

Federal Court



Cour fédérale

**Date: 20181213**

**Docket: IMM-2390-18**

**Citation: 2018 FC 1266**

**Toronto, Ontario, December 13, 2018**

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

**BETWEEN:**

**SAMY AHMED YUSUF  
DERYA YUSUF**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] This is an application for judicial review of the decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board, dated April 25, 2018, in which the RAD dismissed the Applicants' appeals from their respective Refugee Protection Division [RPD]

decisions, finding that the Applicants are not Convention refugees or persons in need of protection.

[2] As explained in more detail below, this application is dismissed, because I have found the RAD's decision to be reasonable in its treatment of the claims of both Applicants.

## II. Background

[3] The male Applicant, Samy Ahmed Yusuf, is a citizen of Turkey and of Ethiopia. The female Applicant, Derya Yusuf, is Mr. Yusuf's wife and also a citizen of Turkey. They claimed refugee protection separately, and their claims were heard and denied by the RPD in separate decisions. However, when they appealed the RPD decisions, the RAD joined the appeals.

[4] Mr. Yusuf alleges that his in-laws oppose his 2008 marriage to his wife because of his race. He states that, in particular, he fears his father-in-law and his wife's uncle, claiming that his father-in-law has beaten him and broke his leg. He states that his wife's family has repeatedly insulted him due to his race and that her uncle is a high ranking police officer in Turkey and has caused him to be arrested multiple times. Mr. Yusuf also alleges that in July 2016 he was accused of being a supporter of Fethullah Gulen [Gulen], a Turkish spiritual leader who is the founder of the "Gulen movement." Following the end of an allegiance between Gulen and President Erdogan in 2013, the Gulen movement is reportedly blamed by the Turkish government for the attempted coup in 2016. Mr. Yusuf states that he was detained and questioned about his association with the Association of Ethiopian Students in Turkey [AEST]

and contends that his wife's uncle is responsible for his arrest and detention, motivated by the family wishing for Ms. Yusuf to marry her cousin instead.

[5] Mr. Yusuf alleges that his involvement with the AEST made Turkish authorities suspect him of supporting the Gulen movement. He claims that his boss informed him in September 2016 that his name was on a list of foreign-born Turkish citizens who were to be arrested, that a few days later his wife told him that the police were looking for him at their home, and that the police also went to his workplace.

[6] On September 10, 2016, the Applicants travelled to Canada, where Mr. Yusuf has family members whom he had previously visited in 2014 and 2015. He says that his sister-in-law informed him later that month that the police were looking for him and had a search warrant. Around this time, Ms. Yusuf returned to Turkey, because her family told her that her mother was ill. She reported to Mr. Yusuf that this was a ruse to get her to return to Turkey and that she was being pressured to divorce him. Mr. Yusuf made his refugee claim on November 11, 2016, based on persecution by Turkish authorities and his wife's family, as well as discrimination due to his race.

[7] Ms. Yusuf contends that, when she returned to Turkey in 2016 to visit her mother, her father and uncle took away her money and travel documents and held her at her parents' house for two months. She alleges that she sought help from a women's shelter when she was eventually allowed to go out of the house to work, but that her family found out and that her father and uncle beat her. She says that she was told she must marry her cousin, that plans were

made for a wedding for her and her cousin, and that she was forced to sign a petition for divorce. Ms. Yusuf also claims that she was beaten and hospitalized for a dislocated disc. She says that her sister then helped her to steal back her passport, after which she escaped to Canada.

[8] Ms. Yusuf arrived in Canada in June 2017 and claimed refugee protection on July 31, 2017. Like Mr. Yusuf, she alleges that her family and Turkish society strongly disapprove of her marriage to Mr. Yusuf. She says that her family had long planned for her to marry her cousin in order to keep wealth within the family and because it was customary for her family to inter-marry. She alleges that her family reacted to her marriage to Mr. Yusuf with threats and violence. Ms. Yusuf also alleges that her mother poisoned her so that she would miscarry.

[9] The RPD rejected both Applicants' claims for refugee protection based on credibility and, in the case of Ms. Yusuf, because she had a viable internal flight alternative. In the decision now under judicial review, the RAD dismissed the Applicants' appeals from their respective RPD decisions, on the basis that credibility was the determinative issue for both claims and that the RPD did not err in its negative credibility findings.

### III. Issues and Standard of Review

[10] The Applicants describe the issue for the Court's consideration as whether the RAD erred in its credibility assessment of the Applicants' claims and supporting documents. The parties agree, and I concur, that the RAD's decision is reviewable on a standard of reasonableness.

IV. Analysis

[11] As an organizational structure, my analysis employs the same subheadings as the Applicants' Memorandum of Fact and Law.

A. *The principal Applicant's perceived support for the Gulen movement*

[12] The RAD found that there was insufficient evidence to conclude that Mr. Yusuf was perceived by Turkish authorities to be a Gulen supporter. Mr. Yusuf challenges this finding on several bases. First, he takes issue with the RAD's identification of factors to be considered in determining whether a claimant has an affiliation with the Gulen movement and whether that affiliation is sufficient to attract the attention of Turkish authorities. The RAD described such factors as including those who volunteered or worked for Gulenist charities, clerics, doctors, civil servants, judges, teachers, and business persons with alleged links to Gulen, and persons who enrolled at a Gulen school, banked at Bank Asya, or subscribed to Gulen publications, after the split between Gulen and President Erdogan in 2013. Mr. Yusuf argues that the selection and application of this list of factors is inconsistent with the documentary evidence, which he submits indicates that, since the failed coup, the Turkish government has been pursuing an indiscriminate crackdown on individuals or groups believed to have Gulen links.

[13] I have difficulty with this submission, as the evidence that Turkish authorities are involved in a large-scale crackdown does not mean that they are not applying means of identifying those with Gulen connections. I can particularly find no error in the manner in which the RAD considered whether the evidence as submitted by Mr. Yusuf supported a conclusion

that he would be perceived as associated with the Gulen movement. He relied in particular upon a letter from the president of the AEST, who referred to that organization as assisting Ethiopian companies who were coming from Ethiopia to Turkey for seminars organized by a Gulen organization called Tuskon, as well as providing translation services for the Ethiopians who were attending.

[14] However, the RAD expressly addressed this evidence, noting that neither the letter from the president of the AEST, nor other letters describing the activities of the AEST as submitted by Mr. Yusuf, stated that the AEST had been accused of being affiliated with the Gulen movement or that any members of the AEST had been targeted by Turkish authorities because of perceived involvement in the Gulen movement due to their membership in AEST. The RAD's analysis was that, if the AEST was perceived to have links to the Gulen movement and its members were having difficulties with Turkish authorities since the attempted coup, these letters would mention such information. I find nothing unreasonable in this treatment of the evidence.

[15] Mr. Yusuf also takes issue with various aspects of the RAD's analysis of a September 2016 summons and a March 2017 warrant of arrest that he provided to corroborate his assertion that he was being sought by the Turkish authorities for perceived Gulen affiliation. The RAD gave little weight to both documents. While the RAD referred to the fact that the summons did not expressly state that the recipient was under an obligation to attend to give a statement, Mr. Yusuf submits that the subsequent warrant refers to failing to respond to the September 2016 "call to statement" as one of the crimes for which arrest is sought. In addition, the RAD questioned the fact that the warrant also referred to an event in February 2016 and to the reasons

for the verdict against Mr. Yusuf having been communicated to him in March 2017, noting that Mr. Yusuf had provided no evidence on the referenced February 2016 event or the reasons for the verdict. He argues that he was not in a position to have information on either event, because he did not respond to the summons and he had left Turkey by the time of the March 2017 verdict.

[16] While I appreciate the logic of these submissions, I do not find them to undermine the reasonableness of the RAD's overall conclusions as to the weight to be afforded to the summons and warrant. The RAD did not impugn the authenticity of these documents but observed that neither document referred to Mr. Yusuf being sought by Turkish authorities because of perceived links to the Gulen movement. It therefore afforded little weight to the summons and warrant in establishing his allegations. While the RAD could have reached different findings as to the effect of this evidence, in my view its conclusions are within the range of acceptable outcomes and cannot be characterized as unreasonable.

B. *Discrimination and abuse of the principal Applicant*

[17] The RAD concluded that the RPD did not err in finding Mr. Yusuf lacking in credibility surrounding allegations that his father-in-law, or his wife's uncle, were responsible for beating him or breaking his leg. Like the RPD, the RAD found Mr. Yusuf's evidence on this incident to be evolving and inconsistent. The RAD also identified inconsistencies with and between the evidence of his wife and sister-in-law.

[18] Mr. Yusuf argues that the RAD erred by failing to take into account his wife's testimony that the incident in which he was beaten lasted 5 to 10 minutes, was chaotic, and may have been

observed differently by those who were present. He submits that it is an error to ignore important evidence which represents an explanation for inconsistent testimony.

[19] I find little merit to this submission. The RAD is presumed to have considered all evidence before it. I appreciate that the more important the evidence that is not mentioned in a decision, the more willing a court may be to infer that the tribunal made an erroneous finding of fact without regard to the evidence (see *Cepeda-Gutierrez v Canada (Minister of Citizenship & Immigration)* (1998), 157 FTR 35 (Fed TD) at para 17). However, the RAD identified multiple inconsistencies in the evidence of Mr. Yusuf and other witnesses, both as to which family member or members assaulted Mr. Yusuf and as to who broke his leg, and I do not regard the evidence that the event was chaotic to represent a sufficiently compelling explanation to conclude that it was overlooked.

### C. *Delay*

[20] Mr. Yusuf submits that the RAD erred in making a negative credibility finding resulting from his delay in leaving Turkey to seek refugee protection. He testified that, notwithstanding the previous persecution he had suffered, he was well established in Turkey and did not decide to leave until he was summoned to appear before the police to answer questions about the association of the AEST with the Gulen movement and concluded that it was no longer safe to remain.

[21] I find no error in the RAD's treatment of this issue. The RAD considered Mr. Yusuf's testimony and argument on this issue and reached the conclusion that his delay in departing



Turkey, notwithstanding the previous incidents that he alleged he had experienced, undermined the credibility of those allegations. I agree with the Respondent's position that Mr. Yusuf is merely repeating before the Court the arguments on this issue which he made before the RAD and suggesting that the Court should reach a different conclusion. This is not the Court's role in judicial review.

D. *The position of the uncle of the associate Applicant in Turkish security*

[22] The RAD also referred to inconsistencies in the evidence as to the role of Mr. Yusuf's wife's uncle in the Turkish police or security apparatus and concluded that there was insufficient credible and trustworthy evidence to conclude that the uncle held a high-ranking position as alleged. Mr. Yusuf submits that the uncle's position is not central to his claim and that the RAD therefore erred in relying on this determination in denying the claim.

[23] Again, I find little merit to this submission. The RAD considered the Applicants' allegation that the uncle was a high-ranking member of the Turkish police or security apparatus and was responsible for having Mr. Yusuf arrested. This allegation cannot be characterized as an insignificant element of his claim, as the uncle is an identified agent of the alleged persecution and is alleged to have influenced the Turkish authorities in seeking out Mr. Yusuf. I find nothing unreasonable in the RAD's conclusion, based on inconsistencies in the evidence on this point, that this allegation was not established and therefore did not support the overall claim.

E. *The claim of the associate Applicant*

[24] With respect to the claim of Ms. Yusuf, the RAD identified numerous inconsistencies between her allegations and the evidence of her husband, as well as inconsistencies with the evidence of other witnesses, surrounding her allegations of abuse, captivity and forced marriage at the hands of her family. Drawing negative credibility inferences with respect to her core allegations, the RAD found that Ms. Yusuf was not a Convention refugee or a person in need of protection.

[25] Ms. Yusuf argues that the RAD failed to engage with her claim in its totality, in that it addressed only her allegations surrounding her mistreatment due to the race of her husband and made no negative credibility findings with respect to her other allegation, that her family wished for her to marry her cousin in order to preserve the property of the family.

[26] I find no error in this regard. Based on the inconsistencies, contradictions and omissions canvassed by the RAD, it found that Ms. Yusuf was not held captive, beaten or forced to marry her cousin as alleged. Whether alleged to have been motivated by racism or financial considerations, the RAD found that the mistreatment asserted by Ms. Yusuf did not occur, and I find nothing unreasonable in the RAD's conclusions to that effect.

[27] Finally, Ms. Yusuf also asserts that the RAD erred in failing to consider her allegation that she feared risk of an honour killing by her family, because she left Turkey and refused to marry her cousin. At the hearing of this application for judicial review, her counsel argued that,

even if the RAD disbelieved her assertion that she was being forced by her family to marry her cousin, and instead believed that the marriage was voluntary, it was still obliged to consider her risk of persecution from an honour killing for failing to proceed with an arranged marriage.

[28] The Respondent points out that Ms. Yusuf did not frame an argument in these terms in her submissions to the RAD. While her Memorandum of Argument before the RAD did raise the risk of honour killing as a result of Ms. Yusuf leaving Turkey after the marriage to her cousin was announced, I agree with the Respondent that she did not argue that the RAD should consider that risk even if it disbelieved her core assertions that she was being forced to marry her cousin. I would therefore have difficulty finding a reviewable error on the part of the RAD in failing to consider this argument.

[29] However, more significantly, the Respondent points out that the RAD's findings undermine the factual underpinning of even this alternative allegation of risk. In addition to the finding that Ms. Yusuf was not held captive, beaten or forced to marry her cousin as alleged, the RAD found it unlikely that she was arranged to marry him in October 2017 as she submitted, given that she was not divorced by that time and polygamy is outlawed in Turkey. Given this factual conclusion, the RAD had no obligation to consider further this allegation of risk.

## V. Conclusion

Having found no reviewable errors by the RAD in connection with the appeal by either of the Applicants, this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

**JUDGMENT in IMM-2390-18**

**THIS COURT'S JUDGMENT is that** this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"

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Judge

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

**DOCKET:** IMM-2390-18

**STYLE OF CAUSE:** SAMY AHMED YUSUF ET AL v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** DECEMBER 11, 2018

**JUDGMENT AND REASONS** SOUTHCOTT J.

**DATED:** DECEMBER 13, 2018

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