

Federal Court



Cour fédérale

Date: 20180914

Docket: IMM-496-18

Citation: 2018 FC 917

Ottawa, Ontario, September 14, 2018

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

**MERAL KUZU, HIDIR KUZU, SIMAY KUZU
AND MEHMET RUTKAY KUZU**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada denied the refugee protection claim of the Applicants, Hidir Kuzu [the Principal Applicant], his wife Meral Kuzu and their children Mehmet Rutkay Kuzu and Simay Kuzu after determining that they are not Convention refugees or persons in need of protection, pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The Principal Applicant alleged persecution in Turkey because of his active involvement with the Cumhuriyet Halk Party [CHP], also known as the Republican People's Party. He also alleged that his Kurdish and Alevi origins have increased his risk profile.

[3] The Applicants seek judicial review of the RPD decision on the grounds that it is unreasonable. They submit that the RPD failed to consider the Principal Applicant's Ethnic-Religious and Political profile, individually and combined. They also argue that the RPD erred in its application of the concept of persecution to the facts of the case and its negative credibility finding with respect to the Principal Applicant, namely that his family was able to leave through the Ataturk Airport in Istanbul unhindered.

[4] For the reasons that follow, the application is dismissed.

II. Facts

[5] The Principal Applicant and his family are citizens of Turkey. They came to Canada on June 15, 2017 and filed their claim for refugee protection that same day. The Principal Applicant was a member of the Turkish military police for 31 years where he claims to have been discriminated and denigrated based on his faith. Although he is Kurdish and Alevi, the Principal Applicant maintains that he is a secular Turk, not identifying himself strongly with either his Kurdish ethnicity or Alevi faith.

[6] After his military career ended, the Principal Applicant joined the CHP, the official opposition party in Turkey, which garnered over 25% of the popular vote. The Principal

Applicant has always supported and voted for this party because he espouses its beliefs, including secularism and kemalism. He was actively involved with the activities of the CHP and devoted a significant amount of his time to volunteer for this party.

[7] Following the attempted coup of July 2016 in Turkey, the Principal Applicant claims that many of his Turkish-Alevi commanders were arrested and sent to prison for politically motivated reasons. On September 12, 2016, the Principal Applicant was summoned by the police for questioning which lasted two hours in connection with the failed coup attempt. He claims that in this first wave of questioning, some seculars, including Alevis and Kemalists, were arrested for allegedly supporting the coup and that most of them remain in prison.

[8] After being questioned, the Principal Applicant remained actively involved in the CHP. He, along with other party members, organized meetings informally titled "*The Future of Democracy in Turkey*" during which members would discuss the Turkish military involvement in Syria and Iraq and other current political issues, with the goal of preparing themselves for future elections and to put in place a strong opposition against the Adalet ve Kalkinma Party's [AKP] authoritarianism. Late in 2016, the Principal Applicant also participated in meetings with other high profile politicians of the CHP to discuss solutions to the AKP and its leader's venture to authoritarianism, as a result of the proposed Bill by the AKP to amend the Turkish constitution in order to expand the President's powers. The Principal Applicant and the CHP members campaigned vigorously against amending the constitution. According to the Principal Applicant, many AKP supporters threatened to use violence against him because of his active

involvement with the “No” campaign. Ultimately, the “No” campaign did not prevail in the referendum.

[9] On May 19, 2017, the police visited the Principal Applicant’s home and brought him in for questioning once again, this time for 6 hours. The police questioned the Applicant about his knowledge of military officers, his activities and his connection with individuals he met within the CHP, his role with organizing the discussion meetings within the CHP, his connection with pro-Kurdish-Alevi organizations and why he obtained a USA travel visa in 2014. The Principal Applicant states that the questioning was in connection with his support and work with the CHP and that the AKP government was determined to stop him. He also claims that compared to the previous questioning that took place on September 12, 2016, the police were very aggressive and menacing. Before concluding, they asked him whether he was planning to move anywhere and declared that they would contact him again.

[10] The Principal Applicant claims that after the second interview, he was followed by plain-clothes officers when he would visit the local CHP branch. In early June 2017, the Principal Applicant decided that the situation was getting risky because he feared that the government authorities were about to incarcerate him, thus motivating him and his family to leave Turkey and come to Canada, where relatives of the family reside. The Applicants’ refugee claim was heard by the RPD on September 19, 2017.

III. The RPD Decision

[11] The RPD considered the Principal Applicant's involvement with the CHP as the key factor of his claim. It noted that the CHP, the oldest political party in Turkey that formed multiple governments in the past, is not a controversial political organization, contrary to many other organizations. The RPD found no persuasive objective evidence that would suggest that active members of the CHP were at risk of persecution or were being targeted.

[12] The RPD accepted that the Principal Applicant is of Kurdish ancestry and that he was culturally Alevi and would be perceived as Alevi, notwithstanding that he does not identify religiously as Alevi. The Principal Applicant acknowledged that his profile as Alevi and Kurdish was not a major factor of his claim; however the RPD took the dual profile into consideration in its decision. The RPD found that while Turkish citizens of the Alevi faith may face some unequal treatment or discrimination within Turkey, this does not generally reach the level of persecution and that the Alevi may relocate within the country to escape this threat. Furthermore, the RPD concluded that while Kurds continue to face societal discrimination, Kurds as a whole do not generally face treatment that would amount to persecution, danger of torture, risk to life or cruel and unusual treatment. The RPD found that to merely establish that one is of Kurdish ethnicity or the Alevi faith is not sufficient to meet the legal threshold for a positive refugee determination, particularly when the Principal Applicant claims to not practice Alevi and does not identify strongly as Kurd politically.

[13] Regarding the questioning of the Principal Applicant by the police, the RPD did not consider it persecutory as hundreds of thousands of individuals were questioned by the police in

the context of the post-coup investigations. It found that there was no persuasive evidence which suggests that active members of the CHP are at risk at this time in Turkey. The RPD concluded that the Principal Applicant's experience did not amount to persecution or indicate future persecution.

[14] Further, the RPD made a negative credibility finding against the Applicants because they exited Turkey through the Istanbul airport using their own identities. The RPD concluded that if the Applicants were wanted by the authorities, they would have been detained at the airport, given the stringent checks and procedures for exiting Turkey through an international airport. The RPD concluded that there is not a serious possibility of persecution and that the Applicants would not be subjected personally on a balance of probabilities to a risk to life, a risk of cruel and unusual treatment or punishment or a danger of torture should they return to Turkey.

IV. Standard of Review

[15] Both parties agree that the standard of review to be applied in the review of the RPD's findings and assessment of the evidence is that of reasonableness, in that the decision must fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9, para 47).

V. Issues

[16] The Applicants allege that numerous reviewable errors were committed by the RPD. The issues to be determined are the following:

1. Did the Board Err to Consider the Principal Applicant's Ethnic-Religious and Political Profile, Individually and Combined?
2. Did the Board Err in its Application of the Concept of Persecution to the Facts of the Case?
3. Did the Board Err in its Negative Credibility Finding with Respect to the Applicants' Leaving Through the Airport in Istanbul, Turkey?
4. Did the Board Fail to take into Consideration the Tendered Evidence?

VI. Analysis

A. *Did the Board Err to Consider the Principal Applicant's Ethnic-Religious and Political Profile, Individually and Combined?*

[17] The Applicants submit that the RPD erred by not considering the Principal Applicant's Kurdish ethnicity, his Alevi faith along with his political profile individually as grounds of their claim for refugee protection. Instead, the RPD considered the Principal Applicant's involvement with the CHP as the key factor of his claim. According to the Applicants, the Principal Applicant identified himself as an Alevi-Kurd from the beginning. His wife and his son, Mehmet Rutkay Kuzu, confirmed that they were seeking refugee status because of their Alevi-Kurd origins. Additionally, the Applicants argue that the Principal Applicant has a combined-cumulative risk profile as an active Alevi-Kurd CHP member involved with the activities against the pro-Islamic AKP party and that the RPD failed to assess the Principal Applicant's risk accordingly. I disagree.

[18] The RPD clearly accepted the Principal Applicant's religious identity as an Alevi and his Kurdish ethnicity. The RPD did not omit to analyze the Principal Applicant's profile as an Alevi and a Kurd, even if it did not consider this profile as a key factor of his claim. The evidence

submitted by the Applicants did not support their claim that members of Alevi faith or of Kurdish ethnicity were likely to be persecuted.

[19] No reviewable error has been established in the RPD's analysis of the Principal Applicant's cumulative Alevi-Kurd and political background. The record shows that the Principal Applicant supports the ideology of secularism and did not practice the Alevi religion. Although he was a part of the Kurdish community, there is no evidence presented showing that the Principal Applicant was engaged in any activism based on being Kurdish beyond his activities with the CHP. Moreover, there was no evidence to support that CHP members and, more particularly Alevi and/or Kurd CHP members were subject to persecution in Turkey. In its decision, the RPD considered this factor, recognized that the Principal Applicant was of Kurdish ancestry and is member of the Alevi religion, and analyzed the risk accordingly. The RPD understood that the Principal Applicant was claiming to be at heightened risk due to being Alevi and Kurdish and reasonably decided that this was insufficient to ground the Applicants' claim.

[20] It is not the role of a reviewing Court to reweigh evidence that was before a tribunal and the Court will not interfere with the RPD's findings so long as they are reasonable. In my view, no reviewable error has been established in this regard.

B. *Did the Board Err in its Application of the Concept of Persecution to the Facts of the Case?*

[21] The Applicants submit that during his second questioning with the police, he was threatened with harm if he were to continue his activities with the CHP. They argue that the RPD

erred by not considering the police's conduct as persecutory and failing to appreciate the gravity of the situation and the risk they faced.

[22]] In my view, the RPD properly found that the conduct of the police did not constitute persecution, which was defined by the Supreme Court of Canada in *Canada (Attorney General) v Ward*, 1993 CanLII 105 (SCC), [1993] 2 SCR 689, as “sustained or systemic violation of basic human rights demonstrative of a failure of state protection”. At no point did the police use violence towards the Principal Applicant, nor did they interfere with his basic human rights. He was simply interrogated about his activities with the CHP, albeit for a lengthy period of time, and then released. In the circumstances, it was open to the RPD to conclude that the level required to constitute persecution was not reached in this case.

C. *Did the Board Err in its Negative Credibility Finding with Respect to the Applicants' Leaving Through the Airport in Istanbul, Turkey?*

[23] The Principal Applicant testified that, after being interrogated by police, he believed that he was being followed by secret agents of the Turkish state in an unmarked car and was wanted by Turkish authorities. The RPD made a negative credibility finding in this regard, concluding that the Applicants knew that Turkish authorities were not looking for them; otherwise they would not have presented themselves to the authorities at the airport exit control using their own passports.

[24] The Applicants submit that the RPD's negative credibility finding was flawed because it was not based on the evidence before it, but rather on an implausibility such as the presumption that the Applicant was not a person of interest to the authorities because he managed to pass

through the airport without any problem. They claim that the RPD failed to properly analyze their evidence with respect to the circumstances which led them to leave the country. They submit that the evidence shows that the Principal Applicant believed that the situation was bound to escalate and the government authorities would wrongfully accuse and incarcerate him. I disagree.

[25] It was open to the RPD to disbelieve the Applicants' evidence and conclude that the Principal Applicant and his family are not at risk given that they exited through Ataturk Airport using their own passports and that they passed through the stringent security checkpoints without difficulty or being detained. The fact that the Applicants left freely demonstrates a lack of interest by the Turkish authorities. I am satisfied that the RPD's findings are rational and based on common sense.

D. *Did the Board Fail to take into Consideration the Tendered Evidence?*

[26] The Applicants claim that the RPD omitted relevant and highly probative evidence, such as the email correspondence from the Applicants' family members and friends after the Applicants fled from Turkey, and ignored evidence emerging from their witness' testimony during the hearing. They argue that the witness' evidence carried a lot of weight because he was a Kurdish-Alevi refugee himself.

[27] It is trite law that the RPD does not have to address each evidentiary minutiae in its decision, provided it considers the totality of evidence. A review of the hearing transcript shows that both the email and the witness' testimony did not offer new information, but simply repeated

the assertions made by the Principal Applicant, as pointed out by the RPD during the hearing. I am satisfied that the RPD analyzed the totality of evidence tendered and did not commit any error by not repeating duplicative and non-contentious evidence in its reasons.

VII. Conclusion

[28] For the above reasons, I am not satisfied that the RPD's decision was unreasonable. It fully considered the Principal Applicant's Alevi and Kurd background and analyzed thoroughly the evidence presented by the Applicants. The decision is transparent, intelligible, and justified and it is defensible in respect of the facts and law. The application is accordingly dismissed.

[29] Neither party proposed a question of general importance for certification. No such question is therefore certified.

JUDGMENT in IMM-496-18

THIS COURT'S JUDMGENT is that the application is dismissed and no question is certified for appeal.

“Roger R. Lafrenière”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-496-18

STYLE OF CAUSE: MERAL KUZU ET AL v. MCI

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: AUGUST 23, 2018

JUDGMENT AND REASONS: LAFRENIÈRE J.

DATED: SEPTEMBER 14, 2018

APPEARANCES:

Cemal Acikgoz

FOR THE APPLICANTS

David Joseph

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Cemal Acikgoz
Barrister & Solicitor
Toronto, Ontario

FOR THE APPLICANTS

Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT