

Federal Court



Cour fédérale

**Date: 20220805**

**Docket: IMM-4362-17**

**Citation: 2022 FC 1176**

**Ottawa, Ontario, August 5, 2022**

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

**BETWEEN:**

**LEVENT AYDEMIR**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is the judicial review application of a decision of the Refugee Protection Division (RPD) made pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act or IRPA]. The RPD concluded that Mr. Levent Aydemir is not a Convention refugee or a person in need of protection in accordance with sections 96 and 97 of the Act.

[2] The RPD decision under review is summarized in the following fashion at paragraph 49:

[49] Given that the [Applicant] has misled the RPD with respect to his identity documents, is not a supporter of the HDP at such a level that would make him a target by the government, has provided fraudulent documents in support of his claim and his evidence in his asylum claim in the United States of America is inconsistent with his evidence in his Canadian claim, I find the [Applicant] to be, in general, not credible. Therefore, I find that the [Applicant] has not provided sufficient credible and trustworthy evidence to support his fear of returning to Turkey.

The Court has come to the conclusion that the decision under review does not have the hallmarks of a reasonable decision. Accordingly, the matter must be returned to a differently constituted panel of the RPD for a new determination.

I. Preliminary matter

[3] This case is one of many that was kept in abeyance while a legal issue relevant to the procedure available to applicants like Mr. Aydemir went through the courts.

[4] That is whether or not was available to Mr. Aydemir an appeal to the Refugee Appeal Division (RAD) from a decision of the RPD. Someone who comes from a safe third country, like the United States, can make a refugee claim in some circumstances and will not be the subject of “refoulement” at the port of entry. However, section 110(2)(d) of the Act provides that no appeal to the RAD lies in such a case.

[5] The constitutionality of that provision was challenged In *Kreishan v Canada (Citizenship and Immigration)*, 2019 FCA 223, [2020] 2 FCR 299, the Court of Appeal ruled that it is constitutional. The matter stayed in abeyance while the matter was before the Federal Court of

Appeal and while a leave application before the Supreme Court for leave to appeal was pending (order of December 19, 2019 by Grammond J, 2019 FC 1530).

[6] Once it had been determined that section 110(2)(d) is constitutional and that Mr. Aydemir has only one option, that is to seek that the RPD decision be the subject of a judicial review application before the Federal Court, the case proceeded before our Court on its merits.

## II. The facts

[7] Mr. Aydemir is a citizen of Turkey. He is of Kurdish ethnicity. He was born on August 28, 1977. He has a wife in Turkey.

[8] The Applicant arrived in Canada on April 20, 2016, crossing the Canada-United States border at a point of entry. He had arrived in the United States, in the State of Texas, after crossing the Rio Grande. He had flown to France from Turkey on December 23, 2015, and then travelled to Mexico before crossing illegally into the United States on January 13, 2016. He was detained in the United States until April 6, 2016, did not fully pursue his asylum claim in the United States and made a refugee claim in this country. His claim was based on an alleged well-founded fear of persecution on account of his ethnicity and his political opinion, according to his Basis of Claim of May 4, 2016. He indicates in that same document that it was always his intention to make a refugee claim in Canada as he has family living in this country. Mr. Aydemir states that family members had made successful refugee claims in Canada and they understood the process. The presence of relatives explains how the Applicant fell under an exemption from the Safe Third Country Agreement between the United States and Canada.

[9] Mr. Aydemir received six years of basic education in his home village. Kurdish was prohibited in school. A dialect of Kurdish was spoken at home: he speaks Turkish with a strong accent. He always enjoyed his Kurdish identity and culture. He describes himself as a Kurdish patriot and as a political activist supporting pro-Kurdish political parties in Turkey. Support for pro-Kurdish parties runs in the family.

[10] The Applicant did not become a member of the political parties he supported because he feared the government had access to members' lists: he did not wish to draw negative attention through membership, as many party members, including family members, had been charged with various offences.

[11] The support for various parties seems to begin in 2009 when he took part in a demonstration regarding electoral fraud. The candidate for the Democratic Society Party (DTP) in Ağrı, his home village, had been elected, but a recount produced a different winner. Prior to the local election of March 2009, Mr. Aydemir showed his support for the DTP by attending various Kurdish celebrations, voting for the party, attending party meetings and DTP-sponsored political events, as well as making political contributions to the party. During the run-up to the election of March 29, 2009 he worked for the DTP. The demonstration was in protest about the alleged electoral fraud.

[12] The Applicant states that he was beaten up by the police and injured, as were several friends who were more seriously injured, including one of the Applicant's cousin who was taken to the hospital. The Applicant was arrested at the hospital and taken to the police station where

he was beaten. The police were asking about his support for pro-Kurdish parties. When released a day later, he was warned that he would not be released if caught again.

[13] Barely a few days later, the Applicant's attention was attracted as he was crossing the street by two individuals who loudly were claiming that the AK Party had rightfully won the election. As the Applicant started retorting, he was grabbed by the men who started beating him and tried to take him into their parked car. People present at the scene intervened, which allowed the Applicant to escape. According to him, the two individuals were plainclothes police officers. Following this second violent incident in a few days, the Applicant left Ağrı Merkez for Darıca, in Kocaeli province, in the west of Turkey.

[14] Support for pro-Kurdish parties continues, as the Applicant attended cultural events and demonstrations. Thus, in March 2013, Mr. Aydemir attended a Newroz festival at the Persembe Pazari Square in Izmit, organized by the Peace and Democracy Party (BDP). The Applicant, together with other BDP supporters, were walking toward the celebration when they were attacked by a group of Turkish nationalists. The police officers in the area arrested the Applicant and the other supporters. Taken to the police station, he was beaten and questioned about the BDP. When released the following day, he was warned that his support for pro-Kurdish parties must stop or it will be worse the next time.

[15] His support continued, handing out pamphlets, attending party meetings and contributing to the "cause". The general election of June 7, 2015 saw the People's Democratic Party (HDP)

surpass the 10% threshold. The Applicant voted at that election. There was no government that was formed, such that a new election was called for November 1, 2015.

[16] Between June and November 2015, the situation changed for the worse states the Applicant. More pressure was exerted on the Kurdish minority. Incidents of violence occurred against the population and the HDP party. Among other incidents, the police would search houses occupied by Kurds. The Applicant's house was one of them. In early October 2015, police officers forcibly entered his home, searched the house, cursed his wife (the Applicant got married in 2009) and him, and ransacked the place. Threats were issued: he would pay the price if he attended the election and he would be killed if he continued his support for the HDP.

[17] The general election took place on November 1, 2015. The ruling party regained its majority in parliament. The Applicant says that he thought the election was unfair and he lost hope. Nevertheless, he went to a meeting on November 10, 2015 about the election results at the HDP building. Upon leaving, he was taken to the police station by two police officers. There, he was interrogated as he was accused of supporting the Kurdistan Workers' Party (PKK), and being a terrorist as a result. The police were interested in information about the HDP party members and supporters: the Applicant claims that he was beaten and that the police sought to turn him as an informant. He was released after two days and ordered to return to the police station within one week to provide the information they requested.

[18] That is when he resolved to leave Turkey. He did not want to spy on the HDP and he was afraid of the police who could harm him severely, or even kill him. With the assistance of an

agent, he left Turkey on December 23, 2015, arrived in the United States on January 13, 2016, after transiting through France and Mexico. It is not known why the Applicant went through France and Mexico, to finally cross the Rio Grande at night, on a raft, on January 13.

III. The decision under review

[19] As already indicated, there is no appeal available to the RAD by operation of the law. The decision of the RPD is the one that can be brought before the Court on judicial review.

[20] For all intents and purposes, the RPD found that the Applicant was not credible with respect to a number of aspects. Given that it is not disputed that the standard of review is reasonableness, the onus on the Applicant will be to satisfy the Court that the decision does not possess “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” (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99) [*Vavilov*].

[21] But first, the RPD took issue with the identification of the Applicant. The Applicant’s passport was not available; instead the Applicant produced a number of documents in support of his identification, none of which says the panel was an original identity document with the claimant’s picture. The pictures made available are said to be old and unclear. Nevertheless, in view of the number of documents “both original and photographed”, supplied by the Applicant which contain his name, date and place of birth, the RPD concludes reluctantly “that I cannot make the finding that the claimant is not, Levent Aydemir from Turkey” (RPD decision, para 9).

[22] The RPD moved from being satisfied that identity had been established, although with hesitation, to its examination of the credibility of the Applicant's testimony.

[23] Going back on the identity issue, this time the RPD finds that it was misled by the Applicant as he claimed that his original identity documents had been seized by the American authorities after he crossed the border between Mexico and Texas the night of January 13, 2016. In support of that contention, the RPD found fault with a document issued by the American authorities on March 23, 2016 while he was detained: Instruction Sheet to Detainee Regarding Requirement to Assist in Removal. The document understandably requires that a passport and national identification card be submitted ostensibly for the purpose of removal from the United States. The RPD wondered why the authorities would be asking for documents they already had. When counsel suggested that this is nothing other than a generic document, as appears on the face of the document, that was summarily rejected by the panel.

[24] The RPD found further support in the fact that the Applicant, when interviewed two days after crossing the border, answered "no" to the question "do you have any form of identification?". Moreover, in an interview conducted by an Asylum Officer in early February 2016, the officer declares on the "Record of Determination/Credible Fear Worksheet", by ticking a box, being satisfied of the identity of the Applicant. Three possibilities are offered on that form to answer whether the "Applicant's identity was determined with a reasonable degree of certainty": the officer checked off the first box which is described to apply where the officer is satisfied with the "Applicant's own credible statements". The description about the particular box goes on to state "(If testimony is credible overall, this will suffice to establish the applicant's



identity with a reasonable degree of certainty)". The other two boxes refer to "passport which appears to be authentic" and "other evidence". For the RPD, these are manifestations that the American authorities did not have in their possession the passport and the national identity card.

[25] I add that the form (Form I-870) reports on an interview to determine eligibility for asylum or protection from removal. If credible fear of persecution or torture is found, the matter is referred to an immigration court. The detainee may then be released while preparing for a hearing. If credible fear of persecution or torture is not found, the person seeking asylum may ask an Immigration Judge to review the decision (Form I-870, item 3.2). This is evidently an important step in the process.

[26] Thus, the RPD concludes that on a balance of probabilities the American authorities did not have the Applicant's passport and identity card. The RPD reasoned that they would have used these documents to identify Mr. Aydemir. The fact that Mr. Aydemir's American counsel offered his evidence in a letter that the passport and the identity card were seized upon his client's detention and are not to be released until the immigration case is concluded did not carry much weight. Instead, the RPD finds that the American lawyer was told by his client that passport and identity card were seized upon his arrest in the United States. In effect, in spite having found that the Applicant is the person he says he is, the RPD nevertheless concludes that there was an attempt to mislead the panel about original identity documents. Why? The panel conjectures that the passport may show extensive travel which would indicate "failures to claim and reavailments" (RPD decision, para 20). Another possibility may be that the identity documents are themselves fraudulent.

[27] The RPD also found that the Applicant is not an official member of the HDP, which would translate into the conclusion that he would not be sought for his political opinion.

[28] This time round, the Applicant is faulted for not having become a member of the HDP, and not having voted in the election of November 1, 2015 (he had voted in the election of June 2015). I reproduce in its entirety paragraph 27 taken from the decision under review:

[27] Further, on one hand, the claimant alleges that he would risk his life to support this party and that is why he cannot return to Turkey. However, on the other hand, he will not become a member because, if he did, he would risk his life. Therefore, it seems that the claimant's conviction in the party's goals does not actually extend to a point where his life and liberty is at risk because he is not willing to become a member. If the principal claimant was so deeply committed to helping the HDP succeed such that he would risk his life to support their cause, surely he would become an official member of the party despite the risk.

I readily acknowledge not understanding fully the paragraph, especially in view of the documentary evidence on file and the opinion of Professor Michael M. Gunter about the situation of the Kurds prior to the November 2015 election. He writes:

Thousands of people were killed during the PKK (*Partiya Karkaren Kurdistan*) or Kurdistan Workers Party insurgency against the Turkish government that raged during the 1980s until 1999 when the PKK leader Abdullah Ocalan was captured and imprisoned. However, a low-level insurgency began again in 2004 due to the lack of progress in solving Kurdish issues, and escalated until 2013 when a now failed peace process was initiated. This peace process was totally shattered in July 2015 following the national elections of 7 June 2015 whose unfavorable results angered the present Turkish government headed by President Recep Tayyip Erdogan and his pro-Turkish nationalist and pro-Islamist AKP party. Nationalist Turks began attacking ethnic Kurds even in western cities of the country, while human-rights violations and persecutions escalated throughout the country. The Turkish government placed indiscriminate, punishing curfews upon ethnic Kurdish cities and towns in the Kurdish southeast,

gassed civilians, and employed severe force resulting in hundreds of deaths. Even in the western part of Turkey the government intimidated and jailed its peaceful opponents, and also detained reporters, professors and individual Kurds who expressed non-violent pro-Kurdish opinions. Indeed Turkey now has more journalists in jail than any other country in the world.

The point of the matter is that it appears that the situation in Turkey deteriorated significantly after June 2015, yet the RPD never engages with this evidence which may well explain the reluctance to become a member of the HDP or even to vote in the election. In fact, as noted by the RPD, the popular vote for the HDP went from 13% in June to 10,7% in November. Despite that situation, the RPD writes at paragraph 28 that “It is difficult for the claimant to maintain that he is a supporter of the HDP when he did not even support the party by doing the most basic of things, voting in the most recent election. Given that he did not vote in this very important election, I find that he was not a supporter of the HDP such that he would be at risk.” No mention is made of the search and ransacking of the Applicant’s house in October 2015.

[29] The RPD carried on with its assessment of letters allegedly from the HDP in support of the Applicant and his father. The RPD expected for the formatting and the letterhead to be identical: it noted that there were differences.

[30] The RPD then found discrepancies between the Applicant’s version in Canada concerning arrests suffered in Turkey and what he told the American Asylum Officer with respect to those arrests. The panel notes the existence of three arrests in Turkey, while Form I-870 would suggest the presence of only one arrest, according to the RPD.

[31] The Applicant repeatedly stated that the quality of interpretation when interviewed by the Asylum Officer was deficient. The decision maker discounted that criticism, calling them “clerical errors”. As a matter of fact, the RPD speculates that the “clerical errors” would have been committed by the interpreter and were due to a bad telephone connection. I observe that the Applicant is designated as “female”, his hometown is incorrect, and he is said to have answered that his native language is Turkish and that he does speak any other language. That is patently incorrect.

[32] In fact, the Form has prominently displayed a disclaimer, printed in bold, which was never alluded to. It reads:

The following notes are not a verbatim transcript of this interview. These notes are recorded to assist the individual officer in making a credible fear determination and the supervisory asylum officer in reviewing the determination. There may be areas of the individual’s claim that were not explored or documented for purposes of this threshold screening.

Furthermore, Mr. Aydemir’s American counsel complained on March 21, 2016 to the “Chicago Asylum Office” about the interpretation during his client’s interview with the Asylum Officer. He noted among other things that the Record of Determination/Credible Fear Worksheet indicates that Mr. Aydemir speaks only Turkish as well other mistakes. He asked that the Determination be vacated and the applicant be re-interviewed.

[33] The response came two days later on March 23, 2016; the Chicago Asylum Office advised that credible fear screening determinations are not subject to motions to reopen and reconsider. Nevertheless, the U.S. Citizenship and Immigration Services decided that, in its sole

discretion, it can reconsider if “information comes to its attention that it believes warrants such action”. In the case of Mr. Aydemir, the determination is said to have been reconsidered and “found that your client does have a credible fear”. This turn of events was never alluded to by the RPD.

[34] Finally, the panel completely discounted a number of letters, from the Applicant’s wife, father, uncle and cousins. These letters are said to not outweigh the large credibility concerns with respect to other evidence. As for the Applicant’s cousin and uncle who received positive decisions from the RPD, the panel disposes of the argument by stating that RPD members are independent decision makers; this decision maker is not bound by these other decisions, as the panel found Mr. Aydemir’s account as not being credible.

[35] As will be evident by now the only issue in this case was the credibility of the Applicant.

The RPD summarized usefully its finding in the following fashion:

[49] Given that the claimant has misled the RPD with respect to his identity documents is not a supporter of the HDP at such a level that would make him a target by the government, has provided fraudulent documents in support of his claim and his evidence in his asylum claim in the United States of America is inconsistent with his evidence in his Canadian claim, I find the claimant to be, in general, not credible. Therefore, I find that the claimant has not provided sufficient credible and trustworthy evidence to support his fear of returning to Turkey.

#### IV. Arguments and analysis

[36] The Applicant challenged each credibility finding, arguing that they are unreasonable and that the matter ought to be returned to a differently constituted panel of the RPD. For his part, the

Minister offered the general view that the RPD's decision is reasonable, but without really engaging with the evidence and the issues argued by the Applicant. These issues command that the case be returned for redetermination.

[37] The Applicant provides a summary of his pro-Kurdish activities over the years as well as the harassment and bullying he suffered growing up. His own description is as a Kurdish patriot and political activist with pro-Kurdish parties in Turkey. I have not any evidence challenging the general description. Even the credibility findings are limited to the degree of support being attributed to the Applicant.

[38] Instead, the RPD considered various aspects of the evidence offered by the Applicant to find what it saw as contradictions, implausibilities and discrepancies. I have been persuaded by the Applicant that these were not present and that the conclusions reached by the RPD were not supported by the evidence.

[39] *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 is often quoted in recent years for its presentation of relevant principles in analysing credibility:

- refugee claimants are presumed to tell the truth, but such presumption can be challenged and a lack of credibility may well be sufficient to rebut it;
- small contradictions, inconsistencies, omissions may accumulate to support a negative credibility finding;
- however, minor contradictions that are secondary or peripheral to a refugee claim will be insufficient to base a negative credibility finding. Similarly, contradictions,

- inconsistencies and omissions cannot be exaggerated to turn minor ones into substantive issues;
- the lack of credibility with respect to central elements of a claim may be generalized to all documentary evidence presented as corroboration. I would add however that a decision maker is not to exclude documentary evidence in order for the credibility finding to be more cogent;
  - the mere absence of corroborative evidence should not *stricto sensu*, base a credibility finding. But that absence may be a factor to consider where there are reasons to question credibility and an explanation for a lack of reasonably expected corroborative evidence is not upcoming;
  - credibility findings may be drawn based on implausibilities, common sense and rationality. For instance, implausibility conclusions may stem from the testimony which is outside the realm of what could be reasonably expected, or falls outside of documentary evidence showing that the events could not have taken place as alleged.

[40] Another important case on credibility often quoted in this Court is *Cooper v Canada (Citizenship and Immigration)*, 2012 FC 118 [*Cooper*]. Some of the principles listed at para 4 in *Cooper* are:

...

d. Not all inconsistencies and implausibilities will support a negative finding of credibility. Adverse credibility findings should not be based on microscopic examination of issues irrelevant or peripheral to the claim: *Attakora v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 444;

e. Evidence or testimony with respect to whether a claimant travels on false travel documents, destroys travel documents or lies about

them upon arrival is peripheral and of very limited value to a determination of credibility: *Lubana*;

...

h. Where a credibility finding is based on inconsistencies of the applicant, specific examples of inconsistency must be set out. The inconsistency must arise in respect of other evidence which was accepted as trustworthy. Put otherwise, an inconsistency can arise in one of two ways: evidence is internally inconsistent in the testimony of the witness, or; evidence that is inconsistent with respect to the testimony of other witnesses or documents. If, in the later situation, that of external inconsistency, the evidence on which the inconsistency is predicated must be accepted as trustworthy;

...

[My emphasis.]

[41] In the case at bar, one of the most damaging finding concerning credibility turned on the number of times the Applicant was arrested in Turkey in relation to pro-Kurdish activities. I agree with the Applicant that the reliance on the interview given in the United States to an Asylum Officer as part of the “Credible Fear Interview” was undue. That interview, which is prominently featured in the decision, was in fact acknowledged as being less than reliable by the USCIS in its letter of March 23, 2016: indeed, it appears to have reversed itself two days after a letter from the Applicant’s American counsel pointing to many deficiencies, including many mistakes that the RPD minimized as clerical errors. Put another way, the RPD found inconsistencies on the basis of a document which seems to have been found to lack trustworthiness.

[42] At the very least, the RPD ought to have explained how that reversal impacted its decision. As the Supreme Court noted in *Vavilov*, “[t]he reasonableness of a decision may be



jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it” (at para 126). Moreover, the Record of Determination/Credible Fear Worksheet, where “clerical errors” are found (including that the Applicant is a “female”, that his only language is Turkish and that he was born elsewhere than his place of birth) has its own disclaimer where the reader is warned that the transcript is not verbatim and that, given the purpose of the interview, “areas of the individual’s claim that were not explored or documented for the purpose of this threshold screening” (Form I-870, p 5). That requires caution on the part of a user of such a document to establish any sort of inconsistency. Such caution was not exercised.

[43] The RPD was satisfied about the Applicant’s identity in spite of not having the Applicant’s passport and/or national identity card. Nevertheless, the RPD held against the Applicant what it considered to be misleading information “with respect to the whereabouts of his original identity documents” (RPD decision, para 11). The whole episode turns on the Applicant’s assertion that the original documents were seized by the American authorities after crossing the Rio Grande on a raft.

[44] There is no direct evidence of misrepresentation, nor is there any motivation for misleading the RPD which would emerge from the reasons for the decision made (other than speculations, at para 20). Instead, the RPD resorts to:

- an Instruction Sheet to Detainee Regarding Requirement to Assist in Removal;
- a request by an American Border Patrol agent for the Applicant’s identification;
- Form I-870 filled out by the Asylum Officer.

[45] Not only does the Form I-870 suffer from the obvious errors already referred to, but the information from the Form used to conclude to some inconsistencies about the seizure of the passport and identity card consists of three boxes where the officer is invited to indicate, by ticking one of the boxes, how the identity was established with a reasonable degree of certainty. The officer is further instructed that if the identity is established by the Applicant's own credible statement, "this will suffice to establish the applicant's identity with a reasonable degree of certainty". That was the box that was ticked off by the officer in this case. There is no need to go to a "passport which appears to be authentic" (second box) or other evidence. Without any explanation, the RPD concludes that this would tend to show that the American immigration official does not have the identity document. One wonders why. On its face, this is unreasonable once the evidence is fully considered: the evidence is misapprehended in that the methodology is provided for, which does not require that the passport be located. The decision maker had to explain how that can be probative that the American authorities are already in possession of the document. There is a failure to account for the use to be made of the boxes, the effect of which is to put a different gloss on the availability of the passport in the hands of the American authorities.

[46] Similarly, the Instruction Sheet to Detainee Regarding Requirement to Assist in Removal is just that: a form with instructions. The RPD queried why the American authorities would speak of a passport or national identification card if they already have it. Not surprisingly, the Applicant responded that he did not know.

[47] In spite of counsel for the Applicant pointing out that the form is a generic document, which it is, the RPD disagreed for reasons given at paragraph 16 of its decision which I found to be unintelligible:

[16] Counsel submits that the Instruction Sheet to Detainee Regarding Requirement to Assist in Removal is a generic sheet. I do not accept this argument. The document itself states that “[t]he following is a list of things you are required to complete within 30 days of receiving this form...requirements will be checked off by the INS officer depending on the facts of each case.” Therefore, it does not seem as if this document is generic at all. It seems as if it is tailored towards each individual claimant and what they are specifically required to provide.

Counsel for the Applicant in this Court submitted that the checked-box on the form read:

“Submit passport (current and expired) to INS. If you have a copy of your passport, you are to submit it”. That is not evidence that the American authorities do not have the passport when such generic instructions to provide a complete account of all passports in one’s possession appear on the form itself.

[48] A request, made by an American Border Patrol agent two days after the Applicant crossed into Texas from Mexico, about “do you have any form of identification?” is similarly given undeserved weight. To assume, without more, that the American authorities are coordinated to the point that information, such as whether identification documents have been seized by other agencies, is a bridge too far. I agree with the Applicant that, without more, concluding that a routine question allows for the conclusion that the documents have not been seized is unreasonable. In fact, it has not been established that the passport would have been seized by the Border Patrol, as opposed to any of the agencies with jurisdiction, such as Immigration and Customs Enforcement (ICE).

[49] It bears noting that the Applicant's American counsel provided another letter, dated April 19, 2016, in which he states that "it was brought to my attention that Mr. Levent's Turkish identity card and passport were seized by ICE upon his detention and ICE will hold on to it until the immigration case is concluded before Immigration Court". The RPD saw a contradiction between the letter and the INS form discussed before. There is no such contradiction. The speculation that the Applicant instructed his lawyer about his passport and identity card is not supported by anything.

[50] The RPD found that the Applicant is not a member or supporter of the HDP because, although he voted in the election of June 2015, the fact that he chose not to vote at the election of November 2015 is seen as showing that the Applicant is not a true supporter of the political party. Here again, the Court must agree with the Applicant's counsel who points out that the evidence concerning the deterioration of the circumstances of the Kurds after the June 2015 election, and those of the Applicant himself where his house was ransacked by the authorities shortly before the election, required an examination. If one is to consider that someone is not what he claims to be because he chose not to vote, documentary evidence that points in a different direction must be considered. Moreover, the expert opinion is not even alluded to by the RPD. The RPD states that "[i]t is difficult for the claimant to maintain that he is a supporter of the HDP when he did not even support the party by doing the most basic of things, voting in the most recent election. Given that he did not vote in this very important election, I find that he was not a supporter of the HDP such that he would be at risk" (RPD decision, para 28). The evidence which could explain must be discussed. It cannot be ignored. Context matters. I believe that it

was incumbent on the RPD to assess the contextual evidence, including a letter from the Applicant's wife, in reaching such definitive conclusions. That was not done.

[51] The RPD also found that letters confirming the Applicant's affiliation with the HDP party are fraudulent. That constitutes a strong accusation. There does not appear to be evidence that would support such an accusation other than observations made by the panel on the basis of an unknown expertise. At any rate, this constitutes a minor issue.

[52] Finally, the RPD discounted letters from the Applicant's wife, father, uncle and cousins, concluding that the letters did "not outweigh my large credibility concerns with respect to the claimant's other evidence" (RPD decision, para 44). In view of my assessment of the RPD's credibility findings, these documents will have to be considered afresh when this matter is the subject of a redetermination.

#### V. Conclusion

[53] The Court has concluded that the decision of the RPD is not reasonable. It is based on findings concerning this Applicant's credibility which are not supported by the evidence or which do not consider contrary evidence. As a result, the decision must be set aside and the matter must be remitted to a differently constituted panel of the Refugee Protection Division.

[54] The parties agreed that there is no question to be certified pursuant to section 74 of the Act. The Court concurs.

**JUDGMENT in IMM-4362-17**

**THIS COURT'S JUDGMENT is:**

1. The judicial review application is granted. The Refugee Protection Division decision is dismissed. The matter is remitted to a differently constituted panel for redetermination.
2. There is no question to be certified in accordance with section 74 of the IRPA.

"Yvan Roy"

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Judge

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

**DOCKET:** IMM-4362-17

**STYLE OF CAUSE:** LEVENT AYDEMIR v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** OCTOBER 13, 2021

**JUDGMENT AND REASONS:** ROY J.

**DATED:** AUGUST 5, 2022

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