

Federal Court



Cour fédérale

**Date: 20121116**

**Docket: IMM-1666-12**

**Citation: 2012 FC 1329**

**Ottawa, Ontario, November 16, 2012**

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

**BETWEEN:**

**ILYAS AYDIN  
ZEYNEP AYDIN**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The Applicants seek judicial review of the January 24, 2012, decision of the Refugee Protection Division of the Immigration and Refugee Board (“the Board”) in which the Board determined that the Applicants were neither Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

[2] For the reasons that follow, the application for judicial review is dismissed.

I. Facts

[3] The Applicants are a husband and wife who are citizens of Turkey. They came to Canada on September 29, 2009, and submitted their application for refugee protection on October 19, 2009, on the basis of their fear of persecution for their political views in Turkey.

[4] Mr. Aydin purports to have been a member of the leftist opposition party in Turkey, the Republican People's Party (CHP), since December 1, 1993. Mrs. Aydin, while not a member, also supports the party. Their refugee claims stem primarily from Mr. Aydin's experiences.

[5] Mr. Aydin recounts that he was arrested and beaten on several occasions because of his political affiliations. He was not charged on any of these occasions, and, each time, was released one to one-and-a-half days after he was detained. Mrs. Aydin was arrested once for objecting to the arrest of her husband.

[6] The Applicants state that they fear the police, the far-right political party Nationalist Movement Party (MHP), and the "idealist" mafia, to whom they refused to give money.

II. Decision under Review

[7] The Board refused the Applicants' claims on the basis of the credibility of the evidence submitted. It made several negative credibility inferences with respect to: (i) the Applicants' political affiliations; (ii) the Applicants' allegations that they were subject to torture; and (iii) threats issued against the Applicants' business in Turkey.

(i) *Political Affiliations*

[8] The Board gave little weight to, and drew a negative credibility inference from, Mr. Aydin's application for CHP membership. The Board was concerned about why a renewal of the membership was written on the original application form, and was not satisfied by the answers given by Mr. Aydin in this regard. Additionally, the Board noted that the Applicants had not provided the original of the document, and offered "no credible reason" as to why it was not before the Board, particularly given the November 9, 2009, date of the membership's renewal that was handwritten on the document.

[9] The Board also found it reasonable to expect that there might have been more information provided by the CHP party with respect to Mr. Aydin's membership and the incidents the Applicants suffered as a result thereof at the hands of MHP party members and the police. In the absence of such additional information from the party, the Board declared that it "simply [did] not believe [the Applicants'] evidence as submitted" and made a negative credibility finding.

(ii) *Allegations of Torture*

[10] The Board made further negative credibility findings with respect to the Applicants' claims that they were beaten and tortured. First, the Board did not find "sufficient credible evidence" to explain why the Applicants would have treated themselves after their release from custody, rather than going to a physician for treatment, or even for an examination that could corroborate the damage they suffered as a result of the beatings.

[11] Second, the Board did not believe the evidence that the CHP party did not assist the Applicants when Mr. Aydin was arrested and tortured in 2009. Instead, because the Applicants claimed that the party had put pressure on the powers that be to release Mr. Aydin in 2007, the Board found that there was "no credible reason why this was not the case or help would not have been forthcoming" in 2009.

[12] Third, the Board noted that the psychiatric report submitted by the Applicants that diagnosed Mr. Aydin with Post-Traumatic Stress Disorder did not off-set the various credibility concerns already established. While the Board took the report under advisement, it commented that Mr. Aydin could reasonably have been expected to contemplate seeking assistance from a psychiatrist much sooner than he did – three to four months prior to the hearing. This is particularly so given Mr. Aydin's history of depression, for which he was prescribed medication in Turkey.

(iii) *Threats Against Business*

[13] Finally, the Board made a number of negative credibility findings related to the Applicants' testimony about threats that were made against Mr. Aydin's construction business in Turkey. First, while the Board admitted photographs of threats spray painted on the business into evidence at the hearing, it afforded them little weight. The Board noted that Mr. Aydin could not recall when the photographs had been taken, and testified that he had received them a year or longer prior to the hearing. The Board did not find it "remotely credible" that Mr. Aydin would forget to give such important documents to his lawyer.

[14] Second, the Board was not satisfied that the Applicants' son, who had taken to running the business back in Turkey after his parents left, actually received threatening emails as Mr. Aydin testified. Indeed, Mr. Aydin could not remember when they were sent, what was contained in the emails, or who sent them. The Board determined it was reasonable to expect that such emails would be made available to it for its consideration. While it never asked the Applicants to produce the emails when they came up at the hearing, the Board made a negative credibility finding.

[15] Finally, the Board stated that it made "little sense to [it] why the claimants' son did not go to the police for their assistance [in response to either of the threats described above] even though he believed things may get worse." The Board further determined that, if the Applicants had indeed been threatened, it was "more likely" that the business would be burned or damaged in some manner, as threatened, rather than standing and unharmed.

### III. Issues

[16] The issues raised by the Applicants can be articulated as follows:

- (a) Whether the Board breached principles of procedural fairness; and
- (b) Whether the Board's credibility findings were reasonable.

### IV. Standard of Review

[17] Questions of procedural fairness are reviewable on the standard of correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 43).

[18] Credibility findings are within the Board's specialized expertise, and are thus owed significant deference. The Board's decisions on such matters are reviewable on the reasonableness standard (*A.M. v Canada (Minister of Citizenship and Immigration)*, 2011 FC 964, [2011] FCJ No 1187 at para 20; *Aguirre v Canada (Minister of Citizenship and Immigration)*, 2008 FC 571, [2008] FCJ No 732 at para 14). Reasonableness is concerned "mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

V. Analysis

A. *Procedural Fairness*

[19] The Applicants contend that the Board breached principles of procedural fairness by failing to notify them of its concerns with respect to: (i) the absence of the original of Mr. Aydin's membership application; and (ii) the absence of supporting documentation from the CHP party in the Applicants' application package. They posit that they should have had the opportunity to address these issues that were central to the Board's negative credibility findings, and that pertained to the credibility, accuracy or genuine nature of the information they submitted.

[20] The negative credibility finding made by the Board with respect to Mr. Aydin's membership application was two-fold: (i) the Board did not understand why the President of the party would handwrite a statement of Mr. Aydin's current membership on his original application; and, as the Applicants assert, (ii) the absence of the original document in the record. While I am concerned about the Board's failure to ask why the original document had not been submitted, I do not find that the original document is likely to have assuaged the Board's concern about the handwritten addition, a concern that the Applicants were afforded an opportunity to address. As such, I do not find that the Board breached a requirement of procedural fairness.

[21] As the Respondent points out, in drawing an adverse inference from the absence of information from the CHP party, the Board was considering a lack of corroborative evidence. Whether it is reasonable to demand corroborative evidence is dependent on the specific facts of each

case (*Lopera v Canada (Minister of Citizenship and Immigration)*, 2011 FC 653, [2011] FCJ No 828 at para 31). On the facts of this case, it was reasonable for the Board to expect such evidence from CHP, given the importance of establishing the Applicants' affiliations with the party and the purported longstanding relationship between Mr. Aydin and the party. The Board is not required to put all of its concerns regarding credibility before the Applicants, and the Applicants were alert to the fact that credibility was at issue in this case (*Morales v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1239, [2011] FCJ No 1522 at para 24). I thus find that the Board did not breach a requirement of procedural fairness in failing to alert the Applicants to the adverse inference it would draw from the absence of information from CHP.

#### B. *Credibility Findings*

[22] The Board is best placed to assess the credibility of applicants and of evidence, and its determinations in such matters are owed significant deference (*Jerome v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1419, [2011] FCJ No 1753 at para 6; *Aguebor v Canada (Minister of Employment and Immigration)* (FCA), [1993] FCJ No 732 at para 4).

[23] In assessing the reasonableness of the Board's conclusions, the decision must be considered as a whole. After reviewing the record and the parties' submissions, I am satisfied that the credibility concerns cited by the Board led it to a conclusion that was within the range of possible, acceptable outcomes.



[24] First, it was reasonable for the Board to make a negative credibility finding on the basis of the absence of the original of Mr. Aydin's membership application. This is particularly so given that the handwritten additions to the initial application were made shortly after the Applicants' arrival in Canada.

[25] Second, it was open to the Board to give little weight to the psychiatrist's letter due to Mr. Aydin's delay in seeking the doctor's assistance. Indeed, it is not for this Court to engage in a re-weighing of the evidence. It was reasonable for the Board to determine that the letter did not offset its other credibility concerns.

[26] Third, it was open to the Board to make a negative credibility finding with respect to the Applicants' failure to provide the photographs showing threats made on his construction business in Turkey. Its conclusion that it was "not remotely credible" that the Applicant would forget to give his lawyer a photograph that would buttress his case until right before the hearing falls definitively within the range of acceptable outcomes.

[27] Finally, it was reasonable for the Board to expect the Applicants to submit the threatening emails purportedly received by their son. Such documents would likely have corroborated their testimony and it was reasonable for the Board, on the facts of this case, to expect corroborative evidence on this point (see *Lopera*, above).

[28] I also find that its reasons are sufficiently justified, transparent, and intelligible given the record before it. Given the centrality of these credibility concerns to the Applicants' claim, and the

deference owed to the Board on credibility matters, I am not satisfied that there are grounds to allow the judicial review.

VI. Conclusion

[29] The Board's decision, considered as a whole, is defensible in respect of the facts and law.

As such, it is reasonable.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application for judicial review is dismissed.

“ D. G. Near ”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1666-12

**STYLE OF CAUSE:** ILYAS AYDIN ET AL v MCI

  

**PLACE OF HEARING:** TORONTO

**DATE OF HEARING:** NOVEMBER 5, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT BY:** NEAR J.

**DATED:** NOVEMBER 16, 2012

**APPEARANCES:**

Clarisa Waldman FOR THE APPLICANTS

Catherine Vasilaros FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Waldman & Associates FOR THE APPLICANTS  
Toronto, Ontario

Myles J. Kirvan FOR THE RESPONDENT  
Deputy Attorney General Canada  
Toronto, Ontario