

Federal Court



Cour fédérale

Date: 20180116

Docket: IMM-2684-17

Citation: 2018 FC 38

Ottawa, Ontario, January 16, 2018

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

**FERIDE CELIK GUVEN &
MIRAY GUVEN**

Applicants

And

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants seek judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Protection Board, dated May 19, 2017, denying their claims for refugee protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

[2] For the reasons that follow, the Application is allowed. The RPD erred in basing its credibility findings on an omission from the Point of Entry [POE] Notes. Even if the RPD had not erred in this finding, the RPD's rejection of the Applicants' explanations for the lack of corroborative evidence was unreasonable, as those explanations were well supported by the country condition documents establishing the risks to actual and perceived Hizmet members, as well as to spouses of Hizmet members. In addition, the RPD's more general finding that the Applicants would not face a serious possibility of persecution upon their return to Turkey is inconsistent with the country condition documents.

I. Background

[3] The Applicants, Feride Celik Guven (Ms. Guven) and Miray Guven, her one-year old daughter, are Turkish citizens.

[4] Gokhan Guven (Mr. Guven) is Ms. Guven's husband, and Miray Guven's father. Mr. Guven is a member of the Hizmet movement, a religious and social movement, whose members have been blamed for orchestrating a failed coup attempt in Turkey in July 2016. The Turkish Government regards the movement as a terrorist organization. Mr. Guven, who had been planning to study in Canada, expedited his departure from Turkey on July 18, 2016 and subsequently sought refugee protection in Canada, fearing persecution as a result of his affiliation with Hizmet. Mr. Guven's claim for refugee protection was accepted by the RPD on November 16, 2016. The Applicants remained in the family home in Turkish Northern Cyprus.

[5] The Applicants recount that on August 10, 2016, Turkish police raided their home, looking for Mr. Guven. The police took the family's computer and their documents, and broke objects in their home. Ms. Guven recounts that the police told her that her husband is a traitor and terrorist, and that sooner or later they are going to find him.

[6] The Applicants arrived in Canada on March 14, 2017 via the United States and made a claim for refugee protection upon arrival. In her initial POE interview, Ms. Guven claimed that she was at risk because her husband was wanted by the police. In Schedule A of the Generic Application Form, completed at the POE, Ms. Guven did not state that she was a member of any group or organization in response to Question 9. Subsequently, in her Basis of Claim Form completed on March 21, 2017, she stated that she was at risk due to her husband's affiliation with Hizmet, and because she was a member of the organization. In her oral testimony at the RPD she again stated that she was a member of Hizmet, explaining that she became involved after her marriage in 2014 and that she participated in religious discussions and fundraising efforts with other members.

II. The Decision Under Review

[7] The RPD rejected the Applicants' claim for refugee protection, finding that Ms. Guven had failed to establish that she was a member of the Hizmet movement, or that she would be so perceived and that the Applicants would not be at risk of persecution upon return to Turkey.

[8] The RPD began by stating that a refugee claimant's sworn testimony is presumed to be true "unless there are reasons to doubt its veracity. In assessing a refugee claimant's sworn

testimony, the board is entitled to consider its plausibility, and to apply common sense and rationality. Where the evidence before the Board is inconsistent with the claimant's sworn testimony, the presumption of truth is rebutted." (citing *Su v Canada (Minister of Citizenship and Immigration)*, 2015 FC 666 at para 11, [2015] FCJ No 748 (QL) [*Su*]). The RPD then stated that the presumption of truthfulness had been rebutted.

[9] The RPD found that Ms. Guven did not establish that she was a member of the Hizmet movement or would be perceived to be a member, noting that the only corroborative evidence submitted was Mr. Guven's positive refugee decision, which was not binding.

[10] The RPD was not satisfied with Ms. Guven's explanation for the lack of other corroborative evidence. Ms. Guven had explained that she had not asked fellow Hizmet members for corroborative letters because this could put them at risk as they were all under surveillance, adding that the wife of her husband's co-worker had been arrested. The RPD noted that Ms. Guven knew she was leaving Turkey to make a refugee claim in Canada, was familiar with the process due to her husband's claim and had time to gather documents.

[11] The RPD also noted that Question 9 in Schedule A to the POE application asked about memberships in organizations and Ms. Guven did not list Hizmet nor did she provide any details about Hizmet. When asked about this omission, she stated that she had given the same answer at the POE as at the hearing, which was that she had been part of Hizmet for three years. The RPD was not satisfied with the explanation, noting that Question 9 is not a "yes or no" question and that if she had provided details about Hizmet at the POE there would have been some

information on the form. The RPD added that Ms. Guven's alleged involvement with Hizmet was not reflected in any of the interview notes taken at the POE, which stated only that she and her daughter were making a claim because the police were looking for her husband.

[12] The RPD acknowledged that persons perceived to be members of Hizmet can be targeted by the authorities. However, the RPD found that Ms. Guven would not be perceived to be a Hizmet member, noting that she and her daughter were not hurt by the police during the raid on their house, the police never returned to their house, Ms. Guven continued to work until a week before she left, and that no threats were made to them.

[13] The RPD also acknowledged the documentary evidence indicating that the Turkish government has cancelled the passports of Hizmet suspects and their spouses. However, the RPD did not believe that Ms. Guven would not have been able to renew her passport, as she had claimed, because the Applicants had left Turkey on their own passports without incident.

[14] The RPD noted Ms. Guven's claim that family members of Hizmet members who are wanted by police can be arrested when the person wanted by the police cannot be found, and that she faced the same risk because the police could return at any time and arrest her when they cannot find Mr. Guven. However, the RPD concluded that there was no serious possibility of such a risk upon the Applicants' return to Turkey because nothing had happened to them in the period prior to their departure. The RPD added that the Applicants' own experiences indicate that the Turkish government is not interested in them.

[15] The RPD also found that the police raid on the Applicants' home did not constitute persecution because the Applicants did not experience a serious violation of their fundamental rights.

[16] The RPD concluded that the Applicants had failed to establish their claims for refugee protection.

III. The Standard of Review

[17] The standard of reasonableness applies to issues of fact, including credibility, and to questions of mixed fact and law.

[18] The Court must therefore, determine whether the decision "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*]). Deference is owed to the decision-maker and the Court will not reweigh the evidence.

[19] It is also well-established that boards and tribunals are ideally placed to assess credibility: *Aguebor v Canada (Minister of Employment and Immigration)* (1993), [1993] FCJ No 732 at para 4 (QL), 160 NR 315 (FCA). The RPD's credibility findings should be given significant deference: *Lin v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1052 at para 13, [2008] FCJ No 1329 (QL); *Fatih v Canada (Minister of Citizenship and Immigration)*, 2012 FC 857 at para 65, 415 FTR 82; *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003

FCT 116 at para 7, 228 FTR 43. However, as explained below, credibility findings are not immune from review.

IV. The Issues

[20] The issue is whether the RPD's decision is reasonable. This requires consideration of whether the RPD's credibility findings are reasonable, whether the RPD reasonably rejected the explanation for the lack of corroborative evidence, and whether the RPD reasonably found that the Applicants, as members or affiliated with members of Hizmet, or perceived to be members, would not face a risk of persecution if they were to return to Turkey.

V. The Applicants' Submissions

[21] The Applicants argue that the RPD made erroneous credibility findings, unreasonably rejected Ms. Guven's explanation for the absence of corroborative evidence and failed to consider the totality of the evidence, which establishes that members of Hizmet, or those perceived to be so, would be at risk of persecution in Turkey.

[22] The Applicants submit that the RPD erred in relying on Ms. Guven's omission in Question 9 of Schedule A to rebut the presumption of truthfulness. The Applicants note that Schedule A contained several errors that the RPD accepted as simply mistakes, including the spelling of Mr. Guven's name and Ms. Guven's level of education. The Applicants submit that the omission in the POE is not an inconsistency. The Applicants point out that Ms. Guven was

consistent in her Basis of Claim form [BOC] and in her testimony that she has been involved in the Hizmet movement since 2014.

[23] The Applicants further argue that the RPD erred in demanding corroborative evidence, rejecting the evidence provided and rejecting their explanations for the lack of other corroborative evidence.

[24] The Applicants submit that Mr. Guven's positive RPD determination was highly probative and corroborated Ms. Guven's allegations. The Applicants argue that the RPD failed to consider Mr. Guven's positive refugee decision and made erroneous findings of fact without regard to this evidence (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 FC 8667 at para 17, 157 FTR 35).

[25] The Applicants further argue that the RPD unreasonably rejected Ms. Guven's explanation for not submitting other corroborating evidence. Ms. Guven testified that Hizmet members are under surveillance in Turkey, and that seeking corroborating evidence could put them in danger. This is confirmed by country condition documents which were before the RPD.

VI. The Respondent's Submissions

[26] The Respondent submits that the RPD did not err in finding that Ms. Guven's omission of her Hizmet membership in Question 9 rebutted the presumption of truthfulness, because it was a crucial element of her claim unlike the other minor errors in the POE form. The Respondent adds that it was reasonable for the RPD to assume that, if Ms. Guven had provided all the details when

the POE form was completed, some of that information would have been included on the form.

The Respondent also notes that Ms. Guven's purported affiliation with Hizmet is not reflected in the interview transcript taken at the POE.

[27] The Respondent argues that the presumption that sworn testimony is true can also be rebutted by the absence of corroborative evidence, where it would be reasonable to expect such evidence, as is the case here (*Bhagat et al v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1088 at paras 9, 11-12, [2009] FCJ No 1368 (QL) [*Bhagat*]). The Respondent submits that the Applicants had time to gather documents before they left Turkey, but did not do so.

[28] The Respondent submits that Mr. Guven's positive refugee determination was considered by the RPD and the RPD reasonably found that it was not binding. The jurisprudence has established that each refugee claim must be examined individually, on its own merits and that the RPD is not bound by the result in another claim, even that of a relative (*Uygun v Canada (Minister of Citizenship and Immigration)*, 2013 FC 752 at paras 28-29, [2013] FCJ No 801 (QL) [*Uygun*]).

[29] The Respondent adds that the RPD was entitled to reject the Applicants' explanation for the lack of corroborating evidence (*Kumar Shoor v Canada (Minister of Citizenship and Immigration)*, 2011 FC 700 at para 16, 204 ACWS (3d) 124 [*Kumar Shoor*]). The Respondent submits that the Applicants failed to explain why they could not obtain evidence from other Hizmet members, or from their family in Turkey, with whom they are in frequent contact.

[30] The Respondent also argues that the RPD reasonably concluded that Ms. Guven would not be perceived to be a Hizmet member, given that her life in Turkey was unaltered following the police raid.

VII. The RPD's credibility findings are not reasonable

[31] While the initial decision-maker – in this case the RPD's – credibility findings are entitled to deference, they are not immune from review. The jurisprudence provides a great deal of guidance regarding the basis upon which credibility findings can reasonably be made. Relying on one principle from the jurisprudence to make credibility findings without regard to other key principles may lead to error, as it has in this case.

[32] The RPD stated, citing from *Su*, “a refugee claimant's sworn testimony is presumed to be true unless there are reasons to doubt its veracity. In assessing a refugee claimant's sworn testimony, the board is entitled to consider its plausibility, and to apply common sense and rationality. Where the evidence before the Board is inconsistent with the claimant's sworn testimony, the presumption of truth is rebutted”.

[33] While that is an accurate statement from *Su*, in this case the RPD did not make any implausibility findings, nor is Ms. Guven's sworn testimony inconsistent with the evidence. Moreover, there are other relevant principles in the jurisprudence, which the RPD should have considered before jumping to its credibility findings.

A. *Relevant principles from the jurisprudence*

[34] The Court's role in reviewing credibility findings is limited. As noted by Justice Mary Gleason (as she then was) in *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319 at para 42, 213 ACWS (3d) 1003 [*Rahal*], among other reasons for the limited role, the decision maker has the advantage of hearing the witnesses testify, observes their demeanor, is aware of the nuances and contradictions in the evidence, and may have expertise in the subject matter that the Court lacks.

[35] Despite the limited role, the Court must still ensure that the credibility findings are reasonable. In assessing the reasonableness of credibility findings, Justice Gleason noted several indicia in *Rahal*, at paras 43-46, including:

- Contradictions in the evidence, particularly in the applicant's own testimony, will provide a reasonable basis for finding the claimant to lack credibility, but such contradictions must be real and more than trivial or illusory.
- While the sworn testimony of the applicant is presumed to be true in the absence of contradiction, it may reasonably be rejected if the RPD finds it to be implausible. A finding of implausibility must be rational, sensitive to cultural differences and clearly expressed.
- The decision-maker may consider the demeanor, including hesitations, vagueness and changes or elaboration of the story in assessing credibility, but it is preferable if there are also other objective facts to support the credibility finding.

- The decision maker must make clear credibility findings with sufficient particulars.

[36] In the present case, the RPD does not note any contradictions in Ms. Guven's testimony before the RPD and in her BOC, nor does the RPD note any implausibility in her testimony, nor any elaboration or hesitation.

[37] In *Ndjavera v Canada (Minister of Citizenship and Immigration)*, 2013 FC 452, [2013] FCJ No 473 (QL) [*Ndjavera*], Justice Donald Rennie (as he then was) addressed the issue of the need for corroboration, noting at paras 6-7;

[6] There is no general requirement for corroboration and it would be an error to make a credibility finding based on the absence of corroborative evidence alone: *Dundar v Canada (Citizenship and Immigration)*, 2007 FC 1026, paras 19-22.

[7] If there is a valid reason to question the claimant's credibility, the Board may draw a negative inference from a failure to provide corroborative evidence that would reasonably be expected. Much depends on the type of evidence at issue and whether it relates to a central aspect of the claim. Corroborative evidence is most valuable when it is independently generated by a neutral source. It may be unreasonable to expect a refugee claimant to generate or collect documentation not already available before fleeing. . . .

[38] In *Ismaili v Canada (Minister of Citizenship and Immigration)*, 2014 FC 84, 22 Imm LR (4th) 276 [*Ismaili*], relied on by the Respondent, Justice Strickland also canvassed many of the governing principles in the jurisprudence with respect to credibility findings and their interaction. The principles relevant to the present case referred to by Justice Strickland can be summarized as follows:

- When an applicant swears to the truth of certain allegations, there is a presumption that the allegations are true unless there is reason to doubt their truthfulness (*Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 at para 5, 31 NR 34 (FCA) [*Maldonado*]).
- The onus is always on the claimant to establish the essential elements of their claim for protection.
- The decision maker (the RPD) is entitled to consider the claimant's lack of effort to obtain corroborative evidence to establish the essential elements of their claim – where such corroborative evidence should be available – and to draw a negative inference of credibility based on the lack of corroborative evidence.
- Where there is a valid reason to doubt the claimant's credibility or where the claimant's story is implausible, the lack of documentary evidence can be a valid consideration for the purposes of assessing credibility. However, negative credibility inferences can only be drawn where the claimant is unable to provide a reasonable explanation for their lack of corroborative evidence (*Dundar v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1026 at para 22, [2007] FCJ No 1326 (QL) [*Dundar*]; *Amarapala v Canada (Minister of Citizenship and Immigration)*, 2004 FC 12 at para 10, [2004] FCJ No 62 (QL)).
- Credibility findings should not be made based only on the absence of corroborative evidence (*Ndjavera* at paras 6-7).

[39] With respect to making credibility findings based on the POE forms and notes, the jurisprudence cautions against relying on inconsistencies in testimony between the POE notes and later testimony and documents, unless those inconsistencies are about “crucial elements” of the applicants claim.

[40] In *Wu v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1102, [2010] FCJ No 1388 [*Wu*], Justice O’Reilly noted that there were many credibility concerns with the claimant’s evidence, including contradictions in the claimant’s account regarding the passport he used, the route he took to travel to Canada, and his admission that he had attempted to mislead the POE officer. Despite these well-founded concerns, Justice O’ Reilly also considered the nature of information collected at the POE stage, and noted that decision-makers should refrain from placing “undue reliance” on inconsistencies arising from the POE evidence, at para 16:

[16] With respect to the Board’s reliance on differences between Mr. Wu’s statements at the POE and his testimony at the hearing, I accept that the Board should be careful not to place undue reliance on the POE statements. The circumstances surrounding the taking of those statements is far from ideal and questions about their reliability will often arise. Here, Mr. Wu submits that he did not understand the interpreter at various points and that this explains the differences between his POE statements and his testimony before the Board.

[41] Similarly, in *Cetinkaya v Canada (Minister of Citizenship and Immigration)*, 2012 FC 8, 403 FTR 46 [*Cetinkaya*], Justice Russell cautioned against reliance on the POE notes to make credibility findings, stating at para 51:

It is an error of the RPD to impugn the credibility of the Applicant on the sole ground that the information provided by the Applicant at the POE interview lacks details. The purpose of the POE interview is to assess whether an individual is eligible and/or admissible to initiate a refugee claim. It is not a part of the claim

itself and, consequently, it should not be expected to contain all of the details of the claim (see also *Hamdar v Canada (Minister of Citizenship and Immigration)*, 2011 FC 382 at paragraphs 43 through 48, and *Jamil v Canada (Minister of Citizenship and Immigration)*, 2006 FC 792 at paragraph 25) (emphasis added). Other cases have held that inconsistencies between POE statements and later evidence can ground credibility findings only where they are “major” and go to “crucial elements of a claim” (*Chen v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 767 at para 12, [2005] FCJ No 959, and *Jamil v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 792 at para 25, 295 FTR 149). The facts in each case will differ, but the principle remains that the decision-maker exercise caution in making credibility findings based on inconsistencies or omissions arising from the POE statements alone. The POE is not part of a refugee claim, and should not be expected to contain all the details of the claim. The purpose of the form is to establish whether an individual is eligible to make a refugee claim. Moreover, the circumstances surrounding the taking of those statements “is far from ideal and questions about their reliability will often arise” (*Wu* at para 16).

[42] To summarize, the jurisprudence cautions against reliance on POE notes with respect to omissions and lack of detail as the sole basis for negative credibility findings. When an applicant swears the truth of certain allegations, there is a presumption that those allegations are true, unless there is a reason to doubt their truthfulness (*Maldonado* at para 5 (CA)). If there is a valid reason to doubt an applicant’s credibility, decision-makers can seek corroborating evidence, and can draw a negative inference from the lack of corroboration. However, an applicant’s explanation for failing to provide corroborating evidence must first be considered before such inferences can be drawn (*Dundar, Ismaili* at para 36; *Amarapala v Canada (Minister of Citizenship and Immigration)*, 2004 FC 12 at para 10, [2004] FCJ No 62 (QL)).

B. *The RPD erred in basing its credibility findings on the POE omission*

[43] In the present case, it is not entirely clear whether the RPD focussed on the lack of corroborative evidence, without any valid reason to doubt Ms. Guven's credibility, or whether it found the omission in the POE form to be the valid reason, but either way, the RPD erred.

[44] If the RPD doubted Ms. Guven's testimony *because* of her failure to mention her Hizmet membership at the POE, this was unreasonable. As noted in *Cetinkaya*, the POE is not part of the claim and should not be expected to have all the details. There was no real contradiction or inconsistency in Ms. Guven's evidence. At the POE, she claimed refugee protection because her husband was wanted by the police. Although she did not elaborate on why her husband was wanted by the police, nor did she state that she was at risk because of her involvement or perceived involvement in Hizmet, her subsequent elaboration in her BOC and testimony was not inconsistent with her earlier evidence; her husband was wanted by the police due to his involvement in Hizmet, and Ms. Guven explained that her involvement was largely due to her husband's involvement. This is not an inconsistency about a crucial element of her claim. When all of her evidence is considered, it reveals that her claim was based on her affiliation or involvement with Hizmet through her husband, and that she became involved after her marriage.

[45] As noted, there are inherent reliability and accuracy concerns with POE forms (see *Wu* at para 16, and *Cetinkaya* at paras 49-51). In the present case, Schedule A appears to have been filled out in a short-hand manner and with the aid of an interpreter. In addition to the errors noted by the Applicants, Questions 9-11 are left entirely blank, even though the form explicitly

instructs claimants to write “None” where they have no details to provide. The interview notes are equally brief.

[46] In my view, the omission from Ms. Guven’s POE interview notes and form is not sufficiently significant to cast doubt on her credibility. Ms. Guven was otherwise consistent in all her evidence.

[47] Although the Respondent argues that the omission in the Applicants’ POE forms and POE interview notes regarding membership in Hizmet was a “crucial element” of their claim, the RPD did not make such a finding. This is only the Respondent’s rationale. The RPD does not even acknowledge the jurisprudence that cautions against making credibility findings based on POE inconsistencies or lack of detail, let alone seek to distinguish this as an omission about a crucial element of the claim.

[48] The RPD also erred in rejecting the Applicants’ explanations for the lack of corroborative evidence.

[49] The RPD noted that Ms. Guven did not provide corroborative evidence of her affiliation with Hizmet and found that she would have had sufficient time to gather such evidence before fleeing Turkey. However, as noted above, it is not clear if the RPD sought corroboration because of the omission in the POE form or expected corroboration regardless – without any valid reason to doubt her credibility.

[50] The Respondent's reliance on *Bhagat* for the principle that the presumption of truth can be rebutted by the absence of corroboration where it is reasonable to expect corroboration is not in dispute. In *Bhagat*, the RPD had found the claimant's story implausible. The issue was not an omission in a POE form or interview. The Court found that in the particular circumstances, the RPD reasonably expected corroboration.

[51] In the present case, the RPD did not find the testimony implausible, rather it simply expected corroboration and then rejected the Applicants' explanations for the lack of corroboration, although – as explained below – the explanations were well supported by the country condition documents and Ms. Guven's own evidence.

[52] The Respondent's reliance on *Kumar Shoor* to support the RPD's rejection of explanations for the lack of corroboration is also misplaced. In that case, the Court noted inconsistencies and contradictions in the claimant's PIF (the form now replaced by the Basis of Claim) and found that the RPD is entitled to reject explanations for those inconsistencies and contradictions which it finds not to be credible. In the present case, the RPD simply rejected the explanations without any analysis or reference to the country condition documents which supported the explanations.

[53] The RPD unreasonably found that the presumption of truthfulness had been rebutted. As a result, corroborative evidence should not have been required in the first place. The RPD's more general expectation that Ms. Guven should have brought corroborative evidence was also not

reasonable, given the country condition documents regarding the risks to Hizmet members in Turkey and Ms. Guven's explanations.

[54] Ms. Guven explained that she could not obtain other corroborative evidence from other Hizmet members or her family living in Turkey due to the degree of surveillance in Turkey, particularly for Hizmet members. The RPD found that this did not explain why she "did not attempt to obtain any evidence from those with whom she volunteered and attended religious discussion groups" (para 24). Ms. Guven's evidence was that, in her view, she would be putting friends and family in danger by asking them to corroborate her affiliation with Hizmet, which is deemed a terrorist group in Turkey. The RPD also noted that Ms. Guven did not provide any corroborative evidence of the police raid on her house, on August 10, 2016 and had explained that she did not think of doing so as she was afraid. Documentary evidence before the RPD reveals that surveillance in Turkey is prevalent, particularly with respect to Hizmet members, and that anyone with any perceived link to the movement, including family, can be targeted. The RPD appears to have ignored the country condition documents with respect to this risk as it simply rejected Ms. Guven's explanation without any analysis.

[55] The RPD also failed to consider how Mr. Guven's positive refugee claim corroborated the Applicants claim. Although the RPD did not completely ignore this decision, it simply stated that it was not bound by it. The jurisprudence has established that each refugee claim should be decided on its own and that the RPD is not bound by the prior positive determinations of family members (*Uygur* at paras 28-29, *Cortes v Canada (Minister of Citizenship and Immigration)*, 2008 FC 254 at para 10, [2008] FCJ No 323 (QL); *Rahmatizadeh v Canada (Minister of*

Citizenship and Immigration), [1994] FCJ No 578 at para 8, 48 ACWS (3d) 1427 (TD)).

However, the Applicants did not submit Mr. Guven's decision to argue that it was "binding". It was submitted as corroboration – to the extent that corroboration was needed – of the risks to the Applicants. The RPD should have considered the extent to which the decision corroborated Ms. Guven's risk as a perceived Hizmet member or affiliated with a Hizmet member and her claim more generally.

[56] The RPD decision for Mr. Guven is brief, but it notes that his wife warned him that the Turkish authorities were looking for him. It confirms that he had listed his wife and daughter as his dependants in Turkey. It confirms that the RPD accepted that Mr. Guven is a Hizmet member, assessed whether he could obtain state protection and whether he had a viable internal flight alternative, and found that he could not. Although the RPD's decision for Mr. Guven does not refer to Ms. Guven as being a Hizmet member, it certainly supports that Mr. Guven – her husband – was a member and that the police were seeking him out in Turkey and that Ms. Guven had warned him that the police had come looking for him.

[57] In conclusion, the RPD erred in finding that the presumption of sworn truthfulness had been rebutted, whether as a result of the Applicants' minor omission at the POE or the lack of corroborating evidence that the RPD expected. Even if corroborating evidence had been reasonably expected, the RPD erred by rejecting Ms. Guven's explanation for the lack of such evidence, which was well supported by country condition documents. The RPD also erred in not assessing the extent to which Mr. Guven's positive refugee decision provided corroboration for her claim.

VIII. The RPD erred in finding that the Applicants would not face a serious possibility of persecution upon their return to Turkey.

[58] The RPD acknowledged that the country condition documents established that spouses of alleged Hizmet members can be arrested and that they have had their passports cancelled. The RPD did not doubt that Ms. Guven was the spouse of a Hizmet member or that her house was raided on August 10, 2016, despite the RPDs comment regarding the lack of corroboration of the police raid.

[59] Despite this, the RPD found that Ms. Guven did not face a serious possibility of persecution in Turkey due to her political opinion because she was not arrested or threatened during the seven months following the raid on her house, and because she was able to leave Turkey with her own passport.

[60] The RPD's conclusion that the Applicants are not at risk because the "[t]urkish government is not interested in them" cannot be justified. The Applicants pointed to the documents before the RPD including excerpts from a report by the Council of Europe Commissioner of Human Rights, which states that Turkish authorities engage in measures which "target directly or are liable to affect family members of suspects in an automatic fashion", including "evictions, terminations of lease agreements and freezing of assets", as well as "annulling passports of spouses" and obtaining "unlimited access [of] personal data of family members". They also highlighted a report from the United States' Department of State, which reports that "[a]fter the coup attempt, the government targeted family members to exert pressure on some wanted suspects", including cancelling passports. They also referred to reports from

Amnesty International which noted, for example, that “anyone with a perceived link to the movement ... has been targeted” and from Human Rights Watch which noted that “those affected ... are caught up in it not because there is clear evidence of their involvement in the coup but merely because of their perceived association”.

[61] Given the consistent, undisputed and objective country documentation establishing, among other things, that “anyone with a perceived link [to Hizmet] can be targeted” and that spouses of Hizmet members can be arrested, it was unreasonable for the RPD to conclude that the Applicants did not face a serious possibility of persecution – either as a Hizmet member, or a spouse of one – simply because they lived in Turkey for seven months without experiencing that persecution.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is allowed.
2. The Applicants claim shall be reconsidered by a differently constituted panel of the RPD.
3. There is no question for certification.

"Catherine M. Kane"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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