Federal Court		Cour fédérale

Date: 20101104

Docket: IMM-4974-09

Citation: 2010 FC 1089

Ottawa, Ontario, November 4, 2010

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

MUSTAFA ORMANKAYA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), for judicial review of the decision of a pre-removal risk assessment officer (the officer), dated July 15, 2009, which determined that the applicant would not be subject to risk of persecution, danger of torture, risk to life or risk of cruel and unusual treatment or punishment if returned to Turkey.

[2] The applicant requests an order setting aside the officer's decision and referring the matter back to a different pre-removal risk assessment (PRRA) officer for redetermination.

Background

[3] The applicant is a citizen of Turkey and a member of the Alevi faith. His wife and all seven of his children remain in Turkey. He alleges that he fears the Turkish authorities and Sunni extremists on the basis of his Alevi religion and his perceived Kurdish identity.

[4] While completing his school and military service, he alleges he was assaulted and abused by Sunni extremists because of his Alevi religion. After that, he worked on his family's farm and then became a truck driver in 1988. In the course of his work, the applicant travelled throughout Turkey and also to Iran and Iraq. Because he looks like a Kurd, he alleges that authorities often arrested, questioned and searched him. Between August 2000 and May 2005, the applicant alleges he was detained four times by authorities who suspected him of collaborating with the PKK, the Kurdish opposition party. In January 2003, a Turkish nationalist group also confronted him and accused him of helping the PKK.

[5] On September 15, 2004, he was issued a Turkish passport and on June 13, 2005, he was issued a Canadian work permit. On July 4, 2005, the applicant entered Canada at Pearson Airport.

[6] On August 10, 2005, the applicant made a claim for refugee protection. On December 29, 2006, his claim was rejected by the Refugee Protection Division of the Immigration and Refugee Board (the Board).

[7] The Board had concluded in general that the applicant had not established that his fears were objectively well founded. There was a lack of objective evidence to support his claims that he had been accused of illegal or anti-government activities and the issuance of a passport to him further diluted the notion that he was considered an enemy to authorities. The Board also found that his credibility was undermined when it came to his allegations of detentions and assaults by the authorities and when it came to his allegations of mistreatment while at school and in the military.

[8] The Board did consider that as a truck driver in Southeastern Turkey, it was plausible that he had been stopped and subjected to short and random detentions, but did not find that the applicant had been singled out or personally targeted. The Board finally considered the country conditions but did not find that general treatment of Kurds and Alevi in Turkey amounted to systematic persecution.

[9] On April 18, 2007, this Court dismissed his application for leave and for judicial review of the Board's decision.

[10] On October 10, 2007, an application for an immigration visa exception on humanitarian and compassionate (H&C) grounds was filed in Canada. That application was subsequently denied.

[11] The applicant was offered the PRRA on July 28, 2007.

The Officer's Decision

[12] It was the officer's determination that while the applicant had presented some new evidence, the fears he alleged at the PRRA hearing were the same fears alleged before the Board. The officer reviewed those fears again, reviewed the conclusions made by the Board and then considered the applicant's new evidence in light of those conclusions and the updated country conditions.

[13] The officer considered the applicant's new documentary evidence regarding the current situation in Turkey, but concluded that Kurds are not at a greater risk than other ethnic groups so long as they do not promote the creation of a separate state. This did not apply to the applicant since he had not established that he was ever a member or a supporter of a political or separatist group. The officer also concluded that the applicant's fears related to his religious beliefs were not supported.

[14] In order to demonstrate that he was wanted by Turkish authorities, the applicant submitted a photocopy of a 2007 arrest warrant and its translation which indicated he had been charged with a political crime. The officer attached very little weight to this evidence because there was no original and because the document was very sparse on details and had an illegible security seal. In the end, the officer was not able to conclude that the applicant had been charged with a political crime.

[15] One new fear raised by the applicant was that his claim for asylum in Canada itself would now cause him to be targeted as a traitor upon return to Turkey. However, the officer noted that the Canadian government does not disclose such information and that in any event, there are no indications that Turkish nationals are persecuted in Turkey purely because they applied for asylum abroad. On the whole, the officer concluded the applicant would not be subject to risk of persecution, danger of torture, risk to life or risk of cruel and unusual treatment or punishment if returned to Turkey.

Issues

[16] The issues are as follows:

1. What is the appropriate standard of review?
2. Did the officer err in rejecting the warrant on the basis that an original was not provided?
3. Did the officer breach procedural fairness by failing to provide him with an opportunity to present the officer with the warrant?
4. Did the officer err by engaging in a selective review of the evidence?

Applicant's Written Submissions

[17] The applicant submits that it was not clear how the officer reached his decision to afford little weight to the warrant. Since he did not indicate that he was questioning the credibility of the

documents, he could not just ignore their content. The officer also had a letter from the applicant's counsel indicating that he had the original.

[18] The officer also erred by implying that genuine Turkish arrest warrants refer to the section of the act for an offence and the date of the offence. Yet the officer is no expert on such matters and did not refer to any documentary evidence. The applicant submits that the officer improperly rejected evidence for technical reasons, based on speculation. The fact that the warrant went to the heart of the applicant's alleged fears of persecution meant that the officer should have taken extra care in handling it. Furthermore, in such circumstances, where the officer had reason to believe that applicant's counsel may have had the original, it was incumbent on the officer to obtain it. Failure to do so was a breach of procedural fairness.

[19] Finally, the applicant submits that the officer erred in his review of the country conditions. The overwhelming portion of the evidence indicates that Kurds are persecuted not because they are separatists but because of their expression of Kurdish identity. Even though the applicant is not Kurdish, he is often perceived to be by authorities and ultra-nationalist groups.

Respondent's Written Submissions

[20] The officer's decision was reasonable. Contrary to the applicant's submission, the officer did not reject the copy of the arrest warrant, but reasonably assigned it little weight. The lack of an original was one factor among many that detracted from its weight. Without the original, it was hard

to verify the seal. The officer also considered the lack of an offence date, any reference to a section or act and the absence of any other evidence showing that the applicant was a political activist.

[21] While the officer was informed that the original would be provided, it was not. The applicant has now provided two other documents which were not before the officer. The officer was not obliged to consider evidence not before her. Nor did the officer have a duty to seek out further information from the applicant. The applicant cannot complain of breaches of procedural fairness because he did not lead all the relevant or the best evidence in his control.

[22] The officer considered the entirety of the documentary evidence. The fact that she came to a conclusion that is different from what the applicant desires does not mean that the officer selectively considered the information. The officer found that the applicant did not fit the profile of someone likely to be targeted by Turkish authorities or any other group. The existence of some information in the documents which could be taken to support the applicant's position does not mean that the information was ignored.

Analysis and Decision

[23] **Issue 1**

What is the appropriate standard of review?

Generally, the standard of review for a PRRA decision is that of reasonableness (see *Wang v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 799 at paragraph 11). Under this

standard, the Court should not interfere unless the officer's conclusions do not fall within the range of possible acceptable outcomes (see *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at paragraphs 47, 53, 55 and 62).

[24] However, any issues of procedural fairness in assessing a PRRA application will be determined on the correctness standard (see *Wang* above, at paragraph 11) Under the correctness standard, the Court will undertake its own analysis of the questions and reach its own conclusion (see *Dunsmuir* above, at paragraph 50).

[25] **Issue 2**

Did the officer err in rejecting the warrant on the basis that an original was not provided?

With respect to the applicant's preliminary argument concerning original documents not being before the officer, I reject this argument as it is up to the applicant to put documents before the officer.

[26] I cannot accept that the error alleged by the applicant is established. First, I note that the warrant was not rejected, but rather given little weight.

[27] Secondly, the officer stated several reasons for affording little weight to the arrest warrant. Lack of an original was merely one of those factors. Indeed, there were several aspects which were reasonably considered as detracting from the probative value of the evidence. Most notably, in my view, was the fact that in the section of the form with the heading, charges laid against the suspect,

it simply read political crime. Such a vague indication of the charge is not probative of determining any actual sanction which might be forthcoming.

[28] The applicant says the officer implicitly speculated that a genuine Turkish warrant would have provided a reference to the date of the crime and the section of the act under which the charge arose. While the officer did note the omitted elements, in my view, this was simply the officer's articulation of his primary concern with the document; that it lacked detail. Since officers are encouraged to articulate their analysis, I cannot fault the officer here for doing so. There is simply no indication, nor can I assume, that the officer improperly imposed a Canadian standard on the warrant.

[29] It was also reasonable for the officer to have been somewhat concerned about the lack of the original document given the officer's discussion regarding the illegibility of the seal.

[30] The officer also is taken to have viewed this evidence in light of the applicant's admission that he was never a member or supporter of any political opposition or separatist party. In the context of the entire decision, the decision to afford little weight to the document was within the range of possible acceptable outcomes and it is not for the Court to interfere in such a decision.

[31] **Issue 3**

Did the officer breach procedural fairness by failing to provide him with an opportunity to present the officer with the warrant?

The onus is on the applicant to ensure that all relevant evidence is before the PRRA officer. The PRRA officer is only obliged to consider evidence that is before her. She is not required to solicit the applicant for better or additional evidence (see *Selliah v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 872, 37 Imm. L.R. (3d) 263 at paragraph 22, aff'd 2005 FCA 160, 50 Imm. L.R. (3d) 105, *Lam v. Canada (Minister of Citizenship and Immigration)* (1998), 152 F.T.R. 316 (F.C.T.D.), [1998] F.C.J. No. 1239 at paragraph 4).

[32] The applicant in the present case cannot complain of a breach of fairness because he did not submit all the relevant evidence he may have had.

[33] The applicant's reliance on *Haghighi v. Canada (Minister of Citizenship and Immigration)*, [2000] 4 F.C. 407 (C.A.) is misplaced. In that case, the Court determined that it was the officer determining an H&C application who had a duty to disclose to the applicant a risk assessment report. The case did not discuss any duty on the officer to solicit evidence that the applicant failed to provide at the outset, as was the case here. Nor are the portions of *Haghighi* above decision discussing a duty to invite response to credibility concerns applicable here. The PRRA officer made no findings of credibility which would require an oral hearing.

[34] While the applicant has expounded on the benefits of getting the most up-to-date information, I cannot impose a novel duty on PRRA officers which does not exist. For the above reasons, I cannot accept that the officer breached his duty of fairness to the applicant.

[35] **Issue 4**

Did the officer err by engaging in a selective review of the evidence?

PRRA officers are expected to engage in a review of documentary resources and to be selective with respect to the portions they find most relevant. Thus, the applicant does not invoke the prospect of an error with this issue as written.

[36] However, where an officer fails to mention the substance of critical documentary evidence which runs contrary to the conclusion he or she reaches, the reviewing court will be more likely to infer that that conclusion was made without regard to the evidence (see *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998) 157 F.T.R. 35, [1998] F.C.J. No. 1425 (F.C.T.D.) (QL)). Yet, if this is the basis upon which the applicant requests this Court to intervene, I find that the applicant has failed to point to such a critical and contrary piece of evidence.

[37] The conclusion reached by the officer was that:

> … the applicant has not demonstrated that he has a political, separatist or religious profile indicating that he would be targeted by the Turkish authorities, soldiers, extremists or any other groups.

[38] The officer based this finding in part on his conclusion that the applicant would not face risk in Turkey based on his perceived Kurdish identity because Kurds are not at a greater risk so long as they do not promote the creation of a separate state. The applicant says this flies in the face of documents which conclude that the Turkish authorities do not tolerate any other nationalities and

that Kurds who wish to freely express themselves and their identity as Kurds are subject to persecution.

[39] I cannot find that such evidence is contrary to the officer's finding. Nor can I find that the officer ignored it. The officer discussed articles describing abuses by Turkish authorities of pro-Kurdish groups:

> Several articles report impunity, abuse and violence by the Turkish authorities toward the leaders and members of pro-Kurdish groups, members and supporters of human rights associations, public figures and journalists. Tensions between nationalist Turks and Kurds are also reported, with Kurds having a greater chance of being detained and abused than Sunni Turks in the same situation. That vulnerability is key to their perceived (leftist) political leanings….

[40] These findings must be contrasted with the evidence that the applicant is not Kurdish, nor a member of any pro-Kurdish group or political party.

[41] When read on the whole, the decision is reasonable. I cannot conclude that this determination fell outside the range of possible acceptable outcomes open to the officer to make. As such, I would not allow judicial review on any of the alleged grounds.

[42] The application for judicial review is therefore dismissed.

[43] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

JUDGMENT

[44] **IT IS ORDERED that** the application for judicial review is dismissed.

"John A. O'Keefe"

Judge

ANNEX

Relevant Statutory Provisions

The *Immigration and Refugee Protection Act*, S.C. 2001, c. 27

72.(1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is commenced by making an application for leave to the Court.	72.(1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est subordonné au dépôt d'une demande d'autorisation.
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).	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).
(2) Despite subsection (1), a person may not apply for protection if	(2) Elle n'est pas admise à demander la protection dans les cas suivants :
(a) they are the subject of an authority to proceed issued under section 15 of the Extradition Act;	a) elle est visée par un arrêté introductif d'instance pris au titre de l'article 15 de la Loi sur l'extradition;
(b) they have made a claim to refugee protection that has been determined under paragraph 101(1)(e) to be ineligible;	b) sa demande d'asile a été jugée irrecevable au titre de l'alinéa 101(1)e);
(c) in the case of a person who has not left Canada since the application for protection was rejected, the prescribed period	c) si elle n'a pas quitté le Canada après le rejet de sa demande de protection, le délai prévu par règlement n'a pas

has not expired; or

(d) in the case of a person who has left Canada since the removal order came into force, less than six months have passed since they left Canada after their claim to refugee protection was determined to be ineligible, abandoned, withdrawn or rejected, or their application for protection was rejected.

(3) Refugee protection may not result from an application for protection if the person

(a) is determined to be inadmissible on grounds of security, violating human or international rights or organized criminality;

(b) is determined to be inadmissible on grounds of serious criminality with respect to a conviction in Canada punished by a term of imprisonment of at least two years or with respect to a conviction outside Canada for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years;

(c) made a claim to refugee protection that was rejected on the basis of section F of Article 1 of the Refugee Convention; or

expiré;

d) dans le cas contraire, six mois ne se sont pas écoulés depuis son départ consécutif soit au rejet de sa demande d'asile ou de protection, soit à un prononcé d'irrecevabilité, de désistement ou de retrait de sa demande d'asile.

(3) L'asile ne peut être conféré au demandeur dans les cas suivants :

a) il est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux ou criminalité organisée;

b) il est interdit de territoire pour grande criminalité pour déclaration de culpabilité au Canada punie par un emprisonnement d'au moins deux ans ou pour toute déclaration de culpabilité à l'extérieur du Canada pour une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;

c) il a été débouté de sa demande d'asile au titre de la section F de l'article premier de la Convention sur les réfugiés;

(d) is named in a certificate referred to in subsection 77(1).

d) il est nommé au certificat visé au paragraphe 77(1).

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

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

(a) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;

a) le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;

(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;

(d) in the case of an applicant described in subsection 112(3), consideration shall be on the basis of the factors set out in section 97 and

d) s'agissant du demandeur visé au paragraphe 112(3), sur la base des éléments mentionnés à l'article 97 et, d'autre part :

(i) in the case of an applicant for protection who is inadmissible on grounds of serious criminality, whether they are a danger to the public in Canada, or

(i) soit du fait que le demandeur interdit de territoire pour grande criminalité constitue un danger pour le public au Canada,

(ii) in the case of any other applicant, whether the application should be refused because of the nature and severity of acts committed by the applicant or because of the danger that the applicant constitutes to the security of Canada.	(ii) soit, dans le cas de tout autre demandeur, du fait que la demande devrait être rejetée en raison de la nature et de la gravité de ses actes passés ou du danger qu'il constitue pour la sécurité du Canada.

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Hadayt Nazami	FOR THE APPLICANT
Margherita Braccio	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Jackman & Associates Toronto, Ontario	FOR THE APPLICANT
Myles J. Kirvan Deputy Attorney General of Canada	FOR THE RESPONDENT