Federal Court  Cour fédérale

Date: 20200615

Docket: IMM-3847-19

Citation: 2020 FC 692

Ottawa, Ontario, June 15, 2020

PRESENT: Mr. Justice Norris

BETWEEN:

MEHMET ZARARSIZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] Mehmet Zararsiz, the applicant, is a thirty-eight-year-old citizen of Turkey. He arrived in Canada in February 2017 and made a claim for refugee protection on the basis of his fear of persecution by the Turkish government for his pro-Kurdish political activism and his Kurdish and Alevi identities.

[2] The claim was heard by the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB] on May 9, 2017. The RPD rejected the claim in a decision dated July 11, 2017. The determinative consideration for the RPD was the applicant's lack of credibility regarding his political identity and activities.

[3] The applicant appealed this decision to the Refugee Appeal Division [RAD] of the IRB. The RAD dismissed the appeal on March 28, 2018. However, on November 14, 2018, this Court granted the applicant's application for judicial review on consent and ordered a new hearing before the RAD. As discussed further below, the RAD had failed to address the admissibility of two pieces of evidence which the applicant had sought to have admitted in his appeal as new evidence under section 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[4] On May 22, 2019, the RAD dismissed the applicant's appeal again and affirmed the RPD's determination that the applicant is neither a refugee nor a person in need of protection within the meaning of sections 96 and 97, respectively, of the *IRPA*.

[5] The applicant now applies for judicial review of this decision under section 72(1) of the *IRPA*. He submits that the RAD erred by refusing to admit new evidence and by upholding the RPD's adverse credibility findings.

[6] For the reasons that follow, I do not agree. As a result, this application must be dismissed.

II. BACKGROUND

A. *Introduction*

[7] The factual background is somewhat convoluted for reasons that will become apparent in a moment.

[8] The applicant entered Canada by crossing the border between Blaine, Washington and Surrey, British Columbia irregularly. He was arrested by the RCMP in Surrey in the early morning hours of February 15, 2017.

[9] Since then, the applicant has had several opportunities to recount the events in Turkey that ultimately led to his claim for refugee protection in Canada.

[10] Shortly after his arrival in Canada, the applicant was interviewed twice by the Canada Border Services Agency [CBSA] – on February 15, 2017, and then again on February 21, 2017. He was assisted by a Turkish interpreter on both occasions. By the time of the second interview, the applicant had retained a Turkish speaking lawyer in Toronto who I will refer to in these reasons as C.A. The applicant had been referred to C.A. by friends from Turkey who now live in Canada.

[11] The applicant's original Basis of Claim Form [BOC] is dated March 15, 2017. It was prepared with the assistance of C.A., who interviewed the applicant by phone. He also asked the applicant to write down and send him the information he had provided when he was interviewed

by the CBSA. The applicant did so. The BOC included a narrative of events in Turkey which supported the applicant's fear of persecution if he were required to return there.

[12] In preparation for his hearing before the RPD, the applicant was interviewed by a psychologist on April 17, 2017. He recounted some of his experiences in Turkey in this interview.

[13] Before his claim was heard by the RPD, the applicant amended his BOC narrative twice: first, on April 19, 2017, and then again, on May 4, 2017. These amendments were done with the assistance of new counsel who had replaced C.A.

[14] The first set of amendments were made by hand, correcting or crossing out information in the original narrative. The second set of amendments, submitted a few days before the RPD hearing, consisted of a fresh narrative in which the applicant both recounted his experiences in Turkey and explained why his original narrative was incorrect in several respects.

[15] The applicant's position was that his original narrative contained many errors and omissions. He blamed C.A. for this, suggesting that the latter must have copied and pasted the information in the BOC narrative from that of another client. For example, while the applicant's date of birth is stated correctly on the BOC form, it is stated incorrectly in the narrative. The original narrative also recounted events which the applicant stated had never happened to him. However, the applicant did not dispute the accuracy of all of the information in the original narrative.

[16] The applicant states in the May 4, 2017, narrative that he did not notice the errors before the original BOC was filed. The original BOC had been prepared while he was still in Vancouver; his lawyer was in Toronto. The lawyer had sent the document to the applicant to sign but it was not interpreted into Turkish for him before he signed it. While there was an interpreter's signature on the document, the applicant maintained that it was already there when he received the document.

[17] There were also discrepancies between information the applicant provided to the CBSA at the Port of Entry and his other accounts. The applicant later explained that this was because he did not trust the officer at the Port of Entry because he was wearing a uniform.

[18] The applicant testified before the RPD on May 9, 2017. While the recording of the hearing is part of the record on this application, no transcript was filed.

[19] Unless otherwise noted, what follows is derived from the applicant's two amended BOC narratives.

B. *The Applicant's Narrative*

[20] The applicant was born in August 1981 in Besni, Turkey, to a Kurdish Alevi father, who died when the applicant was young, and a Turkish Alevi mother. The applicant identifies as a secular, non-practicing Alevi and, while he does not speak Kurdish, he considers himself ethnically Kurdish. He suffered discrimination during his childhood and youth due to his ethnic

and religious identities, including abuse from his teachers. He dropped out of school in seventh grade.

[21] The applicant left Besni with his mother in 2006 because the Turkish police kept harassing them for their pro-Kurdish political affiliation. They joined the applicant's brother in Mersin, where the latter operated a restaurant.

[22] In his second amended BOC dated May 4, 2017, the applicant stated that he had "supported the pro-Kurdish parties such as DTP, BDP and HDP for the last ten years." However, he only became an official member of the People's Democratic Party (known by its Turkish acronym HDP) on May 20, 2016.

[23] After moving to Mersin in 2006, the applicant started working with his brother as his business partner in managing the restaurant; however, he also remained politically active, helping canvass and recruit people to vote for the HDP. The applicant often allowed the local HDP members to hold meetings at the restaurant without charging them for food or the space.

[24] The applicant states that there were several incidents where he was threatened and/or physically assaulted by Turkish nationalists and the Turkish police, who would raid and search the restaurant from time to time.

[25] In his original BOC narrative, the applicant stated that he was arrested on Newroz (the Kurdish national day) in 2012 and held in a police station for two days. He was questioned

about his political activities and physically assaulted. The police recorded his personal information and took his fingerprints. They warned the applicant to stay away from anti-government activities and then released him. In his first amended narrative, the applicant corrected some of the details about this event – e.g. he was held for three hours as opposed to two days, as had been stated in his original narrative. However, he does not mention this incident at all in his second amended narrative. At the RPD hearing, the applicant testified that he did not recall any such incident.

[26] The applicant continued his political work for the HDP, especially during the June 2015 and November 2015 elections. The applicant states that in April 2016, after the police put "further pressure on [the] business," he finally decided to leave Turkey. He paid an agent to secure a work permit for him in the United States. His plan was to go to Canada but he understood it was easier to go to the United States on a work permit first.

[27] While he was waiting for approval of his US visa, on May 6, 2016, the applicant was arrested by Turkish police following an HDP fundraising event at his restaurant. The police kept him at the local police station for several hours. They eventually transferred him to the Anti-Terror branch in Mersin, where he was questioned about his political activities, accused of being a terrorist, and tortured. He was released after two days. Two weeks later, the Turkish police raided and searched his house and physically assaulted him (as well as his brother and mother). They threatened to arrest the applicant again if he held any more HDP meetings at the restaurant.

[28] Despite this, as already noted, the applicant became an official member of the HDP for the first time on May 20, 2016. The applicant states: “At that time I wanted to take a more active role in the party and I even thought about becoming a candidate.”

[29] After the Turkish military coup in July 2016, the police continued to harass and threaten the applicant.

[30] After receiving his US visa, the applicant left Turkey on July 26, 2016. He arrived in Dallas the next day. He found work in a Turkish restaurant while he waited for instructions from his agent about getting to Canada. He eventually travelled to the State of Washington and then crossed the border into Canada on or about February 15, 2017.

C. *The RPD’s Decision*

[31] The RPD heard the applicant’s claim on May 9, 2017. Prior to the hearing, the applicant submitted the two amended BOC narratives. He also provided a Psycho-diagnostic Evaluation Report dated April 19, 2017, which stated that he met the diagnostic criteria for Post-Traumatic Stress Disorder [PTSD] and Major Depressive Disorder [MDD]. Further, the applicant filed country condition evidence, a donation receipt and a membership form as proof of his involvement with the HDP, and an undated letter from his brother. The applicant also called a witness to testify in support of his claim.

[32] On July 11, 2017, the RPD rejected the claim. The RPD found the applicant lacked credibility with respect to central aspects of his claim, including his political identity and activities.

[33] Among other things, the RPD made adverse credibility findings based on the following:

- The RPD rejected the applicant's explanation that the inconsistencies in the BOCs were due to his former counsel's conduct, noting that the applicant had not reported his former counsel to the Law Society;

- The otherwise unexplained differences on material issues between the original BOC narrative and the amended narratives impugned the applicant's credibility;

- For example, the applicant stated that he had been arrested only once (in May 2016) yet in his original BOC narrative he stated that he had also been arrested during Newroz 2012 and the applicant could not explain the discrepancy;

- The RPD rejected the applicant's explanation for inconsistencies about the details of his May 2016 arrest between his CBSA interview and the amended BOC – namely, that he was fearful of the CBSA officers because they were in uniform;

- The RPD found that the applicant's testimony about his reasons for leaving Turkey was vague and inconsistent, as he was unable recall the names of HDP members who were detained in 2016 or the number of police visits to his restaurant;

- The applicant was unable to say what projects the HDP was working on in April 2016;

- The RPD found it was unreasonable that the applicant officially joined the HDP on May 20, 2016 to "become more active" when he had stated in his BOC that he had decided to leave Turkey in April 2016;

- The RPD gave little weight to the testimony of the applicant's witness as the applicant and the witness gave inconsistent answers about their work during the election;

- The RPD gave little weight to the psychologist's report, noting that the applicant had only seen the psychologist once; that the report did not mention cognitive or memory issues; that the psychologist was not a medical doctor; and because the RPD did not believe the applicant's claims as summarized in the report. However, the RPD noted that it had made accommodations during the hearing based on the report by reversing the order of questioning and that it did consider the psychologist's "opinion regarding the claimant's psychological functioning when assessing credibility;"

- The RPD gave little weight to the HDP membership form (dated May 20, 2016) and the HDP donation receipt (dated May 30, 2016), finding that they were not probative of the applicant's activities prior to April 2016 and because they would be "easy to manufacture;"

- The RPD gave little weight to the applicant's brother's letter because the brother was not called as a witness and because of serious credibility concerns generally; and

- The RPD found that country condition documentary evidence showed that the applicant's Kurdish and Alevi identities alone did not put him at risk of persecution.

[34] Having regard to all of these considerations, the RPD concluded that the applicant is neither a Convention refugee nor a person in need of protection.

D. *The Applicant's Appeals to the RAD*

[35] The applicant filed a Notice of Appeal to the RAD on August 9, 2017. He contended that the RPD had erred in its assessment of his political involvement and membership in the HDP, in its credibility findings, and in its assessment of his risk profile.

[36] The appeal was dismissed on March 28, 2018. However, on November 14, 2018, this Court allowed the applicant's application for judicial review on consent and ordered that the appeal be reconsidered.

[37] The applicant's grounds of appeal and supporting materials were identical in both appeals. On his first appeal, he had sought the admission of a number of items as new evidence under section 110(4) of the *IRPA*. They consisted of additional country condition evidence, evidence showing the applicant's involvement with the Kurdish community in Canada, a letter from the Mersin office of the HDP dated August 22, 2017, describing the applicant's activities with the party in 2016, a new letter from the applicant's brother dated September 2, 2017, describing his own experiences with the authorities in March and April 2017, and the applicant's complaint to the Law Society of Upper Canada against C.A. dated October 28, 2017.

[38] Some of this new evidence was included in the Appellant's Record. However, the HDP letter and the letter from the applicant's brother were filed after the Appellant's Record and, as a result, required an application under Rule 29(2) of the *Refugee Appeal Division Rules*,

SOR/2012-257. This application was filed on October 10, 2017. The Law Society complaint also required a separate Rule 29(2) application.

[39] In disposing of the first appeal, the RAD admitted some of the items as new evidence but determined that others did not meet the requirements of section 110(4) of the *IRPA*. However, the RAD did not address the admissibility of the HDP letter or the letter from the applicant's brother. Evidently, it must have overlooked these items and the accompanying Rule 29(2) application.

[40] On the reconsideration of the appeal, the applicant relied on the same items as before; he did not seek the admission of any additional items as new evidence.

III. DECISION UNDER REVIEW

A. *The Application to Admit New Evidence*

[41] As with the first appeal, on redetermination the RAD admitted some but not all of the "new" evidence tendered by the applicant (although not exactly the same items as before were found to be admissible). The RAD also ruled that the items that had been overlooked in the first appeal – namely, the letter from the HDP dated August 22, 2017, and the letter from the applicant's brother dated September 2, 2017 – were inadmissible as the applicant had not demonstrated that they met the requirements of section 110(4) of the *IRPA*.

[42] The applicant does not challenge all of the adverse admissibility determinations so it is not necessary to review all of the items he tendered. The only rulings in issue are those with respect to the letter from the HDP and the letter from the applicant's brother.

[43] In an affidavit filed in support of the application to admit this evidence, the applicant stated that he had received the HDP letter on or about September 20, 2017, when it was delivered by a friend of his brother who had travelled from Turkey to Canada. The applicant also stated: "I have been trying to obtain a letter from the HDP for several months – since before my refugee determination hearing. However, it was not possible because the HDP is in crisis. Many Members of Parliament and other officials from the HDP have been arrested." He went on to explain that in "approximately" August 2017, his brother had gone to the HDP office in Mersin asking them to provide a letter regarding the applicant's participation in the party. In response, the party office provided the letter dated August 22, 2017. The applicant did not say anything in his affidavit about how his brother came to write his own letter, dated September 2, 2017. For its part, the applicant's brother's letter does not mention his efforts to obtain documents for the applicant from the HDP, including the August 22, 2017, letter.

[44] The RAD found that the HDP letter, although it is dated after the RPD decision, was not new evidence because its contents related to events from before the decision – namely, events in 2016. Further, the RAD was not satisfied that the letter was not reasonably available prior to the rejection of the applicant's claim by the RPD. This determination was based on the following:

- The applicant states in his affidavit in support of the application to admit the HDP letter as new evidence that he had attempted to obtain such a letter before his RPD hearing; however, the applicant did not mention this at the RPD. Instead, he testified only about his efforts (through his brother) to obtain his identity card from the party;

- The RAD found that the applicant's explanation for why the letter had not been provided to the RPD – that the HDP had been in "crisis" and Members of Parliament were in custody during the time leading up to his refugee hearing – was inconsistent with the his testimony at the RPD that he had not been able to obtain his identity card from the Mersin office because it was closed. This inconsistency led the RAD member to "doubt whether the Mersin office was closed as alleged and that the Appellant could not have obtained a letter from the HDP prior to rejection" of his claim;

- In any event, the RAD did not find the explanation persuasive. Country condition documentation indicated that the HDP was still in "crisis" and Members of Parliament were still detained. "Nothing has changed since the RPD decision" yet the applicant was able to obtain the letter when before he could not. Consequently, without "further details about when he contacted his brother and when his brother contacted the HDP, it is impossible for the RAD to determine whether such a letter from the HDP could not have been presented to the RPD at the time of rejection;"

- The RAD also noted that, according to the applicant's evidence at the RPD, his brother went to the Mersin office two months before his hearing and found it closed. The RPD did not render a decision on the claim until two months after the hearing. Thus, the applicant had four months to continue to try to obtain documentation from the Mersin office before the decision was made yet this period of time and any efforts the applicant may have made is unaccounted for; and

- Finally, the applicant's brother had not provided any evidence concerning his efforts to obtain documentation from the Mersin office and the obstacles he faced to corroborate the applicant's account of these events.

[45] The RAD also refused to admit the new letter from the applicant's brother. While it, too, was dated after the rejection of the claim by the RPD, the incidents it described all occurred before then. The RAD found that the applicant had not demonstrated that he reasonably could not have obtained the letter prior to the rejection of his claim. Indeed, the applicant had not offered any explanation at all for why he could not have obtained the letter earlier. The RAD also expressed concerns over an inconsistency between the contents of the brother's second letter and the applicant's testimony at the RPD. Specifically, the letter states that the HDP had continued to hold meetings at the brother's restaurant while the applicant had testified that the party had shut down in Mersin. The RAD also noted that the events described in the letter pre-

date the RPD hearing yet the brother's first letter, which was filed at the RPD, makes no mention of them. The RAD concluded that "there is nothing to suggest that the information in the brother's letter was not reasonably available or could not reasonably have been expected to be presented to the RPD at the time of rejection." Consequently, the letter did not meet the requirements of section 110(4) of the *IRPA* to be admissible as new evidence.

[46] Finally in this regard, the RAD refused to convoke an oral hearing, finding that the requirements of section 110(6) of the *IRPA* were not satisfied with respect to the new evidence that was admitted. No issue is taken with this determination.

B. *The Merits of the Appeal*

[47] The RAD upheld all of the RPD's findings as correct, although it substituted reasons of its own for those of the RPD in some respects.

[48] The applicant challenges only some of the RAD's findings on this application so it is not necessary to set out all of the RAD's reasons here. The pertinent findings will be discussed in more detail below. For now, it suffices to note that, with respect to the three findings that the applicant does challenge on this application, the RAD found as follows:

- The first letter from the applicant's brother deserved "no weight" (even though the RPD had assigned it "minimal weight") because the letter could not be authenticated as being from the applicant's brother, because its contents were "vague," and because it did not corroborate key allegations made by the applicant;
- The RPD did not err in assigning low weight to the psychological report, even though the RPD had accepted the diagnosis that the applicant suffered from PTSD and MDD. The RAD found that, despite the psychological evidence, there was no

evidence that the applicant had any difficulties testifying before the RPD. Further, the RPD did not make any adverse credibility findings that were related to his memory issues, as discussed in the report; and

- "Uncontested" RPD findings relating to the applicant's evidence, including his inability to recall salient details, also undermined the applicant's credibility.

[49] More generally, having concluded that the applicant had failed to establish his political identity, the RAD also concluded that the documentary evidence did not establish that the applicant would suffer persecution because of his Kurdish and/or Alevi identities.

[50] The RAD therefore dismissed the appeal and confirmed the RPD's determination that the applicant is neither a Convention refugee nor a person in need of protection.

IV. STANDARD OF REVIEW

[51] The parties agree, as do I, that the RAD's decision should be reviewed on a reasonableness standard. This includes both the RAD's determination concerning the admissibility of new evidence under subsection 110(4) of the *IRPA* and the merits of the appeal.

[52] Reasonableness is now the presumptive standard of review, subject to specific exceptions "only where required by a clear indication of legislative intent or by the rule of law" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10). There is no basis for derogating from the presumption that reasonableness is the applicable standard of review here.

[53] I also note that it was well established in pre-*Vavilov* jurisprudence that the issues raised by the applicant should be assessed on a reasonableness standard. With respect to the admissibility of new evidence, see *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at para 29. With respect to the substance of the decision on the merits of the appeal, see *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35.

[54] An assessment of the reasonableness of a decision must be sensitive and respectful yet robust (*Vavilov* at paras 12-13). Reasonableness review focuses on "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para 83). On review, "close attention" must be paid to a decision maker's written reasons and they "must be read holistically and contextually, for the very purpose of understanding the basis on which a decision was made" (*Vavilov* at para 97).

[55] A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). The reasonableness standard "requires that a reviewing court defer to such a decision" (*ibid.*). A court applying this standard "does not ask what decision it would have made in place of that of the administrative decision maker, attempt to ascertain the 'range' of possible outcomes that would have been open to the decision maker, conduct a *de novo* analysis or seek to determine the 'correct' solution to the problem" (*Vavilov* at para 83).

[56] The burden is on the applicant to demonstrate that the RAD's decision is unreasonable. He must establish that "there are sufficiently serious shortcomings in the decision such that it

cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100) or that the decision is "untenable in light of the relevant factual and legal constraints that bear on it" (*Vavilov* at para 101).

V. ISSUES

[57] The applicant challenges the RAD's decision on two broad grounds which I would state as follows:

a) Did the RAD err in refusing to admit new evidence?
b) Is the RAD's determination of the appeal unreasonable?

VI. ANALYSIS

A. *Did the RAD err in refusing to admit new evidence?*

[58] The applicant submits that the RAD erred in not admitting the HDP letter and the second letter from his brother. He challenges as unreasonable the RAD's finding that his evidence before the RPD and his explanation before the RAD for why he could not obtain the HDP letter sooner are inconsistent. With respect to his brother's second letter, he argues that although the incidents described in the letter happened before the RPD hearing, he could not reasonably have provided the evidence because he did not know about the events at the time.

[59] In my view, the applicant has failed to demonstrate that the RAD committed a reviewable error with respect to either item of new evidence.

[60] Looking first at the HDP letter, the applicant contends that the RAD unreasonably determined that there were inconsistencies between his affidavit in support of the application to admit new evidence and his evidence at the RPD. Specifically, the applicant argues that the RAD unreasonably found that the applicant had given different accounts of the circumstances of the HDP in Mersin during the time leading up to his hearing at the RPD.

[61] The difficulty for the applicant is that he has not provided any evidence of what his evidence on this point was before the RPD. He did not file a transcript of his testimony before the RPD. In his affidavit in support of this application for judicial review sworn July 22, 2019, the applicant states the following:

> I am advised by my counsel and believe that the RAD made statements in its reasons for refusing my appeal on redetermination, as to what I said at my refugee hearing. That hearing took place more than two years ago and I cannot recall with any accuracy what I did or did not say at the hearing. I know that I or my counsel received a copy of the CD recording of my hearing but I have not listened to it.

[62] The affidavit is silent as to why the applicant did not listen to the CD recording to refresh his memory of what his evidence was before the RPD.

[63] While the CD recording is part of the record on this application, it is not the Court's responsibility to listen to it to determine whether the applicant's position is, or is not, well-founded, especially in the absence of any guidance from the applicant as to what parts of the recording are pertinent. Such a procedure would also put the respondent at an unfair disadvantage.

[64] This difficulty for the applicant's position could have been avoided if he had filed a transcript of his testimony at the RPD. I certainly recognize that transcripts can be expensive and applications such as this one can be subject to financial exigencies. The applicant has not offered any explanation for why he did not obtain a transcript of his testimony before the RPD despite the importance of that evidence for this application. The applicant bears the burden of demonstrating that the RAD's determination is unreasonable. Even if it were the case that he did not have the budget to obtain a transcript of his testimony, it was incumbent on the applicant to find an adequate substitute. His own affidavit, based on his memory as refreshed by listening to the CD recording, is one obvious alternative. For unknown reasons, the applicant did not pursue this option, either.

[65] Instead of providing evidence of what his testimony was before the RPD, the applicant attempts to find support for his position in the written representations of his former counsel on the application to admit the HDP letter as new evidence. His former counsel wrote: "At the RPD level, the Appellant had explained that he had made efforts to obtain such a letter, but that he was unsuccessful due to the political situation; specifically the pressure faced by the HDP (which is corroborated in the objective country evidence)." In my view, on an application for judicial review, counsel's synopsis of testimony given in a proceeding – a synopsis which, it bears emphasizing, was prepared for a completely different purpose – is no substitute for evidence of what was said in that proceeding. This is especially the case in the absence of any explanation for why such evidence could not be provided.

[66] The applicant's attempt to find support in the RAD's reasons themselves is equally unpersuasive. For example, the applicant points out that the RAD does not state that it had actually listened to the CD recording. However, the RAD was under no obligation to do so. It is trite law that a decision maker is not required to refer to every piece of evidence in its decision; it is presumed to have considered all evidence (*Florea v Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598 (CA), *Cepeda-Gutierrez v Canada (Minister of Citizenship & Immigration)*, [1998] F.C.J. No. 1425, [1999] 1 F.C. 53 at para 16). While this presumption can be rebutted, there is nothing in the record to support such a finding here. On the contrary, on several occasions the RAD expressly refers to the applicant's RPD testimony, which suggests that the RAD did review the CD recording. Absent any evidence of what the applicant testified to at the RPD, there is no reason not to take these statements at face value and as accurate statements of what the applicant said there.

[67] To repeat, the applicant bears the burden of demonstrating that the RAD's reliance on differences between his testimony at the RPD and his evidence in support of the application to admit the new evidence is unreasonable. Given the deficiencies in the record I have noted, I am left unable to assess the merits of his challenge to the RAD's determination. As a result, the applicant has failed to discharge his burden with respect to this ground of judicial review.

[68] The RAD's determination that the applicant's brother's second letter was not admissible as new evidence either can be dealt with much more briefly.

[69] Given that the letter describes events that occurred prior to the rejection of the refugee claim, at the very least the applicant had to demonstrate to the RAD that it was not reasonably available to him earlier (there being no suggestion that the applicant could not reasonably have been expected to present it if it had been available to him): see *IRPA*, section 110(4). Further, Rule 29(3) of the *Refugee Appeal Division Rules* specifically required the applicant to provide "an explanation" of how his brother's letter "meets the requirements of subsection 110(4) of the Act." However, the applicant's application to admit the letter as new evidence is silent about why he could not reasonably have obtained the information in the letter before the RPD rejected his claim in July 2017. In his affidavit in support of that application, the applicant simply states: "Also, on approximately 25 September 2017, I received a letter from my brother, Murat Zararsiz, certified by a lawyer, via international courier." The applicant says nothing about what he knew about how his brother came to write the letter or why he could not reasonably have obtained such a letter from his brother earlier. His counsel's submissions to the RAD do not address this either.

[70] The applicant submits on the present application that he did not know to ask his brother for a letter because he did not know about the events described in the letter at the time of his hearing. This was not put to the RAD in the application to admit the new evidence. As a result, it cannot be used to bootstrap his position on this application: see *Ilias v Canada (Citizenship and Immigration)*, 2018 FC 661 at para 34.

[71] Even more importantly for present purposes, this submission is not supported by any evidence from the applicant himself. Counsel's submissions on this application for judicial

review, unsupported by evidence, are insufficient to provide the necessary foundation for the ground of review advanced.

[72] The absence of evidence or submissions before the RAD explaining why the applicant's brother's letter could not reasonably have been obtained earlier is a sufficient basis on its own to dismiss the application to admit the letter as new evidence. It was entirely reasonable for the RAD to so conclude.

[73] For these reasons, this ground of judicial review fails.

[74] In fairness to Ms. Joundi, who ably stepped in for the applicant's counsel of record at the hearing of this application, she bears no responsibility for the state of the record or the arguments advanced in the applicant's Memorandum of Fact and Law.

B. *Is the RAD's determination of the appeal unreasonable?*

[75] As already mentioned, the applicant only challenges three specific findings by the RAD in arguing that the determination of his appeal is unreasonable. First, he argues that the RAD erred by giving no weight to his brother's first letter (which was submitted to the RPD). He contends that there was evidence that the letter was authentic (photo ID from his brother was filed with the RPD at the same time as the letter) and it was directly probative of the claim that the Turkish police were looking for him. Second, the applicant argues that the RAD erred in diminishing the significance of the psychological report. More particularly, he submits that the RAD erred by drawing adverse credibility inferences from omissions and inconsistencies in his

evidence given that the report clearly stated that his PTSD affected his ability to recall details about the traumatic incidents: see *Sterling v Canada (Minister of Citizenship and Immigration)*, 2016 FC 329. Third, he submits that the RAD erred in resting its adverse credibility determination in part on findings by the RPD which were "uncontested" on appeal when in fact they were in issue.

[76] I do not agree that the RAD erred in any of these ways.

(1) The Letter from the Applicant's Brother

[77] Looking first at the letter from the applicant's brother, it was handwritten, undated, and unsigned. In its entirety, it read as follows (in English translation – *sic* throughout):

> Hello my older brother, how are you? We all missed you a lot. The situation here is kind of mess. The state is oppressing our party and arrested the officials of the party. The police asked about you but we told them that we did not know. We are scared and do not want to call you because they might bug our phone. What are you doing there, are you comfortable? Please take care of yourself.
>
> My older brother our mother missed you. Our country is very dangerous right now. We don't know what will happen. Therefore, do not return until you receive news from me.
>
> Please take care good of yourself my older brother.
>
> Be trusted to God.

[78] The RPD dealt with this letter as follows:

> In support of the claim, the claimant provided a letter from his brother. However, given serious credibility concerns and the fact the claimant's brother was not called as a witness, the panel is giving this letter little weight.

[79] The applicant challenged this determination in his appeal to the RAD.

[80] The RAD agreed with the applicant that the RPD's reasons for giving the letter "little weight" were in error; however, the RAD made its own determination that the letter deserved "no weight" in establishing the applicant's allegations. This determination was based on the following:

- The letter had not been authenticated as having been written by the applicant's brother;
- No identity documents were attached to the letter to support the claim that it was, in fact, from the applicant's brother;
- The contents of the letter are vague and lacking detail;
- The letter does not corroborate any of the applicant's allegations of what had happened to him; and
- The RAD would expect that a letter from the applicant's brother, who co-owned the restaurant where HDP meetings were said to have taken place, would include "essential corroborative information" related to the applicant's allegations which his brother "may have personally witnessed."

[81] I agree with the applicant that not all of these factors stand up to scrutiny. The RPD had not doubted that the letter was from the applicant's brother and there was no reason for the RAD to do so. However, the RAD's main analysis was premised on the letter having been written by the applicant's brother. I agree it was speculative for the RAD to think that the applicant's brother would have witnessed the events the applicant described and, as a result, that the failure to corroborate the applicant's account diminished the value of the letter. Nevertheless, in my view, the RAD's fundamental point is sound. The letter did not corroborate the applicant's key allegations, whether it should have or not. Having regard to the letter itself and all the factors identified by the RAD – including the letter's vagueness, lack of detail, and the fact that it did

not corroborate the applicant's key allegations – it was reasonably open to the RAD to find that it deserved no weight in establishing the applicant's allegations.

(2) The Psychological Report

[82] Turning to the psychological report, the author of the report, Dr. Holmes-Bose, was of the opinion that the applicant met the diagnostic criteria for PTSD. She also noted that it is "not uncommon" for individuals with PTSD to "experience memory difficulties and a compromised ability to concentrate when recounting traumatic incidents from the past (e.g. difficulties recalling important details of traumatic events, feeling as though one is in a daze) and to struggle with focusing their attention." Indeed, among the symptoms the applicant had reported to Dr. Holmes-Bose which supported the diagnosis of PTSD was his having "difficulties remembering parts of what happened to him (e.g. length of his incarceration, specific dates of events, details of the violence that he suffered at the hands of his captors) because he wishes to forget what happened."

[83] The RPD gave "little weight" to the report "in regards to the events alleged as having caused the claimant's psychological condition/trauma" – in other words, the fact (which the RPD accepted) that the applicant was suffering from PTSD had little value in corroborating the applicant's claim that he had suffered trauma at the hands of Turkish authorities. Nevertheless, the RPD accepted Dr. Holmes-Bose's opinion regarding the applicant's "condition." To accommodate the applicant's particular circumstances, the RPD granted his counsel's request to reverse the usual order of questioning. As well, the RPD considered this "opinion regarding the claimant's psychological functioning when assessing credibility."

[84] In his appeal to the RAD, the applicant argued that the RPD erred in giving the psychologist's opinion little weight as corroboration of his account and, further, in failing to take the diagnosis into account in evaluating his testimonial deficiencies such as inconsistencies in the his accounts of his experiences in Turkey and his inability to recall details.

[85] The RAD found that the RPD did not err in its use of the psychologist's opinion. The applicant does not take issue with the RAD's finding that the opinion lacked corroborative value but he does maintain that the RAD erred in failing to take the opinion into account in making its own determination regarding the applicant's lack of credibility.

[86] I do not agree.

[87] The RAD found that the report did not explain the difficulties the applicant had in giving credible evidence about his experiences in Turkey. As noted above, the applicant had reported to the psychologist that he sometimes struggles to recall details of what happened to him. The psychologist explained in her report that this is consistent with the diagnosis of PTSD. However, the RAD found that the difficulties for the applicant's credibility arose not from his inability to recall details but, rather, from significant inconsistencies between his statements to the CBSA at the Port of Entry and the various iterations of the BOC narrative, which themselves were not mutually consistent. Further, these difficulties had nothing to do with any frailties in the applicant's testimony before the RPD. The problems the psychologist anticipated the applicant might experience while testifying do not appear to have arisen. The RAD specifically observed that the applicant "did not have difficulty remembering specific dates of events, and no

credibility findings were made in this respect." The RAD also noted that when asked to explain why there were discrepancies in his evidence, the applicant "did not blame these credibility concerns on his poor memory or on the stress of the hearing, but on his first counsel and his distrust of authority, which have been assessed above." Earlier in the decision, the RAD had rejected these explanations for the discrepancies in his narratives.

[88] In short, in the RAD's view, the psychologist's report might explain some deficiencies in the applicant's accounts but neither the RPD nor the RAD relied on those deficiencies in drawing adverse conclusions about the applicant's credibility. On the other hand, the report shed no light on what the RPD and the RAD found to be the principal problem for the applicant's credibility – namely, the significant discrepancies between the various accounts he had given of his experiences in Turkey. In my view, this was an entirely reasonable assessment of the value of the report.

[89] Further, the RAD found that the applicant's evidence concerning the detentions of HDP officials, which played a key role in his decision to leave Turkey, was "lacking in knowledge, evolving and vague." These determinations are reasonably supported by the record. The adverse credibility finding that followed from this is consistent with the RAD's assessment of the significance of the psychologist's report for evaluating the applicant's credibility: see *Kaur v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1379 at paras 36-37 and *Brahim v Canada (Citizenship and Immigration)*, 2015 FC 1215 at para 15. There is no basis for me to interfere with that determination.

(3) The "Uncontested" Findings

[90] Finally, the applicant challenges the RAD's reliance on "uncontested" findings by the RPD to undermine his credibility.

[91] The RAD stated the following:

> The Appellant does not contest several core RPD credibility findings. Considering the Appellant does not contest these findings, I see no reason to interfere with them. They are correct and based on the evidence in the record.

[92] The RAD noted one such finding in particular based on the applicant's inability to recall the names of the HDP officials who were detained in April 2016 and whose detention he claimed made it urgent for him to leave Turkey.

[93] By way of further background, the applicant did not describe this incident with much specificity in any of the iterations of his BOC narrative. In the first narrative, he stated that "[t]he government started arresting some of the supporters of the HDP because they were supporting the Kurdish separatists. There was no safe place inside the country where I could move into, nor was there anyone to protect me against the government authorities." As a result, he realized it was no longer safe for him to be in Turkey and he looked for an agent to assist him in leaving. He found that agent at the end of April 2016. On the other hand, in his second amended narrative, he states that he retained the agent because the police were putting pressure on the restaurant. While he then cross-references the part of his original narrative discussing the arrests of HDP officials, he does not mention these arrests in the second amended narrative.

[94] The RPD accepted on the basis of country condition evidence that HDP members were being detained in April 2016. However, its "credibility concern comes from the claimant not being able to say why he felt the urgent need to leave Turkey in April 2016 as noted in his BOC amendment [footnote omitted]. The claimant said because party members were being detained but he could not say which party members were detained in April 2016 that inspired his decision to leave."

[95] The applicant is correct that, contrary to what the RAD appears to have thought, he did contest this finding on appeal. Specifically, he had submitted to the RAD that the RPD had erred in drawing an adverse conclusion about his credibility from his inability to recall this information because it failed to take into account the psychologist's findings. Be that as it may, the important point is that the RAD made its own determination that this adverse finding was "correct and based on the evidence in the record." The applicant submits that this finding repeats the same error as the RPD fell into because it fails to take the psychologist's opinion into account. For the reasons set out in the preceding section, there is no merit to this argument.

VII. CONCLUSION

[96] For these reasons, the application for judicial review is dismissed.

[97] The parties did not suggest any serious questions of general importance for certification under section 74(1) of the *IRPA*. I agree that none arise.

JUDGMENT IN IMM-3847-19

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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