

Federal Court



Cour fédérale

Date: 20171027

Docket: IMM-1060-17

Citation: 2017 FC 960

Ottawa, Ontario, October 27, 2017

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

NASIR DAG

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant is a Turkish citizen who comes from the village of Elbistan. He claimed refugee status both in light of his religious/ethnic profile, as an Alevi Kurd, and perceived political opinions because his village is tied to the Kurdistan's Workers' Party [PKK]. On January 18, 2017, the Refugee Protection Division [RPD] of the Immigration and Refugee Board determined that the applicant was not a Convention Refugee or a person in need of protection in Canada, leading to the present judicial review application.

[2] The applicant obtained a US visa in January 2012, through the help of an agent, who was apparently arrested and killed, although this fact is not mentioned by the applicant in his narrative. He left Turkey for Seattle on January 14, 2012 with the intention of eventually coming to Canada. Indeed, he crossed the Canadian border near Vancouver and traveled to Toronto to make a refugee claim. The applicant alleged four instances of detention and abuse by the Turkish authorities. In January 2007, he was beaten and detained after being accused of attending a terrorist's funeral [first incident]. In December 2008, he was detained and beaten after having attended the commemoration of the K Maras massacre; he was falsely accused of chanting slogans and attending funerals of PKK members [second incident]. In May 2010, after a protest against Turkish authorities happening in a nearby village, he was detained along with many other people and was released after having been beaten and interrogated [third incident]. In August 2011, the applicant's house was raided by the police who ransacked his belongings, and beat the applicant in front of his wife and children. He would also have been taken by the police after being accused of Christian propaganda. He was subsequently accused of being a terrorist and a separatist; he was detained for 4 days [fourth incident].

[3] On December 9, 2013, the RPD dismissed the claim, but this first decision was later set aside by this Court on February 5, 2015. The claim was sent back for redetermination to another panel and hearings were conducted on September 21, 2016, November 17, 2016 and December 14, 2016. His claim was rejected a second time on January 18, 2017, leading to the present judicial review application. In the impugned decision, the RPD determined that the applicant was not credible regarding the material elements of his claim, and found his profile was not indicative of more than a mere possibility of forward looking risk. The officer found the

applicant had not satisfied the burden of establishing a serious possibility of persecution on Convention grounds, or that he was facing a danger of torture, risk to his life, or risk of cruel and unusual treatment or punishment if he were to return to Turkey.

[4] In a nutshell, the applicant submits three distinct grounds of review: (1) a number of key findings with respect of the first and fourth incidents and the execution of the agent are perverse and render the credibility conclusion unreasonable; (2) the RPD misconstrued the purpose of the psychological evidence and it also dismissed corroborating evidence on improper grounds; and, (3) the RPD's assessment of risk did not take into account the most recent country conditions and the fact that the applicant is known as an Alevi Kurd.

[5] The present application for judicial review is dismissed.

[6] It is apparent that the RPD considered all the relevant evidence in the record, including the transcripts of the previous hearing, the extensive documentary evidence submitted by the applicant, the medical reports corroborating the applicant's injuries and another two reports attesting to his psychological state. Overall, I find that the conclusion reached by the RPD is reasonable and must be upheld by the Court. In this respect, the RPD's lengthy reasons are clear and articulate. They provide a rational basis for dismissing the applicant's claim. The arguments of attack made by the applicant are unfounded.

[7] The RPD's negative credibility finding is based on the cumulative effect of multiple omissions, contradictions, absence of explanations or implausibilities. The following findings have not been challenged or seriously questioned by the applicant:

- (a) When interrogated at the hearing, the applicant could not remember the birthdates and ages of his children and wife, despite claiming family was the reason he returned to Turkey between extensive periods of work abroad. Although this is not a "hugely significant credibility concern" it is nevertheless noted by the RPD (para 14);
- (b) There were also several contradictions in the alleged work history abroad. The Personal Information Form [PIF] was amended several times and the countries listed changed. When asked about it, the applicant said he does not remember a lot of things. Plus, the applicant submitted a lot of evidence attesting of his work abroad, but has not submitted a passport to corroborate his travels (para 25). There is no evidence supporting his presence in Turkey at the times alleged (para 25);
- (c) The applicant's testimony regarding his employment in Turkey was also inconsistent with his documents (paras 26 and 27). The applicant also made a "shocking" allegation in his testimony that there was a mention in the Turkish government computer system that he was linked to the PKK (para 28). This would have occurred in 2004, but the applicant said he was listed because of a complaint in 2007 (para 28). When this inconsistency was pointed out, the applicant got very evasive, and shifted his story to

being prosecuted because of his nationality (rather than political affiliation). The RPD was highly concerned by this omission and inconsistencies. This led to find that the applicant was likely not being truthful to the panel on his past activities (para 29);

- (d) There is a lack of evidence placing the claimant in Turkey in the recent past, including a complete gap between 1994 and 2004 (para 30);
- (e) The witness Salman Vural, a cousin of the applicant, could not place him in Turkey after 1988 (para 31). This witness is a now a Canadian citizen. He testified to often going back to Turkey on vacation, which led the officer to think the general risk for Alevi Kurds was not that extreme (para 32);
- (f) The applicant submitted a letter from Dr. Hoca diagnosing him with anxiety and depression because of separation from his family (para 44). The RPD found that this did not corroborate the claimant's allegations about what happened back in Turkey and does not overcome her credibility concerns; and
- (g) The RPD found that the claimant's repetitive trips out and back from Turkey are inconsistent with well-founded fear and undermine his allegations of persecution (para 45).

[8] I will now examine the grounds of attack by the applicant with respect to the following key findings.

[9] Starting with the first incident in 2007, the applicant testified that this occurred because of a complaint made by a nationalist store owner, unlike what was affirmed in his PIF (paras 15-16). When the contradiction was raised, the applicant responded that he omitted this information in his PIF because “it was a long story” (para 16). The RPD also considered a letter from a co-detainee which referred to this complaint, but rejected it because it was not in the form of an affidavit (para 16). Before this Court, the applicant claims that the RPD acted unreasonably in doing so because his testimony was not inconsistent with his narrative, and instead simply added further details. In his narrative, the applicant stated he was stopped on the way back from the funeral of an Alevi religious figure, and that he was arrested based on the perception he was coming back from a terrorist’s funeral. In his testimony, he mentioned he was arrested because of a complaint made by a Turkish nationalist store owner. I agree with the respondent that it was reasonable to draw a negative credibility inference from the applicant’s omission to mention the complaint. The RPD specifically found this was an important omission because it would suggest he was targeted specifically by the authorities, rather than being randomly apprehended. Moreover, this complaint also reappeared throughout the testimony and thus should have been mentioned in the narrative.

[10] With respect to the fourth incident – which the applicant recounts as being the “most memorable”, the RPD noted that the applicant’s testimony regarding the date and the details of the event was again inconsistent with the PIF. The date was off by a year, and the account of the events was completely different (para 17). The applicant testified that the reason for this arrest was the 2007 complaint, unlike what was stated in his PIF statement (para 18). Further, the applicant could not remember being accused of throwing a Molotov cocktail, despite this being

stated in his narrative (para 19). The RPD recognized the applicant's fragile psychological status, but also thought such a key event in his life should have had a clearer place in his mind. The RPD found the event probably did not occur as described, if at all, which hindered all the evidence of past detentions (para 19). Before this Court the applicant now claims the RPD impugned his credibility based on two non-existent inconsistencies. First, his narrative stated he was accused of being a separatist and terrorist, which is consistent with his testimony of being detained based on PKK connections. He claims his narrative never said that he was detained because of the Christian book. He further notes that the fact he forgot about the Molotov cocktail was not an inconsistency or incoherence, but was the result of memory failure due to his psychological condition. The respondent recognizes that the RPD may misinterpret the narrative as stating that the Christian book was the reason for his detention. Yet, the applicant did omit this detail in his testimony and describing the 2011 event, and the RPD could draw a negative credibility inference from this omission. I agree with the respondent that it was reasonable for the RPD to point out inconsistencies between different versions of the 2011 detention recounted by the applicant in his PIF narrative and in his testimony. He did not mention the Christian book or the Molotov cocktail in his testimony while those two facts seemed key in his PIF narrative. He instead focused on the mysterious 2007 complaint which was completely absent from the PIF. I am also satisfied that the RPD acknowledged the applicant's potential psychological issues, and tried to ask open questions, as visible from the examination of the hearing transcripts.

[11] There was also a "startling revelation during the hearing" which the RPD found "very significant" (para 20). The applicant revealed in the hearing that he had to pay \$37,000 to an agent to obtain the US visa. This agent was subsequently arrested and killed. The applicant

mentioned in the hearing being afraid that the agent revealed his name to the authorities before his execution. The applicant stated that, but for this execution, he would have returned to Turkey. The officer found that this indicated the claimant did not really have problems with the Turkish authorities. In addition, there has been no mention of this execution and its impact on the applicant in the previous RPD instance, before the Federal Court, or in all the PIF amendments (para 21). The RPD found this omission had an important impact on the applicant's credibility, and went on to add that "this testimony, in particular that he would have returned to Turkey but for the situation with Ahmet, to strongly suggest the claimant did not have problems with the authorities in Turkey, he is not wanted and he has fabricated his entire asylum claim" (para 21).

[12] Before this Court, the applicant challenges the RPD's interpretation of his testimony about the execution of the agent. He claims the RPD misconstrued this as being the sole basis for his risk, and thought this meant he withdrew all his other fears of persecution. He claims it was indefensible to find his credibility diminished based on that finding, and to conclude that he has fabricated the entire claim. Instead, he argues he was only providing this example to explain why his name may have been shared with the authorities, and of why he feared the authorities. Since the RPD gave too much weight to that single finding, the decision was unreasonable. I cannot agree with the applicant's interpretation of the RPD's decision. First of all, when reading the testimony, it was reasonable for the RPD to interpret the applicant's words as meaning that, but for that execution, he would have considered going back to Turkey. Of course, another interpretation would have been possible, but it is not our Court's role on judicial review to reassess the evidence. Indeed, the transcript reads as follows:

Member: So if this issue hadn't happened with Ahmed, would you have been able to go back to Turkey?

Claimant: I was afraid since this guy was killed. I believe that I may also be killed. I was afraid. So that's why I didn't go. Otherwise, who would want to be apart from their children?

(see the certified tribunal record at 1553)

[13] Furthermore, when reading the decision, the RPD otherwise clearly states that it is making a negative credibility finding because of the applicant's omission to mention the execution up until his hearing, not because the importance of the execution for the applicant means he was "withdrawing his other fears", like the applicant contends. The RPD believes this story may be an embellishment at the hearing, and may indicate the absence of other problems with the authorities. The RPD can make negative credibility findings because of omissions, and it was reasonable for the RPD to do so in this case. If it were true, the agent's execution would have been highly indicative of a risk for the applicant in Turkey. Accordingly, it was reasonable for the RPD to question why this was omitted.

[14] I also dismiss the argument made by the applicant that the RPD otherwise unreasonably discarded relevant corroborative evidence.

[15] The applicant's nephew, Seyit Dag, provided an affidavit to support the refugee claim (para 33). However, the applicant had not seen the nephew in a long time, and the nephew was not involved in any of the incidents listed in the file. The affidavit mentioned that the nephew witnessed raids, but he was actually only told about them. The RPD found the affidavit to be fraudulent, which undermined the credibility of the entire evidence (para 33). In any event, Seyit who claimed refugee status in Canada returned to Turkey despite the allegations of risk he made because he is a Kurdish Alevi (para 34). The RPD therefore attributed no evidentiary weight to

the other documents submitted (letters and photographs of unidentified individuals), as they were all unsworn and unaccompanied by identity documents (para 35).

[16] The applicant submits it was unreasonable to impugn this corroborating evidence for being unsworn and letter writers absent. Evidentiary requirements should not be too strictly applied in view of the difficulty of proof inherent to the refugee's special situation. The respondent replies that the RPD reasonably found the nephew's affidavit to be fraudulent, as there was a clear unexplained contradiction regarding the fact the nephew had not actually witnessed the raids. As for the other documents, the respondent claims it was reasonable to give little weight to the other documents in light of the fraudulent affidavit and the overall assessment of the applicant's credibility. I agree with the respondent. While evidentiary requirements should be relaxed before the RPD, and documents should not be dismissed simply because they were not sworn, the fact a witness lied in its affidavit is a relevant factor to consider. Furthermore, in light of the numerous negative credibility findings, I am not satisfied that these documents alone would be determinative.

[17] The applicant also challenges the little weight attributed by the RPD to the psychological evidence.

[18] The applicant filed a 2012 letter from a doctor in Canada, Dr. Gumuskemer, which referred to a hospital visit in Elbistan in 1998 for a head injury (para 36). The doctor is only recounting the story as told by the applicant. In the first refugee hearing, the applicant mentioned seeing that doctor only because he needed this report. The RPD therefore doubted the doctor's

impartiality and the provenance of the letter. The RPD gave it little weight (para 36). A second letter from a Canadian doctor, Dr. Hirsch, corroborates the allegation of assault from 1998 (para 37). Again, the doctor is only recounting what the applicant told him. This account is also inconsistent with the PIF. The RPD gave the letter little weight (para 37). The RPD also gave little weight to Dr. Devins' psychological report attesting of a major depressive disorder and post-traumatic stress disorder [PTSD] (paras 38-42). The RPD dismissed the report because the doctor only based it on evidence provided by the applicant, which the RPD found to lack credibility. The RPD added that a psychological report cannot serve as a cure-all for deficiencies in a claimant's testimony.

[19] Before this Court, the applicant claims it was unreasonable to doubt Dr. Gumuskemer's impartiality simply because the applicant's brother was able to obtain the letter for him. This is an unsound and speculative reason to impugn evidence. As for Dr. Hirsch's letter, the applicant claims that the RPD dismissed this objective evidence due to an inconsistency in dates given at a previous RPD hearing, and offered his opinion that the doctor was incorrect, which it does not have the expertise to do. The applicant claims that it was unreasonable to dismiss Dr. Devins' report solely because it was exclusively based on evidence provided to him by the applicant, and which was found to lack credibility. It was a circular reasoning to dismiss the conclusions of a psychologist or a psychiatrist because of credibility findings, when the purpose of the report is to actually alert the RPD of how symptoms of PTSD can impact credibility findings.

[20] The respondent submits that the RPD reasonably gave little weight to the psychological evidence in explaining concerns with the applicant's credibility. Indeed, the RPD showed

sensitivity to psychological issues during the questioning, asked him open ended questions and tried to make it as easy as possible to recount events. Yet, no psychological report can be a cure-all for deficiencies in the applicant's evidence. I agree with the respondent. The RPD could give little evidentiary weight to findings that were simply recounted by the applicant. While Dr. Devins' report contained some findings that were based on his direct observations of the applicant, I am not satisfied that admitting the report would have changed the RPD's decision. The report basically recommended to show sensitivity to the applicant's psychological state and to give him breaks during the hearing, both of which were done. Moreover, the RPD would still have been entitled to give little weight to what the applicant simply told the psychiatrist, and that includes allegations of memory loss. As such, the RPD still has made important credibility findings based on the inconsistencies between the testimony and the PIF narrative.

[21] Finally, despite the credibility issues with the applicant's story and allegations of persecution in Turkey, the RPD accepted that he was an Alevi Kurd, and went forward with considering the risk he could face from this national/religious background. Yet, the RPD was unable to find that this profile alone was sufficient for a grant of asylum. The RPD based its decision on a 2016 country report from the UK Home Office which recognized that Kurds were facing discrimination on the part of the Turkish authorities, but that it did not amount to persecution within the terms of the Convention or other inhumane and degrading treatment. Another Home Office report led the RPD to similar conclusions with respect to the Alevis: they were facing discrimination, but not persecution. The RPD also stated having considered the change in situation since the July 2016 coup, as described by counsel and extensive documentary evidence. The RPD however could not conclude that all Alevi Kurds are currently at risk in

Turkey. The RPD based this decision on *Dudu v Canada (Citizenship and Immigration)*, 2014 FC 626 and *Birkas v Canada (Citizenship and Immigration)*, 2013 FC 1184 at paragraph 8, which both essentially said that claims based on a single profile can succeed only if all persons with that profile (ie. all Kurdish Alevis) have a well-founded fear of persecution or establish a personalized risk or danger. This was not the case here.

[22] Before this Court, the applicant submits that the RPD's assessment of risk based on his profile as a Kurdish Alevi man from Elbistan was made without regards to the evidence, for his risk profile, and for the cumulative nature of the persecution alleged. The applicant submits that the RPD relied on outdated country conditions and ignored the compelling evidence of deteriorating conditions after the July 2016 coup, including the multiple cases of violence against similarly situated persons. He criticizes the lack of specific analysis of all the evidence filed, which amounts to "a blanket dismissal of all the post-coup evidence filed", and leads to the inference that all the post-coup country conditions evidence was ignored. The applicant's arguments are not convincing. Indeed, the RPD mentioned the coup of July 2016 (para 48) and it was not unreasonable to refer to the 2016 UK Home Office report. Although the applicant may have preferred a more detailed discussion of the evidence, the RPD is not required to list and discuss every document. It is apparent that the RPD also considered the evidence related to conditions post July 2016.

[23] Before this Court, the applicant also submits that the RPD did not consider his particular risk profile. He was in a more vulnerable position because he cannot hide his Kurdish identity due to his name, place of birth, and accent: all of which the RPD should have considered. This

was relevant because the evidence shows that many Kurds protect themselves by hiding their identity. The RPD should also have looked at the cumulative effect of being Kurdish and Alevi. These grounds of attack are also unfounded in the Court's opinion. The RPD actually considered the applicant's profile as an Alevi Kurd from the restive areas of Turkey in considering his risk. The RPD also considered the risk cumulatively. I also agree with the respondent that prospective risk based on any perceived affiliation with the PKK was considered and duly discarded as being non credible. This is apparent from the questioning with respect to the complaint of 2007 (transcripts at pages 1556 to 1558).

[24] Overall, when read as a whole, the impugned decision is reasonable.

[25] For the reasons above, the judicial review application is dismissed. There is no question of general importance warranting certification.

JUDGMENT in 1060-17

THIS COURT'S JUDGMENT is that the present application for judicial review be dismissed. No question is certified.

"Luc Martineau"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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