

Federal Court



Cour fédérale

Date: 20100401

Docket: IMM-2198-09

Citation: 2010 FC 359

Ottawa, Ontario, April 1, 2010

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

AKYOL, SENER

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr. Sener Akyol came to Canada from Turkey in 2004. He sought refugee protection on the basis that he was at risk of persecution on political and religious grounds at home. He also maintains that he is a conscientious objector and would be imprisoned on his return for having failed to perform his mandatory military service.

[2] A panel of the Immigration and Refugee Board dismissed Mr. Akyol's claim. The Board did not believe his account of events and concluded that his conduct was inconsistent with the behaviour of a person who fears persecution.

[3] Mr. Akyol argues that the Board erred in its treatment of the evidence before it and he asks me to order another panel of the Board to reconsider his claim. I agree that the Board erred and will, therefore, allow this application for judicial review.

II. Issue

[4] There is only one issue here: Was the Board's decision unreasonable?

III. Analysis

(1) Mr. Akyol's evidence

[5] Mr. Akyol claimed that he was a member of a political party called the Freedom and Solidarity Party (ODP). He supported the ODP while in university. He says he was arrested in 2002 for putting up ODP posters. The police questioned and tortured him. Two years later, he was arrested again for participating in a demonstration. Again, he was questioned and tortured. After his release, he decided to flee to Canada.

[6] Mr. Akyol came to Canada in 2004 on a student visa. He did not apply for refugee status until 2006. His claim was based on his fear of political persecution due to his support of the ODP.

He also alleged that he would be imprisoned under extremely harsh conditions on his return for having failed to perform military service, as required under Turkish law.

(2) The Board's decision

[7] The Board made several main findings:

[8] At the hearing of his claim, Mr. Akyol said that he and two friends had been arrested in 2002. In his written narrative, however, he had said that it was he and three friends. Based on the discrepancy, the Board concluded that Mr. Akyol was not credible.

[9] Mr. Akyol was unable to supply any written evidence of his ODP affiliation. He explained that he was never a member, so he could not produce a membership card. He tried to get a letter from the ODP but, out of fear, no one wanted to get involved. The Board found his explanation unreasonable because the ODP was an official party and probably kept records of supporters who had been mistreated.

[10] Mr. Akyol returned to Turkey in 2005 to visit his mother, who was ill. The Board concluded that his behaviour was inconsistent with a subjective fear of persecution. The Board felt that other evidence reinforced its conclusion on this point – Mr. Akyol's delay in applying for refugee status in Canada, and his decision to take a vacation in Brazil before making his application.

[11] While in Turkey, Mr. Akyol reinstated his exemption from military service. The Board concluded that if Mr. Akyol was really at risk of political persecution, authorities would have apprehended him at that point.

[12] Turkish law allows a person to pay a fee in lieu of military service. Mr. Akyol explained that he did not take advantage of this provision because he did not want his parents to pay the fee and did not want to support the military financially. The Board found his explanation unreasonable.

[13] As I read the Board's decision, its findings are interconnected. For example, because the Board did not believe Mr. Akyol's evidence about his political activities, it did not believe he was a conscientious objector either. In turn, because he was not a genuine conscientious objector, the Board found that his actions were inconsistent with those of a person who fears returning to his country of origin.

A. *Was the Board's decision unreasonable?*

[14] I can overturn the Board's decision only if it was unreasonable.

[15] The Board disbelieved Mr. Akyol's claim of political persecution because he testified that two friends had been arrested with him, which contradicted his written narrative where he mentioned three friends. The Board is entitled to rely on discrepancies in evidence when making an assessment of a person's credibility, but this minor contradiction was not a reasonable basis for the Board's overall conclusion that Mr. Akyol was not a credible witness.

[16] The Board also relied on the absence of documentary evidence from the ODP to conclude that Mr. Akyol was not at risk of political persecution. Mr. Akyol gave an explanation – that he could not find someone willing to prepare a letter for him - but the Board did not respond to it. Instead, the Board concluded that the ODP probably had records of any mistreatment suffered by its supporters. But Mr. Akyol did not say the ODP had no records.

[17] Regarding the Board's finding that Mr. Akyol had no subjective fear of persecution, the Board found that Mr. Akyol's mother would not have wanted him to come back to Turkey. Mr. Akyol said that he wanted to make a personal visit to reassure her. He did not say that it was his mother's idea. With respect to delay in claiming refugee protection in Canada, Mr. Akyol explained that he arrived on a student visa so he had status in Canada. There was no rush to make a refugee claim. Regarding his holiday in Brazil, I see no contradiction between a student taking a vacation in South America and a subjective fear of returning to Turkey.

[18] Finally, regarding Mr. Akyol's military service, there was no evidence to support the Board's finding that a request for an exemption would expose Mr. Akyol to political adversaries. His request was made to the university he was attending, not to the military or any government authority. Mr. Akyol also explained his reasons for not paying a fee to be exempted from service. The Board noted that Mr. Akyol did not mind his parents paying for other things, including his holiday. This observation was not responsive to the main explanation Mr. Akyol had given – that he did not want to support the military financially.

[19] In my view, in light of the evidence before it, the Board's conclusions were unreasonable in the sense that they fall outside the range of possible acceptable outcomes based on the facts and the law.

IV. Conclusion and Disposition

[20] I find that the Board's treatment of the evidence resulted in unreasonable conclusions about Mr. Akyol's risk of political persecution and his claim to be a conscientious objector. I must, therefore, allow this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT IS that

1. The application for judicial review is allowed. The matter is referred back to the Board for a new hearing before a different panel.
2. No questions of general importance are stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2198-09

STYLE OF CAUSE: AKYOL v. MCI

PLACE OF HEARING: Toronto, ON

DATE OF HEARING: November 5, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: April 1, 2010

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