

Federal Court



Cour fédérale

Date: 20220525

Docket: IMM-1810-21

Citation: 2022 FC 755

Ottawa, Ontario, May 25, 2022

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

KADIR VURAL

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, a citizen of Turkey, is seeking judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB] dated February 22, 2021, wherein the RPD determined that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and that the Applicant's claim has no credible basis pursuant to section 107(2) of the IRPA.

[2] The Applicant claimed fear of persecution at the hands of the Turkish state on the grounds of his political opinion as a supporter of the People's Democratic Party [HDP] and his membership in a particular social/religious group, the Hizmet movement, as well as the implication of family members in both organizations. Specifically:

A. The Applicant asserted that his brother, Fatih Vural (who is also a follower of the Hizmet movement) was a journalist who worked for several pro-Hizmet affiliated media outlets (Zaman, Bugun, Taraf and Nokta). As his brother's wife is Kurdish, his brother became a supporter of the Kurdish cause and of the HDP, writing articles supporting the HDP. Following a coup attempt in 2016 that was attributed to the Hizmet movement, the Applicant asserts that his brother went into hiding.

B. The Applicant asserts that his cousin, Salih Bozkus, is also a follower of the Hizmet movement and has been in jail for over two years due to his beliefs.

[3] As a result of supporting the Hizmet movement, the Applicant alleged that he was fired by his employer, Turk Telecom, after which the Applicant's brother advised him to leave Turkey for his safety. The Applicant came to Canada on October 10, 2018 and later made a refugee claim in February of 2019.

[4] In its decision, the RPD held that the determinative issue was credibility. The RPD found that the Applicant was not a credible witness on the basis that the Applicant tendered a non-genuine

document in support of his claim and failed to take any steps to procure supporting documentation, without reasonable explanation.

[5] The RPD found that the Applicant was neither a member nor a supporter of the HDP, and that the Applicant was not dismissed from his employment due to Hizmet ties because he was not a Hizmet follower. Further, the RPD found that the Applicant was not perceived as being a Hizmet follower, an HDP supporter or anti-government by the government authorities.

[6] The RPD went on to consider whether, in the absence of credible testimony from the Applicant, sufficient documentary evidence had been presented to ground a successful refugee claim. The RPD found that the Applicant's documentation, considered on its own or in light of the country conditions documentation, was unable to support a positive determination of his claim absent credible testimony.

[7] The RPD also denied the Applicant's request to submit post-hearing supporting letters from a friend and his brother and sister-in-law on the basis that the documents could have been procured prior to the hearing and no credible explanation had been provided for why they were suddenly available to the Applicant given his admission at the hearing that he made no efforts prior to the hearing to procure them.

[8] The Applicant asserts that the decision of the RPD was unreasonable as: (a) the RPD ignored an article written by Meyda Gundem, which confirmed that the Applicant's brother and sister-in-law are followers of the Hizmet movement and failed to properly consider the Applicant's

claim that he was at risk as a result of his family members' affiliation with the Hizmet movement and the HDP; (b) the RPD repeatedly relied on its anecdotal experience without following the specialized knowledge procedure set out in Rule 22 of the *Refugee Protection Division Rules*, SOR/2002-228; (c) the RPD's assessment of a letter from the HDP was unreasonable; (d) the RPD erred by refusing to admit the additional evidence submitted by the Applicant; and (e) the RPD erred in finding that the claim had no credible basis.

[9] After reviewing the record and considering the submissions of the parties, I find that the determinative issue on this application is the RPD's failure to properly consider the Applicant's claim that his family's affiliation to the Hizmet movement was relevant to the risk faced by the Applicant himself and importantly, failed to properly consider the Meyda Gundem article.

[10] This issue is reviewable on a reasonableness standard [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 25]. When reviewing for reasonableness, the Court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified. 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 [see *Vavilov, supra* at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adeniji-Adele v Canada (Minister of Citizenship and Immigration)*, 2020 FC 418 at para 11].

[11] A decision-maker is generally presumed to have considered all of the evidence before them. However, this presumption will not stand where the decision-maker fails to address evidence that contradicts the decision-maker's finding [see *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53 at para 17].

[12] In assessing the documentary evidence before it, the RPD turned to the evidence regarding the Applicant's brother and stated:

[80] Next, I turn to the news article regarding the claimant's brother. This article quotes the claimant's brother, a journalist at a magazine called Nokta. The article says that the journal's editor Murat Capan has been detailed and that the latest issue of the magazine was pulled from shelves.

[81] The article taken at its highest probative value, supports the inference that the publication of a photo of President Erdogan taking a selfie in front of a funeral for a dead soldier, has led to a backlash from the Erdogan government against Nokta Magazine. The claimant's brother is (or was) a journalist at this magazine, and the editor of the magazine was arrested,

[82] None of this information has any apparent connection to the claimant himself. The claimant in testimony alleged that his brother and sister-in-law are Hizmet and HDP supporters and are in hiding, but this article does not provide any context or support to those allegations either. As such, I find that this article is not probative in support of the claimant's allegations.

[emphasis added]

[13] The article referred to by the RPD was an article from Bianet. However, contrary to the RPD's statement, the RPD had an additional news article before it – namely, the Meyda Gundem article. Having reviewed the Meyda Gundem article, I find that it clearly supports the Applicant's assertion that his brother and sister-in-law are Hizmet supporters, by publically tying them to the

Hizmet movement. Therefore, the Meyda Gundem article contradicts the RPD's determination that the news article(s) provided by the Applicant do not provide any context or support for the Applicant's allegation. In the circumstances, the RPD's failure to engage with the Meyda Gundem article constitutes a reviewable error, which renders its decision unreasonable.

[14] Moreover, the national document package evidence before the RPD clearly demonstrated that family members of suspected Hizmet followers (including siblings) are routinely and systematically targeted by Turkish authorities and can be perceived by the Turkish government as Hizmet followers by family association alone. Moreover, decisions of this Court and the Refugee Appeal Division have acknowledged that the Turkish authorities target Hizmet followers on the basis of perceived connection alone and that family members can also be targeted [see *Güven v Canada (Citizenship and Immigration)*, 2018 FC 38 at para 60; *X (Re)*, 2019 CanLii 129877 (CA IRB) at para 42]. However, after finding that the Applicant was not a Hizmet follower, the RPD failed to properly consider whether the Applicant's family members' affiliation to this organization put the Applicant at risk. I find that this further error on the part of the RPD also renders its decision unreasonable.

[15] In light of the aforementioned errors, the application for judicial review is allowed and the matter is remitted to a differently-constituted panel of the RPD for redetermination.

[16] The parties have not proposed a question for certification and I agree that none arises.

JUDGMENT in IMM-1810-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted, the February 22, 2021 decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada is set aside and the matter is remitted to a differently-constituted panel of the Refugee Protection Division for redetermination.
2. The parties proposed no question for certification and none arises.

“Mandy Aylen”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1810-21

STYLE OF CAUSE: KADIR VURAL v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: HEARD BY VIDEOCONFERENCE

DATE OF HEARING: MAY 24, 2022

JUDGMENT AND REASONS: AYLEN J.

DATED: MAY 25, 2022

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