

Federal Court



Cour fédérale

Date: 20170719

Docket: IMM-5241-16

Citation: 2017 FC 702

Toronto, Ontario, July 19, 2017

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

**KAZIM TAS
YILDIZ EGRICAY TAS
MEHMET EREN LEKESIZ (BY LITIGATION
GUARDIAN, KAZIM TAS)**

Applicants

and

**MINISTER OF IMMIGRATION, REFUGESS
AND CITIZENSHIP**

Respondent

JUDGMENT AND REASONS

I. Background

[1] This is an application for judicial review under subsection 72(1) of *the Immigration and Refugee Protection Act*, SC 2001, c-27 [IRPA or Act] of a December 5, 2017 negative decision [Decision] from the Refugee Protection Division [RPD or Board]. In the Decision, the RPD

found that the Applicants are neither Convention refugees nor persons in need of protection as contemplated by sections 96 and 97(1) of the Act. For the reasons explained below, I am dismissing this application for judicial review.

[2] The Applicants Kazim Tas [Mr. Tas], his wife Yildiz Tas [Mrs. Tas], and their ten year-old son Mehmet Lekesiz [the Son], are citizens of Turkey. They are seeking protection from their home country due to their Kurdish ethnicity and adherence to Alevi faith.

[3] Mr. Tas and his wife first began participating in political activities in 1991. Since that time, they allege they have been the victims of unlawful detentions, harsh treatment, and threats. In support of their claim, they refer specifically to five events; I will go over them in chronological order.

[4] In March 18, 1991, Mr. Tas states that he was detained overnight and beaten by the police as a result of his participation in a Newroz event.

[5] Some 8 years later, in 1999, Mrs. Tas states that she was detained by Turkish police and sexually assaulted. As a result of this incident, she says she developed depression and epilepsy.

[6] In November 2014, Mr. Tas alleges that he was detained by the police while at a protest and beaten “mercilessly”.

[7] Then, on January 10, 2016, after Mr. Tas gave a speech at an event commemorating the Ankara bombing, where he alleges being subjected to psychological torture and threatened to death by police officers in plainclothes.

[8] A few months later, in April 2016, all three Applicants claim that, in what was the last straw, they attended a protest against the resettlement of the Syrian refugees and were affected by tear gas. Mr. Tas was also beaten.

[9] The Applicants fled Turkey on July 6, 2016 and made a claim for refugee status on July 21, 2016. While the Applicants arrived in Canada via the United States, they were exempt from the Safe Third Country Agreement as Mr. Tas has a brother in Canada.

II. Issues and Analysis

[10] The RPD heard oral evidence from the Applicants in a two-part sitting, and found they lacked credibility due to inconsistencies and implausibilities, resulting in a negative decision. The Applicants contend the RPD erred by not properly allowing them to respond to an issue raised during the first hearing day, and further erred in the analysis of their (i) risk profile analysis, and (ii) credibility/implausibility findings.

[11] The standard of review for questions of fact and mixed law and fact is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]). The Court will not intervene if the Board's decision falls within an acceptable range of possible outcomes which are defensible in respect of the facts and the law. For questions related to procedural fairness, the

standard of review is that of correctness (*Dunsmuir* at para 129; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43).

A. *Risk Profile Analysis*

[12] The Applicants first contend that the RPD failed to assess the cumulative impact of Mr. Tas's profile on the level of risk that he will face if returned to Turkey. The profiles in question are his Alevi faith, his membership in the Confederation of Public Workers' Unions [KESK], his support of the Peoples' Democratic Party [HDP], and his Kurdish ethnicity. Notwithstanding the RPD's finding that Mr. Tas had not been personally persecuted as a member of KESK and the HDP, the Applicants ask this Court to consider the risk he would face generally upon his return to Turkey as a member of these groups, combined with the fact that he is a Kurd. They refer this Court to a number of documents that state that KESK and HDP have been targeted, particularly after the attempted coup of 2016.

[13] However, I note that the RPD's decision turned on credibility issues, including the involvement of Mr. Tas in both the parties and the demonstrations claimed, leading to questions about subjective fear.

[14] The Board accepted that Mr. Tas was a member of KESK as a result of his job in the public service (KESK being the largest public sector workers' Union in Turkey); however, it found that he was only a "mild supporter" of the HDP (as opposed to a member). The Board also accepted that the Applicants were of Kurdish ethnicity.

[15] However, after reading the National Documentation Package and other documentary evidence, the RPD did not find on a balance of probabilities that Mr. Tas's profile as a KESK member of Kurdish ethnicity, who is also a mild supporter of the HDP, was "sufficient to ground a claim in refugee protection". Indeed, while the Board acknowledged that certain Kurds face persecution, it did not find that the Applicants had established a subjective fear as a result of belonging to this group. This was certainly one conclusion open to the Board and I find it to be reasonable (see *Kaur v Canada (Citizenship and Immigration)*, 2014 FC 505 at para 40). I also note that counsel was unable to provide precedent of this Court or of the RPD that this profile had automatically resulted in a finding of persecution, and I do not find that the Board was unreasonable in failing to make such a finding.

B. *Credibility Findings*

[16] The Applicants take issue with the RPD's credibility findings regarding the family's Alevi faith and the threats posed by their Son's biological father.

[17] Starting with the latter point, the RPD also made negative credibility findings regarding the death threats made to Mrs. Tas and her Son by his biological father, who she testified was "set on ruining her life". During the hearing, Mrs. Tas also provided the RPD with a certificate stating that the biological father had consented to his Son travelling internationally. The Board found the biological father's behaviour to be inconsistent, and was not satisfied that the Applicants truly feared violence or a risk of death at the hands of the biological father.

[18] The Board rejected Mrs. Tas's explanations and felt the Applicants were simply offering up another line of reasoning. The RPD was entitled to make a negative inference based on this testimony (see Justice Brown's comprehensive summary of the law in the area of credibility, in *Gong v Canada (Citizenship and Immigration)*, 2017 FC 165 at para. 9).

[19] Regarding the Applicants' religion, the RPD found that the letter from the Alevi Cultural Centre of Adiyaman was not genuine, stating that there was an ink signature below a seemingly photocopied letter. Counsel admitted that the original was of poor quality, hence some of the comments of the Board. What could be ascertained from the letter reads that "as [a] family they contributed material and moral support to our association". With no letterhead and no signature, it is understandable why the Board had an issue verifying the veracity of this letter, or placing any weight on it.

[20] Counsel for the Applicants also pointed to a passage in the psychiatrist's report where the Son confirms their Alevi faith. However, that evidence was not testimony or objective evidence put before the Board; rather, it was the psychiatrist's opinion and assessment based on what was apparently reported to him by the Son. It does not in any way render the Board's decision unreasonable: Given the deference owed to the Board's factual findings, I find its conclusion with regard to the family's religion to be reasonable.

[21] Ultimately, while I do not find fault with the Board's conclusion on this particular issue, even if it were unreasonable, the Applicants have not presented sufficient evidence to show they would be persecuted as a result of their Alevi faith.

C. *Implausibility Findings*

[22] Finally, the Applicants submit that the RPD made credibility findings that, when properly analyzed, amount to implausibility findings.

[23] First, the Applicants take issue with the RPD's negative plausibility finding regarding continued attendance at anti-government rallies despite their alleged fear of persecution or cruel and unusual punishment (Decision at para 19):

Due to their attendance at the protest in 2016, I find, on the balance of probabilities, that Mr. and Mrs. Tas alleged prior treatment at the hands of the Turkish authorities was not as harsh as they purport it to be, if it occurred at all. This is evidenced by their actions which speak to their lack of subjective fear. Due to the fact that they testified they did have fear, I draw a negative inference with regards to their credibility.

[24] The Board makes the point that if Mr. and Mrs. Tas truly feared persecution or otherwise, why would they have brought along their ten year-old son?

[25] Second, the Applicants take issue with the RPD's findings on Mr. Tas's attendance at anti-government KESK rallies while being an employee of the Turkish Health Department. Contrary to the Applicants' contention, I do not read the Board's response to Mr. Tas admitting that he was risking his job to definitively conclude that Mr. Tas did not participate in anti-government rallies.

[26] Rather, the Board noted inconsistencies in Mr. Tas's responses: on the one hand, he testified keeping his political views quiet; on the other hand, evidence showed photos of him

attending these types of events. The Board did not conclude that Mr. Tas did not participate in anti-government rallies; it simply drew a negative inference due to inconsistent answers. I find both of the RPD's conclusions above to have been reasonable.

D. *Procedural Fairness Issue*

[27] During the first sitting of the hearing on September 14, 2016, the Board raised questions regarding the Son's travel to Canada and whether or not it was a violation of the Hague Convention. The same day, the Applicants provided the biological father's original notarized consent (untranslated), and the RPD stated it would not contact the Minister. The Applicants provided a translated version of this document during the second sitting on September 23, 2016.

[28] On November 1, 2016, the Applicants received a notification that the Minister had indeed been contacted. The Minister never responded. The Applicants attempted to submit post-hearing evidence but it was returned to them with the explanation that that the RPD had already come to a decision. The Applicants contend that the RPD did not give them a chance to properly respond to these allegations.

[29] However, the RPD accepted the father's original notarized consent as being legitimate and did not raise this issue in its Decision. I therefore find no breach of procedural fairness.

III. Conclusion

[30] The RPD reasonably concluded that the Applicants were neither Convention refugees nor persons in need of protection as contemplated by sections 96 and 97 of the Act, and did not breach the Applicants' rights to procedural fairness in doing so.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. Counsel presented no questions for certification, nor do any arise.
3. No costs will be ordered.

“Alan S. Diner”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5241-16

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