

Federal Court



Cour fédérale

Date: 20220614

Docket: IMM-2342-21

Citation: 2022 FC 889

St. John's, Newfoundland and Labrador, June 14, 2022

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

GUNES YELTEKIN GUN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Ms. Gunes Yeltekin Gun (the “Applicant”) seeks judicial review of the decision of an officer (the “Officer”), dismissing her application to seek permanent residence from within Canada, on Humanitarian and Compassionate (“H and C”) grounds, pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Applicant is a citizen of Turkey of Kurdish ethnicity and an adherent of the Alevi religion. She has lived in Canada intermittently since 2002. In 2008, the Applicant left Canada with her three Canadian born children and returned to Turkey where she resided until 2016.

[3] The Applicant returned to Canada in 2016 and made her H and C application on June 20, 2020. She based her application upon her establishment in Canada, the best interests of her Canadian born children and adverse country conditions in Turkey for people of Kurdish ethnicity and adherence to the Alevi religion.

[4] The Applicant argues that the Officer breached the duty of procedural fairness by failing to assess the affidavits and letters of support that she provided to demonstrate her establishment in Canada. Otherwise, she submits that the Officer unreasonably assessed the best interests of her children, in the face of evidence about discrimination in Turkish schools against students of Alevi and Kurdish backgrounds.

[5] The Minister of Citizenship and Immigration contends that the Officer reasonably weighed the evidence and reasonably denied the application for H and C relief.

[6] The Applicant's arguments about procedural fairness cannot succeed. Arguments about a decision maker's failure to consider the evidence is an aspect of the reasonableness of a decision, not an issue of procedural fairness.

[7] The decision is reviewable on the standard of reasonableness; see the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov* (2019), 441 D.L.R. (4th) 1 (S.C.C.).

[8] In considering reasonableness, the Court is to ask if the decision under review “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 that decision”; see *Vavilov, supra* at paragraph 99.

[9] Considering the evidence before the Officer and the oral and written submissions of the parties, I am not persuaded that the Officer’s decision is unreasonable.

[10] The Applicant did not live in Canada without interruption. She lived in Turkey with her three children for many years, apparently without difficulty. Her most recent establishment in Canada began in 2016. However, the Applicant continued to travel and apparently did not “reside continuously” in Canada until 2019.

[11] In the reasons, the Officer did not make a positive finding about establishment. In my opinion, this conclusion is reasonable.

[12] I likewise find the consideration of the best interests of the children to be reasonable. According to the record, they have lived continuously with their mother wherever she happened to be, including in Turkey.

[13] The Officer granted some weight to the Applicant's submissions about adverse country conditions in Turkey, but ultimately concluded that there was insufficient evidence that she would be unemployed or otherwise unable to reintegrate. On the basis of the record, this conclusion is reasonable.

[14] In the result, the application for judicial review will be dismissed. There is no question for certification.

JUDGMENT in IMM-2342-21

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

There is no question for certification.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2342-21

STYLE OF CAUSE: GUNES YELTEKIN GUN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF TELECONFERENCE BETWEEN
TORONTO, ONTARIO AND ST. JOHN'S,
NEWFOUNDLAND AND LABRADOR

DATE OF HEARING: JUNE 8, 2022

REASONS AND JUDGMENT: HENEGHAN J.

DATED: JUNE 14, 2022

APPEARANCES:

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