

Federal Court



Cour fédérale

**Date: 20160205**

**Docket: IMM-2764-15**

**Citation: 2016 FC 139**

**Ottawa, Ontario, February 5, 2016**

**PRESENT: The Honourable Mr. Justice Brown**

**BETWEEN:**

**BULENT BOZTAS**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review by Bulent Boztas [the Applicant] under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the *Act*] of a decision by the Refugee Protection Division of the Immigration and Refugee Board [RPD or the Board] dated May 22, 2015, with Notice of Decision dated May 25, 2015, and communicated to the Applicant on or about June 11, 2015, in which the RPD determined that the Applicant is not a

Convention refugee and is not a person in need of protection, and moreover, that the Applicant's claim had no credible basis. Leave to apply for judicial review was granted on October 28, 2015.

[2] The Applicant is a single man, and a citizen of Turkey of Kurdish ethnicity and Alevi religion, aged 39. He left Turkey on October 15, 2012, to travel to New York City by air via Paris, France. From New York, he flew to Burlington, Vermont, U.S.A., and then went by taxi to Alburgh, Vermont. He made his way to the St. Bernard de Lacolle Canadian border on foot on October 17, 2012, entered Canada and was arrested by Canadian authorities shortly afterwards. The Applicant claims refugee protection on religion, nationality and political opinion grounds.

[3] The RPD found that the Applicant was not a Convention refugee or a person in need of protection, further finding that the Applicant's claim had no credible basis per subsection 107(2) of the *Act*.

[4] Two issues were raised in this Application. The first deals with the no credible basis finding; the assertion being that it was not made in accordance with settled jurisprudence of this Court, a position which I accept. The second issue criticized a number of the credibility findings made; these will not be dealt with, because in my view, the no credible basis issue is determinative.

[5] The standard of review in this case is reasonableness. In *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at paras 57 and 62, the Supreme Court of Canada held 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.”

It is well established that reasonableness is the standard of review applicable to credibility

findings: *Aguilar v Canada (Minister of Citizenship and Immigration)*, 2013 FC 843 at para 34.

In *Dunsmuir* at para 47, 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] In connection with the no credible basis finding, it is important to set out the findings of the RPD. First, the RPD accepted that the Applicant was a Kurd (ethnicity) and an Alevi (religion). In addition, the RPD held:

[36] The panel accepts that Kurdish and especially Alevi people in Turkey face discrimination and harassment and, in particular cases, persecution. A number of documents in evidence pertaining to country conditions outline the difficulties Kurds face, particularly in the southeast of Turkey. However, the panel does not find that every Kurd in Turkey or every Kurd in a particular area of Turkey faces persecution by virtue of their ethnicity alone.

[7] Subsequently, in the second last paragraph of its decision, the RPD addressed the issue of no credible basis. It is not discussed elsewhere. The entirety of the RPD’s comment was:

No Credible Basis

[50] The panel finds that pursuant to subsection 107(2) of the IRPA, that there was no credible or trustworthy evidence on which a favourable decision could be made and therefore there was no credible basis for the claim.

[8] A no credible basis claim is one specifically permitted under the following provisions of the *Act*:

**Decision**

107 (1) The Refugee Protection Division shall accept a claim for refugee protection if it determines that the claimant is a Convention refugee or person in need of protection, and shall otherwise reject the claim.

**No credible basis**

(2) If the Refugee Protection Division is of the opinion, in rejecting a claim, that there was no credible or trustworthy evidence on which it could have made a favourable decision, it shall state in its reasons for the decision that there is no credible basis for the claim.

**Décision**

107 (1) La Section de la protection des réfugiés accepte ou rejette la demande d'asile selon que le demandeur a ou non la qualité de réfugié ou de personne à protéger.

**Preuve**

(2) Si elle estime, en cas de rejet, qu'il n'a été présenté aucun élément de preuve crédible ou digne de foi sur lequel elle aurait pu fonder une décision favorable, la section doit faire état dans sa décision de l'absence de minimum de fondement de la demande.

[9] The Federal Court of Appeal set out the parameters within which a no credible basis decision may be made many years ago in *Rahaman v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89:

[51] Finally, while I have not been able to accept the position advanced by counsel for Mr. Rahaman in this appeal, I would agree that the Board should not routinely state that a claim has "no credible basis" whenever it concludes that the claimant is not a credible witness. As I have attempted to demonstrate, subsection 69.1(9.1) requires the Board to examine all the evidence and to conclude that the claim has no credible basis only when there is no trustworthy or credible evidence that could support a recognition of the claim.

[emphasis added]

[10] This Court considered a no credible basis decision in *Singh v Canada (Minister of Citizenship and Immigration)*, 2007 FC 732:

[23] It is clear from the Board's decision and the transcript of the hearing that the issue of the applicant's membership in a particular social group, i.e. baptized Sikhs, was not addressed. The applicant did not specifically raise this issue at the second hearing but did so at the first. At the first hearing, the applicant had submitted documentary evidence indicating that, although the situation for baptized Sikhs in India has improved in recent years, members of this group are always regarded as suspect by the authorities and are at risk of being arrested. Although the second hearing, which the applicant was entitled to following the order of Martineau J., was a hearing de novo of his refugee claim, all the documents pertaining to the first hearing had been placed in the file for the new hearing. From this perspective, the Board could not refuse the applicant's refugee claim on the ground that it had no credible basis without considering the credible and trustworthy evidence in the file regarding the applicant's status as a baptized Sikh and the risks of persecution associated with this status.

[11] This test to meet on judicial review of a no credible basis finding is a high one, as stated by Rennie J. (as he then was) in *Levario v Canada (Minister of Citizenship and Immigration)*, 2012 FC 314 [*Levario*]:

[18] The threshold for a finding that there is no credible basis for the claim is a high one, as set out in *Rahaman*, at para 51:

...As I have attempted to demonstrate, subs. 69.1(9.1) requires the Board to examine all the evidence and to conclude that the claim has no credible basis only when there is no trustworthy or credible evidence that could support a recognition of the claim.

[19] Thus, if there is *any* credible or trustworthy evidence that could support a positive determination the Board cannot find there is no credible basis for the claim, even if, ultimately, the Board finds that the claim has not been established on a balance of probabilities.

[emphasis in original]

[12] In this case, there was indeed credible or trustworthy evidence that could support a positive determination and that was in fact accepted by the RPD and given some weight, namely:

- A. Evidence relating to the Applicant's identity and the persecution and discrimination in Turkey of those of his particular ethnicity and religion. The RPD accepted the documentary evidence and the fact that the Applicant was Kurdish and of the Alevi faith.
- B. Evidence from letters by professionals was given "very little weight" by the RPD. These letters were written by the Applicant's doctor and his lawyer in Turkey. This evidence indicated that the Applicant had received treatment for his injuries from his family doctor on March 21, 2012, and on June 15, 2012. According to the doctor's letter, the Applicant reported to his doctor that he was injured after being beaten and tortured by the police. The letter from the Applicant's lawyer stated that this lawyer attempted to assist the Applicant in securing his release and the return of his passport in relation to the Applicant's June 2012 detention, to no avail. The RPD gave little evidentiary weight to these letters, but did not say that it gave the letters no weight at all, as would be required for a "no credible basis" finding.

[13] With this law and these findings in mind, I am driven to conclude that the RPD acted unreasonably, and I might add incorrectly, in applying the legal test governing the application of the no credible basis provision as set out above.

[14] Therefore, the decision must be set aside.

[15] Neither party proposed a question for certification, and no question arises.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** judicial review is granted, the decision of the RPD is set aside and remitted for re-determination by a differently constituted panel, no question is certified, and there is no order as to costs.

“Henry S. Brown”

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Judge



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

**DOCKET:** IMM-2764-15

**STYLE OF CAUSE:** BULENT BOZTAS v  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 26, 2016

**JUDGMENT AND REASONS:** BROWN J.

**DATED:** FEBRUARY 5, 2016

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