

Federal Court



Cour fédérale

Date: 20221020

Docket: IMM-5027-21

Citation: 2022 FC 1433

Ottawa, Ontario, October 20, 2022

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

FERIT AGBAL

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Ferit Agbal [Applicant] seeks judicial review of the Refugee Appeal Division's [RAD] June 30, 2021 decision wherein the RAD agreed with the Refugee Protection Division [RPD] that the Applicant is neither a Convention refugee nor a person in need of protection [Decision]. The determinative issue for the RAD was credibility.

[2] The application for judicial review is allowed.

II. Background

[3] The Applicant is a 51-year-old citizen of Turkey. He claims persecution from Turkish authorities and thugs based on his Alevi identity, his political opinion as a leftist and member of the Republican People's Party [CHP], and his perceived membership in the Gülen movement. The Applicant alleges that in 2013, 2016, 2017, and 2018, he was detained by Turkish police for his political views and activities.

[4] In March 2018, the Applicant alleges to have borrowed \$100,000 USD from a loan shark in order to purchase a crane and start a business. In the fall of 2018, the Applicant missed a payment. The company that sold him the crane sent three men, who identified themselves the "Idealist Mafia", to beat the Applicant and take the papers verifying his ownership of the crane. The men returned in January 2019 and confiscated the crane. The Applicant reported the theft to the police, but the company that sold him the crane informed the police that the Applicant was a Gülen movement supporter. The Applicant was detained, tortured, and subsequently released on the condition that he report pending an investigation.

[5] The Applicant obtained a United States [US] visa in February 2019. He fled Turkey on March 31, 2019, leaving behind his wife and children. On April 2, 2019, the Applicant crossed into Canada and made a refugee claim.

[6] In May 2019, the Turkish police raided the Applicant's home. The police beat and threatened to arrest his wife. In response, the Applicant's wife fled with their two children to live with the Applicant's brother. In October 2019, the police visited the Applicant's brother's home and threatened the Applicant.

III. The Decision

[7] The RAD agreed with the RPD that the Applicant was not credible in regard to the crane incident and the corresponding accusation concerning his support for the Gülen movement, which was at the heart of his refugee claim. A supporting letter from the Applicant's wife, outlining a police raid where she was threatened, eventually arrested and which outlined the Applicant's previous arrests and his troubles with the "Idealist Mafia", was not sufficient to outweigh the RAD's credibility concerns.

[8] The RAD further agreed with the RPD that the Applicant was inconsistent and not credible in regard to when and how he obtained his passport as well as when the Applicant was accused of being a Gülen movement supporter.

[9] Having found the Applicant was not credible in relation to the central allegations, the RAD proceeded to find that the Applicant's claims to be a leftist and CHP member were also not credible. Specifically, the RAD did not believe that the alleged detentions in 2013, 2016, 2017, and 2018 occurred. Moreover, the RAD accepted the Applicant was an Alevi, but did not believe he had suffered mistreatment or discrimination on that basis. The RAD also agreed there was no

basis for a separate subsection 97(1) claim under the *Immigration and Refugee Protection Act*, SC 2001, c 27.

IV. Issue and Standard of Review

[10] The sole issue before the Court is whether the RAD reasonably assessed the Applicant's alleged fear of persecution as a CHP activist and leftist Alevi.

[11] The parties agree the standard of review is reasonableness. None of the exceptions outlined in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] arise in this matter (at paras 16-17). A reasonableness review requires the Court to examine the decision for intelligibility, transparency, and justification. In conducting a reasonableness review, the reviewing court must look to both the outcome of the decision and the justification of the result (*Vavilov* at para 87). A reasonable decision must be "justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99). However, a reviewing court must refrain from reweighing and reassessing the evidence considered by the decision-maker (*Vavilov* at para 125, citing *Canada (Canadian Human Rights Commission) v Canada (AG)*, 2018 SCC 31 at para 55). If the reasons of the decision-maker allow a reviewing Court to understand why the decision was made and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law, the decision will be reasonable (*Vavilov* at paras 85-86).

V. Analysis

[12] I find that the RAD mischaracterized the Applicant's claim by framing his fear of persecution as a perceived Gülen member as central, and his fear of persecution arising from his alleged actual political views and activities as peripheral (*Vilmond v Canada (Citizenship and Immigration)*, 2008 FC 926 at paras 17-20 [*Vilmond*]). While the crane incidents are what prompted him to finally leave Turkey, the Applicant maintained throughout his claim that he also feared persecution for his CHP-supporting leftist activities. The Applicant's BOC narrative refers to this in the opening paragraph.

[13] The Applicant submits that his claim was based on a fear of persecution from two sources: 1) the police and Turkish authorities, based on his political opinion as a CHP activist and politically active leftist Alevi; and 2) the police, a business, and its "thugs", who claimed to perceive the Applicant as a Gülen movement supporter.

[14] The Applicant's basis of claim [BOC] narrative detailed his arrests and detentions for his political activities on four occasions.

[15] The RAD relied on *Sheikh v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 238 at 8, [1990] FCJ No 604 (CA) [*Sheikh*] for the proposition that "a general finding of a lack of credibility on the part of the applicant may conceivably extend to all relevant evidence emanating from his testimony." In my view, *Sheikh* is not comparable nor applicable to the facts of the present case. An entirely different basis of claim, having nothing to do with the Gülen

movement, is at issue in this matter. That basis could not be dismissed merely because a different branch of the claim with largely different agents of persecution was found not credible.

[16] While the RAD noted that it considered the support letter from the CHP corroborating the Applicant's involvement, the RAD simply stated that the letter was two sentences long. The RAD did not consider the letter's contents or take it for what it said (*Mahmud v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 729 at para 11, 167 FTR 309).

[17] The Respondent is correct that the RAD's general finding of a lack of credibility on the Applicant's part "may conceivably extend to all relevant evidence emanating from his testimony" (*Sheikh* at para 8). The Respondent is also correct that the Applicant's CHP support letter, which the RAD accepted as authentic, does not establish his allegations of detention. Nevertheless, the RAD explicitly acknowledged that the letter identifies the Applicant as a CHP "sympathizer" who "actively participated in [their] party activities". This evidence squarely contradicts the RAD's finding "that he is not a CHP supporter or a leftist or perceived to be...." The RAD's reasons give no indication as to whether or how this letter, which was central to the Applicant's claim to fear persecution as a CHP supporter, was weighed.

[18] While it was open to the RAD to find that the Applicant's "willingness to make up a fraudulent claim on the basis that he is a perceived Gülen movement supporter undermines his credibility overall", the RAD was not entitled to disregard evidence squarely contradicting its findings of fact on a central element of the Applicant's claim without explanation (*Cepeda-*

Gutierrez v Canada (Minister of Citizenship and Immigration), [1999] 1 FC 53 at para 17, [1998] FCJ No 1425).

[19] In summary, the RAD appears to determine that one detention stemming from the Applicant's perceived Gülen connections was more central to his refugee claim than his four other arrests and detentions between 2013-2018 for his political views and activities. The RAD concluded the Applicant was not a CHP supporter despite documentary evidence explicitly stating that he was. The RAD did not explain why that documentary evidence was not credible or sufficient to establish that the Applicant had at the very least sympathized with, and participated in activities of, the CHP. Accordingly, in my view, the RAD's Decision is not reflective of an internally coherent and rational chain of analysis justified in relation to the facts and law (*Vavilov* at para 85).

VI. Conclusion

[20] The Decision is unreasonable and the application for judicial review is allowed. The RAD mischaracterized the grounds for the Applicant's refugee claim and dismissed evidence squarely contradicting its factual findings concerning a central element of the Applicant's claim without explanation.

[21] The parties did not propose a question for certification and I agree that none arises.

JUDGMENT in IMM-5027-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed. The matter is remitted to a different member of the RAD for re-determination.
2. There is no question for certification.
3. There is no order as to costs.

"Paul Favel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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DATE OF HEARING: MAY 16, 2022

JUDGMENT AND REASONS: FAVEL J.

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