

Federal Court



Cour fédérale

Date: 20201002

Docket: IMM-2885-19

Citation: 2020 FC 950

Ottawa, Ontario, October 2, 2020

PRESENT: Mr. Justice Pentney

BETWEEN:

ALI CANSEL AKCAY

Applicant

And

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Ali Cansel Akcay, seeks judicial review of the Refugee Appeal Division (RAD) decision, which confirmed the Refugee Protection Division (RPD) decision that rejected his claim for refugee status. He argues that the decision is unreasonable because the RAD made numerous errors in its treatment of the evidence and its application of the law. He also argues that he was denied procedural fairness because he was not given an opportunity to address several concerns that the RAD expressed about his evidence.

[2] For the following reasons, I am granting this application, because I find that the RAD failed to explain how it considered a core element of the Applicant's claim, namely that he stopped attending Alevi religious ceremonies because he feared persecution by the authorities. I am not persuaded that any of the other arguments advanced by the Applicant render the decision unreasonable.

I. Background

[3] The Applicant is a Turkish national of Alevi origin who fears returning to Turkey because of systemic discrimination against Alevis in that country. He alleges that he was prevented from pursuing education and work opportunities and was mistreated during his military service because he is Alevi. He also alleges that he stopped practicing his religion because he feared persecution.

[4] The Applicant alleges that he abandoned his university studies at Cumhuriyet University in 2004 because of discrimination by professors and students and after another student reported him to the police. He alleges that negative comments were made towards him because he is Alevi, and that he did not believe he would have a fair opportunity if he pursued his education. He then studied at other universities in Turkey before moving to the Ukraine in 2006, where he completed a Bachelor's degree followed by a Master's degree.

[5] When the Applicant returned to Turkey in 2013, he completed compulsory military service. He says he was disciplined for minor offences, but his non-Alevi counterparts were not punished for similar breaches of the rules. Following his military service, he began looking for a job, but he alleges that employers did not hire him once they heard his accent, which he says

identified him as Alevi. In June 2014, he was hired at Detay Laboratory Services, where he says he was taunted and required to be available for work at all hours, unlike his non-Alevi co-workers. In April 2015, the Applicant was fired and replaced by a non-Alevi.

[6] During this period, the Applicant states that he also stopped attending Alevi religious and cultural events, because he was afraid of being targeted by the police, since they often made inquiries to try to identify Alevis in his city. He stated that the tolerance that existed towards Alevis had ended with the election of President Erdogan, whose statement that “Alevis did not exist” was a clear message that the Alevi sect would no longer be considered legitimate and that “our religious and cultural events would no longer be tolerated” (CTR at p 38).

[7] The Applicant continued to have difficulty finding other employment, and he eventually obtained a job in Saudi Arabia, where he worked from December 2015 to February 2016. Upon returning to Turkey, he was unable to find work and so he obtained a student visa to come to Canada in May 2016. Fearing he would have to return to Turkey when his visa expired, the Applicant submitted a refugee claim in April 2017.

[8] The RPD found that the discrimination the Applicant experienced in Turkey did not amount to persecution, and that there was no serious possibility that he would face a risk upon his return to Turkey. The RAD confirmed this finding.

[9] The RAD agreed with the Applicant that the RPD had erred in not addressing his claim based on his religion. Based on its review of the evidence, the RAD concluded that although Alevis did face discrimination and there were some limits placed on their religious practices, this did not rise to the level of persecution. It also found his claims of discrimination in employment

to be lacking in credibility based on inconsistencies between his testimony and the documentary record. The RAD accepted that he had faced discrimination at university, but found that this did not amount to persecution. Similarly, it rejected his claims about mistreatment in military service because his story was too vague and he admitted to being punished for having breached military rules.

[10] Overall, the RAD concluded that although the Applicant could face some discrimination upon his return to Turkey, this would not rise to the level of persecution because he would be allowed to practice his religion and he would not be barred from obtaining employment or public services because he is an Alevi. The RAD also concluded that the documentary evidence did not support a finding that he would face a forward-looking risk of persecution. It therefore upheld the RPD decision that the Applicant is not a *Convention* refugee nor a person in need of protection.

[11] The Applicant seeks to overturn the RAD decision.

II. Issues and Standard of Review

[12] The Applicant and Respondent have put forward a number of issues, which can be grouped into the following:

- A. Was the RAD decision unreasonable because of its findings regarding the allegations of persecution based on the Applicant's religion, or its conclusion that the discrimination he experienced did not amount to persecution?
- B. Was there a denial of procedural fairness because the RAD made credibility findings without giving the Applicant an opportunity to address its concerns?

[13] The parties both state that the standard of review for the first issue is reasonableness, and I agree. This was the state of the law based on *Dunsmuir v New Brunswick*, 2008 SCC 9, and has not changed under the updated analytical framework set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[14] When reviewing for reasonableness, the Court asks “whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov* at para 99). The analysis in the decision must be internally coherent and display a rational chain of analysis (*Vavilov* at para 85).

[15] Based on this framework, a decision will likely be found to be unreasonable if the reasons read in conjunction with the record do not enable the Court to understand the decision-maker’s reasoning on a critical point (*Vavilov* at para 103). The burden is on the applicant to show that the decision is unreasonable, and a reviewing court must be satisfied that the shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable (*Vavilov* at para 100).

[16] The *Vavilov* framework “affirm[s] the need to develop and strengthen a culture of justification in administrative decision making” by endorsing an approach to judicial review that is both respectful and robust (*Vavilov* at paras 2, 12-13).

[17] On the second issue, questions of procedural fairness require an approach resembling the correctness standard of review that asks “whether the procedure was fair having regard to all of the circumstances” (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018

FCA 69 at para 54 [*Canadian Pacific*]; *Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 at paras 51-54). As noted in *Canadian Pacific* at paragraph 56, “the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond.”

III. Analysis

A. *Was the RAD decision unreasonable?*

[18] The Applicant argues that the RAD decision is unreasonable because of its finding that the discrimination he faced in Turkey did not rise to the level of persecution.

[19] On the issue of religious discrimination, the Applicant submits that the RAD’s findings are internally contradictory, and that it ignored his evidence that he had stopped practicing his religion because he feared persecution by the authorities. The Applicant also submits that the RAD also erred in failing to consider hate speech against Alevis in Turkey is a form of persecution.

[20] I am not persuaded by many of the Applicant’s arguments, but I do agree that the RAD’s failure to consider his evidence about why he stopped practicing his religion is unreasonable. I also find that this is central to his refugee claim, and therefore this error is serious enough to warrant overturning the decision.

(1) Religious Persecution against Alevis in Turkey

[21] The Applicant raises three main concerns regarding the RAD’s treatment of the question of religious persecution against Alevis in Turkey. First, he argues that the RAD’s assessment is

internally contradictory in relation to its assessment of the general situation of Alevis in Turkey. Second, he submits that the RAD failed to consider his evidence about why he stopped attending religious and cultural ceremonies. Third, he submits that the RAD erred in finding that the religious discrimination did not rise to the level of persecution.

(a) *Internal consistency and religious discrimination in general*

[22] The Applicant claims that the decision is internally contradictory because the RAD concluded that the Turkish constitution protects freedom of religion and that the Applicant could “freely practice his Alevi faith” despite noting that Alevis experience discrimination and face many restrictions regarding their religious practices and places of worship that other religions do not (RAD Decision at paras 24-25, 27). The Applicant contends that this finding is contradicted by the objective country condition evidence, which indicates that Alevis in Turkey are not recognized as a distinct religion, their places of worship are excluded from legal and financial benefits, and there is increasing prejudice and acts of violence towards Alevis.

[23] I do not accept that the RAD decision is internally contradictory in regard to its analysis of religious persecution in general in Turkey. At the outset of its analysis the RAD correctly cited the law regarding whether instances of discrimination amount to persecution for the purposes of refugee law. The RAD noted that the dividing line between the two can be difficult to draw, that persecution has been defined as a systemic violation of basic human rights, and that systematic, repeated, or persistent infliction of acts of cruelty, injury, or annoyance can amount to persecution. The RAD referred to the United Nations High Commissioner for Refugees *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status (Handbook)*, which states that discriminatory measures may amount to persecution if they

impose substantial prejudice, including serious restrictions on the right to earn a livelihood, to practice religion, or access to normally available educational facilities. The *Handbook* also provides that persecution also includes a situation that produces in the mind of a claimant a feeling of apprehension and insecurity as regards his or her future existence, and that the cumulative impact of the conduct must be examined (RAD Decision at paras 11-12).

[24] The RAD then proceeded to apply this legal framework to the evidence before it. Unlike the Applicant's assertion, there is no contradiction in the RAD's analysis. The evidence showed discrimination against Alevis in Turkey, but considering the evidence in the record and applying the legal test for assessing whether it amounted to persecution, the RAD concluded that it did not amount to persecution.

[25] The Applicant also objects to the statement by the RAD that he was "able to freely practice his Alevi faith in Turkey" (RAD Decision at para 27), and its reliance upon the fact that freedom of religion is protected by the Turkish constitution. Neither of these provide a basis to overturn the decision. The analysis must be read in its entirety, and doing so in this case demonstrates that the RAD was alive to both the nature and extent of discrimination against Alevis in Turkey, as well as to the legal framework to be applied to assessing whether it amounted to persecution.

(b) *The RAD's failure to analyze why the Applicant stopped practicing his faith*

[26] The Applicant's second argument on this issue gives rise to a more serious concern about the decision. He contends that the RAD decision is unreasonable because it failed to consider his evidence that he stopped practicing his religion because he feared persecution by the police. In

the personal narrative that accompanied his refugee Basis of Claim, the Applicant set out the reasons in some detail:

The government used to tolerate Alevi cultural and religious events, and I often attend [*sic*] such events in Samandağ when I was younger. However, after Recep Tayyip Erdoğan became president in 2014, he announced that Alevis did not exist. This statement was a clear message that the Alevi sect would no longer be considered legitimate and that our religious and cultural events would no longer be tolerated.

Although some Alevis continued to gather in secret to perform cultural and religious rites, I no longer went to events because the Alevi community was constantly under surveillance, and I was afraid that I would be targeted if I participated. After 2014, Turkish police, who are overwhelmingly Sunni, often made inquiries in Samandağ to locate specific people they believed were participating in Alevi gatherings in order to take them in for interrogations and demand that they not participate in Alevi gatherings.

[Emphasis added.]

[27] The RAD noted this statement, but went on to find that the Applicant's only interaction with the police arose in the context of his university experience. According to the Applicant, a Sunni student, who was closely connected to the authorities, filed a police report following a heated exchange between them. The Applicant said he was contacted by the police and asked to report to the station, but based on the advice of another Alevi student who said that the police had mistreated him during an interrogation, the Applicant changed the SIM card in his phone and did not report to the police. The RAD considered this incident and concluded more generally that the Applicant did not experience persecution at the hands of the police.

[28] The difficulty with the RAD's analysis in this respect is that it confounded two separate and unrelated allegations of persecution or fear of persecution on the part of the Applicant. The

police interaction relating to the student complaint related to the Applicant's argument that he faced persecution in the context of his education. On the other hand, the evidence provided by the Applicant more generally about police surveillance and police detention of Alevi in the city where he lived related to his claim that he feared persecution on account of being an Alevi.

[29] This evidence related directly to a central element of his claim for refugee status. He said that he had been practicing his faith, but had stopped because the Alevi community in Samandağ was "constantly under surveillance" and he was "afraid" of being "targeted." He backed up this claim by indicating that the police had been watching Alevi religious and cultural gatherings, and had made inquiries to locate people they believed were participating in these events in order to take them in for interrogations and to demand that they not attend Alevi religious gatherings.

[30] The RAD did agree with the Applicant that the RPD had erred in failing to address his claim of persecution on the basis of his religion. However, when it analyzed this aspect of the Applicant's claim, the RAD did not address his evidence about why he had stopped attending religious services. It is worth noting that the RAD did not make a finding that the Applicant was lacking in credibility, nor did it discuss how his evidence about why he feared persecution corresponded (or not) to the country condition evidence.

[31] If believed, the conduct of authorities could be sufficient to demonstrate the type of religious persecution that has been found to constitute a basis for a valid refugee claim. The jurisprudence confirms that persecution may take various forms. Further, even if a religion is not specifically banned in a country, forcing adherents to go underground to hide the practice of their faith can amount to persecution (see *Gur v Canada (Citizenship and Immigration)*, 2012 FC 992;

Zhang v Canada (Citizenship and Immigration), 2009 FC 1198 at paras 19-20; and, more recently, *Chen v Canada (Citizenship and Immigration)*, 2020 FC 907).

[32] In light of this, it is not clear what the RAD intended when it stated: “[t]hat said, the Appellant is not prevented from practicing his religion” (RAD Decision at para 25). If the RAD found the Applicant’s evidence about why he feared persecution to be lacking in credibility, it needed to state that and explain why it came to that conclusion. If, instead, the RAD meant that the conduct, itself, could not amount to persecution, it is simply wrong. Earlier in this part of the analysis, the RAD states: “[t]he documentary evidence in the record does not establish that the Appellant needs to renounce, abandon, or conceal his deeply held beliefs, or stop exercising his fundamental rights in order to avoid persecution on account of his Alevi faith in Turkey” (RAD Decision at para 23). This reference to the documentary evidence can be contrasted with the absence of any reference to the Applicant’s specific evidence on this point. There is no indication in the decision that the RAD actually weighed the Applicant’s individual narrative in the analysis.

[33] In my view, the RAD’s failure to address this specific aspect of the Applicant’s refugee claim is sufficiently serious to render the decision unreasonable, in accordance with the guidance in *Vavilov* at paragraph 100. The sole basis of the Applicant’s refugee claim is a fear of persecution because he is a member of the Alevi minority. A central element of this identity for the Applicant is the practice of his religion, and the fact that he was not arrested or questioned by the police does not eliminate the possibility that he may reasonably have feared that he would be persecuted on that basis. In addition, the fact that the Applicant was observant but many Alevis in Turkey are not is irrelevant to his claim. The Applicant indicated clearly that he had stopped

practicing his religion, and he explained why he feared persecution based on the conduct of police in the city where he lived. The RAD needed to address this specific allegation, and general references to the situation of Alevis could not replace this analysis.

[34] I find that this amounts to a reversible error. In light of the fact that this matter will be remitted back to a different decision-maker, I will review the Applicant's other submissions in order to explain why I do not agree that they make the RAD decision unreasonable.

(c) *The RAD's analysis of whether religious discrimination amounts to persecution*

[35] On this question, the Applicant contends that the RAD ignored the country condition evidence he submitted, failed to consider that hate speech against Alevis can constitute persecution, and placed too much weight on the United Kingdom Home Office Report.

[36] The weighing of the evidence and the consideration of the country conditions documents lie at the core of the RAD's functions and expertise, and the Applicant has not demonstrated that this aspect of the decision is unreasonable. The RAD's decision reflects a balanced assessment of the evidence, even if it does not point to each specific document in the record. This is not a situation where the RAD's decision reflects a one-sided view of the documentary evidence, nor that it ignored important contradictory evidence on the situation in the country at the relevant time.

[37] The Applicant submits that the RAD also erred in failing to consider hate speech against Alevis in Turkey as a form of persecution. He submits that the law has recognized that hate speech is a form of persecution (*Mugesera v Canada (Minister of Citizenship and Immigration)*),

2005 SCC 40 at paras 147-48) and that the evidence shows clear instances of hate speech against Alevis in Turkey. I am not persuaded. While there is some evidence of negative commentary towards Alevis, the Applicant has not demonstrated that it is so egregious or specific and prolonged as to qualify as the type of conduct that would be found to constitute persecution. The RAD's decision is not unreasonable on this ground.

[38] I am also not persuaded that the RAD erred in its reliance on the United Kingdom Home Office Report. The RAD referred to this report in the following passage at paragraph 40 of its decision:

While isolated incidents of violence against Alevis are identified in the country conditions documents on file, the bulk of the evidence on this point is well summarized by statements in the United Kingdom Home Office report on Alevis in Turkey that such incidents "are few and most Alevis co-exist with other communities with few problems on a daily basis" and that "[e]ven when taken cumulatively, the treatment faced by Alevis does not in general amount to them being subject to action on the part of either non-state actors or the authorities which would amount to persecution or serious harm."

[Footnotes omitted.]

[39] The Applicant contends that the RAD made two errors. He states that the RAD went further than simply relying on the United Kingdom Home Office Report's summary of the evidence, because it adopted its legal conclusions on whether the discrimination amounted to persecution. He argues this is an error because the United Kingdom Home Office Report reflects a different legal standard than that which applies in Canadian law. Furthermore, the Applicant submits that the RAD ignored country conditions documents he submitted that demonstrate that Alevis are persecuted in Turkey and that he faces more than a mere possibility of persecution as an Alevi.

[40] The RAD's reference to the United Kingdom Home Office Report was done early in its analysis of whether the Applicant faced a forward-looking risk of persecution as an Alevi in Turkey. Following the citation of the report, the RAD examined other documentary evidence, including more recent information about the evolving situation in Turkey and the evidence that some Alevi leaders and activists have been targeted. It then concluded at paragraph 43:

Based on the above incidents and the Appellant's testimony, I find the acts considered cumulatively to do not establish he experienced persecution, or that there is a serious possibility he would be persecuted in the future in Turkey on the grounds of religion, ethnicity, or imputed political opinion. The acts were not of a persistent and repeated nature which caused him serious physical or psychological harm, or denied him his basic and fundamental human rights. ... In my opinion, the Appellant is able to live his life in Turkey, especially in the city he is from, largely unencumbered on a daily basis, albeit with occasional discriminatory treatment and harassment. The acts considered together are not of such seriousness that refugee status should be granted to him.

[41] This analysis shows that the RAD considered all the evidence in the record, not simply the United Kingdom Home Office Report. It also demonstrates that the RAD did not reach its conclusions based on the analysis in the report, but rather that it applied the correct legal test to the evidence before it. This is what is required under reasonableness review, and I find no error in this aspect of the RAD's decision.

(2) Other Allegations of Discrimination

[42] The Applicant also submits that the RAD's analysis of his allegations of mistreatment at university, in the military, and at his workplace is unreasonable. The RAD found that the verbal abuse he experienced at university was unacceptable and discriminatory, but he was able to access educational facilities that are normally available to Turkish citizens, and the comments

did not rise to the level of persecution. Similarly, the RAD found that the Applicant admitted that he breached a military rule and that he did not establish that he was treated differently than other soldiers for this. The RAD concluded that his “explanation of his unequal treatment is too vague to be reliable, and considering he acknowledges he broke a military rule, his punishment was not harsh” (RAD Decision at para 21).

[43] The focus of the Applicant’s argument relating to the RAD’s findings about his employment relate to the procedural fairness issue and are canvassed in more detail below. In relation to the reasonableness of the decision, I find that the RAD’s analysis addresses his evidence and explains why it does not find it persuasive. It concluded that the Applicant’s evidence about his employment history and his allegations of mistreatment at his workplace were lacking in credibility. This is based on its assessment of the documents he submitted (which is discussed in more detail below) and its consideration of his testimony. The RAD accepted that the Applicant might have experienced verbal abuse and differential treatment at his workplace, but that this did not amount to persecution. Considering the evidence that he had found a job in Turkey and that other members of his family had found employment or operated successful businesses, the RAD concluded that the Applicant would not be prevented from working in Turkey on account of his Alevi identity. This finding is supported in the evidence.

[44] Finally, the RAD’s analysis on the cumulative impact of the discrimination experienced by the Applicant in education and employment in Turkey is quite brief, but it does indicate that the RAD turned its mind to the question and, given its earlier findings on the specific allegations put forward by the Applicant, it was not necessary for the RAD to elaborate at length on the point.

[45] Under *Vavilov*, a reasonable decision requires the decision-maker to apply the law to the facts, taking account of the specific evidence or claims put forward by the person affected; it also requires that the decision-maker explain its reasoning in regard to the key evidence, in light of the issues presented in the case. That is what the RAD did in this case, and I can find no basis to find that its decision is unreasonable.

B. *Was there a denial of procedural fairness?*

[46] The Applicant submits that he was denied procedural fairness because the RAD made additional credibility findings without giving him an opportunity to respond to its specific concerns. This argument relates to two findings by the RAD with respect to the Applicant's education and employment history.

[47] First, the Applicant points to the RAD's conclusion that it was not credible that he abandoned his studies at Cumhuriyet University because it found that this was not consistent with the Applicant's statements in his visa application. The RAD noted that the Applicant's visa application stated that he attended Cumhuriyet University from June 2004 to May 2006. The RAD found that it was unlikely that he had any reason to lie about these details because he had a significant educational background based on his studies in the Ukraine, and "[t]he chances of obtaining a student visa to Canada were unlikely dependent on incomplete studies at Cumhuriyet University" (RAD Decision at para 15). Based on this discrepancy, the RAD concluded that the Applicant did not abandon his studies as he had alleged.

[48] The Applicant argues that the RPD had not made such a finding and he had no reason to think that this fact would be in dispute. He submits that the RAD breached procedural fairness

because it denied him the opportunity to explain that he feared recruitment into the Turkish Armed Forces if he lost his student status, so he kept it although he had, in fact, left Cumhuriyet University as he stated in his Basis of Claim form.

[49] Second, the Applicant submits that the RAD's findings about his employment history based on an alleged inconsistency between his Schedule A "Background Declaration" forms filed for his visa application and submitted to the RAD was unfair because he was never told that there was any question about the differences in the forms.

[50] The issue concerns the Applicant's alleged difficulty in finding employment. He says the RPD minimized the barriers he had faced by misconstruing his evidence. He had alleged that he was unemployed from February until June 2014, pointing to his Schedule A form, which lists his employer as "N/A" to indicate that he was unemployed for that period. The RPD found that the Applicant had been working at Detay Laboratories during this period, and the Applicant argued before the RAD that "[t]he RPD's error ma[de] it appear that [he] held back-to-back jobs in Turkey instead of a single job where he was subjected to abusive work conditions" (RAD Decision at para 31).

[51] The RAD rejected the Applicant's argument and found that the RPD did not err in its assessment of the evidence because the Applicant's evidence was lacking in credibility. It examined the Schedule A form in the Certified Tribunal Record and found that it was consistent with the RPD's findings, and in particular found there was no "N/A" listed as the employer in the Schedule A form. The RAD stated "[t]he version of the Schedule A Form in the Appellant's Record is not in the RPD Record.... The version referred to by the Appellant in his appeal record is not the official Schedule A Form in the record" (RAD Decision at para 33).

[52] The Applicant contends that the RAD breached procedural fairness by failing to give him notice of its specific concern, thereby denying him the opportunity to provide an explanation. He submits there is no meaningful difference between the two Schedule A forms. The Applicant indicates that an Immigration Officer asked him to write a translation of Detay Laboratories in the blank beneath it, which he did, and that the RAD misapprehended this as amounting to a substantive difference between the two forms.

[53] I am not persuaded that any breach of procedural fairness occurred. As set out earlier, on this question, the Court is required to examine the circumstances as a whole and to determine “whether the procedure was fair having regard to all of the circumstances” (*Canadian Pacific Railway* at para 54). This includes whether the Applicant knew the case he had to meet, and had a full and fair chance to respond.

[54] The Applicant correctly notes that there is jurisprudence of this Court that has found that the RAD cannot make independent findings of credibility or plausibility against an applicant on new substantive issues without telling the applicant about its concerns and providing an opportunity to address them (*Kwakwa v Canada (Citizenship and Immigration)*, 2016 FC 600 at paras 21-24 [*Kwakwa*]; *Xu v Canada (Citizenship and Immigration)*, 2019 FC 639 at paras 33, 46 [*Xu*]). However, it is important to pay attention to the limits that have been established in this regard. At paragraph 24 of *Kwakwa*, Justice Denis Gascon summarized the jurisprudence in this way:

[T]he RAD is entitled to make independent findings of credibility or plausibility against an applicant, without putting it before the applicant and giving him or her the opportunity to make submissions, but this only holds for situations where the RAD does not ignore contradictory evidence or make additional findings or analyses on issues unknown to the applicant.

[55] In paragraph 33 of *Xu*, Justice John Norris confirmed that the key question is whether the RAD decided the appeal “on a basis that cannot reasonably be said to stem from the issues as framed by the parties.” If the RAD simply confirms the finding of the RPD based on information that the applicant was aware of in the record, but which was not specifically discussed by the RPD, there will be no breach of procedural fairness (*Sary v Canada (Citizenship and Immigration)*, 2016 FC 178 at para 31; *Haji v Canada (Citizenship and Immigration)*, 2015 FC 868 at paras 23-27).

[56] In this case, the Applicant was aware that his employment history was in question, because the RPD specifically dealt with it. The RPD also specifically cited the Applicant’s Schedule A form in making its findings. The Applicant’s written appeal submissions to the RAD also address the issue of the different versions of the Schedule A form. Given that the Applicant was aware of both forms and that the handwritten annotations on the version in the record would obviously give rise to potential questions, the conclusion must be that the Applicant did have notice of the issue and an opportunity to address it. I therefore find no breach of procedural fairness relating to the Applicant’s employment history.

[57] Similarly, the RPD had made a negative credibility finding relating to the Applicant’s allegation about having been forced to abandon his studies at Cumhuriyet University. It also found that even if it accepted his reasons for leaving university, the discrimination he said he experienced did not amount to persecution (RPD Decision at paras 10-11). The Applicant, therefore, knew that the credibility of his allegations about leaving university and his experiences while he was enrolled were an important element of his appeal. He also addressed these findings in his written representations to the RAD.

[58] I find that the RAD cannot be faulted for comparing the documents the Applicant had filed in regard to his educational background, including his visa application. This was information submitted by the Applicant, and it related to a question he knew would be before the RAD. As in *Corvil v Canada (Citizenship and Immigration)*, 2019 FC 300 at para 15, I find “the RAD cannot be criticized for raising a piece of evidence in the record, but which appear[s] to have escaped the RPD’s attention, and drawing a negative inference therefrom about the applicant’s credibility, without giving the applicant an opportunity to explain himself given that the applicant’s credibility was a central issue of the appeal filed by the applicant.”

[59] For these reasons, I am not satisfied that the RAD denied the Applicant procedural fairness. In light of the record, and the issues raised on the appeal before the RAD, I find that the Applicant was aware of the case he had to meet, and had an opportunity to address it.

IV. Conclusion

[60] For all of the reasons set out above, I am granting this application on the basis that the RAD failed to address evidence pertaining to a key aspect of his refugee claim. The RAD’s failure to explain how it considered the Applicant’s evidence about the reasons why he stopped practicing his religion is a sufficiently serious error to warrant overturning the decision.

[61] As discussed above, I am not persuaded that the RAD’s decision is unreasonable on the basis of the other arguments advanced by the Applicant.

[62] The application for judicial review is granted. The RAD decision is set aside. The matter is remitted back for reconsideration by a different panel of the RAD, in accordance with these reasons.

[63] The parties did not propose a certified question of general importance, and I agree that none arises on the facts of this case.

JUDGMENT in IMM-2885-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. There is no question of general importance for certification.

“William F. Pentney”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2885-19

STYLE OF CAUSE: ALI CANSEL AKCAY v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 12, 2019

JUDGMENT AND REASONS: PENTNEY J.

DATED: OCTOBER 2 , 2020

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