Federal Court  Cour fédérale

Date: 20200513

Docket: IMM-6315-18
IMM-6317-18

Citation: 2020 FC 617

Ottawa, Ontario, May 13, 2020

PRESENT: Mr. Justice McHaffie

BETWEEN:

ELIF ARSU
ALISAN ARSU

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Alisan Arsu and his daughter Elif Arsu applied for permanent residence on humanitarian and compassionate [H&C] grounds. As relevant factors, they cited their establishment in Canada and the hardship they would face in their native Turkey due to both their profile as politically active Kurdish Alevis and Ms. Arsu's gender. An immigration officer refused their applications,

finding that their circumstances were insufficient to justify an exemption from the application of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] The Arsus argue that the officer's decision was unreasonable. They claim the officer improperly discounted the hardship they would face in Turkey because others were more likely to face such hardship, reached conclusions unsupported by the evidence, and by making untenable findings on mitigation and the risk of gender-based violence. They also argue that the officer unreasonably discounted corroborative evidence by focusing on what the evidence did not say and not what it did say, and by making veiled credibility findings.

[3] I find the officer's decision to be reasonable. The officer's references to the risks faced by others in Turkey are fairly read as an assessment of where the applicants themselves lie on the spectrum of potential hardship described in the country condition evidence, based on their personal circumstances. This is an appropriate consideration in an H&C application. The officer's findings were also reasonably based on the evidence, and I see no error in their analysis of the mitigating factors relevant to the assessment of hardship, or in their treatment of the risk of gender-based violence. I also conclude that the officer did not make any inappropriate or veiled credibility findings and did not improperly criticize the corroborative evidence based on what it did not say. Rather, the officer found that the uncorroborated evidence of the Arsus' family members was insufficient to establish their claims. This was a reasonable assessment on the evidence filed and not one that this Court should disturb.

[4] The consolidated applications for judicial review are therefore dismissed.

II. Issues and Standard of Review

[5] The Arsus raise a number of concerns with the officer's decision. While the ultimate question is whether the decision is reasonable, I find it appropriate to address the issues in the structure adopted by the Arsus, namely:

A. Was the officer's assessment of the hardship the Arsus would face in Turkey unreasonable, and in particular:

   (1) Did the officer improperly discount evidence of personalized violence by comparing the Arsus' risk to those of others and imposing a requirement that they be more likely than others to suffer hardship?

   (2) Did the officer make findings not grounded in the evidence?

   (3) Was the officer's finding that potential hardships could be mitigated by the Arsus' circumstances unreasonable?

   (4) Was the officer's treatment of the risk of gender-based violence unreasonable?

B. Was the officer's treatment of the evidence unreasonable, and in particular:

   (1) Did the officer inappropriately focus on what the documents did not say, rather than what they said?

   (2) Did the officer inappropriately make veiled credibility findings by assigning little weight to documents without making a determination as to their authenticity?

[6] As the parties agree, the decision of an officer on an H&C application under subsection 25(1) of the *IRPA* is subject to review on the reasonableness standard: *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44; *Taylor v Canada (Citizenship and Immigration)*, 2016 FC 21 at para 16. This was so both before and after the Supreme Court of Canada's recent decision in *Vavilov*, decided after the hearing of this matter: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25.

[7] Reasonableness review of an H&C decision recognizes the discretionary nature of such a decision, and Parliament's intention to bestow that discretion on the Minister's delegate, rather than on the Court. It also recognizes the officer's role as fact-finder, and the deference due to that role. Under reasonableness review, a Court does not go hunting for error, either in the decision-maker's conclusions or in their reasons: *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp and Paper Ltd*, 2013 SCC 34 at para 54. Rather, it assesses whether the decision is justified, transparent and intelligible in light of the law and the evidence, and in the context of the record: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras 51–53. That said, as with any discretionary decision, the exercise of discretion under section 25 of the *IRPA* must be justified, undertaken in accordance with the applicable legal principles, and grounded in a reasonable assessment of the evidence.

III. The H&C Officer's Decision was Reasonable

[8] The Arsus made joint submissions on their H&C applications, describing both their establishment in Canada, and the hardships they would face in Turkey should they return. The applications were considered together by the same officer, who issued the same reasons in

respect of each application. The officer assessed the adverse country conditions in Turkey, and the Arsus' establishment in Canada, including their family and community ties, and concluded that the H&C considerations did not justify an exemption under subsection 25(1) of the *IRPA*. The Arsus' challenges to the officer's decision are limited to the issue of hardship, including both the officer's findings on the issue, and their treatment of evidence that spoke to the question of hardship and their family's experiences in Turkey.

A. *The H&C Officer's Assessment of Hardship in Turkey was Reasonable*

[9] The thrust of the Arsus' H&C applications on the question of hardship was that, as members of a Kurdish family in Turkey who practice the Alevi religion, and as politically active leftists, they face a highly discriminatory and dangerous environment in Turkey. The Arsus pointed to country condition evidence describing the hardships and risks facing Kurds and Alevis in Turkey, as well as the restrictions on free expression including arrests and violence against protestors and anti-government activists. These concerns were exacerbated in the wake of the attempted coup in July 2016, which resulted in the arrest and imprisonment of many who opposed the government, with Kurds, Alevis and other minorities being disproportionately targeted. The Arsus also referred to evidence of gender-based discrimination and violence against women in Turkey, particularly for women who are political or who protest against the government.

[10] The Arsus described their own family's extensive experiences with discrimination and persecution by the state, resulting in struggles finding employment and completing their studies. These injustices motivated them to become politically active. They recounted their support for

the People's Democratic Party, a pro-Kurdish left-wing political party in Turkey, their mistreatment at the hands of the authorities, and their participation in anti-government protests. This included a protest in 2013 that they assert resulted in their arrest, detention and beating by the police. Ms. Arsu also recounted an incident in which men who she believes were plainclothes police officers questioned her about her sister and sexually assaulted her. The Arsus also gave evidence that another of Mr. Arsu's daughters was arrested without charge and remains in prison in Turkey.

[11] Much of this narrative was also the basis for the Arsus' refugee claim, which was made in 2015 after their arrival in Canada. The Refugee Protection Division (RPD) rejected that claim, primarily on grounds of credibility. The RPD was not satisfied with the explanations given for inconsistencies between Mr. Arsu's narrative and his oral testimony, and found there to be insufficient reliable evidence to support aspects of the Arsus' evidence. The RPD concluded that the Arsus had not demonstrated that they were activists, that they had been arrested, detained or assaulted by the police, or that they had a profile that would expose them to persecution or other risks warranting refugee protection. The RPD did accept that the incident during which Ms. Arsu was sexually assaulted took place, but was not persuaded that the incident was related to her sister or that the perpetrators were police officers.

[12] The officer considering the Arsus' H&C applications noted that they relied on many of the same events the RPD examined in their refugee claim, which the RPD found non-credible. The officer pointed out that an "H&C decision is not intended to be an appeal of a RPD decision," and that the information available did not justify disregarding the RPD's credibility

concerns. While noting that the RPD's decision was not determinative for purposes of the H&C applications, the officer gave "strong weight" to the RPD's credibility findings. The Arsus do not challenge this conclusion. They underscore that their arguments on these applications do not relate to the evidence of past persecution that was rejected by the RPD, but to evidence regarding their current condition and future hardship should they return to Turkey, and to the officer's analysis of hardship in light of the evidence.

[13] Against this general background, I turn to the specific grounds the Arsus raise to argue that the officer's assessment of hardship as an H&C factor was unreasonable.

(1) The officer's use of comparisons was reasonable

[14] The Arsus take issue with a number of statements in the officer's decision that compare the Arsus' situation to that of others in Turkey, and assess whether they are likely to be targeted by authorities. These include the following passages from the decision:

> …I acknowledge that there are serious human rights concerns in Turkey and that, although the government has taken some measures to address the issue, impunity remains a widespread problem. Although I am not satisfied that the applicants were previously targeted by state authorities based on their ethnicity, religion, or political views and activism, I accept [that Kurdish]-Alevis experience discrimination and I acknowledge [that] pro-Kurdish organisations and protests have been targeted by the state. State authorities in Turkey have imposed restrictions on the ability of its citizens to protest and express their political views. The applicants are fearful of returning to Turkey as they oppose the current government in Turkey and state that they will express their political views if they return. I accept that, as Kurdish Alevis who oppose the current government, the applicants may experience mistreatment at the hands of state authorities and I give this considerable weight in this assessment. However, I am not satisfied that the evidence provided demonstrates that the

> applicants are among the groups most likely to be targeted by the state or perceived as threats by the state- such as journalists, human rights activists, Kurdish politicians, or members of organisations that the government alleges have ties to terrorism.
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> […]
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> While there is evidence that Turkey has introduced laws prohibiting gender-based violence and evidence that the state has taken some steps to address attitudes and police response towards victims of gender-based violence, gender-based discrimination and violence continue to be widespread problems in Turkey, particularly in rural areas, and women experience intimidation and violence in their daily lives and also when expressing their political views. There is evidence that groups that are at high risk of gender-based discrimination and violence include women living in rural areas and women living in traditional and/or conservative areas. The SA was living in Istanbul prior to coming to Canada and, as her mother and sisters continue to live in Istanbul, I find it reasonable to believe that the SA would return to that city and would not be living in a more conservative rural area where she would face a higher risk of gender-based violence and discrimination.
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> […]
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> I acknowledge that discrimination against Kurdish Alevis continues to be a pervasive problem in Turkey and that the state has responded to political protests and perceived threats against the state with violence, however, I am not satisfied that the applicants have demonstrated that they would likely be targeted by state authorities and I find that the applicants' personal circumstances, such as their previous employment history and the presence of their family members, may help mitigate some of these hardships.
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> [Emphasis added.]

[15] The Arsus argue that the officer "discounted" their hardship by referring to the fact that others might be more likely to be targeted, or face a higher risk of gender-based violence and discrimination. In doing so, they say the officer erroneously adopted a "more likely" standard that effectively required them to suffer greater hardship than others in Turkey, including other

Kurdish Alevis, contrary to the principles set out by Justice Gleason, then of this Court, in *Diabate v Canada (Citizenship and Immigration)*, 2013 FC 129 at paragraphs 32–36; see also *Miyir v Canada (Citizenship and Immigration)*, 2018 FC 73 at paras 19–21, 33.

[16] As the Arsus correctly point out, the relevant inquiry on an H&C application is not whether the applicants will suffer a greater degree of discrimination than others, or hardship that is different from the remainder of the population, but whether they would likely be affected by adverse conditions such as discrimination: *Kanthasamy* at para 56; *Miyir* at para 33. However, I do not believe that this precludes an officer from assessing how an applicant's particular circumstances relate to the broader country condition evidence, in terms of the degree of risk or extent of harm they may be facing. In other words, if country condition evidence presents a range of risks or hardship that may be faced by returning nationals, it is appropriate for an officer to assess where on that spectrum the H&C applicant lies in order to conduct the "meaningful, individualized analysis" that is required: *Kanthasamy* at para 56, citing *Aboubacar v Canada (Citizenship and Immigration)*, 2014 FC 714 at para 12. This may include noting that while the H&C applicant is on the spectrum of risk of hardship described in the evidence, they are not at the top end of that spectrum.

[17] Read fairly, I do not take the officer to be ignoring the hardship the Arsus may face in Turkey on the basis that others face greater hardship, or requiring them to be "more likely" to face hardship than others. Nor do I read the decision to effectively disregard the hardship because it is also suffered by others in the country, as criticized in *Diabate*. Rather, I read the officer to be assessing the extent and nature of the hardship to which the Arsus may be exposed,

giving “considerable weight” to their risk of mistreatment while recognizing they are not at the highest end of the spectrum of dangers described in the country condition evidence. This type of weighing of the country condition evidence in light of the particular personal circumstances of an applicant is a valid part of an H&C analysis.

[18] The Arsus also argue that they were not required to establish that they would themselves be personally targeted, given their membership in a group that is subjected to discrimination: *Kanthasamy* at paras 52–56. While I agree with this proposition, I read the officer’s decision as having recognized this and conducted the appropriate analysis. The officer stated that although they were not satisfied that the Arsus had been previously targeted, they nevertheless accepted that Kurdish Alevis experience discrimination and acknowledged that pro-Kurdish organisations and protests have been targeted by the state. This analysis, and the assignment of considerable weight to the consequent risk of mistreatment, is in keeping with *Kanthasamy*.

(2) The officer’s findings were reasonably grounded in the evidence

[19] The Arsus argue that the country condition evidence demonstrates a strong likelihood that they will face significant hardship arising from their profile as proud and vocal Kurdish Alevis. They point to evidence of the mistreatment of Kurds, particularly after the July 2016 coup attempt, including targeting of Kurds by the authorities, efforts to eradicate Kurdish culture, unfounded arrest and imprisonment, mass firing of Kurds from employment, strong anti-Kurdish sentiment, and increasing violence. They say that the officer failed to link this strong evidence with the Arsus’ personal circumstances, and instead selectively relied on parts of the evidence to

conclude, in essence, that things were “not that bad,” which they claim is contradicted by the majority of the record.

[20] I cannot agree with this submission. The officer undertook an extensive review of both the personal evidence filed by the Arsus and the country condition evidence. They determined that the Arsus had not established a number of allegations that were put forward as demonstrating their risk of hardship, notably that they had been targeted, detained or assaulted by the police because of their political activism. Nonetheless, the officer reviewed the country condition evidence as it affected Kurds in Turkey, and Kurdish Alevis in particular. As noted above, the officer accepted that Kurdish Alevis experience discrimination, that Turkey had targeted pro-Kurdish organisations and protests, and that it had restricted the ability to express political views. The officer therefore gave “considerable weight” to the potential for mistreatment at the hands of the state.

[21] The officer also accepted that there is societal discrimination and violence directed at Kurdish Alevis that may cause hardship. At the same time, the officer pointed to attenuating aspects of the evidence and the Arsus’ particular circumstances. Having engaged in this assessment of the country condition evidence, as well as the evidence pertaining to the Arsus’ establishment in Canada, the officer considered the H&C factors collectively, and reached the conclusion that they did not justify an exemption under subsection 25(1) of the *IRPA*.

[22] I cannot read the officer’s decision as ignoring the evidence or being made contrary to it. It was open to the officer to refer to both the evidence of hardship and to the aspects of the

Arsus' personal circumstances that might reduce that hardship. Having reviewed the country condition evidence, I cannot conclude that it is of such a nature that it must point invariably to a positive H&C outcome. I therefore cannot agree that the officer's conclusion is unsupported by or contrary to the evidence, and it is not the role of the Court on judicial review to engage in a reweighing of the evidence to reach a different conclusion: *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 60–62.

(3) The officer's finding that potential hardships could be mitigated was reasonable

[23] I similarly reject the Arsus' argument that the officer's reference to mitigation was unreasonable. The Arsus point to the following passages in the decision (the second of which is also reproduced at paragraph [14] above):

> The applicants indicate that they would experience discrimination from wider society due to their ethnicity and religion-such as difficulties in finding employment. After reviewing the evidence, I accept that there is some societal discrimination and violence directed against Kurdish Alevis and this may cause the applicants hardships; however, I find that the applicants' personal circumstances may help mitigate some of these difficulties. The applicants were previously employed in Turkey, [Ms. Arsu] completed studies, and they have close family members in Turkey.
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> […]
>
> I acknowledge that discrimination against Kurdish Alevis continues to be a pervasive problem in Turkey and that the state has responded to political protests and perceived threats against the state with violence; however, I am not satisfied that the applicants have demonstrated that they would likely be targeted by state authorities and I find that the applicants' personal circumstances, such as their previous employment history and the presence of their family members, may help mitigate some of these hardships.
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> [Emphasis added.]

[24] The Minister suggests that the first of these passages focuses on the Arsus' ability to secure employment upon return, and that it was reasonable to conclude that the Arsus' prior employment and studies would assist in this regard. I agree with the Arsus that this passage is not so limited, given the reference to discrimination "such as" difficulties in finding employment and to "societal discrimination and violence directed against Kurdish Alevis."

[25] Nonetheless, I cannot agree with the Arsus' contention that the officer's reference to the potential mitigating effects of employment history, education and family members in Turkey was unreasonable. I agree that the evidence does not indicate that education and/or prior employment would fully mitigate or eliminate any concern regarding discrimination. Moreover, it would be unreasonable to conclude that concerns about, for example, violence against Kurdish Alevis could be disregarded simply because the Arsus had received an education, had been employed, or had family members in the country. However, the officer does not go this far in their analysis. The officer noted only that the Arsus' circumstances "*may* help mitigate *some* of" the hardships described [emphasis added]. In the circumstances, I do not consider this an unreasonable assessment.

(4) The officer's treatment of concerns about gender-based violence was reasonable

[26] The Arsus argue that the officer's analysis of the risk of gender-based violence was unreasonable. They claim that the officer accepted that the police sexually assaulted Ms. Arsu for her political participation in Turkey, and would be exposed to this risk again if she returned, but that for "some indiscernible reason," the officer did not accept that this was sufficient to justify a positive exercise of their H&C discretion. This argument cannot be accepted for two reasons.

[27] First, as a factual matter, the officer did not accept that the police sexually assaulted Ms. Arsu for her political participation. To the contrary, the officer gave strong weight to the RPD's findings, which included a conclusion that while the sexual assault incident took place, it was not shown that the perpetrators were police officers.

[28] Second, the officer's reasoning was not "indiscernible," but clearly and reasonably set out in their consideration and weighing of the risk of gender-based violence as a factor in the H&C assessment. The officer accepted that there was a risk of violence to women in Turkey, particularly in expressing their political views. However, they concluded that in Ms. Arsu's personal circumstances this was not a "very high risk," since she was likely to return to Istanbul, rather than the rural or conservative areas where the evidence indicated that such violence was a particular problem. The potential for any degree of gender-based violence is an important factor for consideration in an H&C assessment. The officer recognized this, giving this factor "strong weight" in their overall analysis of the H&C considerations. However, as with other hardship factors, the existence of such a risk does not pre-determine a particular outcome in an H&C application.

[29] Nor does the assessment of the extent of that risk in Ms. Arsu's personal circumstances amount to an inappropriate diminishing of Ms. Arsu's hardship through comparison to the situation of those who may be worse off. As discussed above, where the evidence discloses a spectrum of potential risk or hardship, it is appropriate for an officer to assess where on that spectrum an applicant's personal circumstances place them. Provided that the officer does not improperly require an applicant to demonstrate that they are at the high end of the spectrum or

more at risk than others before considering the hardship as a factor—which the officer did not do in this case—such an assessment is not unreasonable.

[30] The Arsus also take issue with the officer's reference to the availability of trauma support for victims of sexual violence in Turkey. They assert that whether Ms. Arsu could or would seek such support is irrelevant and speculative, and that the Supreme Court in *Kanthasamy* made clear that the relevant question was whether there was an adverse impact, regardless of whether there is treatment available: *Kanthasamy* at para 48. They argue that the officer's approach would effectively require Ms. Arsu to expose herself to the risk of sexual assault and seek support afterward.

[31] I disagree with this characterization of the officer's assessment. The officer's reasons on this issue responded to Ms. Arsu's evidence that she continued to suffer trauma because of her past sexual assault. The officer in no way suggested that the existence of such support services would mitigate the risk of a future sexual assault, nor that such future risks could or should be disregarded in light of the existence of post-assault support services.

[32] The Arsus did not make any express arguments, or file any evidence, to the effect that the trauma arising from Ms. Arsu's past sexual assault would be exacerbated on return to Turkey. Nonetheless, the officer appropriately inferred that this was a concern, and assessed it in that context. The officer noted that there was no evidence that Ms. Arsu was receiving treatment for psychological issues or trauma in Canada, but accepted that it would be emotionally difficult for her to return to the country where she was assaulted. They concluded that the existence of

support services "may assist [Ms. Arsu] in returning to Turkey, although it will not undo the trauma she has experienced." By recognizing the concern regarding the trauma Ms. Arsu experienced, and recognizing that the availability of any support services would not undo such trauma, the officer reasonably assessed the concern as put forward by the Arsus, as one factor in the H&C determination. In the context of the evidence and submissions filed on the H&C applications, I do not find this assessment to be contrary to the principles enounced in *Kanthasamy* or to be otherwise unreasonable.

B. *The Officer's Treatment of the Evidence was Reasonable*

[33] The Arsus take issue with the officer's treatment of corroborative evidence that addressed their risk of hardship in Turkey. This evidence included a letter from the Human Rights Association, Istanbul Branch, regarding a claim Ms. Arsu had filed; letters from family members and a neighbour regarding various aspects of the narrative and conditions in Turkey; and letters from friends and community organizations in Canada.

[34] The officer considered this additional evidence in detail. They gave little weight to the letter from the Human Rights Association and to some of the evidence of Ms. Arsu's mother (Mr. Arsu's wife), because of concerns about the qualifications of the translator and the absence of certified copies of the originals. The Arsus do not contest these findings. However, the Arsus assert that the officer's assignment of little weight to corroborative evidence of events and conditions in Turkey was contrary to the principles set out by this Court for the assessment of such evidence.

(1) The officer did not inappropriately focus on what the documents did not say

[35] The Arsus contend that the officer focused on what the various supporting statements and letters "did not say" rather than the evidence that they provided. They assert that this was contrary to the warnings of this Court in *Mahmud* and *Arslan* that a corroborative document that is consistent with an applicant's account should not be discounted simply because it does not corroborate all aspects of the account: *Mahmud v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 8019 (FC) at para 11; *Arslan v Canada (Citizenship and Immigration)*, 2013 FC 252 at paras 83, 86–88.

[36] The Arsus argue that many of the officer's findings fall into this category. By way of example, they point to the arrest of Mr. Arsu's other daughter, *i.e.*, Ms. Arsu's sister. Ms. Arsu gave evidence that her sister was imprisoned but that the authorities would not disclose the charges, "even to her lawyer." Her mother wrote a supporting letter that confirmed that the sister was in prison. In assessing this letter, the officer noted that the Arsus did not file any evidence from the sister's lawyer to corroborate the statements about her arrest and mistreatment. The Arsus argue that this amounts to making an adverse finding because not every aspect of the evidence was corroborated, and that this is contrary to the principles in *Mahmud* and *Arslan*.

[37] In my view, it was not unreasonable for the officer to refer to the absence of corroboration by third parties of a material aspect of their narrative. As I read *Mahmud* and *Arslan*, the concern they express is with dismissing corroborative evidence or drawing inappropriate credibility conclusions because that evidence does not corroborate all parts of an

applicant's account. This is very different from noting that an applicant has not provided independent corroboration of a key factual issue, particularly where one would expect that evidence to be presented. Here, the officer did not discount corroborative evidence filed by the lawyer on the basis that it did not address all aspects of the narrative. They noted the absence of any corroborative evidence from the lawyer at all. As the Minister points out, this Court has recognized that it can be reasonable to require third party corroboration of evidence from interested family members: *Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 at para 27. This is particularly so where adverse credibility findings have already been made.

[38] The Arsus did not make any specific reference to other examples that they argue constitute unreasonable reliance on what the evidence does not say. In any case, having reviewed the evidence filed by the Arsus on their H&C applications and the officer's treatment of that evidence in the reasons, I am satisfied that the officer did not make unreasonable credibility findings based on what the evidence did not say rather than what it did say.

(2) The officer made reasonable findings as to the weight to give to the evidence

[39] Finally, and as a related matter, the Arsus contend that the officer improperly assigned little weight to evidence as a "guise" for an adverse credibility finding without actually making such a finding. The Arsus argue that such veiled credibility findings run contrary to the observations of Justice Ahmed in *Oranye* that "[f]act finders must have the courage to find facts," and that they "cannot mask authenticity findings by simply deeming evidence to be of 'little probative value'": *Oranye v Canada (Citizenship and Immigration)*, 2018 FC 390 at para 27; *Sitnikova v Canada (Citizenship and Immigration)*, 2017 FC 1082 at para 20.

[40] As an example of this type of error, the Arsus point to the officer's treatment of a document said to be a complaint made by the mother to the Istanbul Public Prosecutor's Office. The document mentions the daughter's arrest, and formally complains that the mother was being harassed by individuals identifying themselves as police officers. The H&C officer referred to this document and noted the absence of any response or confirmation from the Prosecutor's Office that they received this complaint. The Arsus argue that the officer did not say whether they concluded that the document was inauthentic, or that the contents are untrue, and that they effectively made an improper veiled credibility finding.

[41] The officer's treatment of the document was not unreasonable. The officer's observation with respect to the complaint document was part of their consideration of four documents filed by members of the Arsu family. The officer noted that these family members have an interest in the outcome of the applications, and found that their letters were not, in and of themselves, sufficient objective evidence to support the applicants' statements that they were targeted by the state. A fair reading of the officer's reasons is thus that they considered the mother's complaint document to be insufficient evidence without corroboration from the Prosecutor's Office through a response or confirmation. As noted above, Justice Zinn at paragraphs 26–27 of *Ferguson* recognized that a decision-maker may not need to make a credibility finding where the evidence is to be given little weight regardless of its credibility:

> If the trier of fact finds that the evidence is credible, then an assessment must be made as to the weight that is to be given to it. It is not only evidence that has passed the test of reliability that may be assessed for weight. <u>It is open to the trier of fact, in considering the evidence, to move immediately to an assessment of weight or probative value without considering whether it is credible. Invariably this occurs when the trier of fact is of the view that the answer to the first question is irrelevant because the</u>

> evidence is to be given little or no weight, even if it is found to be reliable evidence. For example, evidence of third parties who have no means of independently verifying the facts to which they testify is likely to be ascribed little weight, whether it is credible or not.
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> Evidence tendered by a witness with a personal interest in the matter may also be examined for its weight before considering its credibility because typically this sort of evidence requires corroboration if it is to have probative value. If there is no corroboration, then it may be unnecessary to assess its credibility as its weight will not meet the legal burden of proving the fact on the balance of probabilities. When the trier of fact assesses the evidence in this manner he or she is not making a determination based on the credibility of the person providing the evidence; rather, the trier of fact is simply saying the evidence that has been tendered does not have sufficient probative value, either on its own or coupled with the other tendered evidence, to establish on the balance of probability, the fact for which it has been tendered. That, in my view, is the assessment the officer made in this case.
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> [Emphasis added.]

[42] The officer's assessment of the complaint document falls into the second category described by Justice Zinn: evidence tendered by a witness with a personal interest in the matter. In such a case, an officer need not undertake a credibility assessment in order to conclude that the evidence is insufficient.

[43] The other example given by the Arsus falls into the first category described by Justice Zinn. A neighbour of the Arsus provided a letter saying they had witnessed the police harassing the mother, including an incident where police officers came to her house and entered it to conduct a search when they discovered the mother was not there. The officer gave "some weight" to this letter, but noted that it provides few details as to how the author knew the police were harassing the mother, or why they were at the home. Again, I do not view this as making an inappropriate veiled credibility finding. Rather, the officer appears to have accepted the

neighbour's evidence, giving it some weight, while noting its limitations, including the scope of the witness's own knowledge, and the line between what it does and does not corroborate.

IV. Conclusion

[44] I am not satisfied that the officer was unreasonable either in their consideration of the risks and hardships that the Arsus would face if required to return to Turkey, or in their treatment of the corroborative evidence filed by the Arsus. To the contrary, the officer conducted a principled and diligent assessment of both the personal and country condition evidence, and weighed the various factors in assessing whether discretionary H&C relief should be granted. The decision was justified, transparent and intelligible.

[45] The applications for judicial review are therefore dismissed. Neither party proposed a question for certification, and I agree that none arises.

[46] Lastly, in the interests of consistency and in accordance with subsection 4(1) of the *IRPA* and subsection 5(2) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, the style of cause is amended to name the respondent as the Minister of Citizenship and Immigration.

JUDGMENT IN IMM-6315-18 AND IMM-6317-18

THIS COURT'S JUDGMENT is that

1. The applications for judicial review are dismissed.

2. The style of cause is amended to name the respondent as the Minister of Citizenship and Immigration.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-6315-18 AND IMM-6317-18
STYLE OF CAUSE:	ELIF ARSU ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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DATED:	MAY 13, 2020

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