

**Date: 20080418**

**Docket: IMM-3776-07**

**Citation: 2008 FC 478**

**Ottawa, Ontario, April 18, 2008**

**PRESENT: The Honourable Mr. Justice Beaudry**

**BETWEEN:**

**RAHIM YURTERI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of a decision of Refugee Protection Division of the Immigration and Refugee Board (the Board), pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act), in which the Board found that the applicant, Mr. Yurteri, is not a Convention refugee or a person in need of protection.

**ISSUES**

[2] The present application raises the following issue: are the Board's credibility findings reasonable?

[3] The applicant also raises the question of whether the Board erred in determining that the treatment faced by the applicant did not amount to persecution.

[4] For the following reasons, the application for judicial review shall be dismissed.

### **FACTUAL BACKGROUND**

[5] The applicant is a citizen of Turkey who claims refugee protection from Canada on the grounds that he fears persecution at the hands of Sunni Muslim fundamentalists and police and security forces because of his Kurdish ethnicity, Alevi religion and pro-Kurdish political opinions and activities. He claims to have faced discrimination and abuse for the majority of his life due to his ethnicity. He claims that as a student he was often teased, insulted and beaten by Sunni Turk students, and that he faced similar problems while performing mandatory service in the Turkish army.

[6] The applicant's claim is primarily premised on four incidents in which he was detained, interrogated and beaten by the Turkish police while attending pro-Kurdish events. First, on March 21, 2000, the applicant attended a Kurdish *Newroz* event organized by the People's Democratic Party (HADEP). He alleges that participants were randomly approached and taken into custody by local police. He was detained at the station for two days, interrogated and beaten. The police questioned him about his background and political sympathies. Following the incident, the applicant

claims that he was stopped more frequently on the street by police performing random security checks.

[7] The second incident he reported occurred on March 13, 2001, when he attended a commemoration of the “Gazi incident”, in which several Alevis were shot by gunmen suspected to be Sunni fanatics. The applicant was arrested and taken into police custody once again. He was interrogated and beaten. The police accused him of raising money for the Kurdistan Worker’s Party (PKK), considered by Turkish officials to be a terrorist organization. He was released the following day and was not charged.

[8] On May 1, 2004, the third incident occurred at an event held by the Democratic People’s Party (DEHAP), the successor party to HADEP. The applicant was arrested, detained for 24 hours, interrogated and beaten by the police, who believed the Kurds attending the event were supporting the PKK. Before being released, the applicant claims that the police warned him that he would be subjected to police scrutiny as long as he was in Turkey.

[9] In March 2005, the final incident occurred at the *Newroz* celebration, where the applicant was arrested, detained overnight, interrogated and beaten by the police.

[10] A Turkish passport was issued to the applicant on May 24, 2005, and a Canadian Temporary Resident Visa was issued to him on July 11, 2005. He left Turkey for Canada on August 13, 2005 and gave notice of his intention to make a refugee claim in Canada on August 24, 2005.

## **DECISION UNDER REVIEW**

[11] In the decision dated August 23, 2007, the Board rejects the applicant's claim and finds that his fear of persecution by reason of his Kurdish ethnicity, Alevi religion and pro-Kurdish political views lacks credibility and is not subjectively or objectively well founded. The Board concludes that there was insufficient credible evidence to establish a well founded fear, and that it is more likely than not that the applicant's removal to Turkey would not subject him to a risk to his life, a risk of cruel and unusual treatment or punishment, or to danger of torture. The following reasons are given in support of this conclusion:

- a) The Board draws a negative inference from the applicant's failure to mention the mistreatment he endured during his mandatory military service to the immigration officer who conducted the port of entry interview of September 29, 2005. The Board finds that this allegation, contained in his Personal Information Form (PIF), is central to his claim.
- b) The Board draws a negative inference as to the applicant's credibility from his failure to obtain medical reports from the doctors who he claims examined him on two occasions following torture by the police, and from his failure to seek medical attention on the other two occasions he claims to have been tortured. The documentary evidence did not substantiate the applicant's claim regarding his inability to seek medical attention and to obtain medical records of the torture. The Board rejects the applicant's explanation for his failure to seek medical attention following the last two incidents of torture. The Board notes that the applicant and his

counsel had been put on notice to file evidence respecting central evidence of the claim because there was credibility in issue.

- c) The Board draws a negative inference from the applicant's failure to mention in his PIF narrative that he had paid a bribe through his cousin in order to obtain a Turkish passport in May 2005. The Board finds the applicant's explanation of this omission to be unreasonable. The Board finds it implausible that the applicant could have obtained a genuine passport by paying a bribe given his alleged arrests, detentions and claims that the police were monitoring his activities. The documentary evidence reveals that thorough security checks are performed prior to issuing a passport and leaving the country. The Board determines it is implausible that the applicant would have had no difficulties leaving Turkey with a fraudulently procured passport.
- d) The Board draws a negative inference from the delay in leaving Turkey, despite the alleged mistreatment, and despite the fact that he had both a Turkish passport and a Canadian Temporary Resident Visa for over a month before he left. The Board also draws a negative inference from the eleven-day delay in claiming refugee protection. The Board finds these delays to be inconsistent with a subjective fear of persecution.
- e) The Board finds that the lengthy delay in obtaining a letter dated March 5, 2007 from the Democratic Socialist Party (DTP), a pro-Kurdish party, corroborating the applicant's pro-Kurdish political support, undermines the authenticity of the letter. The Board determines that the claimant should have been able to obtain such a letter earlier than March 5, 2007, since the applicant was put on notice to provide evidence of his political activities in Turkey almost one and a half years prior.

- f) The Board examines the documentary evidence regarding the country conditions in Turkey and finds that it does not corroborate the applicant's claim that he was subject to arrests, detentions and torture at the hands of Turkish police because of his Kurdish ethnicity. The Board finds that the documentary evidence does not indicate that Turkish citizens of Kurdish ethnicity are victims of systematic mistreatment amounting to persecution. The Board also finds that the documentary evidence does not corroborate the applicant's claim of persecution on the grounds of religion; while the Turkish government's religious policies are somewhat discriminatory, the Board determines that Alevis are not prohibited from or denied the rights to freely and openly practice their religious beliefs. The Board finds that conditions have improved in recent years. The Board states that the documentary evidence is preferred to the applicant's evidence.
- g) The Board concludes, based on the documentary evidence, that while the applicant may have been detained by the police in Turkey on the occasions alleged, they were a part of a police initiative to preserve public order and protect the public. They were not for the purposes of targeting the claimant because of his Kurdish ethnicity, Alevi religion or because of his pro-Kurdish political views and activities. The Board considers the applicant's personal circumstances and determines that the events alleged do not amount to persecution.
- h) Finally, the Board considers the possibility of the applicant being subjected to persecution as a failed asylum seeker if he were to return to Turkey. The Board considers the documentary evidence and determines that there is no such risk.

## **ANALYSIS**

### *Standard of Review*

[12] The standard of review applicable to a decision of the Board on questions of fact is reasonableness. The jurisprudence of this Court has consistently found that findings of fact, and more particularly credibility, made in the context of a refugee claim, are subject to the highest level of deference (*Aguebor v. (Canada) Minister of Employment and Immigration*, [1993] F.C.J. No. 732 (F.C.A)). Following the Supreme Court of Canada's decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9, determinations regarding the credibility of a refugee claimant made by the Board, should continue to be subject to deference by the Court, and are reviewable on the standard of reasonableness (*Dunsmuir*, above at paragraphs 55, 57, 62, and 64).

[13] For a decision to be reasonable, there must be justification, transparency and intelligibility within the decision making process. The decision must fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir*, above at paragraph 47).

### *Omission of Military Service in Port of Entry Interview*

[14] The applicant submits that the issue of the difficulties encountered by the applicant during his military service was peripheral to his claim, and that the Board therefore erred by drawing a negative inference from this omission. The applicant argues that adding details in the PIF which were not mentioned at the port of entry interview does not indicate a lack of credibility.

[15] The conclusion of the Board on this point does not, in my opinion, constitute an unreasonable error. Whether the abuse the applicant experienced while he was performing mandatory military service in Turkey is a matter which is central to the refugee claim, is a question of fact. In light of the fact that the applicant's reason for leaving Turkey is based on the continuous and cumulative nature of the hardship he suffered, it was open to the Board to draw a negative inference based on this omission.

#### *Medical Treatment*

[16] The applicant submits that the Board made a reviewable error by concluding that the claimant's explanation for his failure to seek medical attention in May 2004 and March 2005 was unreasonable, when the Board did not set out the explanation. The applicant submits that his explanation was that no medical treatment was required on these two occasions, and that this explanation was reasonable.

[17] While it is preferable for the Board to explicitly state the explanation being rejected, the Board's conclusion is not unreasonable. The negative credibility finding made by the Board did not rest solely upon the applicant's failure to provide a reasonable explanation for not seeking medical treatment. Rather, the credibility findings were based on the objective documentary evidence regarding the medical treatment of police detainees, the applicant's failure to provide documentation for the occasions upon which he did seek medical attention, and the failure to seek medical attention on two other occasions.



[18] The Board was entitled to draw a negative inference from the whole of the applicant's evidence on this point. The Board's inference is clearly based on the evidence before it.

*Bribery to Obtain Passport*

[19] The applicant submits that the Board erred by drawing a negative inference from the omission from his PIF of the fact that the applicant's passport was obtained through bribery. The applicant further submits that the Board seized on a minor or peripheral omission, and displayed excessive zeal in order to undermine the applicant's credibility. The applicant argues that there was nothing in the evidence to support an inference that a person in his circumstances would have been prevented from exiting Turkey, and that the Board engaged in mere speculation.

[20] As determined above, it is not the role of this Court to reweigh the importance of the evidence. Whether the omission of the fact that the passport was obtained using bribery is central to the claim is a determination of fact, and is best assessed by the Board. In its reasons, the Board conducted a thorough analysis of the documentary evidence regarding the requirements for obtaining a genuine passport in Turkey, as well as the security measures in place at the border. It is my opinion that the negative inference drawn by the Board with regard to the applicant's credibility was justified and intelligible.

[21] Further, I accept the respondent's submission that even if the omissions were peripheral, the Board's overall finding of credibility would not change.

*Delays in Leaving Turkey and Making Refugee Claim*

[22] The applicant submits that he was not given the opportunity to make submissions responding to the Board's conclusion that a one-month delay in leaving Turkey was inconsistent with a subjective fear of persecution. The applicant argues that the rules of natural justice and procedural fairness require that a claimant should be confronted with an issue before the Board makes an adverse finding of credibility.

[23] The applicant further submits that the Board ignored his evidence regarding the availability of flights; in his PIF, the applicant stated that it took a few weeks to reserve a plane ticket.

[24] The applicant also contends that the Board erred by determining that the 11 day delay in claiming refugee status after arriving in Canada was inconsistent with a subjective fear of persecution. The applicant cites *Chuop v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 37, at paragraph 6, in which the Court found that the Board erred by making adverse findings based upon a short delay.

[25] In addition, the applicant alleges that his explanation, that he followed the advice of the smuggler not to make a refugee claim at the port of entry because he would be sent back, was reasonable, and that it was unreasonable for the Board to reject his explanation.

[26] I accept the respondent's submission that the negative determination made from the delay must be viewed in context; the decision was based on the delay to leave Turkey earlier than August 2005 given the applicant's history of detentions and torture dating back to 2000, the delay to leave Turkey earlier than August 13, 2005 given that a visa was issued on July 11, 2005, and finally the delay in claiming refugee status. It was open to the Board to draw a negative inference regarding the existence of subjective fear in light of these multiple delays.

[27] With regard to alleged violation of natural justice arising from the applicant's inability to respond to the findings of the Board, I cannot conclude that there was any such violation. While the principle remains true that the Board should afford a claimant an opportunity to clarify any apparent contradictions or inconsistencies in his or her testimony upon which the Board intends to rely, the Board has no obligation to confront a claimant with its conclusions regarding the sufficiency of the evidence. In *Sarker v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 987, Justice MacKay found the following at paragraphs 13 through 15:

[13] It is true that where the panel is concerned or has doubt as to credibility arising from contradictions or inconsistencies in the applicant's evidence, written and oral, it is obliged, in fairness, to indicate those doubts or concerns, and to give an applicant a chance to explain them, before relying on inconsistencies as a basis for disbelieving the evidence provided (see: *Ta Wei Li v. M.E.I.*, (1996), 109 F.T.R. 178, and *Gracielome v. Canada (MEI)* (1989), 9 Imm. L.R. (2d) 237 (F.C.A.)).

[14] Here the panel was not concerned with inconsistencies in the applicant's evidence. Rather it found key aspects of the applicant's story to be implausible given the panel's general understanding from documentary evidence of country conditions in Bangladesh, and its own experience. The finding that evidence is implausible is a conclusion based on assessment of its likely veracity in all of the circumstances. That conclusion may only be reached after the

hearing is over, all the evidence has been submitted and the panel has opportunity to consider it.

[15] In my opinion there is no obligation on the panel to signal its conclusions on implausibility or on the general credibility of evidence, in advance of a decision. Rather, the onus remains on the applicant to establish by credible evidence his claim to be considered a Convention refugee. The panel did not err, or fail to ensure procedural fairness in concluding there were implausibilities in the applicant's evidence without first bringing those to the attention of the applicant and providing opportunity for him to respond.  
[Emphasis added]

[28] *Saker* has been cited with approval in *Awoh v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 1198, 2006 FC 945, at paragraph 21 and *Singh v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 1961, 2005 FC 1588, at paragraph 13.

[29] For these reasons, the Board did not err or violate the rules of natural justice in its assessment of the delays in the applicant's claim.

#### *Delay in Obtaining Corroborating Letter*

[30] The applicant argues that the Board relied on an irrelevant consideration by casting doubt on the genuineness of the letter from the DTP on the ground that there was a delay in obtaining the letter. The applicant submits that the fact that false documents are easily obtained in a particular country cannot constitute a valid reason for rejecting the document submitted.

[31] The Board did not reject the letter simply because it determined from the documentary evidence that false documents of this nature were easily procured in Turkey. Rather, the negative

determination of the credibility of the letter was also based on the incredible explanation offered by the applicant. The applicant testified that the DTP had not been politically active in the year prior to the production of the letter; however, the documentary evidence showed that the DTP's predecessor, the Democratic Society Movement (DHT) had been in existence since October 2004. This was included in the Board's reasons, which I find to be justified, and intelligible.

*Treatment did not Amount to Persecution*

[32] Finally, the applicant argues that the Board erred in law by determining that the treatment faced by Kurds did not amount to persecution. He submits that the Board accepted that "Kurds who publicly or politically asserted their Kurdish identity or publicly espoused using Kurdish in the public domain risked censure, harassment, or prosecution." The applicant advances that persecution can be defined as the violation of a fundamental human right, and that the public assertion of one's ethnic identity is such a right. Therefore, the mistreatment of the applicant amounts to persecution.

[33] The respondent alleges that the applicant confuses persecution with discrimination, and that the determination is a question of fact. It is my opinion that the determination of whether behaviour constitutes persecution is a mixed question of fact and law. As such, the determination of the Board on this question must be subject to the deference of the Court, and is reviewable on the standard of reasonableness (see *Dunsmuir*, above).

[34] Persecution has been defined by the Courts as an affliction of repeated acts of cruelty or a particular course or period of systematic infliction of punishment. Mere harassment or

discrimination is insufficient (*Rajudeen v. Canada (Minister of Employment and Immigration)* (1984), 55 N.R. 129 (F.C.A.), *Olearczyk v. Canada (Minister of Employment and Immigration)* (1989), 8 Imm. L.R. (2d) 18 (F.C.A.), *Murugiah v. Canada (Minister of Employment and Immigration)* (1993), 63 F.T.R. 230 and *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689.

[35] The Board determined that the security checks and detentions of the applicant were part of a police initiative to preserve public order and protect the public at large, and not for the purposes of targeting the applicant because of his ethnicity. In light of this conclusion, I believe it was open to the Board to conclude that the incidents did not amount to persecution. The Board's analysis of the country conditions in Turkey and the existence of objective risk were thorough. The Board's determination was reasonable. The applicant asks this Court, once again to substitute its own appreciation of the facts for that of the Board. The Court's intervention is not warranted here.

[36] The parties did not submit questions for certification and none arise.

**JUDGMENT**

**THIS COURT ORDERS that** the application for judicial review is dismissed. No question is certified.

“Michel Beaudry”

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Judge

**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** IMM-3776-07

**STYLE OF CAUSE:** **RAHIM YURTERI  
and THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** April 14, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT:** Beaudry J.

**DATED:** April 18, 2008

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