Federal Court  Cour fédérale

Date: 20151029

Docket: IMM-68-15

Citation: 2015 FC 1226

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, October 29, 2015

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

VELI EKER,
SEBRE EKER,
BENSU EKER,
BERKAY EKER

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicants are citizens of Turkey. They are challenging the legality of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board rejecting their claim for refugee protection on the main ground that "the applicants' narrative is a fabrication".

[2] The principal claimant, Mr. Veli Eker [applicant], is of the Alevi faith and of Kurdish ethnicity; he is from the region of Adana, which is majority Kurdish and Alevi. His fear of persecution is based on his perceived political opinion, and that of the other applicants is based on their family relationship with the applicant. In the narrative that accompanied his Personal Information Form [PIF], the applicant explains that on June 12, 2011, during the general election in Turkey, he worked as a scrutineer [monitor] for the Peace and Democracy Party [BDP] in the Dumlupinar borough. Having noticed that monitors from other parties had removed votes for the pro-Kurdish party from ballot boxes, he got into an argument with them. Police arrived on the scene, arrested him and took him to the police station, where he was detained for eight hours and beaten a number of times. The police accused him of being a separatist, propagandist and terrorist; they interrogated him about the BDP, about his relatives and his contacts, and before releasing him, told him that his name had been added to a list and that he was now under surveillance.

[3] In fact, the applicant alleges that, three months after that first incident, on September 8, 2011, two plainclothes police officers showed up at his place of business and took him away in a van. They detained him in a garage or basement where he was interrogated about the BDP and the names of its directors. He told them that he was not a party member and did not know who the directors were, but the police officers did not believe him. The police beat him, insulted and threatened him, and before releasing him, pointed a firearm at his throat and warned him that they would detain his wife the next time. Following that second incident, the applicant decided to abandon his business, leaving his friends to look after his affairs. His children were living off and on at his father's, while he and his wife stayed at his sister's, also on an occasional

basis. In the meantime, employees of the applicant told him that police had showed up at his place of business asking them why he was not at work. The applicant avoided going out at night and sought a solution to leave the country. The applicant hired a former police officer whom he paid to help obtain passports for himself and his family. They obtained visas for the United States; on January 21, 2012, the applicants arrived in New York. The following day they took a bus to the border crossing at Lacolle and claimed refugee protection in Canada.

[4] Given that it did not believe the applicant's narrative of persecution on the basis of imputed political opinion, the RPD concluded that the applicants were not "Convention refugees" within the meaning of section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27) [Act], nor were they "persons in need of protection" within the meaning of subsection 97(1) of the Act, in light of the fact that according to the documentary evidence it was unlikely that the applicants would be persecuted or be at risk on the sole basis that they are of Kurdish origin. The parties agree that a standard of reasonableness applies to reviewing findings of credibility and fact made by the RPD (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]).

[5] Neither the intelligibility nor the transparency of the RPD's grounds for its dismissal are disputed in this case. Let us begin with the reasons for which the RPD did not believe the applicants' narrative. First, the RPD found major inconsistencies and contradictions in the answers provided by the principal applicant in his "Claim for Refugee Protection in Canada" form when he arrived in Canada on January 22, 2012, compared to those given in his Personal Information Form [PIF] and during his testimony at the hearing:

(a) In his "Claim for Refugee Protection in Canada" form, the applicant indicated that in 2011 he had been a member or supporter of the Democratic Society Party [DTP], without, however, playing an active role, and made reference to the election on June 3, 2011 – when, in actual fact, that election had been held on June 12, 2011. However, the DTP had been banned since 2009. In later testimony at the hearing the applicant indicated that he had been a supporter and adherent of the BDP, and that he had worked as a scrutineer for the BDP on the day of the election.

(b) In his PIF and testimony, the applicant claimed to have been detained by police on two occasions, namely, for eight hours and for one hour respectively. He further alleged that his employees had warned him that the police had been to his place of business looking for him. However, in his "Claim for Refugee Protection in Canada" form, the applicant declared that he had never been sought after, arrested or detained by the police. When questioned about this contradiction, the applicant explained that in his view, being held for eight hours and for one hour respectively did not amount to detention. In addition, he explained that he had not been sought by police because no written arrest warrant had been issued against him. There are further significant contradictions or omissions with regard to where the applicant was detained.

(c) In his PIF, the applicant stated that he had abandoned his flower shop after his second detention by the police on September 8, 2011. He noted that his children would often stay with his father and that he and his wife would stay with his

sister. Yet in his "Claim for Refugee Protection in Canada" form, the applicant stated having lived in the same place from January 2008 until leaving Turkey in January 2012. Furthermore, the RPD pointed out that the applicant's son had continued attending the same school until December 2011. Accordingly, the RPD concluded that the applicants were not in hiding up to the moment they left the country in January 2012.

(d) In his PIF, the applicant stated that a former police officer had helped him obtain passports to leave Turkey, while in his "Claim for Refugee Protection in Canada" form he indicated that he had done this himself, which is yet another contradiction.

[6] The RPD also found a number of implausibilities with respect to the applicant's allegations. For example, the RPD found it implausible that the police would detain, torture and interrogate the applicant about the BDP and its leadership, given that such information was in the public domain and the applicant was not even a member of the BDP.

[7] The applicants now challenge before this Court each and every one of the aforementioned credibility or implausibility findings made by the RPD. They argue that the RPD showed excessive zeal with respect to the terminology used by the applicant when he spoke of the BPD, and with regard to precise dates, when, from a substantive perspective, the applicant's testimony had not changed, which is vigorously disputed by the respondent in this case. During the hearing of this application for judicial review, the applicants' learned counsel invited the Court to review the applicant's testimony in its entirety. The applicant explained to the RPD that even if the

name of the BDP did not appear on the illegally rejected ballots, those ballots had been cast for independent candidates from the pro-Kurdish party that had succeeded the banned party (the former DTP). In fact, the BDP was officially created after the election. However, a letter from the BDP – the authenticity of which was not disputed – corroborated the applicant's allegations about his political involvement and arbitrary arrest. Moreover, the applicant points out that he had clarified in his testimony the apparent "inconsistencies" and "contradictions" found by the RPD. For example, he explained that he had had difficulty hearing the interpreter who had assisted him by telephone at the port of entry, and that he had initially misunderstood some of the questions. Furthermore, when he completed his claim for refugee protection form at the port of entry, he did not believe it was necessary to mention that he had been detained for eight hours. He also asserts that he pointed out that he had not been sought by police because no warrant for his arrest had been issued. The applicant further submits that he had never claimed to have lived in hiding; he had written his principal address in his PIF and not that of his sister because he and his wife had only stayed with his sister on a few occasions. With regard to his son, the applicant claims that it was pure conjecture on the part of the RPD to insinuate that, given that his son had gone to live with his father, he must have changed schools. Lastly, the applicant reiterates that he remained proprietor of his flower shop until he left Turkey, but that he had stopped showing up on the premises. As to the RPD's finding that it was implausible that the police would have detained the applicant to question him about the BDP when the party was known to the public, the applicant points out that he was initially arrested for having reported on fraud during the 2011 election, and that he had been accused of terrorism. He was subsequently threatened and stopped by police who wanted to know about his involvement within the BDP and obtain information about the party's leadership.

[8] In this case, I am not convinced by the aforementioned arguments put forth by the applicants. I find the impugned decision to be reasonable and the dismissal of the claim for refugee protection to be an acceptable outcome having regard to the evidence in the record and the specialized expertise of the RPD, which is better placed than the Court to assess the applicants' credibility. Furthermore, it should be remembered that judicial review is not an appeal on the merits of the decision rendered. As this Court has noted in *Alyafi v Canada (Minister of Citizenship and Immigration*, 2014 FC 952 at paragraph 18:

> The role of a reviewing court is by definition limited. It is well settled by case law. Its 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 (*Dunsmuir*, above at para 47). It even goes so far as affording great deference to the interpretation that the administrative tribunal may make of its home statute when it does not concern jurisdiction or a question of law of central importance for the system. This does not refer to a decision that another decision-maker with knowledge of the same facts and the applicable law may have made, but only to a "reasonable" decision—even if it is not the best decision in the circumstances and it opens itself to criticism. …

[9] The present application for judicial review must fail. I substantially agree with the reasons for dismissal provided by the respondent in its written memorandum and repeated at the hearing of this matter by counsel for the respondent. At the risk of repeating myself, it is well established that it is not the Court's role to substitute its assessment of the evidence or to reassess the weight given by the RPD to certain particular elements of the evidence in the record. The weight to be assigned to this or that piece of evidence is a matter exclusively for the RPD. The Court will intervene only if the RPD's findings were made in a perverse or capricious manner or without regard for the material before it. That is not the case here.

[10] With regard to the importance that was assigned to the applicant's previous statements made in his "Claim for Refugee Protection in Canada" form, the RPD "has complete jurisdiction to determine the evidentiary weight to be given to the point of entry notes and may draw negative conclusions from contradictions and inconsistencies in the evidence, including differences between the statements made at the point of entry and any subsequent testimony" (*Singh v Canada (Citizenship and Immigration)*, 2008 FC 453 (CanLII) at para 17). Thus, the RPD committed no reviewable error by examining the answers given at the port of entry by the applicant. In this case, the contradictions in the applicant's narrative relate to key elements of the applicants' claim. In particular, the applicant was mistaken about, or contradicted himself on, the date of the general election, on the name of the party with which he was associated, the detention to which he was subject and on whether he had been sought by police. The applicant simply reiterated explanations that had already been considered or dismissed by the RPD.

[11] Moreover, the RPD committed no reviewable error by dismissing the letter of attestation of political activity apparently issued by a representative of the BDP. Such a letter does not prove its contents – as would an official and genuine birth certificate, for example. As for the explanations provided with regard to the BDP by the applicant, it was open to the RPD to dismiss these to the extent that, taken cumulatively, the contradictions and implausibilities found were of sufficient importance for the RPD not to believe the applicant, as was the case here. The contradictions found by the RPD are determinative and are all based on the evidence in the record.

[12] Furthermore, the impugned decision must be read as a whole. In this case, the RPD did not conduct a microscopic analysis of the evidence and its concerns with regard to the veracity of the applicants' narrative touch on key elements of the claim. The reasons for not believing the applicants' are also expressed in an intelligible manner and support the findings of lack of credibility or implausibility made by the RPD. Although it is possible that another decision maker may have reached a different conclusion, cumulatively, I am of the view that the general finding of a lack of credibility with regard to the fear of persecution on the ground of presumed political opinion falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at para 47).

[13] Lastly, the applicants argue in the alternative that the RPD engaged in a selective reading of the documentary evidence in the National Documentation Package on Turkey [Package], by citing only a brief excerpt to conclude that Kurds are not persecuted in Turkey. Furthermore, having assigned no credibility to the applicants' narrative or their fear of persecution based on imputed political opinion, on the subject of objective conditions, the RPD referred to the Package, and more specifically to a document entitled "Operational Guidance Note" published by the U.K. Home Office in May 2013. According to the passage cited by the RPD, although Turkish citizens of Kurdish ethnicity may be victims of discrimination in Turkey, this generally does not reach the level of persecution, nor does it violate Article 3 of the European Convention on Human Rights, particularly when the claim for refugee protection is based solely on persecution on the grounds of the claimants' Kurdish ethnicity. Given the aforementioned credibility issues emphasized with regard to allegations related to the applicant's role in the election of June 12, 2011, the RPD did not act in an unreasonable manner in finding that it was

unlikely that Kurdish origin – in and of itself – would be a ground of persecution. (*Rahaman v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89 (CanLII), [2002] 3 FCR 537 at para 29; *Sellan v Canada (Minister of Citizenship & Immigration)*, 2008 FCA 381 at paragraphs 2and 3).

[14] For these reasons, the application for judicial review will be dismissed by the Court. Counsel agree that no question of general importance arises in this matter.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review be dismissed. No question is certified.

"Luc Martineau"

Judge

Certified true translation
Sebastian Desbarats, Translator

FEDERAL COURT

SOLICIATORS OF RECORD

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