

Date: 20080714

Docket: IMM-145-08

Citation: 2008 FC 869

Ottawa, Ontario, July 14, 2008

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**YUSUF BAYSAL
OZLEM BAYSAL**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Yusuf Baysal is a Turkish national of Kurdish ethnicity. He taught music in Polatli, Turkey without a business licence. He taught Kurdish music to Kurdish children. He conducted a public concert of his students and was immediately detained by the police. He was detained by the police on another occasion. The police beat, tortured, and threatened him with death. The police searched his business premises many times. The police searched him when he was in the street. Mr. Baysal fled with his wife to Canada. After he left Turkey the police continued to be interested in him, asking his family and neighbours where he was and whether he would be returning. The

Immigration and Refugee Board found that this police “harassment” more likely occurred because Mr. Baysal operated an unlicensed business, than because he was a Kurd. Was that decision reasonable?

[2] For the brief reasons that follow, I am of the view that the decision was not reasonable based on the totality of the evidence before the Board, significant parts of which the Board failed to reference in its written reasons. That failure, in the circumstances, is an error of law.

BACKGROUND

[3] Mr. Baysal’s refugee claim is based on allegations that he had been persecuted while in the Turkish military and subsequently when he owned a music store where he taught Kurdish music. He described having suffered mistreatment at the hands of the military when he was a part of it. His evidence was that he was eventually detained in a military jail after a complaint that he and a friend had been making “separatist propaganda”. The two were held for 28 days, the first three days of which they were kept in a building with no heating. Mr. Baysal subsequently deserted the army although he turned himself in two years later and spent another 120 days in detention as a result of his desertion. He stated that his experience in the military made him sympathetic to the Kurdish issue and after he was released from jail and had resigned from military he began visiting the DEHAP office in Polatli, although he did not become a member of that political party. He also opened a music store, although he was unable to get a business permit due to his military history.

[4] On March 21, 2005, he was detained during the Kurdish New Year celebrations in Polatli. He was leading his students in a public music concert at the time. He testified that during his detention two plainclothes police officers slapped him, hit him with their fists and cursed at him. He asked them what his crime was and why he was being detained and they told him "you know very well why you are here and what's your crime". He was then beaten for about 10 minutes during which time he was kicked, his hair was pulled and his lip was smashed. During this interrogation he was warned to close his business otherwise it would not be good for him. He recalled one of the officers asking him "why only Kurdish, why don't you teach Turkish". He told them that he did not think it was a crime to teach Kurdish music to which one replied "you know what happens to those who don't love this country". Mr. Baysal testified that he told the officers that he did love his country; he just wanted to practice his language and his culture. He told the Board that it was then that one of them "hold my head with my hair and hit the table and I was threatened that only Turks can live here, nobody else". He was also threatened that if he did not close his business they would come and arrest him again. He was released the following morning.

[5] After his release, Mr. Baysal continued to operate his music store, although police officers came to his business a number of times and searched the store and he was stopped by the police in the street many times. In May 2006, Mr. Baysal was once again taken into police custody where he states that he was beaten badly. He was kicked, punched and beaten with truncheons. He was stripped naked, made to lie down on the floor, and beaten on the soles of his feet - a procedure known as "falaka". His evidence was that the police also threatened to close down his business and there were threats made to him concerning what would happen to his wife if he did not close it. He

testified that during this interrogation the police officers accused him of teaching Kurdish music and making Kurdish and separatist propaganda. Following this detention, his wife began receiving threatening phone calls and was questioned by police at her workplace. Mr. Baysal and his wife left Turkey on July 18, 2006, for Canada.

ANALYSIS

[6] The Board found that there was nothing that happened to Mr. Baysal while serving the military that could reasonably support his refugee claim. I agree.

[7] There was documentary evidence before the Board that torture and ill-treatment by law enforcement officials is a common practice in Turkey and that "police also regularly used disproportionate force against demonstrators, particularly targeting leftists, supporters of the pro-Kurdish party DEHAP, students and trade unionists....". As noted above, the Applicant was a supporter of the DEHAP, although not a member. The Applicant taught Kurdish music to Kurdish children. He had them perform in public. Accordingly, the Applicant's detention and mistreatment by the police was exactly the sort of conduct the evidence indicated was likely to occur to a Kurdish supporter. There was no evidence that such detention and disproportionate force is used by law enforcement officials on owners of unlicensed businesses.

[8] Mr. Baysal and his students performed publicly during the Newroz celebration, an important Kurdish day of celebration. The police observed the performance and when the crowd became disruptive, the police started into the crowd. Mr. Baysal was detained and taken to the security

directorate. During his detention he was slapped, cursed at, and punched. Is it reasonable to conclude that he was detained at a Kurdish celebration conducting children singing Kurdish songs because he did not have a business license? I think not.

[9] The Board held that “it is not credible that he would be identified as a ‘dangerous person’ because of the music lessons he gave”. The Board notes that his business cards and advertising did not identify his business as one teaching Kurdish music. Yet, the uncontradicted evidence before the Board was that the Applicant did teach Kurdish music and that the police knew it. Whether he advertised this is irrelevant. If teachers of Kurdish music are persecuted in Turkey, they would be foolhardy to advertise that fact.

[10] During his interrogation the police asked Mr. Baysal why he only taught Kurdish music and not Turkish music. If the issue for the police was that he was running an unlicensed music business, why would they even suggest that he should be teaching Turkish music? This exchange, when he was under detention, is not mentioned by the Board in its reasons. Because it is so telling, the Board ought to have addressed it directly and indicated why they concluded that it was not relevant or why it was being discounted. While the Board does not need to review all the evidence in its decision, it does need to review evidence that directly contradicts its conclusions and indicate why it has discounted that evidence.

[11] The Board also failed to address other evidence that supported the testimony of Mr. Baysal and countered the Board’s conclusion. One of the police officers told Mr. Baysal “you know that

those who don't love this country, what happens to them". It is hard to believe that operating a business without a license would be seen as a mark of a lack of love for Turkey. Based on the evidence of the insistence of the Turkish government that there be a single designation for its citizens and its failure to recognize ethnic groups, this statement strongly supports the Applicant's assertion that he was targeted because of his ethnicity.

[12] The Board also fails to address evidence that even after Mr. Baysal had closed his business and left Turkey the police continued to make inquiries of his family and neighbours as to his location and whether he would be returning to Turkey. Again, this evidence supports the Applicant and runs counter to the Board's conclusions.

[13] The Board appears to have examined the conduct of the local Turkish police through North American eyes. A Canadian would not likely view teaching music of a minority as an activity that would attract police attention, while operating a business without a licence would. There is no evidence that the same holds true in Turkey. In fact, there was no evidence before the Board that operating an unlicensed business attracts any police attention in Turkey. There was significant evidence that being a Kurdish supporter does attract police attention.

[14] For these reasons, I find that the decision of the Board is not reasonable and must be set aside.

[15] Since this application was filed, Ozlem Baysal has returned to Turkey and counsel asks that the style of cause be amended to remove her as a party. The Minister consents and an order will issue amending the style of cause.

[16] Neither party proposed any question to be certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The style of cause is hereby amended as follows:

YUSUF BAYSAL

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

2. The decision of the Immigration and Refugee Board dated December 11, 2007, is set aside and the Refugee claim of Yusuf Baysal is referred to a different Member for determination.
3. No question is certified.

“Russel W. Zinn”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-145-08

STYLE OF CAUSE: YUSUF BAYSAL v.
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: July 8, 2008

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

DATED: July 14, 2008

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