

Federal Court



Cour fédérale

Date: 20170713

Docket: IMM-524-17

Citation: 2017 FC 681

Toronto, Ontario, July, 13, 2017

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

BULENT BALCI

Applicant

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP**

Respondent

JUDGMENT AND REASONS

UPON application for judicial review by Bulent Balci [the Applicant] pursuant to s. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the *IRPA*], of a decision made by a Senior Immigration Officer [PRRA Officer], dated January 27, 2017, in which the Applicant received a negative Pre-Removal Risk Assessment [PPRA];

AND UPON reading the pleadings and proceedings, and upon hearing what was alleged by counsel for the parties;

AND UPON considering the reasons of Justice James Russell of the Federal Court in granting the Applicant's stay of removal motion on February 14, 2017, in which he held:

1. The Applicant has raised several grounds for serious issue. And, on the low threshold applicable in this motion (not frivolous or vexatious), I find that serious issue is established. For example, the Officer fails to consider that, although the Applicant was found by the Refugee Protection Division [RPD] to be an Alevi/Kurd who was assimilated into Turkish society, the Applicant's more recent involvement with the People's Democratic Party [HDP] (the Officer appears to accept that he is at least a member) means that he is now asserting his Kurdish identity in a way that was not the case when he made his previous claim. I also think it is not frivolous or vexatious for the Applicant to argue that the Officer read the evidence in a selective way when considering future risks for those like the Applicant, who are Kurdish and politically involved. The Applicant points out that there was evidence before the Officer to support that assimilated Kurds, even in western cities, are at risk. The UK Home Office Country Information report for March 2016 refers to the Minority Rights Group International report of September 2015 and claims of 1,260 members of the HDP having been detained, including "members of district and provincial branches of the HDP", as well as more high profile members. The Applicant is a member of a provincial branch, and there are reports of police violence against Kurds and mob violence.
2. The Applicant is an HDP member whose wife has been convicted in Turkey of conducting illegal demonstrations in support of illegal organizations, including the Kurdistan Worker's Party [PKK] and the Revolutionary Peoples Liberation Party [DHKP-C]. In order to avoid the sentence imposed, the wife and the Applicant fled to Canada. This appears to me to raise the Applicant's profile as an HDP member in a material way that places him at real risk upon return. The wife claims that the Applicant was also a participant in the demonstrations.

3. There is an Al Jazeera report of July 2016 that refers to people having to set up self-defence units to protect themselves against Justice and Development Party (AKP) mobs, and that the most vulnerable groups are “woman, Alevi and Kurds”.

AND UPON determining that this application should be granted for the following reasons:

1. The Applicant is a Kurdish citizen of Turkey, of the Alevi religion from the central region of the country. He came to Canada in 2001 and filed a claim for refugee protection which was rejected by the Refugee Protection Division [RPD] on June 2, 2003, for a number of reasons including credibility.
2. However, central to the RPD’s finding, the Board Member stated:

The claimant alleges to be a Kurd, but he does not speak the Kurdish language. He stated that his parents lost their ties to Kurdish culture ever since the family was forced out of their ancestral homeland. The claimant stated that he is Alevi but a non-practicing one. In my opinion, the claimant falls into a category of Alevi/Kurds who are completely assimilated into the Turkish society and do not face a risk of persecution because of their Kurdish or Alevi background. The documentary evidence states:

Outside southeast Turkey, Kurds do not usually suffer persecution, or even bureaucratic discrimination, provided that they do not publicly assert their Kurdish ethnic identity. Kurds who publicly or politically assert their Kurdish ethnic identity run the risk of harassment, mistreatment and prosecution. In urban areas Kurds are largely assimilated, may not publicly identify themselves as Kurds and generally do not endorse Kurdish separatism.

[Emphasis added]

3. Leave to apply for judicial review of the RPD decision was denied by this Court and he returned to Turkey in 2005. However, having arranged a fraudulent marriage of convenience to a Canadian citizen in 2004, he returned to Canada as a sponsored permanent resident in 2007. He then divorced his Canadian wife and remarried his first wife, a Turkish woman, and then sponsored her and their child. He was reported for misrepresentation, but left Canada in 2010 having failed to appear at an Immigration Appeal Division hearing convoked for the purpose. He subsequently returned via smugglers to Canada in July 2016 with his first and present wife and the two children they now have, and presented himself to a Canada Border Services Agency officer where he was given an opportunity to file the PRRA which is the subject of this application.
4. His claim of new risk is based on allegations that both his profile and that of Turkey have changed since the RPD decision of 2003.
5. In terms of standard of review, the issue is reasonableness. In *Dunsmuir v New Brunswick* (2008 SCC 9 at para 47 [*Dunsmuir*], the Supreme Court of Canada explained what is required of a court reviewing on the reasonableness standard of review:

A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, 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.

6. The Supreme Court of Canada also instructs that judicial review is not a line-by-line treasure hunt for errors; the decision should be approached as an organic whole (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54). Further, a reviewing court must determine whether the decision, viewed as a whole in the context of the record, is reasonable (*Construction Labour Relations v Driver Iron Inc*, 2012 SCC 65 at para 3; see also *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62).
7. Upon review of the reasons of the PRRA Officer, it is clear that the Officer was aware of the activities of the Applicant in Turkey since his return and in particular that he was involved in Kurdish politics, that he and his wife became members of the BDP (Peace and Democracy Party) and its successor the HDP (People's Democratic Party) which was a pro-Kurdish political party; the Officer states that in the reasons for the decision under review.
8. The PRRA Officer also noted the facts of abuse including mistreatment and two police raids on their house, as alleged by the Applicant, as well as noting that the couple had become involved in protests, that they actively sought and were refused permission to have their children exempt from Sunni education and other potentially relevant activities in a PRRA; again these facts are in the Officer's reasons.
9. The PRRA Officer specifically noted the spouse was charged and sentenced for attending an unauthorized meeting and resisting police, although the Officer did

not mention the convictions related to events found to be Kurdistan Worker's Party [PKK] and the Revolutionary Peoples Liberation Party [DHKP-C] events, which are illegal organizations actively suppressed by the Turkish government.

10. The PRRA Officer concluded on the basis of country condition documents that HDP party members at risk were those who were "prominent" or "high ranking", and concluded that the Applicant did not fit into that category; in my view this finding was not justified on the law, i.e., was not reasonable per *Dunsmuir*, in that it failed to take into account and consider contrary country condition evidence to the effect that thousands of HDP members were detained and arrested after the coup in July, 2016, albeit that evidence did not specify whether they were prominent or ordinary party members.
11. The Officer appears to have adopted a revised country condition assessment from that found by the RPD in 2003 regarding the risk to Alevi/Kurds. The risk to Alevi/Kurds as found by the RPD is set out above in paragraph 2 above: they are not at risk unless they publicly or politically assert their Kurdish ethnic identity. However, the PRRA Officer concluded that Kurds are at risk if they held a "prominent position in" or were "high ranking" members of the Kurdish party, HPD.
12. In concluding the assessment of risk based on the Applicant being an Alevi/Kurd, the Officer stated: "As mentioned earlier, however, the RPD found in the Applicant's refugee claim, that the Applicant fell into a category of Alevi/Kurds who are completely assimilated into the Turkish society and did not face a risk of

persecution because of their Kurdish or Alevi background.” The Officer did not note the RPD’s exception to its finding namely that: “[K]urds who publicly or politically assert their Kurdish ethnic identity run the risk of harassment, mistreatment and prosecution.”

13. As such, the Officer appears to have found conditions for Alevi/Kurds post-coup different, and improved from their situation in 2003, by indicating that in 2017, only high ranking or prominent members of the HDP are at risk, while in 2003 Kurds ran the risk of harassment, mistreatment and prosecution for merely publicly or politically asserting their Kurdish ethnic identity. I am unable to see how that decision was arrived at, i.e., it lacks intelligibility, and in that connection it is possible the RPD’s exception was overlooked. Therefore this aspect of the decision is unreasonable per *Dunsmuir*.
14. The Officer then compared the general risk profile to the profile of the Applicant and found they did not match; this assessment would have been reasonable except for the fact that the general risk profile for Alevi/Kurds was unreasonable as just outlined.
15. The PRRA Officer also, and properly in my view, noted that the RPD had credibility concerns with the Applicant, and also noted weaknesses in some of the evidence relied upon by the Applicant in his PRRA application. In my view these findings were justified on the record.
16. The Applicant says the PRRA Officer failed to consider the corroborating evidence supplied in his wife’s basis of claim [BOC] on her refugee claim, upon

which the Applicant relied, and also failed to consider corroborating court records confirming her conviction and sentence for attending unlawful rallies. Upon review, I find that the wife's BOC corroborates point-by-point important components of the Applicant's allegations. The Officer made no mention of the BOC or court record. While Officers are presumed to have reviewed the record, it is not intelligible to me how the Officer concluded in this case and on this evidence that "there is insufficient evidence to make a finding that, on a balance of probabilities, the Applicant will be viewed as a political dissident by the state and therefore might face the risk of detention and mistreatment." Neither the Applicant's nor his wife's evidence was rejected as not credible.

17. The matter of the wife's conviction raising the risk profile of the Applicant was not argued before the PRRA Officer nor was it raised by the Applicant in this case, although it was discussed during the hearing. I need not consider that matter in the circumstance.
18. Considering the above, and reading the decision as a whole, I am persuaded that the PRRA decision is unreasonable. I reach this conclusion because it fails to meet criteria of reasonableness set by *Dunsmuir* as noted above. It therefore falls outside the range of possible, acceptable outcomes which are defensible in respect of the facts and law in this case.
19. Neither party proposed a question of general importance to certify, and none arises.

JUDGMENT in IMM-524-17

THIS COURT'S JUDGMENT is that judicial review is granted, the decision of the PRRA Officer is set aside, the matter is remitted for redetermination by a different PRRA Officer, no question of general importance is certified, and there is no order as to costs.

“Henry S. Brown”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-524-17

STYLE OF CAUSE: BULENT BALCI v THE MINISTER OF
IMMIGRATION, REFUGEES AND CITIZENSHIP

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JULY 12, 2017

JUDGMENT AND REASONS: BROWN J.

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