Federal Court  Cour fédérale

Date: 20170518

Docket: IMM-4486-16

Citation: 2017 FC 512

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Montréal, Quebec, May 18, 2017

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

SELCUK EZICI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] Based on the Federal Court of Appeal's unanimous judgment written by Justice Gilles Létourneau in *Jayasekara v. Canada (Citizenship and Immigration)*, 2008 FCA 404, the offence in this case is serious and warrants the application of the exclusion clause:

> [48] It is not disputed that trafficking in narcotics and psychotropic substances can entail both human and economic consequences for society. As the evidence reveals, drug trafficking is treated as a serious crime across the international spectrum. In their book on *The Refugee in International Law*, 3rd ed., Oxford University Press, 2007, at page 179, G.S. Goodwin-Gill and J. McAdam mention that the UNHCR, with a view to promoting consistent decisions "proposed that, in the absence of any political factors, a presumption of serious crime might be considered as raised by evidence of commission of any of the following offences: homicide, rape, child molesting, wounding, arson, drugs traffic, and armed robbery" (emphasis added).
>
> [49] In accordance with the three *United Nations Drug Conventions*, i.e. the *1961 Single Convention on Narcotic Drugs* (amended by the Protocol of 25 March 1972), 976 U.N.T.S. 105; the *1971 Convention Against Psychotropic Substances*, 1019 U.N.T.S. 175; and the *1988 Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, E/Conf. 82/15, signatory nations are required to coordinate preventive and repressive action against drug trafficking, including the imposition of penal provisions as necessary. The choice of penal provisions remains at the discretion of the Member State and may exceed those provided by the Conventions if the Member States deem them desirable or necessary for the protection of public health and welfare.
>
> [50] As reflected by the penal provisions enacted, most signatory states define and treat drug trafficking as a serious crime. In contrast to mere possession, drug trafficking is usually punishable by a period of incarceration. In this country, the sentence imposed for a drug trafficking offence carries a maximum time of 18 months for a summary conviction and up to a maximum of life imprisonment for an indictable offence depending on the substance trafficked: see the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, s. 5.

Refer also to the judgment in *Williams v Canada (Minister of Citizenship and Immigration)*, [1997] 2 FC 646 (FCA), by Justice Barry L. Strayer, at paragraph 29.

II. Nature of the matter

[2] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of an opinion issued by a delegate of the Minister on September 22, 2016, that the applicant constitutes a danger to the public in Canada within the meaning of paragraph 115(2)(a) of the IRPA.

III. Facts

[3] The applicant, age 41, is a citizen of Turkey. He arrived in Canada on June 13, 2000, and claimed refugee protection. He was granted refugee status on March 13, 2001, and permanent residence on February 15, 2002.

[4] In 2008, the applicant was charged with assault with a weapon and uttering threats in a domestic violence context, but was acquitted of the charges.

[5] On November 29, 2011, the applicant was arrested for trafficking in heroin. He was released on conditions, including one restricting his use of a cell phone to work contexts, which was amended in 2012.

[6] On June 18, 2013, during an arrest for a violation of the *Highway Safety Code*, the applicant was also arrested for new charges of trafficking in heroin and breach of conditions.

[7] On January 29, 2015, the applicant pleaded guilty to the charges of heroin trafficking for the period from October to November 2011, as well as to the charges of breach of conditions. In total, he was sentenced to concurrent sentences of five years of incarceration.

[8] On September 24, 2015, the Immigration Division issued a deportation order against the applicant, finding that he was inadmissible under paragraph 36(1)(a) of the IRPA.

[9] On May 12, 2016, the applicant received a copy of the request for the Minister's opinion from the Canada Border Services Agency. The applicant filed reply submissions on June 15, 2016.

IV. Decision

[10] On September 22, 2016, the Minister's delegate found that the applicant constituted a danger to the public in Canada pursuant to paragraph 115(2)(a) of the IRPA and that he could be removed to Turkey.

[11] First, the delegate stated that he was satisfied that the applicant was inadmissible in Canada for serious criminality under paragraph 36(1)(a) of the IRPA, a finding based on the convictions on January 29, 2015, for possession of substances for the purpose of trafficking and the five-year concurrent sentences of imprisonment that were imposed on him.

[12] Next, the delegate assessed the danger that the applicant might present to the public in Canada. He considered the circumstances surrounding the offences, as well as the respondent's

submissions, to determine whether there was sufficient evidence to establish that the applicant is a possible re-offender whose presence in Canada would create an unacceptable risk to the public (*La v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 476; *Williams v. Canada (Minister of Citizenship and Immigration)*, [1997] 2 FC 646, [1997] FCJ No. 393 (QL)).

[13] Upon reading his file, the delegate stressed that the applicant had reoffended with trafficking in heroin while he was released on conditions to await his trial. The delegate also noted that the applicant's offences were serious and that the use of heroin wreaks havoc on society. He subsequently weighed the information in the Statistical Information on Recidivism report dated March 27, 2015, the decision by the Parole Board of Canada [PBC] dated December 3, 2015, and the Criminal Profile Report dated April 13, 2015, giving more weight to the latter report, as it was more substantiated. Lastly, the delegate expressed concern about the lack of a rehabilitation plan, a concrete plan for finding employment upon his release from the correctional institution, and of genuine support from family or friends. The delegate found that the applicant presents a danger to the public in Canada:

> [TRANSLATION]
> Based on the evidence before me, showing that Mr. Ezici's criminal activities were both serious and dangerous to the public, in addition to the lack of evidence demonstrating rehabilitation, as well as a risk of recidivism, as previously demonstrated, on the balance of probabilities, I am satisfied that Mr. Ezici presents a risk to the public in Canada, both now and in the future.
>
> (Reasons for Decision by the Minister's delegate, at page 9)

[14] Having determined that the applicant presented a danger to the public in Canada, in accordance with paragraph 115(2)(a) of the IRPA, the delegate turned to section 7 of the *Canadian Charter of Rights and Freedoms* [Charter], based on the teachings of the Supreme

Court in *Suresh v Canada (Minister of Citizenship and Immigration)*, [2002] 1 SCR 3, 2002 SCC 1. He proceeded with an analysis of the risk to which the applicant would be exposed if he were to be removed to Turkey. Assessing the risks that the applicant would face as an Alevi (Shiite) in Turkey, the delegate found that the evidence submitted did not lead to the conclusion that the applicant would be threatened with persecution: although Alevis face some level of discrimination in Turkey, that discrimination is neither systematic nor state-sanctioned. Furthermore, the delegate noted that the applicant's statements in 2015 referred to his yearly visits to Turkey. On a balance of probabilities, the delegate found that the applicant would not face a personal risk to his life, freedom and safety if he were removed from Canada.

[15] Lastly, the delegate examined the humanitarian and compassionate considerations raised by the applicant. He found that the applicant had not provided any documentary evidence in support of his family ties in Canada—noting that his parents and sisters lived in Turkey—, of his deep roots in society or of the immeasurable hardship that his departure from Canada would cause him. The delegate considered that the best interests of the child directly affected by the decision had not been demonstrated: no evidence had been submitted to prove the relationship between the applicant and his child, the child's Canadian citizenship, the applicant's custody of the child, the relationship of dependence or the financial and emotional support that the applicant provides to the child.

[16] The delegate therefore concluded that the need to protect Canadian society took precedence over the potential risks to which the applicant could be exposed if he were removed to Turkey, in accordance with paragraph 115(2)(a) of the IRPA. The delegate found, on a

balance of probabilities, that the applicant's removal would not shock the conscience of Canadians and would not violate his rights provided in section 7 of the Charter. Furthermore, the evidence shows that the applicant periodically returned to Turkey after obtaining refugee status.

V. Issues

[17] The Court summarizes the grounds raised by the applicant in support of his application for judicial review as follows:

1. The delegate's findings regarding the assessment of the danger the applicant presents in Canada are unreasonable;
2. The delegate breached his duty of procedural fairness by failing to provide sufficient reasons for his decision regarding a key piece of evidence in the case;
3. The delegate's findings about the risks the applicant would face if he were removed to Turkey are unreasonable;
4. The delegate's examination of the humanitarian and compassionate considerations regarding the discrimination against Alevis in Turkey is unreasonable.

[18] The issue of procedural fairness is reviewable on the correctness standard (*Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 SCR 339, 2009 SCC 12; *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, [2011] 3 SCR 708, 2011 SCC 62 [*Newfoundland Nurses*]).

[19] The decision by the Minister's delegate to issue an opinion in accordance with paragraph 115(2)(a) of the IRPA—in particular, his findings about the danger, his assessment of

the risk to the applicant, and his examination of the humanitarian and compassionate considerations—raises questions of fact and questions of mixed fact and law and is reviewable on the reasonableness standard (*Nagalingam v. Canada (Citizenship and Immigration)*, 2008 FCA 153, at paragraph 32; *Dunsmuir v. New Brunswick*, [2008] 1 SCR 190, 2008 SCC 9, at paragraph 47 [*Dunsmuir*]).

VI. Relevant provisions

[20] Paragraph 36(1)(a) of the IRPA provides for inadmissibility on grounds of serious criminality:

36 (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for	**36** (1) Emportent interdiction de territoire pour grande criminalité les faits suivants :
(a) having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed;	a) être déclaré coupable au Canada d'une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans ou d'une infraction à une loi fédérale pour laquelle un emprisonnement de plus de six mois est infligé;

[21] Paragraph 115(2)(a) of the IRPA sets out the exception to the principle of non-refoulement:

Protection	**Principe**
115 (1) A protected person or a person who is recognized as a Convention refugee by another country to which the person may be returned shall	**115** (1) Ne peut être renvoyée dans un pays où elle risque la persécution du fait de sa race, de sa religion, de sa nationalité, de son

not be removed from Canada to a country where they would be at risk of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion or at risk of torture or cruel and unusual treatment or punishment.	appartenance à un groupe social ou de ses opinions politiques, la torture ou des traitements ou peines cruels et inusités, la personne protégée ou la personne dont il est statué que la qualité de réfugié lui a été reconnue par un autre pays vers lequel elle peut être renvoyée.
Exceptions	**Exclusion**
(2) Subsection (1) does not apply in the case of a person	(2) Le paragraphe (1) ne s'applique pas à l'interdit de territoire :
(a) who is inadmissible on grounds of serious criminality and who constitutes, in the opinion of the Minister, a danger to the public in Canada; or	a) pour grande criminalité qui, selon le ministre, constitue un danger pour le public au Canada;
(b) who is inadmissible on grounds of security, violating human or international rights or organized criminality if, in the opinion of the Minister, the person should not be allowed to remain in Canada on the basis of the nature and severity of acts committed or of danger to the security of Canada.	b) pour raison de sécurité ou pour atteinte aux droits humains ou internationaux ou criminalité organisée si, selon le ministre, il ne devrait pas être présent au Canada en raison soit de la nature et de la gravité de ses actes passés, soit du danger qu'il constitue pour la sécurité du Canada.

VII. Analysis

[22] For the reasons that follow, the application for judicial review is dismissed.

A. *Danger the applicant presents to Canadian society*

[23] The applicant is disputing the opinion issued by the Minister's delegate regarding his level of dangerousness. Firstly, the delegate's decision is apparently unreasonable because he was selective about the evidence considered. The delegate allegedly erred by finding that the criminal acts committed in 2011 and in 2013 were not isolated incidents and that they were indicative of a risk of recidivism, even though the applicant did not follow a criminal way of life prior to those events. Moreover, the delegate was allegedly selective about the evidence, noting only the negative aspects about the applicant. The delegate allegedly did not cite the excerpts from the PBC's decision in which the Board granted the applicant day parole because he did not present an unacceptable risk to society during that period. The delegate apparently cited the applicant's Criminal Profile Report dated April 13, 2015, giving significant weight to the passage about his risk of recidivism, but completely disregarding another passage describing the applicant as someone who demonstrated compliant and respectful behaviour toward authority figures and who had a positive attitude toward caseworkers and a medium level of motivation. The delegate apparently provided no explanation for disregarding those passages that are relevant in determining the applicant's risk of recidivism.

[24] Secondly, the delegate allegedly erred and breached his duty of procedural fairness to provide sufficient reasons for his decision regarding a PBC decision dated December 3, 2015, which was a central element of the case. The delegate thus allegedly ignored a passage from the most recent decision in the applicant's file, in which the PBC found that he presented a low risk of recidivism, and another passage in which the PBC referred to the applicant's progress and

awareness. As a result, the delegate allegedly dismissed evidence from a reliable and objective source, without mentioning the reasons for disregarding it.

[25] On the contrary, the respondent argues that the delegate's findings about the applicant's risk of recidivism are reasonable. The delegate was reportedly not selective in assessing the evidence, noting the applicant's submissions and reviewing the documents available on file. The delegate apparently considered and commented on the positive aspects of the applicant's case but did not consider them to be determinative. Furthermore, the delegate reportedly relied heavily on the decision by the PBC, which found that full parole was not advisable given the risks to the protection of society and qualified the applicant's risk of recidivism as moderate. In order to determine the danger the applicant presented, it was open to the delegate to give significant weight to the fact that the applicant had reoffended with trafficking in heroin in 2013 and had breached his release conditions, as well as to the lack of a rehabilitation plan. The delegate's decision therefore fell within the range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[26] As for the applicant's argument concerning the inadequacy of the reasons, the respondent argues that the applicant is instead expressing disagreement with the delegate's findings and that the reasonableness standard should apply to the delegate's decision (*Newfoundland Nurses*, at paragraphs 21–22).

[27] Firstly, the Court concurs with the respondent's arguments regarding the issue of the inadequacy of the reasons raised by the applicant and finds that the reasonableness standard applies, in accordance with *Newfoundland Nurses*:

> [21] As Professor Philip Bryden has warned, "courts must be careful not to confuse a finding that a tribunal's reasoning process is inadequately revealed with disagreement over the conclusions reached by the tribunal on the evidence before it" ("Standards of Review and Sufficiency of Reasons: Some Practical Considerations" (2006), 19 *C.J.A.L.P.* 191, at p. 217; see also Grant Huscroft, "The Duty of Fairness: From Nicholson to Baker and Beyond", in Colleen M. Flood and Lorne Sossin, eds., *Administrative Law in Context* (2008), 115, at p. 136).

[28] In fact, after reviewing the decision, the Court notes that the delegate examined the various reports that were submitted and that his decision is based on all of the evidence. The mere fact that the delegate based his findings on reasons extraneous to the PBC's report dated December 3, 2015, and that he arrived at an outcome that was contrary to the applicant's submissions does not constitute an error. In this respect, the decision satisfies the correctness standard.

[29] Secondly, the Court finds that the Minister's delegate did not commit any reviewable errors and that the decision made is reasonable. As the respondent submits, it was open to the delegate to give a certain weight to the context of the applicant's alleged criminal acts. Furthermore, the delegate referred to passages from the reports on record that were favourable to the applicant; he simply did not give them as much weight as the applicant would have wanted. That does not constitute an error and does not justify the Court's intervention.

B. *Risk to the applicant in Turkey*

[30] The applicant argues that the delegate's findings that he will not face a personal risk to his life, freedom and safety are unreasonable. He submits that the delegate dismissed evidence the applicant had submitted without valid reasons. He rejected documents reporting on acts of violence against the Alevis in Turkey and the lack of state protection, preferring a document from the *UK Home Office* that described those acts of violence against the Alevis as isolated incidents.

[31] The respondent submits to the contrary that the delegate cited sources submitted by the applicant in his Reasons and recognized that the Alevis were victims of discrimination in Turkey. Nevertheless, the delegate reportedly considered all the evidence and drew conclusions that differed from those of the applicant: the discrimination against the Alevis in Turkey is not systematic, is not sanctioned by the state and is not so widespread as to be considered persecution. It was also open to the delegate to give weight to the fact that the applicant returned to Turkey every year.

[32] Upon reviewing the decision and the evidence available in the record, the Court finds that the delegate did not commit any errors that warrant its intervention. Certainly, the delegate had a different interpretation of the evidence than the applicant. Nevertheless, that is insufficient to render the decision unreasonable. The delegate was correct in finding that the objective documentary evidence did not lead to the conclusion that there is systematic discrimination or persecution of the Alevis in Turkey and in giving some weight to the fact that the applicant

visited Turkey every year. Consequently, in this regard, the delegate's decision falls within the range of possible, acceptable outcomes, which are defensible in respect of the facts and law.

C. *Humanitarian and compassionate considerations: discrimination against the Alevis in Turkey*

[33] The applicant alleges that the delegate's analysis of the humanitarian and compassionate considerations is unreasonable, as it is incomplete because it does not take into account the discrimination to which the Alevis are subject in Turkey. Thus, the delegate allegedly did not take into account the hardship the applicant, as an Alevi, would face if he had to return to Turkey.

[34] The respondent, however, submits that the delegate addressed the discrimination experienced by the Alevis in Turkey, but that he qualified its severity, noting a peaceful co-existence between the Alevis and the other communities in the country. These considerations would be insufficient to offset the danger that the applicant presents to the public in Canada.

[35] The Court finds that the delegate considered the humanitarian and compassionate considerations raised by the applicant. The delegate found that the situation of the Alevis in Turkey did not constitute a humanitarian and compassionate consideration sufficient to offset the danger that the applicant presents to the public in Canada. Contrary to the applicant's arguments, this finding is not vitiated by any error that warrants the Court's intervention. The applicant has not demonstrated, on a balance of probabilities, that he would face hardship in being subject to

persecution as an Alevi in Turkey. The delegate analyzed the evidence that was available to him and made a justified, transparent and intelligible decision (*Dunsmuir*, above, at paragraph 47).

VIII. Conclusion

[36] The application for judicial review is dismissed.

JUDGMENT in IMM-4486-16

THIS COURT ORDERS that the application for judicial review is dismissed. There are no questions of general importance to be certified.

"Michel M.J. Shore"
Judge

Certified true translation
This 29th day of November 2019

Lionbridge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4486-16
STYLE OF CAUSE:	SELCUK EZICI v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	MAY 10, 2017
JUDGMENT AND REASONS:	SHORE J.
DATED:	MAY 18, 2017

APPEARANCES:

Éric Taillefer	FOR THE APPLICANT
Daniel Latulippe	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Surprenant, Magloé, Golmier Montréal, Quebec	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT