him by the authorities in Turkey, the PRRA Officer's conclusion that he would not be of interest to the Turkish authorities is not a reasonable conclusion.

[12] This judicial review is therefore allowed. There is no question for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this judicial review is granted, the PRRA Officer's decision is set aside, the matter is remitted to a different Officer for re-determination, no question is certified.

"Ann Marie McDonald"

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Judge

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

**DOCKET:** IMM-742-16

**STYLE OF CAUSE:** NEDIM ELIK v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** AUGUST 10, 2016

**REASONS FOR JUDGMENT  
AND JUDGMENT:** MCDONALD J.

**DATED:** OCTOBER 20, 2016

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