Federal Court Cour fédérale

Date: 20250718

Docket: IMM-14727-24

Citation: 2025 FC 1285

Ottawa, Ontario, July 18, 2025

PRESENT: Madam Justice Go

BETWEEN:

EBUBEKIR TOPBAS

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ebubekir Topbas [Applicant] is a citizen of Türkiye who has twice sought refugee protection in Canada. Both times, his claim was found ineligible to be referred to the Refugee Protection Division of the Immigration and Refugee Board of Canada because of paragraph 101(1)(e) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] The Applicant submitted a Pre-Removal Risk Assessment [PRRA] application sometime in early 2024, alleging persecution based on his ethnic identity as a person of Kurdish descent and his political expression because of his membership in the People's Democratic Party ("Halklarin Demokratik Partisi") [HDP].

[3] A Senior Immigration Officer [Officer] refused the Applicant's PRRA application, finding insufficient evidence to indicate that his past political activity in Türkiye or his Kurdish ethnicity could subject him to a forward-looking risk pursuant to section 96 or 97 of the *IRPA* [Decision].

[4] The Applicant seeks a judicial review of the Decision. For the reasons set out below, I grant the application.

II. Issues and Standard of Review

[5] The Applicant argues the Decision was unreasonable because:

a. the Officer disregarded overwhelming country condition evidence and selectively read the evidence;
b. the Officer failed to assess the cumulative nature of the Applicant's profile; and
c. the Officer failed to give appropriate weight to the Applicant's uncontradicted testimony.

[6] The presumptive standard of review of a decision's merits is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 25. The parties agree that the reasonableness standard should apply in this case. The Court should assess whether the decision bears the requisite hallmarks of justification, transparency and

intelligibility: *Vavilov* at para 99. The Applicant bears the onus of demonstrating that the decision was unreasonable: *Vavilov* at para 100.

III. Analysis

[7] While I disagree with some of the Applicant's arguments, I agree with him that the Officer made reviewable errors with respect to all three issues the Applicant identifies.

[8] The Applicant submitted a narrative along with his PRRA application in which he set out his experiences of discrimination due to his Kurdish ethnicity including being prevented from registering for high school, discriminatory treatment during his mandatory military service and being slapped by a superior for speaking Kurdish on the phone. The Applicant also described being attacked by locals in his hometown in December 2019. When he reported to the police saying he was attacked because of his Kurdish ethnicity, the police refused to help, noting that all citizens have the right to "fight terrorists."

[9] The Applicant also stated in his narrative that he formally joined the HDP in October 2020. Additionally, the Applicant stated he was detained by police at his home and questioned about his HDP membership in December 2020. The Applicant stated he was beaten for supporting a "terrorist organization" and released the next day. The Applicant claimed that he continued to attend HDP events as the COVID-19 restrictions relaxed. However, in July 2021, he was stopped by police on his way to work. While checking his phone, the police discovered a Kurdish song about Newroz that the Applicant previously had shared on Facebook. He was taken to a police station and told to erase any Kurdish songs from his phone. The Applicant did so but

alleged that he was detained for over 24 hours. After being released, the Applicant began focusing on how to leave Türkiye.

[10] In terms of corroborative evidence, the Applicant provided a letter from the Peoples' Equality and Democratic Party on behalf of the HDP, a letter from his father confirming discrimination towards Kurds and the murder of a Kurdish family in his hometown, a copy of his HDP membership form, a receipt for the membership fee, and a picture of him attending a Newroz celebration in Toronto.

[11] In the Decision, the Officer acknowledged the Applicant's fear of being arbitrarily detained in Türkiye if he continues supporting the HDP or for his Kurdish ethnicity, as well as his inability to complete high school and the assignment of manual labour to Kurds in the military. Regarding the December 2019 attack, the Officer noted a "scarcity of details regarding the nature of the complaint" the Applicant made to the police following the attack and observed that it was difficult to understand what action the police could have pursued if the perpetrators were not identified.

[12] Turning to the HDP, the Officer considered the HDP membership form but found a scarcity of information in the Applicant's narrative or supporting documentation to elaborate on the extent of his involvement with the HDP to ground a forward-looking risk assessment.

[13] Noting a scarcity of documentary evidence from the Applicant, the Officer consulted documentary sources, including two UK Country Policy and Information Notes [UK Reports], as

well as a US State Department publication. The Officer found that these sources disclosed disproportionate targeting of Kurdish communities but noted that "any discrimination faced by Kurds does not, by its nature or repetition, even when taken cumulatively, amount to a real risk of persecution and/or serious harm." The Officer also found a scarcity of details regarding the murder of the Kurdish family in the Applicant's hometown and whether the same fate could befall the Applicant.

[14] Having reviewed the Officer's findings and the country condition evidence, I agree with the Applicant that the Officer quoted selectively from the country condition documents and ignored part of the UK Reports which states that individuals who have been vocally critical of the government's approach to Kurds or have otherwise come to the adverse attention of authorities may be at risk of arrest.

[15] As the Applicant points out, while the Officer relied on one statement from one of the UK Reports to reach their conclusion, the same UK report provides a non-exhaustive list of factors for considering whether membership in the HDP could result in a person facing persecution. The list includes, among other things, the level of the person's known or suspected involvement with a separatist organization, whether the person has ever been arrested or detained and in what circumstances, whether the circumstances of the person's arrest or detention indicate that the authorities viewed the person as a suspected separatist, the person's Kurdish ethnicity, and the person's perceived political activities abroad in connection with a separatist organization. I pause here to note that the objective evidence indicates that the government of Türkiye considers HDP a "separatist organization."

[16] In the case at hand, the Officer did not raise any credibility concerns about the Applicant's membership with HDP, the Applicant's work in the youth branches of the HDP, and his Kurdish ethnicity. However, the Decision failed to acknowledge that being Kurdish is in and of itself a factor that may heighten the Applicant's risk of arrest.

[17] In addition, the Decision made no mention of the Applicant's claim that the police came to his home on December 26, 2020, nor the Applicant's detention in July 2021. These factors, according to the UK Report, were relevant in determining the likelihood of persecution faced by the Applicant as a supporter of the HDP.

[18] By selectively relying on the country condition evidence, and by failing to consider additional factors that may be relevant to the Applicant's risk assessment, the Officer made an unreasonable decision by failing to take into account all the relevant evidence.

[19] I reject the Respondent's submission that the Applicant failed to meet his evidentiary burden to support the circumstances of his arrest, detention, and injuries: *Singh v Canada (Citizenship and Immigration)*, 2024 FC 202 at paras 24-27. I find nothing in the Decision to support the Respondent's submission that the Officer chose not to mention these allegations because they only selected and accepted parts of the Applicant's evidence most persuasive to support their findings while rejecting others. Other than making some general comments about "a scarcity of details," the Officer made no mention of the Applicant's allegations of arrest or detention or the Officer's assessment of these allegations for that matter.

[20] The last point is also tied to the third issue raised by the Applicant, namely the Officer's failure to weigh the Applicant's evidence. I acknowledge the Respondent's submission that the Applicant did not provide any testimony because no hearing was held, but the Applicant did provide a narrative, which the Officer appeared to rely on selectively in the Decision. For instance, the Officer referred to the December 2019 attack and the incidents of discriminatory treatment the Applicant received while serving in the military as described in the Applicant's narrative, without questioning the veracity of such evidence.

[21] I agree with the Respondent that in the absence of any negative credibility determination, the Officer could find the evidence tendered did not have sufficient probative value to establish the fact for which it has been tendered: *Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 [*Ferguson*] at paras 22-27. However, the issue here is that, besides noting the "scarcity of details," the Officer made no assessment of evidence the Applicant submitted to justify their conclusion.

[22] As Justice Zinn explained at para 26 of *Ferguson*, "[i]f the trier of fact finds that the evidence is credible, then an assessment must be made as to the weight that is to be given to it. It is not only evidence that has passed the test of reliability that may be assessed for weight. It is open to the trier of fact, in considering the evidence, to move immediately to an assessment of weight or probative value without considering whether it is credible."

[23] In the case at hand, the Officer made no findings of weight or probative value of any of the evidence, including the evidence included in the Applicant's narrative. While it was certainly

open to the Officer to assign little weight to the Applicant's narrative because it was unsworn, or because the Applicant did not provide the relevant corroborative evidence, this was not what happened. Rather, the Officer selectively quoted from the country condition evidence, and selectively quoted from the Applicant's narrative, when they found insufficient evidence to indicate the Applicant's Kurdish ethnicity or his past political activity could subject him to a forward-looking risk, without stating what, if any, weight the Officer assigned to the evidence that was left out in the Decision, and why it was considered insufficient.

[24] The Applicant cites *Velazquez Jimenez v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 1235 [*Velazquez Jimenez*] at para 18 to argue that in the absence of any clear credibility findings, the Officer was obliged to consider the Applicant's risk on the basis of the facts as presented. While the facts in *Velazquez Jimenez* differ from that of the case at hand, I agree that given the Officer did not raise any concerns or negative credibility findings about the Applicant's evidence, the Officer ought to have considered the Applicant's risk based on the totality of the facts as presented.

[25] Finally, as the Applicant submits and I agree, the Officer failed to consider his cumulative profile. The Officer considered his profile as someone of Kurdish ethnicity first and then separately as an HDP member, without considering how those two features might intersect cumulatively. The Applicant submits this was unreasonable because the Officer essentially "carved out two indelible parts" of his risk profile, citing *Thevarasa v Canada (Citizenship and Immigration)*, 2024 FC 1123 [*Thevarasa*] at para 21, referencing *Vilvarajah v Canada (Citizenship and Immigration)*, 2018 FC 349 [*Vilvarajah*] at para 21. I agree.

[26] The Court in *Thevarasa* found it unreasonable for a PRRA officer to treat each aspect of the applicant's profile in complete isolation without remembering the whole of the applicant's profile: *Thevarasa* at para 21. While the facts at hand are different, the Officer in this case committed a similar error. Further, as in *Thevarasa*, the error in this case was compounded by the Officer ignoring the country condition evidence showing each aspect of the Applicant's profile contributed to his cumulative profile and hence to the risks the Applicant would face in Türkiye.

[27] I do not find persuasive the Respondent's argument that since the Applicant made no submissions on his cumulative profile as part of his PRRA application, and filed no evidence about his cumulative profile, the Officer cannot be faulted for not considering this as part of the forward-looking assessment: *Pascal v Canada (Citizenship and Immigration)*, 2020 FC 752 [*Pascal*] at para 26.

[28] At the hearing, the Respondent additionally submitted that the Officer did consider the Applicant's cumulative profile by pointing to one sentence in the Decision where the Officer referred to both the Applicant's ethnicity and political activity to suggest that they considered his cumulative profile. Also, the Respondent submitted that by considering the Applicant's forward-looking risk, the Officer therefore considered the Applicant's cumulative profile.

[29] I find the Respondent's additional arguments have no merits. First, in the sentence relied on by the Respondent, the Officer referred to the Applicant's "past political activity in Türkiye or his Kurdish ethnicity." The use of the proposition "or" indicates that the Officer was looking at

the Applicant's profile as a Kurd and as a member of HDP separately, not cumulatively. Second, the essence of any PRRA decision is to consider a claimant's forward-looking risk. Restating the PRRA test does not address the issue at hand, namely, whether the Officer considered the Applicant's profile, cumulative or otherwise, when considering the Applicant's forward-looking risk.

[30] Having said that, I also disagree with the Applicant's submission with respect to *Pascal.* At the hearing before me, the Applicant argued the Court in *Pascal* rejected the applicant's submission because the Court found no difference between the two profiles relied on by the applicant. The Applicant also argued *Pascal* does not support the Respondent's position that the Applicant has an obligation to raise cumulative profile in order for the Officer to consider it. With respect, the Applicant's submission was not consistent with the Court's decision in *Pascal*: para 26.

[31] Nevertheless, I find *Pascal* distinguishable because my reading of the record suggests that the Applicant did make submission on his cumulative profile, unlike the applicant in *Pascal*.

[32] In his narrative, the Applicant, who was self-represented in his PRRA application, referred to his fear of persecution due to his "Kurdish ethnicity and political expression," and that being "a Kurd and a supporter of the HDP" made it difficult for him to live in Türkiye. While the Applicant did not use the word "cumulative profile," his submissions and information speak to the risks he faces due to the dual aspects of his profile as a Kurd ***and*** his political expression as perceived by the agent of persecution. For instance, the Applicant described his

sharing of a Kurdish song about Newroz led to him being taken to the police station as that song "belongs to terrorists," thus linking his ethnicity identity with imputed political expression. As such, the case at hand is distinguishable from that of *Pascal* where the applicant failed to provide information about the increased risk, if any, arising from the different aspects of his profile.

[33] For all the reasons noted above, I find the Decision unreasonable.

IV. Conclusion

[34] The application for judicial review is granted.

[35] There is no question for certification.

JUDGMENT in IMM-14727-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and the matter sent back for redetermination by a different officer.
2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-14727-24
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