

Federal Court



Cour fédérale

Date: 20190320

Docket: IMM-3669-18

Citation: 2019 FC 342

Montréal, Quebec, March 20, 2019

PRESENT: Mr. Justice Grammond

BETWEEN:

**GULER YASUN
MELIH YASUN
MELIKE DOGA YASUN**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Ms. Yasun and her two minor children claimed refugee status, because she was persecuted in Turkey on the basis of her political opinions. She seeks judicial review of the dismissal of her claim. I grant her application, because the decision-maker unreasonably disregarded evidence of her psychological condition, found her not to be credible and found that certain aspects of her claim were implausible.

I. Facts and Decision Challenged

[2] Ms. Yasun, the principal applicant, is a citizen of Turkey of Kurdish ethnicity and Alevi faith. She has limited education and worked as a hairdresser. The other two applicants are Ms. Yasun's minor children. They left Turkey in May 2017 and travelled to the United States, where they stayed for approximately two months. In July 2017, they came to Canada and claimed asylum. The facts giving rise to the claim are described in her basis of claim [BOC] form and may be summarized as follows.

[3] In December 2012, Ms. Yasun participated in the commemoration of an uprising called "K. Maras". She and other participants were arrested by the security forces. She was questioned, insulted, beaten and detained for a day.

[4] Ms. Yasun says that as a Kurdish Alevi, she has always supported and voted for leftist parties. She says she joined the People's Democratic Party, known as the HDP, in May 2014.

[5] In May 2015, Ms. Yasun helped the HDP with the election campaign. After one of the leaders of the party held a rally in her town, there was vandalism at her workplace and that of other participants. She complained to the police, who said it could not do anything.

[6] In April 2016, Ms. Yasun participated in a demonstration opposing a camp for Syrian refugees. The demonstration was attacked with tear gas and Ms. Yasun was affected. The next day, the police arrested her and beat her. She was released the next day.

[7] In April 2017, Ms. Yasun's workplace was vandalized again. She complained to the police. When the police came to her workplace, they realized that Ms. Yasun had hung a poster of one of the HDP's leaders. They then beat her and detained her for a day.

[8] The Refugee Protection Division [RPD] of the Immigration and Refugee Board dismissed Ms. Yasun's claim on June 29, 2018. The RPD's decision is a long one and at this stage I will provide only a brief summary. The RPD found that Ms. Yasun was not a credible witness. It also found that if Ms. Yasun was wanted by the authorities, she would not have been issued a passport in November 2016, which was after the failed coup attempt of July 2016 and the ensuing repression. The RPD also found that Ms. Yasun's failure to claim asylum in the United States negatively impacted her credibility. The RPD concluded that Ms. Yasun had a "very low political profile", which would not put her at risk of persecution. Thus, the RPD found that Ms. Yasun was not a Convention refugee. Pursuant to section 107(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], the RPD also found that her claim had "no credible basis", with the result that Ms. Yasun was deprived of a right of appeal to the Refugee Appeal Division.

[9] Ms. Yasun now seeks judicial review of the RPD's decision.

II. Analysis

A. *Psychological evidence*

[10] Ms. Yasun's first ground is that the RPD's credibility findings failed to take into account her psychological assessment. I agree.

[11] Ms. Yasun was examined by a psychiatrist, Dr. Kitamura, who also administered a cognitive screening test. He concluded as follows:

In summary, combining her history, my objective mental status and cognitive testing, Ms. [Yasun] meets the Diagnostic and Statistical Manual of Mental Disorders fifth edition (DSM-5) criteria for a major neurocognitive disorder (dementia) which is likely the combined result of her traumatic brain injury sustained during her childhood assault, coupled with her limited formal education and the ongoing effects of severe anxiety and depression as a result of her persecution (more below) which are known to adversely affect memory, concentration and decision-making ("executive functions"). Ms. [Yasun] will be prone to confusion, inattention and impaired memory during times of increased stress, such as when asked about her previous persecution in Turkey, especially by individuals in positions of authority. I recommend that in the context of a refugee hearing, she be permitted the assistance of a designated representative.

[12] In the introductory section of its credibility findings, the RPD noted those conclusions and did not appear to challenge them. Moreover, it stated that "the Board has taken into consideration how her medical conditions affected her memory and the credibility of her testimony".

[13] However, it appears that the RPD failed to take this into account when it noted, on several occasions, that Ms. Yasun gave confusing testimony, did not remember specific events or failed to provide satisfactory explanations.

[14] For example, the RPD drew an “adverse inference on [Ms. Yasun’s] overall credibility” on the basis of her explanations regarding her husband’s attempt to come to Canada and arrest at the airport in Turkey. It appears that the main basis for that negative credibility finding is the fact that Ms. Yasun did not amend her basis of claim [BOC] form after learning of her husband’s failed attempt to join her in Canada. In response to the RPD’s questions, Ms. Yasun gave a number of explanations for failing to do so, including the lack of an interpreter, the fact that she did not have her counsel’s phone number and the fact that she did not have a telephone. The RPD found this testimony “difficult to follow”. I would observe, however, that the reasons given by Ms. Yasun are not mutually exclusive. More importantly, the transcript of the hearing shows that, shortly after the exchange mentioned in the decision, the RPD member observed that Ms. Yasun was not feeling well and decided to postpone the hearing. This, however, is not mentioned in the decision as a potential explanation of Ms. Yasun’s “difficult to follow” testimony.

[15] There is another indication that the RPD did not give due consideration to Ms. Yasun’s psychological condition. At the opening of the hearing, counsel for Ms. Yasun wanted to highlight to the RPD that her client suffered from cognitive disability and was vulnerable. The following exchange ensued:

Counsel: [...] for example in – more recently I had her in my office in the hearing prior to this one to prepare and she collapsed in my office and I performed CPR on her.

Member: [laughs] you got the certificate for that?

[16] While the RPD member may have simply intended to lighten the mood, this exchange conveys the impression that he was unreceptive to the challenges faced by Ms. Yasun.

[17] Moreover, the RPD's decision contains a lengthy discussion of a number of cases in which judges of this Court, for various reasons, held that a psychiatrist's or a psychologist's report should be given little weight. The RPD then stated that it would "put little evidentiary weight on Dr. Kitamura's assessment regarding on whether the allegations in the claim occurred" [sic]. However, Dr. Kitamura's report was not put forward as evidence of Ms. Yasun's persecution in Turkey, but rather as evidence of a mental condition that could affect her manner of testifying. It was thus not necessary for the RPD to cast doubt on the validity of psychiatric reports generally. This unnecessary discussion casts doubt on the RPD's statement to the effect that it took into account Ms. Yasun's psychological condition in its assessment of her credibility.

[18] Given those circumstances, this is a case where the words of my colleague Justice Anne Mactavish are apposite: "it is impossible to ascertain from the Board's reasons how or why it concluded that Dr. [Kitamura's] finding of severe cognitive impairment did not explain why [Ms. Yasun] was unable to consistently recall the events giving rise to his claim for refugee protection" (*Ali Ors v Canada (Citizenship and Immigration)*, 2014 FC 1103 at para 23).

B. *Credibility issues*

[19] There are two other negative credibility findings that appear unreasonable.

[20] First, the RPD faulted Ms. Yasun for omitting to mention her membership in the HDP when she was questioned at the port of entry. Yet, this Court has repeatedly warned against giving too much weight to port of entry notes, given the circumstances in which they are taken (see, for example, *Wu v Canada (Citizenship and Immigration)*, 2010 FC 1102 at para 16; *Alekozai v Canada (Citizenship and Immigration)*, 2015 FC 158 at para 8 [*Alekozai*]; *Horvath v Canada (Citizenship and Immigration)*, 2018 FC 147 at paras 21–22). More importantly, those notes reveal that while Ms. Yasun did not name the HDP, she mentioned specifically that she had a poster of one of the HDP’s leaders at her workplace. I fail to see how a credibility finding can reasonably hang on such a flimsy basis.

[21] Second, the RPD faulted Ms. Yasun for not claiming asylum during her two-month stay in the United States, prior to her arrival in Canada. As a result, the RPD attached “an adverse inference to her overall credibility and the truthfulness of the allegations in the claim”. Ms. Yasun, however, had a good reason for not claiming asylum in the United States: she has a relative in Canada, with the result that she is exempted from the Safe Third Country Agreement. This Court has recognized that the presence of a relative in Canada is a valid reason for not claiming asylum in the United States: *Ay v Canada (Citizenship and Immigration)*, 2010 FC 671 at paras 39–40; *Gopalarasa v Canada (Citizenship and Immigration)*, 2014 FC 1138 at paras 32–35; *Alekozai* at para 12).

C. *Implausibility finding*

[22] In addition, the RPD’s decision contains an implausibility finding that is not reasonably grounded in the evidence. The RPD found that it was unlikely that the Turkish authorities would

have issued a passport to Ms. Yasun if they were targeting her because of her political activities. That finding, however, assumes that the authority that issues passports would communicate with the local police who mistreated her. This may or may not be the case. There is nothing in the record that supports such an assumption (see, by way of analogy, *Yoosuff v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1116 at para 9). It is not safe to base an implausibility finding on the assumption that police officers who arrest or beat political opponents keep records of this.

[23] For all those reasons, the application for judicial review will be allowed and the matter will be sent back to a different member of the RPD for redetermination.

JUDGMENT in IMM-3669-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The matter is sent back to a different member of the Refugee Protection Division for redetermination;
3. No question is certified.

"Sébastien Grammond"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3669-18

STYLE OF CAUSE: GULER YASUN, MELIH YASUN, MELIKE DOGA
YASUN v THE MINISTER OF CITIZENSHIP AND
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