Federal Court  Cour fédérale

Date: 20190515

Docket: IMM-4887-18

Citation: 2019 FC 711

Ottawa, Ontario, May 15, 2019

PRESENT: Mr. Justice Brown

BETWEEN:

YUSUF BAYDAL

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review by the Applicant, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a pre-removal risk assessment [PRRA] application which was dismissed by a senior immigration officer [Officer] of Immigration, Refugees and Citizenship Canada [IRCC], dated July 20, 2018 [Decision].

II. Facts

[2] The Applicant is a citizen of Turkey, born April 27, 1969. He fears being "arrested, tortured and even killed" in Turkey due to his profile as a very active Gulen supporter. "The Gulen movement is a term used to describe those who follow the US-based Islamic cleric Fethullah Gulen; the movement is not a political party, neither is it a religion": Decision at p 2.

[3] The Applicant deposed to having Gulen connections from 1990–2000: he resided in Gulen-arranged university student apartments; worked for a Gulen-owned broadcasting company; married a Gulen supporter; hosted Gulen meetings in his home; his daughter attended a pro-Gulen high school; and he gathered evidence for a pro-Gulen journalist's article on corruption of the military service unit while completing his mandatory military service.

[4] Fearing reprisals from having criticized the military, he fled Turkey with his family and made a refugee claim in Canada on July 1, 2001. They had a Canadian-born son in September, 2001. The son attended a Gulen-owned high school in Toronto.

[5] The Refugee Protection Division [RPD] rejected the Applicant's 2001 claim in 2005.

[6] The Applicant filed for a PRRA application, which was rejected in 2007. The Applicant left Canada with his family in August 2007.

[7] The Applicant deposed that since his return to Turkey he had numerous additional Gulen connections and extensive Gulen-related activities from 2007 to 2015: he worked as a professor in two universities where he organized Gulen meetings; he worked as director of an English program where he organized Gulen meetings and fundraisers; he participated in a pro-Gulen association and rented office space to organize tutoring and lessons for the Gulen movement; and he organized training activities for Gulen-affiliated companies. The list is very lengthy.

[8] His credibility was not raised in the Decision.

[9] The Applicant deposed, and it is accepted, that Turkish President Erdogan [Erdogan] "officially declared that the Gulenist movement was an illegal terrorist organization" in May, 2016. The Applicant gave evidence, uncontested, concerning the attempted coup of July 15, 2016, for which Erdogan and his government quickly blamed Gulen and his followers. It is not disputed that after the attempted coup the Ergodan government initiated persecution, detainment, and arrests of tens of thousands of Gulenists with the objective of cleaning the state of Gulenists. In the following months, arrests included thousands of judges. Hundreds of entities were shut down for allegedly belonging to the Gulen movement. The Turkish Supreme Court ruled the Gulen movement to be an armed terrorist organization in June, 2017.

[10] The evidence of the attempted coup and resulting wide-ranging anti-Gulen crackdown by the Erdogan government was not contested, indeed it seems the Officer accepted it.

[11] Specifically, the Applicant was investigated by the Turkish government because he held an account at Bank Asya – well-known to be affiliated with Gulen. The Applicant deposed he destroyed materials showing his relationship to the Gulen movement after the coup. His fear of being arrested increased: his friend, a pro-Gulen journalist, was arrested; and the police continued mass arrest in 2016. The Applicant deposed police raided his house and his wife lied about his whereabouts in January, 2017; his sister-in-law's husband was arrested in April, 2016; and by the time of his PRRA application, almost 140,000 Gulen supporters were imprisoned.

[12] As a result, the Applicant fled Turkey a second time in 2017 and again applied for refugee status. He made a refugee claim but was found ineligible for referral to the RPD because he was previously rejected: IRPA, paragraph 101(1)(b). He is now subject to a deportation order for returning without authorization: IRPA, subsection 52(1).

III. Decision under review

[13] As noted he applied to IRCC for a PRRA. However, the PRRA Officer rejected the application, finding there was no new evidence: IRPA, subsection 113(a); Decision at p 3:

> I do not find that the submissions provided by the applicant establish any facts that are substantially different from those that were presented to the RPD. Rather, I find that the applicant has reiterated the some facts which he expressed before the RPD. The facts outlined in this application are materially consistent with those already argued before the RPD.

[14] The Officer said he or she did "not find sufficient objective evidence ... to demonstrate that the applicant has had membership in or support for the Gulen movement at any level": Decision at p 4. The Officer found lack of personalized risk, at p 4:

> ... Notwithstanding, the applicant has not proffered any evidence to demonstrate that he is wanted by authorities in Turkey. While I have considered all these documents in the context of assessing country conditions, they are generalized in nature and do not establish a linkage directly to the applicant's personal circumstances. Evidence of general conditions within a country is not in itself sufficient to show that the applicant is personally at risk of harm.
>
> Overall, the applicant has provided insufficient objective evidence that would be indicative of new risk developments in either country conditions or personal circumstances which have arisen since the date of the RPD decision. As such, I am not persuaded to conclude differently from the decision of the RPD.
>
> ... I do not find that the applicant would face more than a mere possibility of persecution, nor do I find the applicant more likely than not to face a danger of torture, a risk to life, or a risk of cruel and unusual treatment or punishment if returned to Turkey.

IV. Issues

[15] The issue is the reasonableness of the Officer's Decision.

V. Standard of review

[16] In *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 57, 62 [*Dunsmuir*], the Supreme Court of Canada holds that a standard of review analysis is unnecessary where "the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question." A PRRA decision should be reviewed on the reasonableness standard: *Micolta v Canada (Minister of Citizenship and Immigration)*, 2015 FC 183 at para 13. In *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55, the Supreme Court of Canada explains what is required of a court reviewing on the reasonableness standard of review:

> [55] In reasonableness review, the reviewing court is concerned mostly with "the existence of justification, transparency and intelligibility within the decision-making process" and with determining "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para. 47; *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708, at para. 14). When applied to a statutory interpretation exercise, reasonableness review recognizes that the delegated decision maker is better situated to understand the policy concerns and context needed to resolve any ambiguities in the statute (*McLean*, at para. 33). Reviewing courts must also refrain from reweighing and reassessing the evidence considered by the decision maker (*Khosa*, at para. 64). At its core, reasonableness review recognizes the legitimacy of multiple possible outcomes, even where they are not the court's preferred solution.

VI. Analysis

[17] After hearing from the Applicant, I asked counsel for the Respondent to consider in her presentation and help me decide whether I should find the Officer's reasons to be very seriously or substantially disconnected from the political reality in Turkey, or words to that effect. Despite counsel's able submissions, and after reflecting on the matter, I am unable to conclude otherwise. Therefore judicial review must be ordered.

[18] Fundamentally, and notwithstanding a small number of what might possibly be considered defensible findings, the Decision is seriously and materially flawed because it is not defensible on the record given the evidence of Turkey's changed political reality in terms of Gulen supporters between 2001 when his first claim was considered, and 2017 when he arrived back in Canada for the second time.

[19] In essence, the Officer criticized the Applicant's new evidence of persecution in 2017 after the attempted coup, because it was contrary to the Applicant's evidence at his refugee hearing in 2001. In my respectful opinion, the Officer failed to appreciate the evidence that the situation for Gulen supporters changed very materially between 2001 and 2017.

[20] The Applicant applied for refugee protection in 2001 based on his situation in 2001. At that time he said he was a Gulen follower, but noted that did not present serious issues for him at the time. And so it might have been.

[21] The 2001 claim stemmed from his fear of persecution due to his denunciation of military corruption in Turkey.

[22] His claim based on the situation in Turkey in 2017 has very little if anything at all to do with the 2001 claim given the radical change in country conditions after the attempted coup.

[23] The 2018 claim pertained to a genuine fear of persecution based on the Applicant's significant and longstanding involvement with the Gulen movement. While being a Gulen supporter was not problematic for the Applicant in 2001, it was in 2017 causing him to flee for a second time.

[24] The Officer acted unreasonably in treating the Applicant as if nothing had changed in Turkey's treatment of Gulen supporters.

[25] I am unable to disentangle or treat as a minor error this unreasonable approach to the evidence which, with respect, pervades the Decision. The Decision is not defensible on the facts, contrary to what is required by the Supreme Court of Canada in *Dunsmuir*. In my view, it falls outside the range of possible, acceptable outcomes that are defensible in respect of the facts and law.

[26] This is a determinative issue. It is not necessary to address the other issues raised by the Applicant.

[27] I have considered that judicial review is not a treasure hunt for errors, and that the Decision must be read as an organic whole.

[28] In this light I remain of the view that the Decision is unreasonable. Therefore it will be set aside.

[29] Neither party submitted a question of general importance to certify, and in my view, none arises.

JUDGMENT in IMM-4887-18

THIS COURT'S JUDGMENT is that judicial review is granted, the Officer's Decision is set aside, the matter is remanded for reconsideration by a different decision-maker, no question of general importance is certified and there is no order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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