

Federal Court



Cour fédérale

Date: 20230803

Docket: IMM-621-22

Citation: 2023 FC 1070

Ottawa, Ontario, August 3, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

**KERIM ANULUR
GULHANIM ANULUR
(A.K.A. KERIM GULHANIM)
MUSTAFA EKREM ANULUR
HIDAYET ESAD ANULUR**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] Kerim Anulur, his wife Gulhanim Anulur, and their two children are citizens of Turkey. They sought refugee protection in Canada on the basis of their fear of persecution as members of the Hizmet movement. In a decision dated January 5, 2022, the Refugee Protection Division

(RPD) of the Immigration and Refugee Board of Canada rejected their claim on credibility grounds. The RPD also found under section 107.1 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*) that the claim is manifestly unfounded because it is clearly fraudulent.

[2] The applicants now apply for judicial review of the RPD's decision under subsection 72(1) of the *IRPA*. They submit that the RPD assessed their credibility unreasonably and that the manifestly unfounded determination is also unreasonable.

[3] As I will explain in the reasons that follow, I am not persuaded that the decision is unreasonable in either of these respects. This application for judicial review will, therefore, be dismissed.

II. BACKGROUND

[4] Kerim Anulur was born in Turkey in February 1982. He claims that he was first introduced to the Hizmet movement in 1998, his last year of high school. He attended university in Russia on a Hizmet scholarship. After graduating, he began working as an assistant teacher at the Nigerian Turkish International College in Kaduna, Nigeria in 2006. According to Mr. Anulur, this school was part of the First Surat Group of Companies, an organization associated with the Hizmet movement.

[5] Gulhanim Anulur was born in Turkey in September 1987. She also became a follower of the Hizmet movement. She met Mr. Anulur in 2008 when he was visiting Turkey with some students from the school in Nigeria. The two were married a short time later. Their first son

Mustafa was born in September 2010. Their second son Hidayet was born in June 2015. All four members of the family held Turkish passports.

[6] Mr. Anulur continued to work as a teacher in Nigeria until August 2012. From August 2012 until June 2015 he worked in the Central African Republic as director of a Hizmet school in Bangui. In June 2015, he took up a position as a manager for the First Surat Group of Companies in Nigeria. The family lived in Abuja, Nigeria until they left for Canada in April 2019.

[7] The applicants claimed that, after an attempted coup in July 2016, the Turkish embassy in Nigeria began denouncing Hizmet followers as terrorists and urged Nigerian authorities to shut down Hizmet institutions there.

[8] Mr. Anulur claimed that in March 2017 he learned through his contacts at Nigeria's "immigration department" that his and his wife's Turkish passports had been cancelled. He testified that these contacts were named Idris and Sani. He did not know their surnames or positions. (Later Mr. Anulur testified that it was Idris who shared this information with him. Sani was someone else, the person who procured false passports for him, as described below.)

[9] As set out in his Basis of Claim (BOC) narrative, Mr. Anulur's contacts told him that the Turkish embassy had sent two letters to Nigeria's Ministry of the Interior. The first letter, dated October 16, 2016, listed eight passports of Turkish citizens residing in Nigeria that had been cancelled because of the holders' association with the Hizmet movement. Mr. Anulur was on this

list. The second letter, dated October 28, 2016, listed 90 passports that had been cancelled for the same reason. Mr. and Ms. Anulur were on this list.

[10] The applicants submitted copies of these two letters to the RPD on March 10, 2020. At the RPD hearing, Mr. Anulur explained that his contacts had shown him the letters and allowed him to photograph them. (He does not mention this in his BOC narrative.) The documents submitted to the RPD were said to be printed copies of the photographs. They list the names and passport numbers of Turkish citizens who are residing in Nigeria whose passports have been “cancelled and declared null and void, on the charges of their membership to [*sic*] the terrorist organization FETO.” (FETO is an acronym for Fethullahist Terrorist Organization, a term used by Turkish authorities to refer to the Hizmet movement.)

[11] According to the applicants, it was because of learning that their passports had been cancelled and that they had been denounced as members of FETO that they realized they would be at risk if they returned to Turkey, that their situation in Nigeria was precarious, and that they needed a contingency plan in case they had to leave. They applied for Schengen visas in 2017 but were refused. They also applied for US visas in 2017 but never received a decision. In March 2018 they obtained false Senegalese passports and attempted unsuccessfully to obtain UK and Czech visas. Mr. Anulur was able to obtain a French visa using the Senegalese passport but when he arrived in France in December 2018 he was refused entry and detained briefly because the passport was found to be fraudulent. After returning to Nigeria, Mr. Anulur then obtained fraudulent Israeli passports for himself and his family. They used these passports to travel to Canada via England, arriving here on April 2, 2019.

III. DECISION UNDER REVIEW

[12] As stated above, the RPD rejected the claim on credibility grounds. The RPD also found that the claim was manifestly unfounded because it was clearly fraudulent.

[13] In summary, the RPD made the following findings:

- The letters purportedly from the Turkish embassy to the Nigerian Ministry of the Interior are fraudulent.
- The applicants “consistently and over time, engaged in a pattern of deception, disregard for the laws of several sovereign states, misrepresented their personal and national identities, failed to make refugee claims in safe third countries without reasonable explanation, and otherwise acted in a manner that demonstrated not only a complete lack of subjective fear of persecution, but also a lack of forthrightness that one would expect from a genuine refugee claimant.”
- The applicants’ evidence contained material omissions and inconsistencies. The applicants’ explanations for these omissions and inconsistencies were not credible.
- The negative inferences the RPD drew “weighed heavily” against the applicants’ credibility. The RPD found that the presumption of truthfulness had been “thoroughly rebutted.” The RPD “had no choice but to make a general finding of non-credibility [footnote omitted] which extended to the totality of both adult claimants’ evidence [footnote omitted].”

- The finding that the two letters from the Turkish embassy are fraudulent, together with the RPD's other credibility concerns, met the high threshold for determining that the claim is manifestly unfounded.

[14] The RPD therefore concluded that the applicants had failed to establish with sufficient credible and trustworthy evidence that they are Convention refugees or persons in need of protection. Pursuant to section 107.1 of the *IRPA*, the RPD also stated that the claim is manifestly unfounded because it is clearly fraudulent.

IV. STANDARD OF REVIEW

[15] The parties agree, as do I, that the RPD's decision should be reviewed on a reasonableness standard.

[16] 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" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). A decision that displays these qualities is entitled to deference from the reviewing court (*ibid.*). For a decision to be reasonable, a reviewing court "must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic, and it must be satisfied that there is a line of analysis within the reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived" (*Vavilov* at para 102, internal quotation marks and citation omitted). On the other hand, "where reasons are provided but they fail to provide a transparent and intelligible justification [. . .], the decision will be unreasonable" (*Vavilov* at para 136).

[17] When applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances (*Vavilov* at para 125). Nevertheless, the test of reasonableness and its requirements of justification, intelligibility and transparency apply to an administrative decision maker's assessment of the evidence before them and the inferences that may be drawn from that evidence (*Kreishan v Canada (Citizenship and Immigration)*, 2019 FCA 223 at para 46). Consequently, adverse findings of fact and conclusions or inferences with respect to credibility must find their justification in the evidence before the decision maker and their expression in the decision maker's reasons (*ibid.*).

[18] The onus is on the applicants to demonstrate that the RPD's decision is unreasonable. To set aside a decision on this basis, the reviewing court must be satisfied 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).

V. ANALYSIS

[19] As set out above, the RPD's decision turns on two related findings: that the applicants are not credible and that the letters relating to the cancellation of their Turkish passports are fraudulent.

[20] On the issue of credibility, the RPD made several adverse findings regarding specific aspects of the applicants' evidence, including: the omission from their BOC form of a trip the family took to Senegal in October 2017 for which they used their Turkish passports despite

allegedly having been informed that the adult applicants' passports had been cancelled a year earlier; an inconsistency in the date on which Turkish police allegedly visited the home of Ms. Anulur's parents looking for her; the applicants' failure to seek refugee protection in Senegal in 2017, in France in 2018 (in the case of Mr. Anulur), and in the United Kingdom (*en route* to Canada in 2019); and the applicants' failure to identify themselves and claim asylum immediately upon arrival in Canada but, instead, presenting themselves as travelling on business on fraudulent Israeli passports. Relying on these specific findings, the RPD drew an adverse inference concerning the applicants' "overall" credibility. The RPD then concluded that the applicants had failed to provide sufficient credible evidence that they are, as they claimed, Hizmet supporters who had been identified as such by Turkish authorities and who were therefore at risk in Turkey.

[21] The applicants submit that the reasonableness of the RPD's decision is undermined by a failure to consider properly documentary evidence capable of corroborating their claim to be Hizmet supporters. In particular, they submit that the RPD failed to consider this potentially corroborative evidence independently of its credibility concerns, as it was required to do: see *Yu v Canada (Citizenship and Immigration)*, 2015 FC 1138 at paras 31-35; *Li v Canada (Citizenship and Immigration)*, 2019 FC 307 at para 18; and *Balyokwabwe v Canada (Citizenship and Immigration)*, 2020 FC 623 at para 44.

[22] I do not agree. The RPD expressly dealt with the potentially corroborative evidence on its own terms and separate from any concerns about the applicants' credibility. It did not find the documentary evidence to be insufficient because it was submitted by parties who did not appear

to be credible. Nor did it effectively find the support letters were not authentic under the guise of giving them little weight. Rather, the RPD found the evidence lacking because it had little probative value on its face.

[23] For example, the applicants provided letters from three individuals who identified themselves as former co-workers of Mr. Anulur's in Nigeria. All three have been recognized as Convention refugees in Canada due to their own Hizmet membership. However, the letters said very little about Mr. Anulur's membership in the Hizmet movement. They simply confirmed his employment with the First Surat Group of Companies and made only general claims about his affiliation with the Hizmet movement. The RPD found that none of the letters provided a degree of detail that would permit it to conclude that the writers had direct knowledge of the applicants' circumstances. This finding, which was open to the RPD, reasonably supported the conclusion that the letters had little probative value and certainly not enough to overcome the applicants' "total lack of credibility" or the tendering of fraudulent letters from the Turkish embassy.

[24] The applicants also take issue with the RPD's adverse credibility determinations but they have not persuaded me that any of them are unreasonable. Contrary to their arguments on review, these determinations are justified by the RPD's reasoned assessment of the evidence, as expressed in the decision maker's reasons. Given the centrality of the matters on which the RPD found the applicants were not credible, it was open to the RPD to draw a negative inference about their overall credibility: see *Kinfe v Canada (Citizenship and Immigration)*, 2019 FC 286 at paras 20-21; and *Occilus v Canada (Citizenship and Immigration)*, 2020 FC 374 at para 25. Credibility determinations "lie within the heartland" of the RPD's mandate and are entitled to

considerable deference (*Luo v Canada (Citizenship and Immigration)*, 2019 FC 823 at para 11).

The applicants have not established any grounds on which this Court could interfere with the RPD's determinations.

[25] The applicants also submit that the reasonableness of the decision is undermined by the RPD's failure to address the question of whether they would be perceived by Turkish authorities as Hizmet supporters given their profile. I agree with the applicants that it does not necessarily follow from the fact that the RPD found that there was insufficient credible evidence of their Hizmet membership that Turkish authorities would take the same view. While it would have been preferable for the RPD to have addressed this nuance, I do not agree that its failure to do so undermines the reasonableness of the decision. The applicants' central contention before the RPD was not simply that they had a profile that gave rise to a serious possibility of persecution but, rather, that they had in fact been identified by Turkish authorities as Hizmet supporters and had already been singled out for adverse treatment (the cancellation of their passports, their denunciation to Nigerian officials as members of a terrorist group, the police raid). The question of their profile apart from these incidents was, at most, a peripheral aspect of their claim.

[26] Furthermore, the RPD reasonably determined that the core elements of the applicants' narrative were not credible. Crucially, the RPD reasonably concluded that the two letters relating to the cancellation of the adult applicants' Turkish passports are fraudulent. The significance of this finding for the credibility of the claim cannot be overstated. According to the applicants, learning about those letters was the pivotal event that ultimately led them to seek protection in Canada. Like the adverse credibility findings, the RPD's finding concerning these

letters is explained in detail by reasons that are justified, intelligible and transparent. While the applicants take issue with the finding that the letters are fraudulent, their submissions effectively ask me to reassess the evidence and come to a different conclusion. That is not the proper role of a court conducting judicial review on a reasonableness standard.

[27] The RPD's finding that the applicants tendered fraudulent documents in support of their refugee claim, together with its serious concerns about the applicants' credibility, reasonably support the determination that the claim is manifestly unfounded. The RPD instructed itself that, before such a determination can be made, it must be satisfied that the dishonesty or deceit went to an important part of the refugee claim such that the determination of the claim would be influenced in a material way: see *Warsame v Canada (Citizenship and Immigration)*, 2016 FC 596 at paras 26-31. As the RPD noted, "the core allegation in the claim is that the Turkish government cancelled the passports and submitted a list of suspected Hizmet members to the Nigerian authorities which included the claimants' names."

[28] The RPD found that the validity of the two documents purporting to be these very lists "hinges on the credibility of the claimants and the facial integrity of the documents." It concluded that the applicants "were generally non-credible, as was their explanation for how these documents came into their possession." It also found that "the documents have extensive facial defects that call their validity into question." These findings are explained in detail by reasons that are justified, intelligible and transparent. The applicants have not identified any basis on which to interfere with them. They point out that the RPD does not mention independent evidence demonstrating that Turkey had cancelled the passports of alleged Hizmet

followers and was sharing information about alleged Hizmet followers with Nigerian authorities. Even if it would have been better if the RPD had mentioned this evidence, the failure to do so does not undermine the reasonableness of the decision. That evidence provides little to no support for the proposition that the letters relied on by the applicants are genuine. The RPD provided detailed reasons for finding that they are not. The evidence it did not mention is, at best, of marginal relevance to this question of fact. While the applicants dispute the RPD's assessment of the significance of the facial defects on the documents, their submissions simply amount to a request that I substitute my view for that of the RPD. As I have already said, that is not the proper role of a court conducting judicial review on a reasonableness standard.

[29] The centrality of the two letters to the applicants' claim for protection is beyond dispute. It was therefore open to the RPD to conclude that the finding that the letters are fraudulent "affects the integrity of the entire claim – if the documents are fraudulent, then the claimants' passports were never cancelled because the Turkish government never had an interest in them at all." This, in turn, provides a reasonable basis on which to conclude that the claim for refugee protection is manifestly unfounded because it is clearly fraudulent. The applicants have not established any basis to interfere with this determination.

[30] Finally, in their further memorandum of argument, the applicants raised a concern about how the RPD had effectively pitted their former counsel (a lawyer) against them when it drew adverse inferences about their credibility. They ultimately did not press this as a ground for review. Nevertheless, given the broader importance of this issue, I am of the view that some comment is warranted.

[31] Among the adverse credibility findings the RPD made was that Mr. Anulur had not provided a credible explanation for omitting the October 2017 trip to Senegal from his BOC narrative. The RPD gave several reasons for this finding, including the following: “Lastly, the claimants were represented by a very thorough, experienced and effective counsel. [Former counsel] has appeared before me many times and I am family [*sic*] with the quality of his preparation and his attention to detail. I have no doubt that [former counsel] reviewed the allegations with the claimants and gave them every opportunity to confirm their completeness.”

[32] Similarly, another adverse credibility finding related to Mr. Anulur’s explanation for why he did not attempt to obtain letters from his contacts at the Nigerian immigration department who had shown him the letters from the Turkish embassy. Mr. Anulur testified that it did not occur to him that he should try to do so. The RPD gave several reasons for not finding this explanation credible, including the following: “Lastly, the claimants were at all material times represented by experienced counsel who would have advised them of the importance of making reasonable efforts to obtain supporting documentation. This can be observed by the fact that the claimants did in fact produce documentation in support of other aspects of their claims.”

[33] In their further memorandum of argument, the applicants framed their objection to the RPD’s reasoning in these respects as a breach of procedural fairness (not knowing that the RPD would rely on its personal opinion about the experience and expertise of their former counsel to their detriment, they did not know the case they had to meet). While this argument was not pressed at the hearing of this application, they maintain their position that it was not appropriate for the RPD to effectively conscript their former counsel as a witness against them.

[34] Separate and apart from any questions of procedural fairness, I share the applicants' concerns about the propriety of the RPD's reliance on the experience and expertise of their former counsel. It is true that this Court has held that the fact a party is represented by counsel may be a relevant consideration in assessing that party's understanding of the process: see *Ikeji v Canada (Citizenship and Immigration)*, 2016 FC 1422 at para 47; *Hassan v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 459 at para 24; and *Zerihaymanot v Canada (Citizenship and Immigration)*, 2022 FC 610 at paras 19-20. Nevertheless, a decision maker must be scrupulous about not trenching on privileged matters. In the present case, the RPD made specific findings of fact about steps the applicants' former counsel took in preparing the applicants' case. It is just as inappropriate to make such findings on the basis of inferences from the experience and expertise of counsel as it would be for the RPD to ask the applicants (or their counsel) about these things directly. Absent a waiver of privilege, how the applicants prepared their case with the assistance of their lawyer is off limits to the RPD. The member should not have considered – let alone relied on – this factor in making an adverse finding concerning the applicants' credibility.

[35] Another way in which the applicants' former counsel found himself at odds with his clients' interests arose from a discrepancy in the evidence about when Turkish police had visited the home of Ms. Anulur's parents.

[36] By way of further background, the applicants all relied on Mr. Anulur's BOC narrative, which was completed on April 24, 2019. The narrative stated that "in approximately August 2018, my wife's parents' home was raided by the police." However, on March 10, 2020,

the applicants submitted an undated letter from Ms. Anulur's mother stating that this incident occurred on October 15, 2017.

[37] When asked about this discrepancy at the hearing, Mr. Anulur said that after seeing the letter from his mother-in-law, he realized he had made a mistake about the date of the police raid in his narrative and "corrected" the mistake. When asked how this was done, Mr. Anulur stated that he and his wife contacted their lawyer. The RPD member then turned to the applicants' counsel and asked if he "can help me out?" The applicants' counsel requested an opportunity to confer privately with his clients.

[38] When the hearing resumed a few minutes later, the member said the following to the applicants' counsel: "So obviously I don't want to, I don't want to engage in any sort of discussion that would reveal privileged discussions, so I'll simply repeat my yes or no question earlier, is you know are you able to help me out here? Yes or no?" The applicants' counsel then suggested that the member explore the issue further with the applicants themselves. In response to a question from the member, Mr. Anulur clarified that they had spoken to their counsel's assistant on the telephone about the mistake and she said she would "tell the lawyer." The applicants' counsel then stated: "So, Mr. Member, I'll just tell you that I asked Nasibeh, who is my assistant, was my assistant a while ago, stopped working with me for about a year and has actually started working with me again, and she has no recollection of this. That's all I can say." The applicants' counsel then continued: "So I mean it's possible; certainly people forget things. But we have no recollection or no record of it."

[39] The RPD dealt with this issue in the decision as follows:

The claimants submitted a letter which is allegedly from the [Ms. Anulur's] mother, stating that the raid took place October 15, 2017 – almost a full year prior [to when Mr. Anulur said it happened in his narrative]. The claimants did not provide any explanation why their evidence differed from that of [Ms. Anulur's] mother, but rather, they alleged that they tried to correct their own evidence to accord with that letter.

[Former counsel] did his due diligence, and his office had no record of any conversations regarding this information, but even if he did, the claimants still had not explained why their evidence was different than the mother's. They cannot simply “correct” their own evidence to accord with the letter when a material inconsistency arises – they must provide an explanation which is credible on a balance of probabilities to reasonably explain the inconsistency. They failed to do so.

As such, I draw a further negative inference against the overall credibility of the claimants.

[40] In my view, by approaching this issue as it did, the RPD put former counsel in an untenable position. Once again, the RPD conscripted the applicants' counsel as a witness against his clients, only this time it did so directly. For obvious reasons, the applicants were in no position to challenge their counsel's lack of recollection of being informed of the mistake (nor, for that matter, his assistant's). Moreover, despite the member stating that he was not asking counsel to reveal privileged discussions, that is exactly what the member's questions invited.

[41] In fairness, the stage for the RPD's questions was set by Mr. Anulur's testimony implicating his former counsel's office in the unfolding of events. Nevertheless, the member should not have put the applicants' counsel on the spot in the way that he did. The member should have proceeded on the basis that, if there was anything counsel was required to disclose under the Rules of Professional Conduct (for example, under Rule 5.1-1, which provides that

when acting as an advocate, “a lawyer shall represent the client resolutely and honourably within the limits of the law while treating the tribunal with candour, fairness, courtesy, and respect”), he would disclose it without having to be asked. Whether the applicants’ former counsel failed to act with loyalty to his clients or went farther than he should have in responding to the RPD’s questions is not for me to judge in the absence of an allegation of ineffective assistance.

[42] All this being said, I reiterate that the applicants do not contend that these missteps by the RPD impugned either the reasonableness or the fairness of the decision. And as I have explained, none of the grounds on which they do rely have persuaded me that the decision is unreasonable.

VI. CONCLUSION

[43] For these reasons, the application for judicial review will be dismissed.

[44] Neither party proposed any questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

JUDGMENT IN IMM-621-22

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

DOCKET: IMM-621-22

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PLACE OF HEARING: TORONTO, ONTARIO

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