

Federal Court



Cour fédérale

Date: 20220119

Docket: IMM-4966-20

Citation: 2022 FC 49

Ottawa, Ontario, January 19, 2022

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

BILGE KAGAN EROGLU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Bilge Kagan Eroglu, is a Turkish national who made a refugee claim because he fears persecution based on his Alevi faith. He says that he is at risk from his father – who never accepted his change in religion, and that he faces threats from others in Turkey as well as Turkish government officials.

[2] The Applicant's refugee claim was dismissed by the Refugee Protection Division (RPD), and the Refugee Appeal Division (RAD) dismissed his appeal. He seeks judicial review of the RAD decision. For the reasons that follow, I conclude that this application must be granted.

I. Background

[3] The Applicant's narrative is relatively straightforward, even if the evidence on several key points is not. He says that he converted to the Alevi faith, and that his mother and sister were also adherents although they kept this secret from his father, who had become an increasingly devout Sunni Muslim and a supporter of the Adalet ve Kalkinma Partisi or Justice and Development Party (AKP), which formed the government in Turkey.

[4] The Applicant claimed that he experienced physical attacks because of his religion. He stated that in June 2016, he was assaulted by five of his friends when he told them the Alevi religion was a religion of true peace. He said that in August 2017, two sons of his father's assistants beat him up and threatened to tell police and intelligence services that he had ties to pro-separatist Kurds. He also stated that in September 2017, the police raided his home looking for him and when they failed to find him, they took his mother and sister into custody for questioning. The Applicant then went into hiding until he could flee to Canada. He indicated that a second police raid on his home occurred after he had left for Canada.

[5] The RPD rendered an oral decision at the end of the hearing. Subsequent to the hearing, at the request of counsel for the Applicant the RPD admitted further evidence, and it then issued a written decision on October 28, 2019.

[6] The RPD did not question that the Applicant was an Alevi, although, in its oral reasons, the panel noted that some concerns arose because of inconsistencies between his testimony and the objective evidence about the faith. In the end, the RPD accepted that he was an Alevi. The

determinative issue for the RPD was that the Applicant's evidence about the threats he faced was not credible.

[7] The RPD found that there were a number of significant discrepancies in the Applicant's evidence, in particular as between his oral testimony and the narrative set out in his Basis of Claim (BOC) form. The Applicant stated that he was nervous while he was testifying and thus his answers were jumbled. The RPD accepted that testifying in a hearing room was stressful but it found that this could not explain the significant differences between his testimony and his BOC form, nor did it explain his answers that contradicted his BOC.

[8] The PRD found that the Applicant had not demonstrated that his father had sufficient influence with the police to persecute his son, and that it was not plausible that his father had orchestrated the raids on the family's home that put his wife and daughter in danger. Overall, the RPD found the Applicant's evidence that he was at risk of persecution because of his religion to lack credibility. The panel also examined his residual risk as an Alevi, and found that the objective evidence did not show that he faced a serious possibility of persecution because of this. Based on these findings the RPD dismissed his claim.

[9] On appeal, the Applicant sought to introduce new evidence, most of which was accepted by the RAD. The panel found that the Applicant's affidavit as well as the copy of his father's identity card qualified as new and relevant evidence and so it was admitted. The RAD refused to accept a newspaper article submitted by the Applicant, because it was not clear that it was published after the RPD hearing.

[10] The RAD found the determinative issue to be credibility, and it reviewed the Applicant's arguments about the errors the RPD committed in some detail. In summary, the RAD agreed with the RPD that several inconsistencies between the Applicant's testimony and the details set out in his Basis of Claim (BOC) form undermined his credibility. The RAD reviewed each of the RPD's credibility findings, and considered the Applicant's arguments challenging them:

- (a) He testified that he was beaten by his father, but omitted this from his BOC form. The Applicant explained that when he said in his BOC form that his father threatened him, this included the physical assault. The RAD found this was not reasonable, in particular because he differentiated between threats and assaults elsewhere in his BOC;
- (b) The RAD accepted that translation difficulties might explain why the Applicant said an attack occurred in July 2017 rather than June 2016. The RAD accepted that this might have been an innocent mistake and did not draw any negative conclusion from the discrepancy;
- (c) The RAD found that three specific inconsistencies in the Applicant's evidence were each relatively minor, but collectively they indicated he had difficulty "keeping his story straight" and thus undermined his credibility. The RAD accepted that the Applicant's nervousness during the hearing may have affected his testimony, but that could not explain all of these discrepancies:
 - i. He testified that the men who beat him were Sunnis but not part of a any group, but his BOC narrative said they were members of a group called Halveti;

- ii. His testimony that he was beaten in August 2017 because he told his attackers he had chosen to be Alevi was inconsistent with his BOC narrative that said he was beaten because he asked his attackers to stop coming to his father's sermons; and
 - iii. His testimony that after the August 2017 beating he was threatened that he would be attacked again if he continued to follow the Alevi faith was inconsistent with his BOC statement that his assailants threatened to report him to the police and intelligence services;
- (d) He testified that his mother and sister were detained for three to five days, but said their detention lasted 15 hours in his BOC narrative. The RAD rejected the Applicant's explanation that he had estimated three to five days because that was the normal detention period in Turkey. It found that even if this was an estimate, the fact that he provided two quite different estimations of the length of the detention undermined his credibility;
- (e) The Applicant had claimed his father was an influential member of the ruling AKP party, but other than letters from his mother and sister, he provided little evidence to support this claim. The RAD found that while the copy of the father's identity card submitted by the Applicant strengthened his claim that his father worked with the authorities, his failure to provide any other evidence to support his claim that his father was so influential that he could influence Turkish authorities to act against his son also undermined his credibility.

[11] Turning to the letters from the Applicant's mother and sister, the RAD disagreed with the RPD's rejection of this corroborating evidence based on the finding that the Applicant lacked credibility. Instead, the RAD stated that this evidence should be weighed on its merits independently of the Applicant's credibility, and then the panel would make an overall credibility assessment based on his testimony and the supporting documents.

[12] The RAD noted that the supporting letters from the Applicant's mother and sister were unsworn, and thus were of less probative value than sworn documents. It stated that it would "have regard to these supporting documents... in making my assessment of the [Applicant's] overall credibility" (RAD Decision, para 27).

[13] The RAD then stated its conclusion:

[28] When I weigh the Appellant's credibility problems as outlined above against the supporting documentation he has provided, I find that the [Applicant] is, overall, lacking in credibility. I find that he is not an Alevi convert and that neither his father nor the Turkish authorities are pursuing him on that basis. Nor is he perceived to be an Alevi convert, a leftist, or a separatist by the government, his father, or members of society.

[14] Because the RAD found that the Applicant was not an Alevi convert, the panel did not consider his residual risk in Turkey. The RAD therefore dismissed the appeal.

[15] The Applicant seeks judicial review of the RAD decision.

II. Issues and Standard of Review

[16] The determinative issue in this case is whether the RAD's decision meets the standard of reasonableness as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

[17] In summary, under the *Vavilov* framework, a reviewing court “is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints” (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 2 [Canada Post]). The burden is on the applicant to satisfy the Court “that any shortcomings or flaws relied on... are sufficiently central or significant to render the decision unreasonable” (*Vavilov* at para 100, cited with approval in *Canada Post* at para 33).

[18] In examining the reasons, and the reasoning process, a reviewing court must be able to follow the logic of the analysis, to “connect the dots on the page where the lines, and the direction they are headed, may be readily drawn” (*Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431 at para 11, cited with approval in *Vavilov* at para 97). *Vavilov* provided an important clarification of the approach (at para 87):

[I]t is not enough for the outcome of a decision to be *justifiable*. Where reasons for a decision are required, the decision must also be *justified*, by way of those reasons, by the decision maker to those to whom the decision applies. While some outcomes may be so at odds with the legal and factual context that they could never be supported by intelligible and rational reasoning, an otherwise reasonable outcome also cannot stand if it was reached on an improper basis.

[Emphasis in original]

III. Analysis

[19] I find that the Applicant has met his burden to establish that the RAD's decision is not reasonable. There are two fatal gaps in the reasoning of the RAD, and these are sufficiently central to the outcome of the case to make the decision unreasonable.

[20] As noted above, the RAD found several discrepancies in the Applicant's evidence which undermined his credibility. Although the Applicant challenged these findings, I am not persuaded that they were unreasonable. The RAD considered the Applicant's arguments on the appeal in light of its review of the record, and it explained why it reached the conclusion that these elements undermined the credibility of the Applicant. This is what reasonableness review demands, and I find that these aspects of the RAD's analysis meet the *Vavilov* standard.

[21] However, the RAD said it would consider the corroborative evidence filed by the Applicant rather than dismissing it based on his lack of credibility, as the RPD had done. This was a reasonable approach, in light of the jurisprudence.

[22] The problem with the decision is that having said it would conduct a separate analysis of this evidence, the RAD failed to explain their reasoning regarding what weight (if any) it accorded to this evidence, and how this analysis contributed to the overall result reached in the case. This is unreasonable, because it fails to explain to the Applicant why this evidence failed to overcome or counterbalance his credibility problems.

[23] The evidence in question was set out in letters from his mother and sister, and an email from a friend in Turkey. The letters are consistent with many elements of the Applicant's narrative, indicating that:

- (a) his father had been a moderate Muslim who became aligned with religious fundamentalists and hosted meetings with them in his home;
- (b) his father had close ties with the ruling AKP party, the police and members of the army;
- (c) the Applicant was threatened and attacked because he spoke favourably about the Alevi faith;
- (d) police forces who were searching for the Applicant questioned and took the mother and sister into custody, both before and after he left Turkey; and
- (e) the authorities threatened the Applicant's mother and sister because they did not reveal the Applicant's whereabouts.

[24] The email from his friend was also consistent with the Applicant's narrative about going into hiding and how he managed to exit Turkey.

[25] The RAD said the following in regard to these documents, at para 27:

I believe it is preferable to consider the documents independently of an Appellant's credibility and then make an overall assessment based on his testimony and the supporting documents. I will have

regard to these supporting documents below in making my assessment of the [Applicant's] overall credibility.

[26] This is followed by the following statement, under the heading “Assessment of his overall credibility”: “When I weigh the [Applicant's] credibility problems as outlined above against the supporting documentation he has provided, I find that the [Applicant] is, overall, lacking in credibility” (RAD Decision, para 28). That statement, together with the RAD's earlier comment that this evidence was of less probative value because it had not been sworn, is the sum total of the RAD's explanation of how the panel assessed these documents, and how they contributed to the overall assessment of the Applicant's credibility. That falls short of the standard of justification that is set out in *Vavilov*.

[27] There may have been good reasons for the RAD to conclude that the evidence was not sufficient to overcome the many credibility issues it had identified with the Applicant's evidence, but it needed to explain what these reasons were, even if only through a brief statement of its reasoning. Its failure to do so leaves the Applicant – and this Court – guessing as to what its rationale may have been. That is not reasonable.

[28] If this was the only error committed by the RAD, it might not have been significant enough to warrant overturning the decision. When combined with the other significant major gap in the RAD's analysis, however, it meets the threshold.

[29] The second major problem with the RAD's decision is its statement that: “I find [the Applicant] is not an Alevi convert and that neither his father nor the Turkish authorities are

pursuing him on that basis” (RAD Decision, para 28). The difficulty here is that there is absolutely no discussion or explanation of how the RAD reached that conclusion.

[30] The RPD had expressed some doubt about the Applicant’s testimony regarding the Alevi faith, but in the end, it accepted that he had converted to that faith. The RAD decision does not discuss any of the evidence relating to this point, nor does it explain how the Applicant’s credibility problems supported the conclusion that he had not converted to the Alevi faith.

[31] A refugee claim based on religious persecution may fail because a claimant does not convince the decision maker that they are (or have converted to become) a member of a faith. Or, a claim may fail because, although the claimant demonstrates that they are a member of a faith, they fail to establish that they are at risk of persecution because of it. These are different matters, and the evidence and analysis on one issue may not be relevant or persuasive in regard to the other.

[32] In this case, the RAD’s decision focuses entirely on the risks that the Applicant said he faced, and it failed to explain the basis for its conclusion that he was not an Alevi. Whatever evidence supported this finding, or how its credibility analysis brought it to this conclusion, is simply not explained by the RAD. This is also unreasonable, under the *Vavilov* framework.

[33] These two errors relate to central elements of the RAD’s decision. The panel found the determinative issue to be the Applicant’s credibility, but failed to explain how it analyzed evidence he submitted to bolster his narrative. The RAD also found that he was not at risk of

persecution because he was not a member of the Alevi faith, but did not explain their reasoning nor why the panel disagreed with the RPD on this point.

[34] The RAD decision may be justifiable, based on a careful and thorough review of the entirety of the factual record and in light of the applicable case law, and I pause to note here that in many respects the RAD conducted just this sort of analysis. The RAD's decision is not, however, justified in regard to its treatment of the corroborative evidence and the finding that the Applicant was not an Alevi convert, because it fails to explain to the Applicant – the person directly affected by the outcome – how the panel came to the conclusion reached on these essential questions. That makes the decision unreasonable, according to *Vavilov*.

[35] For all of these reasons, the application for judicial review is granted. The RAD's decision will therefore be set aside and the matter remitted to a different panel for reconsideration.

[36] There is no question of general importance for certification.

JUDGMENT in IMM-4966-20

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted.
2. The decision of the Refugee Appeal Division is set aside, and the matter is sent back for redetermination by a differently constituted panel.
3. There is no question for certification.

“William F. Pentney”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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