Federal Court  Cour fédérale

Date: 20140115

Docket: IMM-10716-12

Citation: 2014 FC 43

Ottawa, Ontario, January 15, 2014

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

HIKMET TIFTIKCI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] for judicial review of the decision of a Senior Immigration Officer [Officer] on the Applicant's application for a Pre-Removal Risk Assessment [PRRA], dated 30 August 2012 [Decision], which found that the Applicant did not face any of the risks set out in sections 96 and 97 of the Act if returned to Turkey.

BACKGROUND

[2] The Applicant is a 50-year-old citizen of Turkey who claims he was persecuted by Turkish state authorities and Turkish nationalists because he is recognizably Kurdish and has been active in promoting the rights of the Kurdish minority.

[3] In 1989, when the armed conflict between Kurdish nationalists and Turkish government forces was at its height, the Applicant came to Canada and filed a refugee claim. He says he had difficulty adapting to his circumstances in Canada and suffered depression. An uncle and brother, who were living in Canada and who have made successful refugee claims here, convinced him to return to Turkey. He left Canada in 1990 and his refugee claim was considered abandoned.

[4] After returning to Turkey, the Applicant claims that he became a "supporter of the Kurdish political cause" and a member of several political parties that promoted Kurdish rights in Turkey. These included the Democracy Party [DEP] and the People's Democracy Party [HADEP], both of which were later banned by the Constitutional Court of Turkey, and more recently the Peace and Democracy Party [BDP]. He claims that as a result of these political activities, he has been perceived as a Kurdish separatist and a supporter of the Kurdistan Workers' Party [PKK], a Kurdish nationalist group that has engaged in armed conflict with Turkish authorities, and has been subjected to abuse, detention and threats by Turkish nationalists and the Turkish security forces. He claims he would be subject to similar mistreatment if required to return to Turkey.

[5] The Applicant claims that on 21 March 2009, while attending celebrations for the Kurdish "national day" of Newroz, he and his wife were detained by security forces who intervened to

disperse the crowd, and were held for several hours before being released. They considered this to be "just part of being a Kurd in Turkey," and continued to live there as before. In April 2011, the Applicant claims he was attacked by a group of Turkish nationalists in the town of Kulu. They accused him of being a PKK supporter and punched and kicked him "quite savagely." He says he lost four of his front teeth and was left bloody and bruised. He reported the incident to the police at the urging of the BDP. When he returned to the police a week later to inquire about progress on the case, and expressed scepticism about the interest of the police in pursuing the matter, he says he was arrested for obstructing justice and was held for two days. He told friends in anger that he intended to file a formal complaint about this incident, though he did not actually intend to do so, fearing it would worsen his situation. He says the gendarmes came to his home in early June 2011 asking why he was telling people he intended to complain about his detention. They searched his home and arrested him again, holding him for two days in an attempt to intimidate him.

[6] After his release, the Applicant says he feared for his safety and decided to flee to Canada and make a refugee claim. His wife was already in Canada visiting their daughter, intending to stay for a few months. The Applicant applied for and was apparently refused a Canadian visitor's visa, but obtained a tourist visa for the United States and flew to New York from Istanbul on October 9, 2011. Two days later, he crossed into Canada at Fort Erie and made a refugee claim at the port of entry. He was interviewed by an Immigration Officer and disclosed his prior abandoned refugee claim. It was determined that this made him ineligible for refugee protection, but that he was eligible to be referred for a PRRA.

[7] In support of his PRRA application, the Applicant submitted a sworn affidavit regarding his experiences in Turkey, identity documents, a dentist report, and six documents relating to the human rights situation in Turkey. The Applicant's PRRA application was rejected, making him subject to removal from Canada, but the removal order was stayed by this Court on 30 October 2012, pending the outcome of the current application.

DECISION UNDER REVIEW

[8] The form completed by the PRRA Officer indicates that while the risk identified by the Applicant fell within subsections 96 and 97 of the Act, it was neither personal to the Applicant nor shared with others in a similar situation, and was not objectively identifiable. The Applicant was thus determined not to be at risk of persecution, torture, loss of life, or cruel and unusual treatment or punishment if returned to Turkey. The sections of the form dealing with state protection and internal flight alternatives were not completed by the Officer.

[9] The reasons provided in support of the Decision are brief, comprising less than one page.

[10] The PRRA Officer observed that the Applicant failed to provide evidence of his involvement with Kurdish political parties and the promotion of Kurdish rights:

> Since this application is based on the applicant's membership in the Kurdish minority and his involvement in three parties committed to defending the rights and interests of that minority, I would have expected him to make an effort to provide evidence of it or to explain what prevented him from doing so. He did not do either. He did not even say whether, after years of dangerous activism in Turkey supporting his cause, he has taken part to any extent in the non-dangerous activities of any Kurdish organizations in Toronto.

[11] The Officer then considered the dental report submitted by the Applicant. The Officer noted that the "very general and incomplete description" in the report did not assist the Applicant because it did not identify the cause of the injuries. In addition, while the Applicant claimed to have lost four teeth in the April 2011 attack, the report mentions only two broken teeth, and this discrepancy was unexplained. The Officer assigned "little probative value" to this document.

[12] Turning to the six documents provided by the Applicant on the human rights situation in Turkey, the Officer found that they "do not corroborate the risks that the applicant claims to face." However, the Officer found that they were consistent with other documentary sources he or she consulted, and that they "confirm that… Kurds experience violence and discrimination."

[13] The Officer observed, however, that these same sources also pointed to improvements in the circumstances of the Kurdish minority in Turkey:

> The sources also point to the reforms and constitutional amendments undertaken by Turkey to align itself with European human rights standards. These reforms constitute progress towards improved protection of human rights and the rights of minorities in Turkey, despite the fact that they are not fully implemented or that they are subject to restrictions. Thus, Turks are able to get a new trial if the European Court of Human Rights finds that a decision of a Turkish court has violated the Convention for the Protection of Human Rights and Fundamental Freedoms.

[14] The Officer then concluded that the Applicant had not proven that he would be at risk if returned to Turkey:

> It was up to the applicant to meet his burden of proving that he is personally exposed to risks of return. He failed to do so. Accordingly, I find that he is not subject to any of the risks provided for in sections 96 and 97 of the Act.

ISSUES

[15] The Applicant raises the following issues in this application:

a. Did the Officer err in failing to hold an oral hearing?

b. Did the Officer make erroneous findings of fact without regard to the evidence and fail to provide adequate reasons for the decision?

STANDARD OF REVIEW

[16] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Minister of Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[17] The Applicant submits that the standard of review for questions of mixed fact and law is reasonableness, while questions of law and questions of procedural fairness are reviewable on a standard of correctness: *Kastrati v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1141 at paras 9-10). While I note that questions of law are not always reviewable on a correctness standard, such questions do not arise here. In my view, the first issue set out above raises a question of procedural fairness and is reviewable on a standard of correctness (*Canadian Union of Public Employees (C.U.P.E.) v Ontario (Minister of Labour)*, 2003 SCC 29 at para 100; *Sketchley v*

Canada (Attorney General), 2005 FCA 404 at para 53), while the second issue deals with questions of fact and mixed fact and law that are reviewable on a standard of reasonableness: *Jainul Shaikh v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1318 at para 16; *Cunningham v Canada (Minister of Public Safety and Emergency Preparedness)*, 2010 FC 636 at para 15.

[18] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at para 47, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

STATUTORY PROVISIONS

[19] The following provisions of the Act are applicable in these proceedings:

Convention refugee	**Définition de « réfugié »**
96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(a) is outside each of their	*a)* soit se trouve hors de tout

countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or

pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

Personne à protéger

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont

généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

[…]

[…]

Application for protection

112. (1) A person in Canada, other than a person referred to in subsection 115(1), may, in accordance with the regulations, apply to the Minister for protection if they are subject to a removal order that is in force or are named in a certificate described in subsection 77(1).

Demande de protection

112. (1) La personne se trouvant au Canada et qui n'est pas visée au paragraphe 115(1) peut, conformément aux règlements, demander la protection au ministre si elle est visée par une mesure de renvoi ayant pris effet ou nommée au certificat visé au paragraphe 77(1).

[…]

[…]

Consideration of application

113. Consideration of an application for protection shall be as follows:

Examen de la demande

113. Il est disposé de la demande comme il suit :

[…]

[…]

(b) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;

b) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;

(c) in the case of an applicant not described in subsection 112(3), consideration shall be on the basis of sections 96 to 98;	*c)* s'agissant du demandeur non visé au paragraphe 112(3), sur la base des articles 96 à 98;
[…]	[…]

[20] The following provisions of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations] are applicable in these proceedings:

Hearing — prescribed factors	**Facteurs pour la tenue d'une audience**
167. For the purpose of determining whether a hearing is required under paragraph 113*(b)* of the Act, the factors are the following:	167. Pour l'application de l'alinéa 113*b)* de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise :
(a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;	*a)* l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur;
(b) whether the evidence is central to the decision with respect to the application for protection; and	*b)* l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;
(c) whether the evidence, if accepted, would justify allowing the application for protection.	*c)* la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.

ARGUMENT

Applicant

Absence of an Oral Hearing

[21] The Applicant argues that the Officer had a duty to hold an oral hearing in this case before rendering a negative decision, and that the failure to do so amounts to a breach of procedural fairness.

[22] The duty of procedural fairness with respect to the holding of hearings on a PRRA application is shaped by section 113(b) of the Act and section 167 of the Regulations, which amount to "a codification of some of the principles of natural justice and of fairness": *Shafi v Canada (Minister of Citizenship and Immigration)*, 2005 FC 714 at para 21 [*Shafi*]. Para 113(b) of the Act states that "a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required." Section 167 sets out the factors as follows:

a. Whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;

b. Whether the evidence is central to the decision with respect to the application for protection; and

c. Whether the evidence, if accepted, would justify allowing the application for protection.

[23] The Applicant says this is a conjunctive test: a hearing is required only where an applicant's credibility is called into question and this is a determinative factor in the issues that the PRRA

officer must decide: *Andrade v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1074 at para 30 [*Andrade*].

[24] The Applicant argues that, while purporting to make the Decision based on insufficiency of evidence, the Officer in fact made a finding about his credibility. The Officer expressed the view that the Applicant failed to provide proof of his involvement with Kurdish political parties or to explain why he could not. However, the Applicant had provided a sworn declaration outlining these facts. The Officer's rejection of this evidence amounts to a veiled credibility finding, described by this Court as a situation where "the applicant's story and professed fears are given no weight, effectively rejecting the applicant's evidence as not credible, even though no specific reference is made to credibility as an issue": *Zokai v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1581 at para 13.

[25] There is a blurred line, the Applicant argues, between decisions based on "sufficiency of evidence" and those based on "credibility," such that a reviewing Court must look beyond the words used in the decision: *Andrade*, above, at para 31; *Latifi v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1388 at para 60. A finding that there is insufficient evidence may really mean that the officer did not believe the applicant: *Liban v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1252 at para 14; *Yakut v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1190 at para 13. Where an officer's findings on the evidence amount to a statement that the officer did not find the applicant believable, this is a credibility finding: *Shafi*, above, at para 19; *LYB v Canada (Minister of Citizenship and Immigration)*, 2009 FC 462 at paras 33, 35 [*LYB*].

[26] In determining whether an officer's finding about the sufficiency of evidence is in fact a credibility finding, the Applicant argues, the Court must start from the premise that an applicant's evidence is presumed to be true. If the officer's finding is one that can only be made by disbelieving the evidence, the officer has made a credibility finding: *Cho v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1299 at paras 24, 26; *LYB*, above, at paras 30-38; *Kaberuka v Canada (Minister of Citizenship and Immigration)*, [1995] 3 FC 252 at para 32.

[27] Here, the Officer's disbelief of the Applicant's statutory declaration is implicit in the statement that

> I would have expected him to make an effort to provide evidence [that he is a member of the Kurdish minority and that he was involved in three parties committed to defending the rights and interests of that minority] or to explain what prevented him from doing so.

[28] The fact that the Officer questioned the Applicant's Kurdish ethnicity and involvement in Kurdish organizations was also evident, the Applicant says, from the statement that

> He did not even say whether, after years of dangerous activism in Turkey supporting his cause, he has taken part to any extent in the non-dangerous activities of any Kurdish organizations in Toronto.

[29] The Officer's treatment of the dental report, assigning it low probative value, also amounts to a credibility finding since "[t]he probative value… of a document corroborating an applicant's narrative and provided by the applicant is clearly related to the applicant's credibility": *El Morr v Canada (Minister of Citizenship and Immigration)*, 2010 FC 3 at para 24; *Andrade*, above at paras 39-40.

[30] The Applicant points out that he did not have the benefit of a hearing before the Refugee Protection Division [RPD], and thus the PRRA process was the only context in which his credibility could be assessed.

[31] The Statutory Declaration and the dental report were the basis for the risks identified by the Applicant, and were thus central to the Decision. The documentation submitted on country conditions demonstrates the increased scrutiny, harassment, arrest and detention faced by members of Kurdish political parties and Kurds who publicly assert their identity; the Statutory Declaration was the basis for connecting the Applicant to that risk.

[32] Furthermore, if the Officer had accepted this evidence as true, the Applicant's application would likely have been accepted. The Statutory Declaration asserts that he is Kurdish, involved in Kurdish political parties, and has suffered violence and imprisonment because of this. In combination with the evidence of current country conditions in Turkey, it shows that his life is truly at risk, and that this is a personalized risk faced by the Applicant.

[33] When the circumstances enumerated in section 167 of the Regulations are present, there is a presumption in favour of an oral hearing (*Shafi*, above, at para 21), and in fact "[i]f the Minister and his officials doubt any part of the applicant's evidence, they must provide the applicant with an oral hearing": *Tehrankari v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 1420 at para 6. This would have allowed the Applicant to address the Officer's concerns, and was all the more important in the current case since the Applicant did not have the benefit of a refugee hearing.

Alleged Erroneous Findings of Fact and Inadequate Reasons

[34] The Applicant also argues that the Officer failed to conduct a proper analysis of the evidence that was before him, made statements or findings without a proper evidentiary basis, made selective reference to the evidence without providing explanations for preferring some parts over others, and failed to recognize the significance of certain pieces of evidence to the case at hand. He argues that all of this amounts to making the Decision without regard to the evidence in a manner that renders the Decision unreasonable. In addition, the Applicant says the Officer's reasons do not meet the required standard of transparency and intelligibility.

[35] It is an error, the Applicant argues, to make findings of fact that are not adequately supported by the evidence (*Kaybaki v Canada (Solicitor General of Canada)*, 2004 FC 32 at para 5 [*Kaybaki*] at para 5; *Hng v Canada (Minister of Citizenship and Immigration)*, [2005] FCJ No 301 at para 27; *Kanapathipillai v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1110 at para 5), or to selectively choose some evidence over other evidence without explanation: *Roberts v Canada (Minister of Citizenship and Immigration)*, [2004] FC 1460 at para 17. The presumption that a decision-maker has considered all of the evidence is rebuttable, the Applicant says, and a negative inference can be drawn from a decision-maker's failure to mention particular evidence where it is of significant probative value: *Kaybaki*, above, at para 5. The Applicant relies upon *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 at paras 15, 17, where the Court stated:

> 15 The Court may infer that the administrative agency under review made the erroneous finding of fact "without regard to the evidence" from the agency's failure to mention in its reasons some evidence before it that was relevant to the finding, and pointed to a different conclusion from that reached by the agency…
> …

> 17 … [T]he more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact "without regard to the evidence": *Bains v. Canada (Minister of Employment and Immigration)* (1993), 63 F.T.R. 312 (F.C.T.D.). In other words, the agency's burden of explanation increases with the relevance of the evidence in question to the disputed facts. Thus, a blanket statement that the agency has considered all the evidence will not suffice when the evidence omitted from any discussion in the reasons appears squarely to contradict the agency's finding of fact...

[36] In this case, the Applicant argues, the Officer referred to a variety of reports, but did not analyze the evidence or explain the reasons for preferring some parts of the evidence over others. The Decision is largely devoid of a proper analysis that would allow the Applicant to understand why and how the Officer reached the Decision.

[37] The Officer referred to the six documents provided by the Applicant on the human rights situation in Turkey, and simply stated that they did not corroborate the personalized risks alleged by the Applicant. This is incorrect, the Applicant claims. The documents referred not only to the violence and discrimination suffered by the Kurdish minority in Turkey generally, which the Officer recognized, but also to the particular situation of supporters and members of Kurdish political parties and those who publicly or politically asserted their Kurdish identity. Such persons face increased scrutiny, harassment, arrest and detention by authorities, which the Officer failed to recognize or consider. The Applicant cites sections from these reports which discuss:

- Hate crimes and mob violence against members of the Kurdish minority, as well as police discrimination and failure to protect members of this minority from such crimes (Immigration and Refugee Board of Canada, Responses to Information Requests (RIRs), TUR104096.E: *Turkey: Situation of Kurds in western cities such*

as Ankara, Istanbul, Izmir, Konya and Mersin; resettlement to these cities (2009-May 2012), Applicant's Record, pp. 100-102);

- Arrests of supporters of the BDP (United States Department of State, 2010 Country Reports on Human Rights Practices – Turkey, 8 April 2011, Applicant's Record, pp. 42, 45, 51); and
- The prosecution of Kurdish demonstrators for serious terrorism-related crimes resulting in significant jail terms (Human Rights Watch, *Turkey: Protesting as a Terrorist Offence: The Arbitrary use of Terrorism Laws to Prosecute and Incarcerate Demonstrators in Turkey*, 2010, Applicant's Record, pp. 76-77, 85).

[38] As such, the documents did corroborate the personalized risk faced by the Applicant, who asserted that he had faced detention and harassment at the hands of the authorities in Turkey because he was a member of the BDP and had attended Kurdish festivities and demonstrations, including Newroz. In reaching the conclusion that the evidence did not corroborate the personalized risk alleged by the Applicant, the Officer ignored contrary evidence and provided inadequate reasons for reaching this conclusion.

[39] In addition, the Officer relied selectively on the evidence. The Officer referred to reforms and constitutional amendments to align laws and practices in Turkey with European human rights standards, but failed to refer to evidence of delays in implementing these reforms. The Officer referred to the possibility of appealing Turkish court decisions to the European Court of Human Rights, but failed to refer to evidence that the European court has been overwhelmed by cases from Turkish citizens so that only a small portion of these cases have been heard and decided.

[40] The Officer's reasons, the Applicant argues, fail to meet the threshold of providing a clear basis for the rationale behind the Decision. They are not sufficiently clear, precise and intelligible to allow the Applicant to know why his application failed, and this is a sufficient basis to quash the Decision: *Ogunfowora v Canada (Minister of Citizenship and Immigration)*, 2007 FC 471; *Gay v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1280 at paras 40-41.

Respondent

[41] The Respondent argues that the Decision of the Officer was reasonable, and there was no breach of procedural fairness. The Officer reasonably concluded that the Applicant had failed to present sufficient evidence to substantiate the risks of harm he alleged. Since this conclusion relates to the sufficiency of evidence and not the credibility of the Applicant, no oral hearing was required. The Officer's reasons, while brief, demonstrate an awareness of the evidence before him, including evidence that ethnic Kurds in Turkey may face violence and discrimination. The Officer nevertheless found that the Applicant had not met the burden of showing that he would be personally exposed to risk if returned to Turkey, and the Applicant has not demonstrated that the Officer ignored or disregarded any evidence in making this finding.

Absence of an Oral Hearing

[42] Oral hearings are exceptional, the Respondent says, and will only be granted where an applicant satisfies all of the factors in section 167 of the Regulations: *Tran v Canada (Minister of Public Safety and Emergency Preparedness)*, 2010 FC 175 at paras 28-29 [*Tran*]. When the legislative provisions regarding the PRRA are read contextually, it is clear that applicants must present evidence to support their applications and indicate how that evidence relates to them; they cannot assume that a hearing will be convened.

[43] Here, the Officer did not determine that the Applicant lacked credibility, but rather that he had failed to demonstrate a personalized risk based on the documentary evidence submitted. The evidence was not of sufficient probative value to establish the facts and concomitant risks alleged: *Ferguson v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067 at para 26 [*Ferguson*]; *Iboude v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1316 at paras 5, 12-14 [*Iboude*]. A hearing is not required where an officer denies a PRRA application on the basis of insufficient objective evidence, as this finding is distinct from credibility: *Al Mansuri v Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 22 at para 43; *Tran*, above, at paras 28-29.

[44] The PRRA Officer is entitled to engage in two separate assessments of the evidence presented: one of weight, and the other of credibility. In the case of a witness with a personal interest in a matter, the evidence may be examined for its weight before considering its credibility, because, as the Court stated in *Ferguson*, above, at para 27:

> [T]ypically this sort of evidence requires corroboration if it is to have probative value. If there is no corroboration, then it may be

> unnecessary to assess its credibility as its weight will not meet the legal burden of proving the fact on the balance of probabilities. When the trier of fact assesses the evidence in this manner he or she is not making a determination based on the credibility of the person providing the evidence; rather, the trier of fact is simply saying the evidence that has been tendered does not have sufficient probative value, either on its own or coupled with the other tendered evidence, to establish on the balance of probability, the fact for which it has been tendered.

[45] Here, the Respondent argues, the Applicant's allegations of risk were given little probative value because of the absence of corroborating evidence. There was no evidence other than the Applicant's statements connecting him to the alleged risk. No credibility finding was necessary, because the evidence did not have sufficient probative value to establish the fact for which it was being tendered; namely, that the Applicant was being targeted due to his involvement in Kurdish political parties or his Kurdish ethnicity: *Ferguson*, above, at paras 26-27; *Iboude*, above, at para 14.

[46] Specifically, the Applicant stated he was involved in Kurdish political parties, but did not provide any additional evidence to support this allegation, or any explanation for failing to do so. He stated he had lost four of his teeth in an attack by ultranationalists, but the dental report he submitted describes fractures in two teeth, and doesn't say how they occurred. The Officer was not obliged to hold a hearing to afford the Applicant an opportunity to remedy his failure to properly support his PRRA application with evidence. It is well-established that a PRRA officer has no duty to hold an oral hearing where the sufficiency of evidence is the central issue: *Parchment v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1140 at paras 18-19 [*Parchment*]; *Lewis v Canada (Minister of Citizenship and Immigration)*, 2007 FC 778 at para 22 [*Lewis*]; *Ray v Canada (Minister of Citizenship and Immigration)*, 2006 FC 731 at paras 30-42 [*Ray*]; *Sen v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1435 at paras 25-26 [*Sen*]; *Yousef v Canada (Minister of*

Citizenship and Immigration), 2006 FC 864 at paras 26-30, 34-37 [*Yousef*]; *Saadatkhani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 614 at paras 5-8; *Ferguson*, above, at para 35; *Iboude*, above, at para 14; *Kazmi v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1375 at paras 9-11 [*Saadatkhani*]; *Abdou v Canada (Solicitor General)*, 2004 FC 752 at paras 3-8 [*Abdou*]; *Malhi v Canada (Minister of Citizenship and Immigration)*, 2004 FC 802 at paras 7-9 [*Malhi*]; *Kim v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 321 (FCTD) at para 6 [*Kim*].

Alleged Erroneous Findings of Fact and Inadequate Reasons

[47] A decision-maker is presumed to have weighed and considered all the evidence (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA)), and the Applicant has not rebutted that presumption here. The fact that the Officer did not mention every document, or every part of each document, does not indicate a failure to take the evidence into account: *Hassan v Canada (Minister of Employment and Immigration)* (1992), 147 NR 317 (FCA) at 318.

[48] While not citing it extensively, the Respondent says, the Officer clearly noted the evidence that was before him. The Officer was not obligated to provide an extensive analysis of the evidence, and was not required to make an explicit finding on each constituent element leading to the final Decision. While the reasons might not include all of the details a reviewing court might prefer to see, the Supreme Court has held that "even if the reasons in fact given [by an administrative decision maker] do not seem wholly adequate to support the decision, the court must first seek to supplement them before it seeks to subvert them": *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 [*Newfoundland*

Nurses] at para 12, quoting with approval David Dyzenhaus, "The Politics of Deference: Judicial Review and Democracy", in Michael Taggart, ed., *The Province of Administrative Law* (1997), 279 at p. 304. The Court must read the reasons together with the outcome to determine "whether the result falls within a range of possible outcomes: *Newfoundland Nurses*, above, at paras 14, 16.

[49] Here, the Respondent says that the reasons show that the Officer was aware that the Applicant was a member of Kurdish political parties and was involved in activities defending the rights of the Kurdish people. The Officer also observed that there were incidents where Kurdish minorities were exposed to violence and discrimination. However, after weighing the evidence, the Officer found that the Applicant would not be at risk if returned to Turkey, and this finding was open to the Officer as the trier of fact.

ANALYSIS

[50] This application raises the perennial issue of whether a decision that is ostensibly based upon sufficiency of evidence is really a veiled negative credibility finding so that the Officer should have convened a hearing with the Applicant in accordance with subsection 113*(b)* of the Act and section 167 of the Regulations.

[51] It is clear from the Decision as a whole that the Officer uses the language of insufficiency.

> Since this application is based on the applicant's membership in the Kurdish minority and his involvement in three parties committed to defending the rights and interests of that minority, I would have expected him to make an effort to provide evidence of it or to explain what prevented him from doing so. He did not do either. He did not even say whether, after years of dangerous activism in Turkey supporting his cause, he has taken part to any extent in the non-dangerous activities of any Kurdish organizations in Toronto.

[52] The Officer also finds that the dentist's report does not corroborate the Applicant's story that he lost four teeth during an assault. It seems to me that there is nothing unreasonable about the Officer's assessment of the dentist's report and its probative value and that the Officer is clearly concerned with sufficiency. The report is accepted as being genuine and for what it says; it just does not provide evidence that supports the Applicant's account of what happened to him.

[53] The Applicant swore a Statutory Declaration setting out the basis of his fear of returning to Turkey. He pointed out that he was Kurdish and had been a member or supporter of various Kurdish parties in Turkey.

[54] In his PRRA submissions, counsel for the Applicant set out the following basis for his claim:

> As a consequence of his perception by Turkish nationalists and the Turkish security forces as a Kurdish separatist and a supporter of the PKK, he has been subjected to abuse, detention, and threats. In light of the current political climate in Turkey it is likely that he would again be subjected to similar mistreatment if he was required to return to Turkey.

[55] In his Statutory Declaration, the Applicant says that, generally speaking, his support for organizations that supported Kurdish rights in Turkey did not cause him "any major problems":

> 7. In the years that followed I became a supporter of the Kurdish political cause and the political parties that promoted Kurdish rights in Turkey (HEP, DEP, HADEP, DEHAP, DTP, BDP). I was a member, for example, of the DEP and HADEP before they were banned by the government. In 2010 I became a member of the BDP, the party that currently represents Kurds. I always understood that there was a risk in being associated with the Kurdish political movement, but I

> was fortunate not to have experienced any major problems. Perhaps I was safer as a result of being a long-distance truck driver; I was often away from home for long periods of time.

[56] What caused the Applicant to come to Canada was a "series of problems" he experienced while his wife was in Canada visiting their daughter:

> i. In March 2011 Esme went to Canada in order to visit our daughter. I remained in Turkey to work, and our son Hizir continued to attend his high school. She was expected to return to Turkey after a few months in Canada. While my wife was away, however, I experienced a series of problems that eventually caused me to fear for my safety.
>
> ii. In April 2011 while I was in Kulu, I was attacked by a group of Turkish nationalists. Kulu is not a big place, and most activists – Kurdish and Turkish – are familiar with each other. The nationalists he (sic) encountered that day knew that I was a Kurd and a member of the BDP. Apparently, recent fighting between the Turkish army and the PKK had heightened tensions between Turks and Kurds. I was walking to a coffee shop when I was confronted by a group of nationalists. They seemed to be spoiling for a fight, and accused me of being a supporter of the PKK. In the ensuing attack I was punched and kicked quite savagely. I lost four of his (sic) front teeth, and was left bloody and bruised.
>
> iii. After the attackers left I made his (sic) way to the coffee shop for help. My friends there took him (sic) to the local hospital. I was afraid to report the matter to the police (I could identify many of his assailants), believing that – given the empathy between the nationalists and the Turkish police – there was little point in doing so. I did inform the local BDP office of the assault. Although the BDP was sympathetic to my situation there was little they could do; the party's members were often targets for recriminations by the nationalists. It was suggested, however, that I report the incident to the authorities.
>
> iv. As a result, I went to the local police station to inform them of what had happened. I was told that efforts would be made to arrest my attackers. After a week I went back to the police station to see what had been done. The police were dismissive, saying that I would be notified when arrests had been made. When I expressed scepticism about the apparent lack of interest

> shown by police I was arrested on the spot for obstructing justice. They kept me in custody there for two days, during which I was physically abused by the police.
>
> v. After his (sic) release I was angry at how I had been treated; I told my friends that I was going to make an official complaint. I never intended, however, to actually do so – I was afraid I would be treated worse if I did.
>
> vi. In early June *jendarms* came to our home in Karacadag to see me. They wanted to know why I was telling people that I was going to complain about my detention. They searched our house and then took me into custody. Again, I was detained for two days – an obvious effort by the authorities to intimidate me.
>
> vii. After my release I was very concerned about my safety if I remained in Turkey. I decided to come to Canada and seek refugee protection. Rather than remain in Karacadag I went to my sister-in-law's home in Ankara. I arranged for a new passport and a Canadian visa.

[57] The Applicant's experience with the police speaks of "detention" and "intimidation" and he says they "physically abused" him. However, this evidence is vague as to what was actually involved. We do not know, for instance, what the Applicant means by physical abuse.

[58] So the Applicant's own evidence was that his membership and support for Kurdish organizations resulted in nothing that would cause him to flee to Canada until the April 11, 2011 incident and the response of the police to his complaints. He says that the "nationalists he [*sic*] encountered that day knew that I was a Kurd and a member of the BDP." However, he suggests the following reason for the attack:

> Apparently, recent fighting between the Turkish army and the PKK had heightened tensions between Turks and Kurds. I was walking to a coffee shop when I was confronted by a group of nationalists. They

> seemed to be spoiling for a fight, and accused me of being a supporter of the PKK.

[59] The Applicant does not say that he belonged to the PKK. The Applicant does not say the attackers believed he was a member or supporter of the PKK. He says that they were spoiling for a fight and accused him of being a PKK supporter. They did know he was a member of the BDP. In his Statutory Declaration, he emphasizes his membership in the BDP, and it was the BDP who advised him to report the café incident to the authorities.

[60] There is little in the Statutory Declaration to support the allegation that the ultranationalists attacked the Applicant because of the Kurdish organizations he supported for many years. His evidence suggests that the nationalist attack was prompted at the time of heightened tensions between the Turkish army and the PKK. There is no evidence that the police response – whatever it may have been – was prompted by the Applicant's membership in, or support of, the Kurdish organizations he identifies, and it was the BDP that advised him to take his complaint to the police.

[61] In other words, the Applicant's evidence was that the triggering event that caused him to come to Canada was not his long-standing support of the Kurdish organizations he identifies, but an isolated incident that arose out of a rise in tensions in 2011 as a result of fighting between the Turkish army and the PKK.

[62] As the Officer points out, the Applicant's PRRA application was based upon his "membership in the Kurdish minority and his involvement in three parties committed to defending the rights and interests of that minority …." As the Officer also points out, the Statutory Declaration

does not provide an evidentiary basis for this contention: "I would have expected him to make an effort to provide evidence of it or to explain what prevented him from doing so." The Statutory Declaration does not provide evidence of how the Applicant's "involvement" in the organizations he identifies gave rise to the triggering event he describes in his Statutory Declaration. The Statutory Declaration makes it clear that his involvement in Kurdish organizations has not caused him any problems that would lead him to seek protection in Canada before the triggering incident.

[63] In my view, then, this was not a disguised credibility finding. The evidence to support how his "involvement" in Kurdish organizations led to the triggering event just is not there. The issue was one of sufficiency of evidence.

[64] As the Respondent says, the Officer was not obliged to hold a hearing to afford the Applicant the opportunity to buttress his application and, essentially, to remedy his failure to properly support his PRRA application. This case falls within the well-established jurisprudence that PRRA officers may weigh the evidence before them and make findings regarding its probative value and sufficiency – without being required to hold an oral hearing per section 167(a) of the *IRPR*. There is no duty on the part of Officers to hold an oral hearing when sufficiency of evidence is the central issue: *Parchment*, above, at paras 18-19; *Lewis*, above, at para 22; *Ray*, above, at paras 30-42; *Sen*, above, at paras 25-26; *Yousef*, above, at paras 26-30, 34-37; *Saadatkhani*, above, at paras 5-8; *Ferguson*, above, at para 35; *Iboude*, above, at para 14; *Kazmi*, above, at paras 9-11; *Abdou*, above, at paras 3-8; *Malhi*, above, at paras 7-9; *Kim*, above, at para 6.

[65] The Applicant also alleges that the Officer overlooked documentation that referred to violence and discrimination faced by the Kurdish minority generally in Turkey, as well as the "situation of supporters and members of Kurdish political parties, as well as the situation of Kurds who publically or politically asserted their identity, who faced increased scrutiny, harassment, arrest and detention by the authorities." The Applicant's point, I think, is that the documentation in question "corroborated the personalized risk faced by the Applicant." He says that he had faced detention and harassment at the hands of the authorities in Turkey because he was a member of the BDP and because he had attended Kurdish festivities and demonstrations, including Newroz.

[66] The Applicant's own evidence, however, does not support this allegation. His Statutory Declaration says that he did not experience anything that would cause him to come to Canada as a result of his Kurdish status or his membership or support of Kurdish organizations or his attendance at Newroz. It was the BDP who advised him to go to the police, and the police appear to have reacted and detained him because he "expressed scepticism about the apparent lack of interest shown by the police," not because he was a member or supporter of any particular ethnic or political group. While this may not be a valid reason for detention, it does not show persecution or risk on the grounds set out in sections 96 and 97 of the Act.

[67] In my view, there was no contradictory evidence that the Officer failed to assess and the reasons are transparent and intelligible. The Applicant failed to provide sufficient evidence to establish that he was personally exposed to the risks that were the basis for his claim, i.e. that because of his "involvement" in parties defending the Kurdish cause, he was the victim of violence

at the hands of Turkish ultranationalists and the Turkish security services or, more importantly, that he would face section 96 persecution or section 97 risk in the future if returned to Turkey.

[68] The Applicant says that the Decision is unreasonable and the reasons are inadequate because the Officer failed to address the risks associated with his perceived political opinion and his involvement with Kurdish organizations. In my view, however, the Officer does deal with this issue reasonably. The stated risk is clearly acknowledged by the Officer in the Decision and the Officer makes it clear that the Applicant does not "meet his burden of proving that he is personally exposed to risks of return." The human rights documentation is examined and the Officer concludes that the "six documents on the overall human rights situation do not corroborate the risks that the applicant claims to face on a personal basis." The Officer finds that "Kurds experience violence and discrimination." Once again, the Applicant's problem was that he failed to provide sufficient evidence of the nature of his "involvement" with the Kurdish organizations to show how he would be at personal risk if returned to Turkey. But the Applicant's own Statutory Declaration says little about what his support of the Kurdish political cause and political parties that promoted Kurdish political rights in Turkey involved, and it does not connect such involvement to persecution or section 97 risk in the future. The Applicant says that he supported the Kurdish political cause and Kurdish political parties for years without experiencing "any major problems." And there is no evidence that police behaviour after the triggering event of April 2011 was connected to his Kurdish support and involvement. The Applicant simply did not provide sufficient evidence to support future risk as a result of perceived political opinion.

[69] Justice Rennie provided the following warning in *Komolafe v Canada (Minister of Citizenship and Immigration)*, 2013 FC 431 at para 11:

> 11 *Newfoundland Nurses* is not an open invitation to the Court to provide reasons that were not given, nor is it licence to guess what findings might have been made or to speculate as to what the tribunal might have been thinking. This is particularly so where the reasons are silent on a critical issue. It is ironic that *Newfoundland Nurses*, a case which at its core is about deference and standard of review, is urged as authority for the supervisory court to do the task that the decision maker did not do, to supply the reasons that might have been given and make findings of fact that were not made. This is to turn the jurisprudence on its head. *Newfoundland Nurses* allows reviewing courts to connect the dots on the page where the lines, and the direction they are headed, may be readily drawn. Here, there were no dots on the page.

[70] In my view, the reasons in this case are not silent on the critical issue. The critical issue was insufficiency of evidence. The Applicant did not provide sufficient evidence to establish forward-looking persecution or risk based upon perceived political opinion.

[71] Counsel agree there is no question for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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