Federal Court  Cour fédérale

Date: 20130604

Docket: IMM-7844-12

Citation: 2013 FC 598

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, June 4, 2013

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

Ertugrul SAVAS
Funda SAVAS
Ata Cem SAVAS

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), for judicial review of a decision by the Refugee Protection Division of the Immigration and Refugee Board (the panel) that the applicants are neither Convention refugees nor persons in need of protection under sections 96 and 97 of the Act.

[2] The panel agreed that the applicants had been subjected to acts of discrimination and harassment over the years. It nonetheless found that, cumulatively, these acts of persecution and harassment did not amount to persecution.

[3] Thus, the panel, after reviewing the evidence, concluded that the applicants had not demonstrated the subjective fear required to qualify for protection under the Act. To this effect, the evidence indicated that these incidents had occurred over a long period of time during which the applicants had considered their options. In fact, one attempt to acquire a visitor's visa to Canada was refused in 2006; in 2007 the principal applicant inquired about the possibility of making a refugee claim in England but abandoned the project when he was advised by a lawyer that his chances of success were minimal. He continued to work at his job in Turkey and it was only at the end of 2009, some 14 months after the last incident involving the applicant that he obtained a visitor's visa for the United States, ending up in New York, on December 11, 2009. It seems likely that his real destination was Canada, given that he crossed the border on December 19, 2009, although he did not claim refugee protection until two days later. His spouse and son did not arrive in Canada until September 6, 2011, and they too claimed refugee protection, but they did so as soon as they arrived at the Canadian border.

[4] The panel, after reviewing the documentation available on June 29, 2011, was also of the view that it was less likely that Turkish citizens of the applicants' religious denomination would be subject to persecution if they were to return to Turkey, thereby concluding that there was no objective basis to their fear.

[5] Lastly, the panel determined that the applicants would not be at risk of torture or cruel and unusual treatment or punishment.

[6] It should be noted once again that discrimination and harassment do not amount to persecution.

[7] Justice Michel Beaudry of this Court aptly summarized the state of the law in *Yurteri v The Minister of Citizenship and Immigration*, 2008 FC 478, at paragraph 34:

> [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).

[8] In this case, the panel concluded that discrimination and harassment, in and of themselves, do not rise to the requisite level of severity.

[9] The standard of review in matters such as these is reasonableness. They involve questions mixed fact and law. The applicants are relying on *Gur v The Minister of Citizenship and Immigration*, 2012 FC 992, to argue that a correctness standard ought to be applied when a panel fails to consider the cumulative effects of incidents of discrimination.

[10] I agree that failing to consider the cumulative effects could be a question of law calling for a correctness standard. Conversely, the application of the accumulation will be a question of mixed fact and law reviewable on a reasonableness standard. Put another way, the question of weighing the evidence in order to determine whether there was a sufficient accumulation so as to constitute persecution will be a mixed question. In this case, the panel concluded on two occasions that the accumulation of incidents did not amount to persecution. Indeed, the applicants complain that the "theory of accumulation" was not adequately applied. It is not that the theory of accumulation was ignored but rather, that the applicants are not satisfied with the result.

[11] It therefore follows that the panel's decision must be reviewed on a reasonableness standard. Has the deference owed to the decision rendered been overcome by the applicants? I think not. As it is stated in *Dunsmuir v New Brunswick*, [2008] 1 SCR 190, at paragraph 47, "[t]ribunals have a margin of appreciation within the range of acceptable and rational solutions". This is just such a case.

[12] It was reasonable for the panel to conclude that the applicants' behaviour was not consistent with a subjective fear. It was a finding at which the panel could rationally have arrived. The objective evidence did not favour the applicants, even if the panel had agreed that a subjective fear existed. The finding on subjective fear and that regarding an objective basis to that fear were reasonable because they were based on the evidence before the panel.

[13] The facts before the panel were such that, even when added together, the incidents of discrimination and harassment did not amount to the cruelty or the systematic infliction of

punishment required to conclude that there was persecution. It was reasonable to find that there was a lack of persecution.

[14] Accordingly, the application for judicial review is dismissed. There is no question for certification.

JUDGMENT

The application for judicial review of a decision of the Immigration and Refugee Board's Refugee Protection Division dated July 11, 2012 is dismissed.

"Yvan Roy"
Judge

Certified true translation
Sebastian Desbarats, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7844-12
STYLE OF CAUSE:	Ertugrul SAVAS, Funda SAVAS, Ata Cem SAVAS v. MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Quebec
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