

Federal Court



Cour fédérale

**Date: 20140404**

**Docket: IMM-6236-13**

**Citation: 2014 FC 334**

**Ottawa, Ontario, April 4, 2014**

**PRESENT: The Honourable Mr. Justice Simon Noël**

**BETWEEN:**

**ERSIN ARPA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

**I. Introduction**

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision rendered on August 29, 2013 by Edward Aronoff of the Immigration and Refugee Board's Refugee Protection Division [RPD] finding that Ersin Arpa is neither a "refugee" within the meaning of section 96 of the IRPA nor a "person in need of protection" under section 97 of the IRPA.

## **II. Facts**

[2] The Applicant is a 27-year-old citizen of Turkey. He is a Muslim by religion and of Kurdish ethnicity.

[3] He arrived in Canada on August 29, 2011 on a visitor's visa and claimed refugee status on the basis of his Kurdish ethnicity and, as a conscientious objector, of his objection to military service.

[4] The hearing before the RPD was held on July 31, 2013. At the hearing the Applicant made the following allegations. In 2006, he was asked to report for his military draft inspection. To avoid performing his military service, the Applicant moved to the United Kingdom on a visitor's visa where he remained without legal status until October 2008. He was then deported back to Turkey, and upon his arrival, was detained because he had not performed his military service. Through bribing, the Applicant was released, but he undertook to report to his local military office a week later. Instead of going to the military office, the Applicant registered for university courses which led the military to grant him a deferment of his military obligations until January 1, 2013. He claimed to fear being arrested, tortured or killed in detention if he were to move back to Turkey. He argued that he had a well-founded fear of being persecuted there based on his political opinion as a conscientious objector and because of his race and nationality as a Kurd, and he further submitted that he would be subjected to harsh and cruel prison conditions which would amount to cruel and usual treatment or punishment should he be sent back to Turkey.

**III. Decision under review**

[5] The RPD was satisfied as to the Applicant's identity.

[6] The RPD stated that there was no internationally recognized right to being a conscientious objector and the fear of being prosecuted for desertion is not sufficient to prove a well-founded fear of persecution. It was deemed necessary to determine whether the Applicant was in fact a conscientious objector as case law greatly restricted the scope of this notion. In this regard, the Applicant submitted no evidence that he had strong religious beliefs or that he was part of an organization of conscientious objectors, he never disclosed his opinions on the matter to anyone, and instead of telling the military that he was opposed to mandatory service, on one occasion he fled the country and on another he registered in classes to obtain a deferment.

[7] For the RPD, being prosecuted for failing to comply with mandatory military service is not generally considered persecution. The Applicant had the burden of proving that his situation was truly a case of persecution. According to the documentary evidence, failing to abide by the Turkish law requiring compulsory military services can result in a sentence of one month to 36 months of detention. Following the applicable jurisprudence, even if the Applicant were to be imprisoned for 36 months, it would not constitute persecution.

[8] The Applicant also referred to specific cases in the National Document Package that allegedly support his claim that, as a conscientious objector, he would be subjected to harsh and cruel prison conditions which would amount to cruel and usual treatment or punishment. The RPD

found that these cases were isolated situations. The Applicant simply had not provided enough evidence to establish that he was indeed a conscientious objector.

[9] With respect to the claim that the Applicant would be subjected to discrimination amounting to persecution because he is a Kurd, the RPD noted that the Applicant failed to provide sufficient evidence to establish persecution.

[10] As such, the RPD found that, on a balance of probabilities, that there was no reasonable chance or serious possibility that the Applicant would be persecuted should he return to Turkey, and that it was more likely than not that the Applicant would not be subject personally to a risk to his life or to a risk of cruel and unusual treatment or punishment, or danger of torture.

#### **IV. Applicant's submissions**

[11] The Applicant argues that it was unreasonable for the Panel to find that the Applicant was not a conscientious objector because he lacked genuine convictions and because he worked "within the system in order to postpone the performance of his military service". It is well documented that the right to be a conscientious objector does not exist in Turkey, and the Applicant did the only legal thing he could do to defer his service: pursue an education. The Applicant also argues it was also unreasonable for the RPD to find that the Applicant should have disclosed to the military authorities or publicized his beliefs given that doing so would inevitably have exposed him to even worse treatment.

[12] In addition, the Applicant submits the RPD erred when it came to the conclusion that the cases of conscientious objectors submitted by the Applicant were isolated cases as there is clear evidence that conscientious objectors are frequently exposed to mistreatment while in detention.

[13] Also, the Applicant argues the RPD unreasonably failed to consider documentary evidence in coming to the conclusion that he would not suffer persecution by reason of his Kurdish ethnicity.

**V. Respondent's submissions**

[14] The Respondent claims that the RPD's decision is reasonable and correctly reflects the evidence submitted. The finding that the Applicant is not a conscientious objector is completely reasonable considering the evidence adduced by the Applicant, who had the onus of proving the genuineness of his convictions. What is more, it was also incumbent on the Applicant to demonstrate that his refusal to perform his military service would expose him to persecution, which he did not do.

[15] The RPD also reasonably found that the possible sentence for draft evasion -- ranging from one month to 36 months of imprisonment -- does not amount to persecution as this finding is consistent with case law. Furthermore, the Applicant also had the onus but failed to establish that his refusal to perform the mandatory military service exposes him to a greater punishment as a result of his own personal attributes.

[16] As for the Applicant's Kurdish ethnicity, nothing in his Personal Information Form ["PIF"] relates to this allegation. He has failed to produce any evidence to the effect that he is exposed to a personalized risk due to his ethnicity.

## **VI. Issues**

[17] This application for judicial review raises three issues:

1. Did the RPD err in finding that the Applicant was not a conscientious objector?
2. Did the RPD err in finding that the punishment for evasion of mandatory military service that is provided for under Turkish law does not amount to persecution?
3. Did the RPD err in finding that the Applicant failed to establish that he would be persecuted due to his Kurdish ethnicity?

## **VII. Standard of review**

[18] The RPD's findings regarding the Applicant's refugee protection claim are all to be reviewed under the standard of reasonableness (see for example *Sahin v Canada (Minister of Citizenship and Immigration)*, 2013 FC 990 at para 8, [2013] FCJ No 1088; *Etiz v Canada (Minister of Citizenship and Immigration)*, 2013 FC 308 at paras 16-17, [2013] FCJ No 333). By way of consequence, this Court shall intervene only if the findings are unreasonable to the point that they fall outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law." (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] SCJ No 9).

## **VIII. Analysis**

[19] For the following reasons, this Court finds that the RPD's decision is reasonable.

A. *Did the RPD err in finding that the Applicant was not a conscientious objector?*

[20] It was reasonable for the RPD to conclude that the Applicant was not a conscientious objector because he failed to demonstrate the genuineness of his convictions. It is well established that a claimant cannot be granted refugee status just because he or she does not want to serve in his or her country's army (*Lebedev v Canada (Minister of Citizenship and Immigration)*, 2007 FC 728 at para 14, [2007] FCJ No 975 [*Lebedev*]). There are exceptions to this general rule, including that of "conscientious objectors", notion which this Court has restricted "to those cases where a claimant refuses to take part in any military action because of his genuine convictions grounded in religious beliefs, philosophical tenets or ethical considerations." (*Lebedev*, above, at para 46).

[21] In the present case, the Applicant failed to adduce evidence suggesting that he refuses to perform his mandatory military service because of convictions that are grounded on his religious beliefs, philosophical tenets or ethical considerations. The RPD examined the evidence and reasonably concluded, for lack of evidence, that the Applicant was not a "conscientious objector". The RPD indicated that there was no evidence demonstrating, *inter alia*, that the Applicant has strong religious beliefs, that he was a member of an organization of conscientious objectors, or that he had ever made public statements to the effect that he objected to having to serve in the army. Independently of the Applicant's arguments that the RPD should not have expected him to have disclosed his beliefs to the military authorities because doing so would have exposed him to greater danger, it should be noted that, at the very least, there must be evidence on file that the Applicant was indeed a conscientious objector, and there was not. Considering the facts in the present case, the RPD's finding in this regard certainly fell within a range of possible, acceptable outcomes.

B. *Did the RPD err in finding that the punishment for evasion of mandatory military service that is provided for under Turkish law did not amount to persecution?*

[22] The RPD did not commit an error in coming to this conclusion as it is consistent with applicable case law. As aptly summarized by the Respondent, there is no internationally recognized right to conscientious objections (*Hinzman v Canada (Minister of Citizenship and Immigration)*, 2006 FC 420 at para 207, [2006] FCJ No 521 [*Hinzman*]) and being opposed to military service is not sufficient to establish a well-founded fear of persecution (see *Karen v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1217 at para 18, [2011] FCJ No 1486 [*Karen*]; *Mohilov v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1292 at para 33, [2008] FCJ No 1645).

[23] The Federal Court of Appeal has previously held that the prosecuting and imprisoning of people who refuse to perform military service rendered mandatory under an ordinary law of general application does not constitute persecution on the basis of a Convention ground (*Ates v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 322, [2005] FCJ No 1661). Therefore, it was incumbent upon the Applicant to demonstrate to the RPD “that the sentence awaiting him would amount to persecution.” (*Karen*, above, at para 19; see also *Hinzman*, above, at para 117).

[24] After having considered the evidence, the RPD came to the conclusion that even the maximum penalty of 36 months of imprisonment that could be imposed upon the Applicant would not constitute persecution. This finding is consistent with the jurisprudence surrounding the matter (see for example, *Sahin v Canada (Minister of Citizenship and Immigration)*, 2013 FC 990 at para 18, [2013] FCJ No 1088; *Ozunal v Canada (Minister of Citizenship and Immigration)*, 2006 FC 560 at para 28, [2006] FCJ No 709).



[25] Furthermore, the Applicant also argues that there is strong evidence supporting his submission that conscientious objectors are frequently ill-treated during detention and that, therefore, it was unreasonable for the RPD to find that he was not exposed to a risk to his life or to a risk of cruel and unusual treatment or punishment. There may well be evidence to that effect. However, the RPD had already reasonably concluded that the Applicant was not a conscientious objector. Hence, the evidence referred to by the Applicant on this issue was not relevant at the time of the hearing before the RPD and so it remains today. The RPD's finding in this regard is reasonable.

*C. Did the RPD err in finding that the Applicant failed to establish that he would be persecuted due to his Kurdish ethnicity?*

[26] The Applicant submitted absolutely no evidence to establish a personalized risk related to his ethnicity. In fact, on several occasions during the hearing before the RPD, the presiding member made it quite clear to counsel that the evidence submitted with respect to the difficulties the Kurds experience in Turkey was of general application. Despite having the onus to do so, the Applicant simply did not adduce sufficient evidence – or any evidence at all, for that matter – in his PIF narrative or at the RPD hearing that could establish the Applicant's personalized risk in these circumstances (*Jarada v Canada (Minister of Citizenship and Immigration)*, 2005 CF 409 at paras 26-28, [2005] FCJ No 506).

[27] As there was no evidence and considering that merely being a Kurd is not sufficient to grant refugee status, it was completely reasonable for the RPD to conclude that the Applicant failed to demonstrate that he would be persecuted in Turkey due to his Kurdish ethnicity, and the RPD more than sufficiently addressed the question in its reasons.

[28] For all of the aforementioned reasons, this Court finds that the RPD's decision finding that the Applicant is neither a "refugee" within the meaning of section 96 of the IRPA nor a "person in need of protection" under section 97 of the IRPA is reasonable, and this application for judicial review shall be dismissed.

[29] The parties were invited to submit questions for certification, but none were proposed.

**ORDER**

**THIS COURT ORDERS that** this application for judicial review is dismissed. No question is certified.

“Simon Noël”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-6236-13

**STYLE OF CAUSE:** ERSIN ARPA v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

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