

Federal Court



Cour fédérale

Date: 20220923

Docket: IMM-5418-21

Citation: 2022 FC 1321

Ottawa, Ontario, September 23, 2022

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

ERKAN DEMIR

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision of the Refugee Appeal Division of the Immigration and Refugee Board [the “RAD”], dated July 29, 2021 and issued to the Applicant on or about August 4, 2021 [the “Decision”]. The Decision dismissed the Applicant’s appeal and upheld the decision of the Refugee Protection Division of the Immigration and Refugee Board [the “RPD”], dated March 3, 2021.

[2] The Applicant claims he has a fear of persecution at the hands of Turkish authorities and Sunni extremists due to his Alevi faith, his membership in Alevi cultural organizations and his political beliefs. Because of this, he sought refugee protection. The RPD refused the Applicant's claims, determining that the Applicant was not a Convention refugee or a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The RPD upheld that decision.

II. Background

[3] The Applicant, Erkan Demir, is a 48-year old male citizen of Turkey. He left Turkey for the United States of America in 2007 on a visitor's visa. After this visa expired, the Applicant remained in the USA illegally until August 5, 2019 at which point he entered Canada. He claimed refugee status on August 21, 2019. The Applicant alleges that he fears persecution at the hands of Turkish authorities and Sunni extremists and is a Convention refugee on three grounds:

- i. His Alevi faith;
- ii. His membership in Alevi cultural associations;
- iii. His real or perceived political opinion as being opposed to the Turkish government due to his Alevi faith.

[4] The RPD addressed the Applicant's main argument dealing with fear of persecution due to his religion and denied the Applicant's refugee claim. It found that although Alevis experienced some discrimination in Turkey, this did not amount to persecution.

[5] Though the RPD had drawn adverse inferences from the Applicant's delay in leaving Turkey and failure to claim asylum in the USA, it found, on the balance of probabilities, that the Applicant established that he, subjectively, had a fear of persecution due to his faith.

[6] For a finding of a well-founded fear of persecution, that subjective fear must have an objective basis. The RPD outlined its interpretation of the law defining Convention refugee status and what constitutes persecution in this context. It observed the following:

- i. The definition of Convention refugee is forward-looking. The issue in such a claim is not whether the claimant had good reason to fear persecution in the past, but if the claimant has sufficient grounds for fearing future persecution in the future.
- ii. The line between persecution and discrimination or harassment is not always clear. Persecution is the sustained and systemic violation of basic human rights. Determining whether something amounts to persecution requires the RPD to consider the case-specific evidence and facts along with the Applicant's personal circumstances.
- iii. Discrete incidents of discrimination or harassment may amount to persecution when considered cumulatively.
- iv. Even where events of discrimination or harassment are not serious enough to be persecuted, they may nevertheless give rise to a reasonable fear of persecution if they produce in the mind of the Applicant a feeling of apprehension or insecurity regarding his future existence.

[7] The RPD found that the Applicant's subjective fears of persecution did not have an objective basis. In coming to this conclusion, the RPD considered the legal, social and economic circumstances of Alevis in Turkey:

- i. Alevis are the largest religious minority in Turkey, comprising 15-25% of Turkey's population. The Alevi faith is not acknowledged by the Turkish state as a religion distinct from Sunni Islam. This leads to some obstacles for Alevis, but they are able to practice their faith. The number of *cemevis* (places of worship) has increased significantly over the past two decades, though this increase is likely due to Alevi activism not government acquiescence.
- ii. The Turkish Constitution requires compulsory religious instruction in schools with content determined by the state. Religious minorities experience difficulties obtaining exemptions from these courses, which promote Sunni Islam. Alevis contested this at the European Court of Human Rights and the court ruled that the religious courses violated educational freedom. Since then, the Turkish government has added materials on Alevism to the curriculum; however, Alevi groups insist that the materials are inadequate and often incorrect.
- iii. The Turkish Penal Code criminalizes insulting values held sacred by a religion, interfering with a religious group's services, and defacing its property. Alevis are occasionally victims of having their places of worship and homes vandalized. However, police do investigate these incidents.
- iv. Alevis face job discrimination and are underrepresented in positions within the state apparatus.

- v. Alevis have been the victims of massacres carried out by nationalists linked to far-right and Islamist militants in the past. However, violence against Alevis appears to have declined significantly in recent decades.
- vi. After a failed coup attempt in 2016, the Turkish government has retaliated on its political opponents, including many Alevis. However, evidence indicates that the authorities provided them with effective protection.

[8] Thus, the RPD held that Alevis face discrimination; however, such discrimination does not rise individually or cumulatively to persecution as Alevis need not abandon or conceal their faith in order to avoid persecution. It also noted that the Applicant's experiences were from a few decades back, when conditions were worse for Alevis.

[9] Finally, the RPD held that the Applicant did not have a reasonable fear of persecution. Where an Applicant's treatment does not amount to persecution, it may nevertheless lead to a reasonable fear of persecution if they produce, in the mind of the Applicant, feelings of apprehension and insecurity regarding his existence. The RPD accepted the Applicant's claims that he had such feelings and, as a result, suffered from panic and anxiety attacks and took medication for this condition. The panel found the Applicant to be credible regarding these medical problems, but held that the Applicant did not have a reasonable fear of persecution given he successfully managed his condition with medication.

III. Decision Under Review

[10] The RAD dismissed the Applicant's appeal. In its analysis, the RAD echoed the RPD's credibility findings regarding the Applicant's testimony about the discrimination he faced growing up as an Alevi in Turkey:

- i. Sunnis would call him and his family derogatory names;
- ii. Religious classes at school were only for Sunnis;
- iii. Sunnis refused to shop at the Applicant's father's hardware store;
- iv. The Applicant hid his Alevi faith during his military service in 1994-95 because he faced mistreatment;

[11] The RAD also found that the Applicant credibly established the following two incidents occurred:

- i. In 1995, the Applicant had been in a coffeehouse when shootings targeting Alevis occurred up the street;
- ii. In 1999, a group of people hurled anti-Alevi insults at the Applicant and his father as the two were leaving a *cemevi* (a place of worship) while gunmen on a motorcycle opened fire on others leaving the *cemevi*, and, during this incident, the Applicant was beaten and his father was hit by a stone.

[12] The RAD addressed whether the RPD erred in not considering all of the Applicant's claims. The RPD decision had focussed primarily on the Applicant's Convention refugee claim based on his Alevi faith. The RAD found that the RPD erred by failing to address whether or not the Applicant would face a serious possibility of persecution due to his real or imputed political opinion as being opposed to the Turkish government. Nevertheless, it also held this claim was not established by the evidence. The RAD found that the only evidence that supported this claim was a source stating that the Turkish government used the failed 2016 coup attempt in Turkey to crack down on its opponents, including many Alevis. It observed that this claim was only raised by the Applicant's counsel in closing argument. The Applicant himself never claimed he had such a fear during his testimony. Consequently, the RAD found that the Applicant lacked both the subjective fear of persecution and the objective basis for that fear.

[13] The RAD also rejected that there was a serious possibility of persecution due to membership in a particular social group based on the Applicant's membership in Alevi cultural organizations. It found that there was no evidence that the Applicant would face any additional discrimination or harassment because of this over and above what he would suffer due to his faith.

[14] The RAD affirmed the RPD's persecution analysis. It observed that the RPD was well aware that incidents of discrimination and harassment had to be considered cumulatively and prospectively to determine if they amounted to persecution.

[15] The RAD also found the RPD did not disregard evidence. The Applicant had argued that the RPD ignored a research report that indicated that treatment of Alevis had worsened since the failed 2016 coup attempt. The RAD pointed out that the RPD had cited the report in its decision.

IV. Issue

[16] Was the RAD's decision reasonable?

V. Standard of Review

[17] The standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 25).

VI. Analysis

A. Political Opinion

[18] The Applicant makes both procedural and substantive arguments on this front. First, he asserts that because the RAD found that the RPD had erred in not considering whether he had a well-founded fear of persecution due to his political opinion, it should have directed a different RPD panel to hold a new hearing. Second, the Applicant argues that the RAD did not adequately assess this ground in a forward-looking manner. He claims that, in Turkey, Alevis are targeted for perceived leftist and anti-state views, particularly since the failed 2016 coup attempt.

[19] The Respondent argues that the RAD was not obligated to mechanically return the matter to the RPD once it concluded that the RPD erred in failing to consider the Applicant's risk based on political opinion. As well, it was reasonable to deny the Applicant's claim on this ground because of the limited evidence.

[20] I agree with the Respondent. The RAD was not required to return the matter to the RPD and was entitled to find that the Applicant's claim lacked merit. The RAD's ability to refer a matter back to the RPD is set out in section 111 of the *IRPA*:

Decision

111 (1) After considering the appeal, the Refugee Appeal Division shall make one of the following decisions:

(a) confirm the determination of the Refugee Protection Division;

(b) set aside the determination and substitute a determination that, in its opinion, should have been made; or

(c) refer the matter to the Refugee Protection Division for re-determination, giving the directions to the Refugee Protection Division that it considers appropriate.

Referrals

(2) The Refugee Appeal Division may make the referral described in paragraph

Décision

111 (1) La Section d'appel des réfugiés confirme la décision attaquée, casse la décision et y substitue la décision qui aurait dû être rendue ou renvoie, conformément à ses instructions, l'affaire à la Section de la protection des réfugiés.

Renvoi

(2) Elle ne peut procéder au renvoi que si elle estime, à la fois :

(1)(c) only if it is of the opinion that

(a) the decision of the Refugee Protection Division is wrong in law, in fact or in mixed law and fact; and

(b) it cannot make a decision under paragraph 111(1)(a) or (b) without hearing evidence that was presented to the Refugee Protection Division.

a) que la décision attaquée de la Section de la protection des réfugiés est erronée en droit, en fait ou en droit et en fait;

b) qu'elle ne peut confirmer la décision attaquée ou casser la décision et y substituer la décision qui aurait dû être rendue sans tenir une nouvelle audience en vue du réexamen des éléments de preuve qui ont été présentés à la Section de la protection des réfugiés.

[21] It is only when the RAD believes it cannot make a decision without hearing evidence that was presented to the RPD that the RAD may refer the claim back to the RPD. The RAD reasonably found this not to be the case here.

[22] The Applicant's testimony to the RPD focussed on his fear of persecution due to his being Alevi. The political opinion claim only clearly appears during closing submissions by the Applicant's counsel. The only evidence to support this claim is from the National Documentation Package (NDP) for Turkey, which states that since the 2016 failed coup, the Turkish government has targeted political rivals, including many Alevis. As the RAD pointed out, even this was only relevant for the state of emergency period that lasted until July 2018. Moreover, the documentary evidence is mixed on the level of discrimination against Alevis and that merely being an Alevi individual, in and of itself, does not result in a finding of a well-founded fear of persecution.

[23] Given this relative lack of evidence and the applicable legislation, the RAD was reasonable in finding that the Applicant lacked both the subjective and objective components of a well-founded fear of persecution based solely on political opinion.

B. Membership in Social Groups

[24] The Applicant claims that it was unreasonable for the RAD to conclude that the Applicant's membership in Alevi cultural organizations would not put him at risk more than whatever risk he might face due to his Alevi faith and that the RAD disregarded evidence in coming to this conclusion. The Applicant accuses the RAD of ignoring key parts of the NDP and wrongly denying this claim because it did not find evidence that he was an activist and failed to consider that mere members of Alevi groups were also being targeted.

[25] Contrary to the Applicant's argument, there is no indication that the RAD disregarded evidence. The RAD quoted the very same passage as the Applicant; after the 2016 failed coup attempt, the Turkish government had cracked down on political opponents, including "Alevi activists and members of Alevis organizations". The RAD noted that there is no evidence that the Applicant was an activist and limited evidence regarding his membership in Alevi groups. Specifically, it pointed out that while there was evidence that the Applicant had joined the Pir Sultan Abdal Cultural Association, there was no evidence that he was active in this group or that he would be active in the future. The discrimination alleged by the Applicant did not form an objective basis for a well-founded fear of persecution.

C. Religion

[26] The Applicant asserts that the RAD failed to conduct the proper legal persecution analysis. He maintains that the RAD failed in two ways: by failing to look at persecution in a forward manner and by failing to account for the cumulative impact of the discrimination the Applicant faced.

[27] Moreover, he takes issue with some of the RAD's findings. He claims that the RAD unreasonably narrowed the Applicant's profile to that of an "average Alevi" and wrongly found that the Applicant could manage the discrimination with medication.

[28] Much of the Applicant's submissions focus on the alleged error that the RAD failed to consider the discrimination and harassment cumulatively. The Applicant cites extensive case law to support the position that:

- i. Incidents of harassment and discrimination must be considered cumulatively when assessing if they amount to persecution.
- ii. It is not enough for the RAD to state simply that discrimination and harassment does not cumulatively amount to persecution, the tribunal must explain why.
- iii. It is necessary to evaluate persecution in light of the claimant's individual circumstances.
- iv. Acts other than violence, such as mistreatment in education, employment or other areas of life can be discrimination and harassment.

[29] However, critically he does not explain how the RAD failed to do so.

[30] The RAD committed no reviewable error in upholding the RPD's persecution analysis.

[31] The RAD reasonably held that it was clear that the RPD was aware that it had to consider persecution in a forward-looking manner and provided extensive reasons for why the discrimination and harassment the Applicant faced did not amount to persecution.

[32] Moreover, the RAD did not unduly narrow the Applicant's profile to that of an average Alevi, nor did it err in responding to the Applicant's feeling of apprehension and insecurity. The RAD clearly considered the particular discrimination and harassment the Applicant had faced.

[33] In discussing the Applicant's feelings of apprehension and insecurity, the RAD was responding to a confusing, nonspecific argument that the Applicant had included in his written submissions about "psychological violence". The RAD was reasonable in refusing to find this line of argument relevant to the facts of this case.

[34] The Application is dismissed.

JUDGMENT in IMM-5418-21

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed.
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: ERKAN DEMIR v THE MINISTER OF CITIZENSHIP
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APPEARANCES:

ALP DEBRELI FOR THE APPLICANT

DANIEL ENGEL FOR THE RESPONDENT

SOLICITORS OF RECORD:

ALP DEBRELI FOR THE APPLICANT
BARRISTER AND SOLICITOR
TORONTO, ONTARIO

DANIEL ENGEL FOR THE RESPONDENT
ATTORNEY GENERAL OF
CANADA
DEPARTMENT OF JUSTICE
TORONTO, ONTARIO