

Federal Court



Cour fédérale

Date: 20251117

Docket: IMM-9325-24

Citation: 2025 FC 1829

Ottawa, Ontario, November 17, 2025

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

MUHAMMED ISLAM DOGAN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of a decision by the Refugee Protection Division [RPD] of the Immigration and Refugee Board dated March 27, 2024 [Decision] which refused the Applicant's claim for refugee protection. The Applicant was found not credible such that the RPD held the Applicant had not established he was either a Convention refugee or a person in

need of protection pursuant to ss. 96 and 97(1) of the *Immigration and Refugee Protection Act* [IRPA].

[2] Briefly, the Applicant is a Kurdish national and citizen of Türkiye who alleges fear of persecution in Türkiye because of his Kurdish ethnicity, and his political affiliation and alleged activities with an opposition party. The RPD found he had not established his alleged political profile and the alleged police actions against him, and country condition evidence did not elevate his claim to the thresholds required by ss. 96 or 97 of *IRPA*. I am not persuaded the Applicant's submissions to the contrary have merit.

[3] He also alleges his former counsel was incompetent. In my respectful view, there is no merit in his arguments on this point either. Moreover, in my view, this allegation also fails because he delayed fourteen months before filing a complaint with the Law Society of Ontario which he could (and should) have done far sooner.

[4] This application will be dismissed.

II. Facts

A. *The Applicant's ethnicity and political activity*

[5] The Applicant is a Kurdish citizen of Türkiye and supports the opposition Halkların Demokratik Partisi [HDP]. The Applicant says he experienced discrimination, oppression, and persecution because of his ethnicity. Throughout his schooling, the Applicant claims to have

been subject to the “constant assimilation policy of the Turkish state” which is, in effect, the “discrimination and oppression of the Kurds.”

[6] The Applicant claims to have been detained and mistreated because of his Kurdish identity and his political affiliation. The Applicant alleges he was arrested by the police in February 2018 and August 2021, and that he received a death threat from the police.

[7] The Applicant applied for a student visa in Canada on July 12, 2021, but was rejected on August 31, 2021. In January 2022, the Applicant fled Türkiye to Mexico, then to the USA, and then to Canada where he submitted his claim for refugee protection in June 2022. He disclosed the rejection of his study permit application as recorded in the port of entry [POE] notes. However, he failed to disclose his prior visa rejection in his Schedule A to his Basis of Claim [BOC]. His Schedule A and other forms were completed by an interpreter he selected and not by his former counsel. Former counsel did assist him with his BOC. The omission of his earlier rejection resulted in the Minister drawing the omission to the attention of the RPD, which notified the Applicant, who then amended his BOC with counsel’s assistance.

III. Decision under review

[8] The Applicant made his refugee claim under ss. 96 and 97(1) of *IRPA* based on his Kurdish ethnicity and his alleged role as a supporter of an opposition party, the HDP. The RPD found the Applicant not credible. The RPD refused the Applicant’s claim for refugee protection finding the Applicant had not established on a balance of probabilities (the onus was on him) that

he would personally be subject to a danger of torture, risk to life, or a risk of cruel and unusual treatment or punishment should he return to Türkiye.

IV. The Applicant's lack of credibility

[9] The determinative issue before the RPD was the Applicant's credibility. The RPD identified multiple inconsistencies in his testimony and found him not credible:

[7] When a claimant swears that certain facts are true, there is a presumption that they are true, unless there is valid reason for doubt. In this case, the panel identified inconsistencies, that were not reasonably explained, that went to the heart of his claim that he fears the authorities because of two past arrests. In addition, he testified that he attended HDP events, yet his testimony about the events he participated in as well as his party knowledge lacked expected details. When confronted, he frequently repeated the allegations in his BOC instead of directly addressing the issue at hand. Specific concerns are discussed below.

[10] The Applicant's oral testimony before the RPD on his fear of the police, his involvement with the HDP, and the events which he alleged led to his leaving Türkiye were not consistent with his BOC. His testimony in material respects did not match up with what was written in his BOC, even as amended although the Applicant confirmed the BOC was true and correct. He was represented by counsel at the hearing when this testimony was given, and had been prepared for the hearing.

A. *The Applicant's fear of the police*

[11] The Applicant declared in his BOC he fled Türkiye because his political activity led to his arrest in August 2021 and a death threat by police. The RPD asked the Applicant about his

fear of returning to Türkiye three times. Each time, the Applicant cited only his Kurdish ethnicity and made no mention of his alleged arrests or persecution on the basis of his alleged political opposition:

[13] The panel accepts the claimant's testimony and finds the claimant consistently said that he fears harsh treatment and discrimination because of his Kurdish identity. However, at this point the panel had asked three times, and the claimant had failed to testify consistently with his Basis of Claim that his opposition political activity led to an arrest by the police after which his life was threatened.

[12] The RPD asked a fourth time about his alleged fear of police as written in his BOC. The Applicant only then referred to arrests and the death threat in his BOC. When asked why he did not refer to these when first asked, the Applicant testified he had "other things he felt he had to say." The RPD did not accept this explanation and drew negative inferences:

[15] The panel rejects this explanation. The claimant had alleged that he was arrested for the first time in February 2018 in a raid at his home. He alleged that he was arrested for supporting the HDP and was beaten for hours before being released without charge. He also alleged that he was again arrested in August 2021 near his home, was told he was a terrorist sympathizer, was beaten and held for three days. He alleged he was told that "from now on, we are going to be tracking your every move...if you make one wrong move, I will put a nice little bullet through that head of yours." The claimant alleged that he took this threat seriously and as a result that he stopped going to his job and avoided leaving his home. If all of these allegations are true, the panel would expect him to testify he fled Türkiye because of a death threat following two violent arrests. The panel would not expect him to find it more important, three times, to tell the panel he feared return because of his Kurdish ethnicity.

[16] The panel draws negative inferences on both arrests and the death threat from the police officer. The claimant failed to reasonably explain why, three times, he failed to testify to his allegation that he fears police because of two arrests and a death threat. He therefore failed to establish the precipitating events, his fear of the police. He also failed to establish his alleged HDP

political activity, since he also failed to mention it three times. The panel draws a negative inference on the claimant's credibility.

[13] The RPD also found the Applicant had not disclosed his February 2018 arrest in a previous Canada student visa application from July 2021. The RPD drew a negative inference and concluded, on a balance of probabilities, the alleged February 2018 arrest set out in his BOC did not occur:

[17] The claimant alleged in his BOC narrative that he was arrested for his HDP activities in February 2018. But in his Canada student visa application signed in July 2021, he was asked if he had ever been arrested and he answered no. At the hearing the panel asked why he had not reported the February 2018 arrest in his student visa application. The claimant responded that he could not obtain a record of the arrest from the police. This is not a reasonable explanation: the form did not tell applicants to supply corroborating evidence of any arrests. The panel draws a negative inference on this arrest and on the credibility of the claimant's testimony. On a balance of probabilities this arrest did not occur.

B. *The Applicant's HDP activity*

[14] The Applicant described himself as a "supporter" and "election observer" who handed out leaflets, hung flags during campaigns, and acted as a polling officer in 2015. However, the RPD found the Applicant's testimony in respect of his HDP activities was vague and unsupported by documentary evidence.

[15] The Applicant reiterated the same details when questioned. The RPD was not satisfied with the Applicant's refusal to provide more detail and drew a negative inference as to his involvement with the HDP:

[20] Given that the claimant alleges he participated in the significant role of HDP polling officer as early as 2015, again working as an HDP election observer in subsequent years, the panel would expect that he would be well known to the party through his participation in events that the panel would expect him to recall in some amount of detail. The claimant failed to provide specific evidence about the kinds of events these were: he says they were protests, but it is unclear what they were about, where they were, and the other sorts of details people are able to provide when they were actually there. The panel also finds the claimant did not provide expected details about the nature of the work of caring for women and children participating at a protest. The panel finds, based on his lack of knowledge about HDP events he alleges he attended and services he alleges he performed at these events, on a balance of probabilities, he did not attend HDP events. The panel also draws a negative inference on the claimant's allegation that he worked for the HDP at elections. On a balance of probabilities, the claimant was not involved with the party.

[16] The RPD concluded the Applicant was not a credible or trustworthy witness:

[21] The panel has determined that on a balance of probabilities the first arrest did not occur, and has made negative inferences with regard to the precipitating events, including the second arrest and the death threat. Now the panel finds that on a balance of probabilities, the claimant was not involved with the HDP. These determinations go to the heart of the claim. The panel determines that the claimant is not a credible or trustworthy witness.

[17] Considering the negative credibility findings and lack of reference to the HDP, the RPD assigned little probative weight to a photograph tendered by the Applicant of him as a polling officer in 2015 with a blurry badge.

C. *The Applicant's delay in leaving Türkiye, his alleged ease of exit, and the Applicant's father's letter*

[18] The RPD asked the Applicant to explain why he fled the country six months after his arrest on August 1, 2021. The Applicant explained, despite his intention to leave immediately, that he had no money. The RPD found this explanation inconsistent with his BOC where he cited concerns leaving his home because there were unmarked police cars. Further, the RPD accepted evidence the Applicant would have to interact with authorities to leave Türkiye. The RPD concluded the Applicant was not a person of interest (based on its previous findings) and did not establish his subjective fear.

[19] The RPD addressed the Applicant's father's letter but assigned it little weight considering it did not mention the alleged February 2018 arrest, the alleged death threat, or the Applicant's difficulty raising money to flee Türkiye.

D. *The Applicant's alleged prospective fear of the authorities*

[20] The RPD found the Applicant did not establish government authorities were targeting him, nor his alleged forward-facing fear.

E. *The Minister's disclosure and the Applicant's wife's letter*

[21] The RPD found the Applicant omitted the rejection of his Canadian student visa application. Neither the Applicant's BOC nor his narrative refer to this previous rejection, despite the Applicant signing Schedule A affirming he had never been refused status.

[22] In November 2023, the Applicant amended his narrative with counsel's assistance to explain this omission. He did so after the RPD gave him notice the Minister had brought this to its attention. The Applicant says he misunderstood and believed the question was about whether he had obtained a permit. Second, the Applicant claims he did not understand the question included student permits. When asked to explain this omission at the hearing, he stated he was in fear and under stress at the time. The RPD did not accept this explanation. The Applicant further testified he knew the Canadian Government already knew the answer to that question.

[23] The RPD did not accept this explanation and drew a negative inference with respect to the events precipitating his flight from Türkiye:

[38] The significance is this: the Minister provided documentary evidence that before the alleged arrest that precipitated the claimant's flight to Canada, he was trying to get to Canada on a student visa. He omitted to state in his BOC narrative that he had already applied for a student visa at the time of the precipitating events. He twice denied he had ever been rejected for a student visa. And in his Basis of Claim narrative, while represented by counsel, he does not make any allegations about making plans to travel to Canada on a student visa. The panel already has found that the claimant failed to establish that the arrest that allegedly occurred in this time period had happened at all. The panel finds the Minister's evidence buttresses this finding: on a balance of probabilities, the claimant was not arrested in August 2021. On a balance of probabilities, the claimant was never arrested.

[24] The RPD addressed the Applicant's wife's letter and assigned it little weight as it did not mention the Applicant planned to leave her and her children.

[25] The RPD held the Applicant had not established fear on the basis of his political opinion:

[40] Due to the accumulation of credibility concerns that rebut the presumption of truthfulness, and the lack of independent evidence

to support his allegations, the panel finds the claimant failed to establish his HDP involvement, his arrests, the death threat from the police. He also failed to establish his allegation that the police were monitoring him at the time of his flight. He did not establish that the police have any interest in him at all. He failed to establish his prospective fear on the basis of his real or imputed political opinion.

F. *Risk to the Applicant on his Kurdish identity*

[26] The RPD then assessed his risk on return on the sole basis of his Kurdish ethnicity, that is, without reference to his alleged political profile which the RPD had rejected. The RPD considered the following issues facing those with Kurdish ethnicity returning to Türkiye. In doing so, the RPD references Canada's National Documentation Package [NDP] which contains over 1,200 pages of information on country conditions in Türkiye.

(1) Restrictions on language

[27] The RPD accepted Turkish is the sole official language, and its necessity for individuals to pursue educational and economic opportunities. However, the RPD found Kurdish languages are not banned and reasoned there are several other regions where minority languages are not official languages and where they must learn the official language for employment. The RPD concluded Kurdish people do not face persecution because of the language restrictions in Türkiye.

(2) Cultural restrictions

[28] The RPD noted Türkiye's constitution prohibits discrimination but recognized there is inconsistent enforcement of these provisions. The RPD was also satisfied Kurdish people are not permitted to fully exercise their linguistic, religious, and cultural rights. However, the RPD concluded Kurdish people are viewed as Turkish people and are entitled to the same fundamental rights.

(3) Government access

[29] The RPD concluded there are no laws to prevent Kurdish people from public or private employment, participation in public life, or access to health or education services. However, the practical reality indicates Kurdish people in western Türkiye have greater access to these services than those in the southeast where there is conflict. Notably, the Applicant and his family live in western Türkiye, not the southeast where the situation differs.

[30] The RPD accepted this evidence and found access to government services varies on one's geographic location. However, the RPD concluded any discrimination in respect of access to these services is not persecutory as there is no persuasive evidence harm is inflicted in a systemic manner or the discrimination impacts Kurdish people's basic human rights.

(4) Economic and social discrimination

[31] The RPD concluded Kurdish people are discriminated in economic life, but found this discrimination did not rise to the level of persecution because Kurdish people may participate in public life and may obtain both private and public employment.

[32] The RPD held the objective country condition evidence from the NDP on discrimination based on the Applicant's Kurdish identity does not rise to the required serious level of persecution:

[63] The panel finds the objective evidence establishes that Kurds face discrimination, particularly in economic life. But for discrimination to cumulatively rise to the level of persecution, the mistreatment suffered or anticipated must be serious. It must threaten an individual's basic human rights in a fundamental way, and the infliction of harm must occur with repetition or persistence, or in a systematic way. The panel finds the claimant has failed to establish that in his case, the harm feared cumulatively rises to the level of persecution on a balance of probabilities.

[64] A claimant need not demonstrate past persecution to ground a successful claim under section 96, because the test is forward-looking. But it is not a crime for Turks to seek asylum elsewhere. There is no persuasive evidence that there is stigma attached to former asylum seekers upon return. Türkiye's sophisticated information databases mean failed asylum seekers are likely to come to the attention of the government if they have a criminal record or are a member of a group of particular interest including the Gulen movement, Kurdish or opposition political activist, or human rights activist or a draft evader or deserter. The claimant provided documentary evidence at Exhibit 5 that he served his military service time. The claimant failed to establish that he is a Kurdish political activist or a human rights activist. He did not allege any involvement in the Gulen movement.

[65] I find that the claimant has failed to establish that his forward-looking risk of persecution on the basis of his Kurdish ethnicity alone is objectively well-founded.

[33] The RPD rejected the Applicant's claim, drawing the following overall conclusion on credibility:

[66] The panel finds the claimant did not establish political involvement that would present a serious possibility of persecution and/or false prosecution or, on a balance of probabilities, a risk to life, of cruel and unusual treatment or punishment, or a danger of torture upon his return. And I find that he has not established that his fear of persecution on the basis of his Kurdish ethnicity alone is objectively well-founded so as to give rise to a serious possibility of persecution within the meaning of s. 96 or, on a balance of probabilities, to a danger of torture, a risk to his life or a risk of cruel and unusual treatment or punishment within the meaning of s. 97(1).

...

[68] Based on the above analysis, the panel finds that the claimant has not established that he faces a serious possibility of persecution for a Convention ground upon return. The panel likewise finds that the claimant has not established, on a balance of probabilities, that he faces a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment, upon return.

[69] The panel rejects the claim pursuant to both sections 96 and 97(1) of the *IRPA*.

V. Issues

[34] The Applicant raises the following issues:

1. Were the Applicant's former counsel incompetent in their representation of the Applicant and there by breaching his right to procedural fairness?
2. Did the RPD err by making a negative credibility finding and is the Decision therefore unreasonable?

VI. Standard of review

[35] The parties submit, and I agree the standard of review for the RPD's Decision is reasonableness. On the issue of procedural fairness, the Applicant submits the standard is correctness. The Respondent submits questions of procedural fairness do not lend themselves to a standard of review analysis; rather, the reviewing Court must be satisfied the process was fair having regard to the circumstances. For procedural fairness, the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond.

A. *Reasonableness*

[36] With regard to reasonableness, in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, issued contemporaneously with the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [Vavilov], the majority per Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

[31] 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” (Vavilov, at para. 85). Accordingly, when conducting reasonableness review “[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with ‘respectful attention’ and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion” (Vavilov, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand “the basis on which a decision was made” (Vavilov, at para. 97, citing *Newfoundland Nurses*).

[32] A reviewing court should consider whether the decision as a whole is reasonable: “what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual

context of the particular decision under review” (*Vavilov*, at para. 90). The reviewing court must ask “whether the decision 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 the decision” (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).

[33] Under reasonableness review, “[t]he burden is on the party challenging the decision to show that it is unreasonable” (*Vavilov*, at para. 100). The challenging party must satisfy the court “that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable” (*Vavilov*, at para. 100).

[Emphasis added]

[37] Per the Supreme Court of Canada’s more recent judgment in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21, the purpose of reasonableness review is to uphold the rule of law while according deference to administrative decision-makers:

[57] *Vavilov* explained that the purpose of reasonableness review is “to give effect to the legislature’s intent to leave certain decisions with an administrative body while fulfilling the constitutional role of judicial review to ensure that exercises of state power are subject to the rule of law” (para. 82). Reasonableness review starts from a posture of judicial restraint and “a respect for the distinct role of administrative decision makers” (para. 13), arising from the legislature’s institutional design choice to give administrative decision makers rather than courts the jurisdiction to decide certain issues (para. 24). Reasonableness review also serves to “maintain the rule of law” (para. 2) and “to safeguard the legality, rationality and fairness of the administrative process” (para. 13). Thus, the purpose of reasonableness review is to uphold “the rule of law, while according deference to the statutory delegate’s decision” (*Canada Post*, at para. 29).

[Emphasis added]

[38] *Vavilov* makes it abundantly clear the role of this Court is not to reweigh and reassess the evidence unless there are “exceptional circumstances.” The Supreme Court of Canada instructs:

[125] It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from “reweighing and reassessing the evidence considered by the decision maker”: *CHRC*, at para. 55; see also *Khosa*, at para. 64; *Dr. Q*, at paras. 41-42. Indeed, many of the same reasons that support an appellate court’s deferring to a lower court’s factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial review: see *Housen*, at paras. 15-18; *Dr. Q*, at para. 38; *Dunsmuir*, at para. 53.

[Emphasis added]

[39] The Federal Court of Appeal held in *Doyle v Canada (Attorney General)*, 2021 FCA 237 [*Doyle*] confirms the role of this Court is not to reweigh and reassess the evidence unless there is a fundamental error:

[3] In doing that, the Federal Court was quite right. Under this legislative scheme, the administrative decision-maker, here the Director, alone considers the evidence, decides on issues of admissibility and weight, assesses whether inferences should be drawn, and makes a decision. In conducting reasonableness review of the Director’s decision, the reviewing court, here the Federal Court, can interfere only where the Director has committed fundamental errors in fact-finding that undermine the acceptability of the decision. Reweighing and second-guessing the evidence is no part of its role. Sticking to its role, the Federal Court did not find any fundamental errors.

[4] On appeal, in essence, the appellant invites us in his written and oral submissions to reweigh and second-guess the evidence. We decline the invitation.

B. *Procedural fairness*

[40] The Respondent submits that although frequently referred to as a correctness standard, the Federal Court of Appeal has stated questions of procedural fairness are not decided according to any particular standard of review, particularly when bias is alleged. More importantly, the Federal Court of Appeal conclusively determines, and I agree, that on procedural fairness “the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond”: see *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 55-6 [per Rennie JA]:

[55] Attempting to shoehorn the question of procedural fairness into a standard of review analysis is also, at the end of the day, an unprofitable exercise. Procedural review and substantive review serve different objectives in administrative law. While there is overlap, the former focuses on the nature of the rights involved and the consequences for affected parties, while the latter focuses on the relationship between the court and the administrative decision maker. Further, certain procedural matters do not lend themselves to a standard of review analysis at all, such as when bias is alleged. As Suresh demonstrates, the distinction between substantive and procedural review and the ability of a court to tailor remedies appropriate to each is a useful tool in the judicial toolbox, and, in my view, there are no compelling reasons why it should be jettisoned.

[56] No matter how much deference is accorded administrative tribunals in the exercise of their discretion to make procedural choices, the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond. It would be problematic if an *a priori* decision as to whether the standard of review is correctness or reasonableness generated a different answer to what is a singular question that is fundamental to the concept of justice—was the party given a right to be heard and the opportunity to know the case against them? Procedural fairness is not sacrificed on the altar of deference.

[Emphasis added]

[41] I will also follow a more recent Federal Court of Appeal judgment relying on “the long line of jurisprudence,” both from the Supreme Court and the Federal Court of Appeal itself, that “the standard of review with respect to procedural fairness remains correctness”: see *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at paragraph 35 per de Montigny JA (as he then was). Notably, to the same effect is the judgment of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, per Binnie J at paragraph 43:

[43] Judicial intervention is also authorized where a federal board, commission or other tribunal

(b) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;

No standard of review is specified. On the other hand, *Dunsmuir* says that procedural issues (subject to competent legislative override) are to be determined by a court on the basis of a correctness standard of review. Relief in such cases is governed by common law principles, including the withholding of relief when the procedural error is purely technical and occasions no substantial wrong or miscarriage of justice (*Pal*, at para. 9). This is confirmed by s. 18.1(5). It may have been thought that the Federal Court, being a statutory court, required a specific grant of power to “make an order validating the decision” (s. 18.1(5)) where appropriate.

[42] In *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 50, the Supreme Court of Canada also establishes what is required on the correctness standard of review:

[50] When applying the correctness standard, a reviewing court will not show deference to the decision maker’s reasoning process; it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer. From the outset, the court must ask whether the tribunal’s decision was correct.

[43] In addition to the foregoing, jurisprudence also recognizes that a decision may breach natural justice or be procedurally unfair in extraordinary circumstances where the Applicant is the victim of incompetent representation by legal counsel. In such cases, the test set out in the jurisprudence places the onus on the Applicant to establish extraordinary circumstances, and to establish a reasonable probability the outcome would have been different but for the incompetence. See for example *Satkunanathan v Canada (Citizenship and Immigration)*, 2020 FC 470 at paragraph 33; *Nik v Canada (Citizenship and Immigration)*, 2022 FC 522 at paragraphs 22-24; *Ahuja v Canada (Citizenship and Immigration)*, 2025 FC 33 at paragraphs 16-18 and *Kandiah v Canada (Citizenship and Immigration)*, 2021 FC 1388 at paragraphs 47, 50, 56, 58.

VII. Relevant legislation

[44] Section 96 of *IRPA* defines a Convention refugee as:

Convention refugee

96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of

Définition de réfugié

96 A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n’a pas de

nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

[45] Section 97(1) of *IRPA* defines a person in need of protection:

Person in need of protection

97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or

Personne à protéger

97 (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont

from that country,

généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

VIII. Submissions of the parties

A. *There was no inadequate representation by former counsel*

(1) Test for incompetence of counsel

[46] The test for assessing allegations of incompetent representation was recently stated by Justice Gascon in *Sachdeva v Canada (Citizenship and Immigration)*, 2024 FC 1522 at paragraph 21 [*Sachdeva*]. To demonstrate incompetent representation, the party must:

(i) corroborate the allegation by giving notice to the former counsel and providing them with an opportunity to respond, (ii) establish that the former counsel's act or omission constituted incompetence without the benefit and wisdom of hindsight, and (iii) demonstrate that the outcome would have been different but for the incompetence (*Macias Vargas v Canada (Citizenship and Immigration)*, 2024 FC 736 at paras 15–17 [*Macias Vargas*]; *Abuzeid v Canada (Citizenship and Immigration)*, 2018 FC 34 at para 21; *Badihi v Canada (Citizenship and Immigration)*, 2017 FC 64 at para 17 [*Badihi*], citing *Galyas v Canada (Citizenship and Immigration)*, 2013 FC 250 at para 84).

[47] Notably, the burden of proof is “very high” and rests on the Applicant: *Sachdeva* at paragraphs 22-23. Evidence of incompetence must be “so clear and unequivocal and the circumstances so deplorable that the resulting injustice caused to the claimant is blatantly obvious” (*Blandon Quintero v Canada (Citizenship and Immigration)*, 2024 CF 966 (CanLII), 2024 FC 966 at para 12, citing *Mbaraga v Canada (Citizenship and Immigration)*, 2015 FC 580 at para 25): *Sachdeva* at paragraph 22. Incompetence of counsel will only be found to be a breach of procedural fairness in “extraordinary or exceptional circumstances”: *Sachdeva* at paragraph 49.

[48] There is also considerable jurisprudence in this Court requiring parties alleging professional incompetence by a lawyer or consultant to have initiated a complaint with the professional regulator, i.e., here the Law Society of Ontario: *Nashir v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 147 at paragraph 28; *Cyril v Canada (Citizenship and Immigration)*, 2015 FC 1106 at paragraph 18; *Molnar v Canada (Citizenship and Immigration)*, 2012 FC 530 at paragraph 60. This was not done in the case at bar.

[49] In my view, such complaints should also be filed within a reasonable time. That is not the case here. While counsel says the Applicant filed a complaint in June 2025, this was one year and two months after the negative RPD decision and, with respect, the delay is not justified given the Applicant had ample time to do so. The delay in this case was unreasonable.

[50] I am rejecting the allegation of incompetence based on the evidentiary record in this case, and in addition, because the Applicant unreasonably delayed filing his claim.

(2) Allegations of incompetence

[51] The Applicant submits his right to procedural fairness was breached by the alleged incompetence of his counsel. As I understand his arguments, they are that professional incompetence lies at the root of his problems with the RPD. This is a factually suffused issue in respect of which one must turn to the record.

[52] The Applicant alleges incompetence for three reasons.

[53] First, the Applicant alleges counsel did not assist him in preparing his documents for the RPD. In particular, the Applicant claims his translator prepared his original and amended BOC and narratives without the assistance of his counsel. However, the Applicant claims he was unaware of the existence of the BOC and was asked to confirm his signature when he saw it for the first time at the hearing.

[54] With respect, it seems to me this argument is not credible. The Applicant actually states in his Amended BOC that he “had my refugee forms completed with the assistance of a Turkish-English translator as I do not speak nor read any English.” Those documents included both the BOC and the defective Schedule A. The Applicant selected the translator who was not an employee of his former counsel. Indeed, Applicant’s counsel reports the Applicant introduced the translator to former counsel and not the other way around. The Applicant says he had a second interview in Mississauga “to get the refugee document,” which are not described by the Applicant, but he says were completed by the translator and not reviewed by his lawyers.

[55] Second, the Applicant alleges he neither met nor had a conversation with his counsel prior to his hearing date. The Applicant states he was unaware one would be attending the hearing and that another would remove themselves from the record until he received the Notice of Removal of Counsel of the Record. The Applicant further claims a third individual introduced himself as a lawyer and met with him twice: once on November 10, 2023, to amend his BOC and once 3 or 4 days before the hearing where he claims he was told that individual could not attend the hearing.

[56] The preponderance of evidence from those involved at the law firm contradicts the Applicant's arguments. All of the lawyers involved deny the Applicant's allegation he never met his lawyers before. Their evidence is that the Applicant personally attended at their office on multiple occasions, he met with two different lawyers, and he spent considerable time with his lawyer on a minimum of two occasions. In addition to these in person meetings, he had multiple meetings via telephone when he stated he was unable to accommodate in person meetings. During these telephone meetings, two different Turkish interpreters, including a Turkish-English bilingual interpreter who read his entire BOC and narrative to him in the Turkish language with counsel present. During the extended meetings conducted via telephone, the Applicant was repeatedly asked if he wished to make any changes, additions, or deletions to the narrative, or if he had any questions regarding the process.

[57] The lawyer who appeared with the Applicant at the hearing states they met with him at the office multiple times. They specifically state they met with him on March 1, 2024, in person for hearing preparation. Another lawyer corroborates this meeting at which they were also

present. Hearing counsel further states the Applicant knew they would be representing him at his hearing for “literally months” without objection. Hearing counsel also states they thoroughly reviewed his entire BOC narrative with the Applicant, who “did not indicate that he was unacquainted with his BOC, he did not point out any concern around his signature, nor did he indicate any omissions or inaccuracies in his BOC.”

[58] Third, the Applicant alleges the outcome of his hearing would have been different if counsel had reviewed and referred to his POE notes. The Applicant claims his translator provided his POE notes to counsel. The Applicant submits his counsel did not, but should have, reviewed these documents. In the alternative, if counsel were not provided with the POE notes, the Applicant submits they should have asked.

[59] Again, I do not accept the Applicant’s version of events. First, the translator denies he had the POE notes. Second, the translator denies he gave the POE notes to the law firm. Moreover, the translator says he did not see the Applicant giving his POE notes to the lawyers. Notably, the Applicant himself does not say he gave the POE notes to the law firm. All of this is corroborated by the fact the lawyers deny ever receiving the POE notes.

[60] There is, in a word, no evidence the lawyers were ever given the POE notes. This is fatal to the Applicant’s assertion that any of the lawyers should have compared them to the BOC or Schedule A prepared by the Applicant’s chosen translator.

[61] But for the Minister's intervention, the Applicant states his matter was no longer eligible to be designated as a "less complex case" and he had to proceed with a regular hearing. I do not see how anything the lawyers did made any difference. The but for test is not met. The fact is the Schedule A and the translator together "completed" (the Applicant's words) the BOC and the Schedule A which as we now know contained a misrepresentation. That is why the case was removed from the less complex stream. When his lawyers pressed him on why his Schedule A contained the misrepresentation when they met with him after the misrepresentation was discovered, their notes record the Applicant never answered their direct questions why the Applicant decided not to disclose his previous rejection.

[62] In effect he says he was instructed to make this falsehood, but never says by whom, not then and not now.

[63] The lawyers report:

Mr. Dogan stated during this meeting that he had been instructed to omit any mention of his student application in his BOC. I asked [a non-lawyer employee present] to inquire who instructed him and why. He declined to respond. He made noises instead, but no explanation. The question was repeated but again, he refused to respond, beyond making noises which sounded like murmuring, and he was very obviously nervous and reluctant to answer the question. Given the reality that Mr. Dogan's evidence is that he was the victim of human smugglers/traffickers in terms of which he paid a large sum of money to human smugglers to be able to come to Canada, I felt that he was nervous about talking about this in the event that these individuals found out. I let it go, and based his responses to the Minister's Allegations on what he stated as his explanations for his omission. The amended narrative was drafted based on Mr. Dogan's responses. After being interpreted by [the non-lawyer employee], the document was signed by Mr. Dogan. After reviewing the details, I instructed [the non-lawyer employee]

to walk Mr. Dogan over to [another lawyer] who was expecting Mr. Dogan to finalize his responses to minister's intervention.

[Emphasis added]

[64] A non-lawyer employee reports:

I am aware that when asked who advised him not to disclose the student permit application, Mr. Dogan refused to disclose, choosing only to make noises but not answer. These were sounds like hummmm but not actual words. I am aware that [a lawyer] expressed concern and she instructed me to escort Mr. Dogan to [another lawyer's] office, who was the lawyer who was representing him at his refugee hearing and who was waiting to meet with him. I accompanied him to [the lawyer's] office, which is just a few doors down from mine. On the way there we passed our receptionist office, and a couple other offices.

[Emphasis added]

[65] With respect, considering all of the above, it seems to me the error on the form was possibly deliberate. I find that the Applicant's decision to be untruthful on the Schedule A he signed with his interpreter, was his own. We do not know who "instructed" him to be untruthful, if indeed that is the case.

[66] The Respondent takes the position the allegation of incompetent counsel is without merit, saying the Applicant's dissatisfaction with his prior legal representation does not amount to a breach of procedural fairness. On the facts found above this is certainly the case and I agree.

[67] The Respondent further submits these accusations are unsupported by the evidence and have been disproven by former counsel. This is also the case, and again I agree.

[68] The Applicant's burden of proof is very high and the alleged incompetence must be "so clear and unequivocal" that the injustice to the Applicant is "blatantly obvious": *Sachdeva* at paragraph 22. I am not satisfied the Applicant has met this very high burden. Indeed, the Applicant's submission the outcome of his case would have been different is baseless as noted above because it is not supported by the evidence or the RPD's reasons.

[69] Moreover, while the RPD found an inconsistency between the Applicant's materials in respect of his omission of the previous refusal of his Canadian student visa application and drew a negative inference, this was only one of multiple negative inferences which form the basis of the RPD's negative credibility finding. I am not satisfied the outcome would have been different but for the alleged incompetence of counsel, which as noted was not established.

(3) There is no merit in the Applicant's new evidence motion

[70] One final point. The Applicant's current counsel sought and obtained legal aid billing information in June 2025. However, he did not share this information with counsel or the Court immediately, as he should have done. Instead, and inexplicably, counsel for the Applicant delayed four months and filed a last-minute motion to have it admitted as new evidence shortly before the hearing. I heard his new argument submissions at the hearing.

[71] I have concluded his motion must be dismissed. First, there is no acceptable explanation for the serious delay in bringing new evidence to the attention of counsel and Court until the last minute. It is simply inexplicable and with respect inexcusable conduct. In my view, the Respondent was entitled to proceed on the record the Applicant put before him and quite

properly did just that. The unreasonably delayed and last-minute effort by counsel deprived the Respondent of his right to cross-examination. It also denied the Respondent his right to file evidence in response. This, in my view, constituted substantial prejudice to the Respondent all of which could, and should have, been avoided by Applicant's counsel bringing the evidence to Respondent counsel's and the Court's attention immediately. He cannot argue this evidence is critical and important having himself treated it so casually if not neglectfully.

[72] In any event, it seems to me this new evidence would not affect my conclusion. As I understood it, the Applicant says this new evidence should be admitted for two reasons. First, his former lawyers should be faulted for not including time on their invoices for which they were in fact not able to bill to legal aid. Second, lawyers who take on work should not be expected to delegate work to others in their law firm. He says the absence of dockets on legal aid accounts is proof certain steps were not done that he claims should have been done.

[73] These submissions have no merit. There is no evidence to establish professional negligence in relation to these allegations. Nor am I able to see why fee-capped invoices to legal aid must show time that, while worked, is non-billable. Nor is there merit in the argument that lawyers who sign court documents must have done all related work themselves; delegation of work to others is commonplace in law firms, usually to professionals with lower rates. There may be other deficiencies in the proposed new evidence because there was no time for the Respondent to either submit contrary evidence or cross-examine. However, I am satisfied the proposed new evidence would not have affected the result, and more generally it does not pass muster.

B. *The RPD's Decision is not unreasonable*

(1) The RPD's negative credibility findings are not unreasonable

[74] The Applicant submits the RPD erred by focusing on a “microscopic element” of the Applicant’s testimony and the RPD’s credibility findings are unreasonable.

[75] First, the Applicant submits the negative credibility finding in respect of his failure to mention his arrests and death threat is unreasonable. The Applicant submits his reference to his Kurdish identity was a reasonable explanation as he alleges it was the cause of his arrests and death threat.

[76] Second, the Applicant submits he was “more than an ordinary supporter” of the HDP and the RPD did not properly consider a photograph before it. The Applicant claims the photograph shows the Applicant during the election where he was given a name tag with the HDP’s logo. The Applicant states this is sufficient to show his association with the HDP. The Applicant further submits he provided several photographs of his pro-Kurdish political activities at the Kurdish Information Centre of Toronto.

[77] Similarly, the Applicant submits the RPD unreasonably concluded he was not involved with the HDP because there were no reference letters outlining his involvement with the party. The Applicant submits this is unreasonable considering the NDP for Türkiye states the HDP does not provide letters to supporters.

[78] The Applicant also submits the RPD unreasonably drew a negative inference in respect of the inconsistencies between the Applicant's BOC and student visa application. The Applicant reiterates he did not "hide or omit" the refusal of his student visa application and has referred to this refusal in his POE notes. The Applicant also reiterates his lawyers overlooked this document when preparing his BOC and Schedule A. The Applicant submits this omission is the result of inadequate legal representation and should not support a negative credibility finding.

[79] The Applicant further states the POE notes were available to the RPD, but the RPD did not refer to them.

[80] The Applicant submits the RPD's conclusion related to his delay in leaving Türkiye was unreasonable. While the Applicant intended to leave immediately, he claims the delay was the result of finding a smuggler, gathering \$12,000 USD, and his fear of being monitored by police. The Applicant submits, considering the above, a delay of five to six months is not unreasonable.

[81] The Respondent submits the RPD reasonably determined the Applicant had not credibly established his arrests and death threat, or his political involvement with the HDP. These negative credibility findings are supported by the RPD's transparent and intelligible reasoning.

[82] With respect, credibility determinations lie within the heartland of the discretion of triers of fact. Credibility determinations may not be overturned unless they are perverse, capricious or made without regard to the evidence. In this respect I adopt the findings of my former colleague Justice Rochester (as she then was, now of the Federal Court of Appeal) in *Onwuasoanya v*

Canada (Citizenship and Immigration), 2022 FC 1765 at paragraph 10 regarding RPD credibility determinations after an oral hearing (as here). They should only be overturned “in the clearest of cases” which test is not met here:

[10] Credibility determinations are part of the fact-finding process, and are afforded significant deference upon review (*Fageir v Canada (Citizenship and Immigration)*, 2021 FC 966 at para 29 [*Fageir*]; *Tran v Canada (Citizenship and Immigration)*, 2021 FC 721 at para 35 [*Tran*]; *Azenabor v Canada (Citizenship and Immigration)*, 2020 FC 1160 at para 6). Such determinations by the RPD and the RAD demand a high level of judicial deference and should only be overturned “in the clearest of cases” (*Liang v Canada (Citizenship and Immigration)*, 2020 FC 720 at para 12). Credibility determinations have been described as lying within “the heartland of the discretion of triers of fact [...] and cannot be overturned unless they are perverse, capricious or made without regard to the evidence” (*Fageir* at para 29; *Tran* at para 35; *Edmond v Canada (Citizenship and Immigration)*, 2017 FC 644 at para 22, citing *Gong v Canada (Citizenship and Immigration)*, 2017 FC 165 at para 9).

[Emphasis added]

[83] In my view, and with respect, in this connection the Applicant is asking this Court to reweigh and reassess the evidence and second-guess the RPD on its “heartland” determination of the Applicant’s credibility. I see no exceptional circumstances no reason to depart from the general law that the RPD is entitled to respectful deference, particularly on credibility findings where it has the inestimable benefit of having seen and heard the live testimony of the Applicant.

[84] I follow Justice Rochester. And with respect I decline the invitation to reweigh and reassess and second-guess the RPD, per *Vavilov* and *Doyle*.

(2) The RPD's did not selectively read the NDP

[85] The Applicant submits the RPD acted unreasonably as the RPD engaged in a “selective and one-sided” reading of the evidence in the NDP. The Applicant cites several excerpts which refer to Kurdish people as “the most persecuted” in Türkiye who are facing discrimination in education, employment, freedom of expression, language, and cultural rights due only to their ethnicity. These materials also detail how Kurdish people are subject to human rights abuses and “vitriolic attacks.” The Applicant submits the RPD omitted articles which would otherwise support his fear of persecution based on his Kurdish ethnicity.

[86] The Applicant cites excerpts on the reliance of stereotypes and its correlation to police questioning, as well as evidence related to hiring. The Applicant also refers to evidence of the recent violence experienced by Kurdish people, including the death of a Kurdish individual singing a Kurdish song and widespread imprisonment for Kurdish supporters or sympathizers.

[87] The Applicant alleges the RPD's role was improperly “adversarial,” and his lifelong discrimination should be considered persecution.

[88] The Applicant further submits the RPD should have considered s. 97 of *IRPA* when assessing the Applicant's claim for refugee protection. On his return to Türkiye, the authorities will be made aware he has no legal entry into Canada and commenced a refugee claim referring to his experiences. He submits he will most likely be targeted because of this.

[89] The Respondent submits the Applicant's submissions to the RPD selectively reviewed the materials are without merit. It is once again an invitation to reweigh, reassess, and second guess the decision-maker which is impermissible. Again, I agree.

[90] In my view, the discussion and conclusions of the RPD, drawn from the voluminous (1,200 or so pages of) country condition evidence, are intelligible, transparent, and justified on the record. The RPD assessed several articles in respect of the restrictions on Kurdish people's language, culture, access to culture, and economic and public life.

[91] The RPD in my view reasonably concluded, while Kurdish people face discrimination, it did not rise to persecution. The RPD cited the UK Home Office Report which states "even when taken cumulatively, discrimination faced by Kurds does not in general, by its nature or repetition, amount to a real risk of persecution and/or serious harm."

[92] Notably also, the RPD is deemed to have considered all the evidence before it and is under no obligation to mention every disputed finding.

[93] This line of argument fails.

IX. Conclusion

[94] Therefore, this judicial review is dismissed.

X. Certified question

[95] Neither party posed a certified question, and I agree none arises.

XI. Costs

[96] Neither party requests costs, and none will be ordered.

JUDGMENT in IMM-9325-24

THIS COURT'S JUDGMENT is that:

1. The Applicant's motion to file new evidence is dismissed.
2. This application for judicial review is dismissed.
3. No question of general importance is certified.
4. There is no order as to costs.

"Henry S. Brown"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9325-24

STYLE OF CAUSE: MUHAMMED ISLAM DOGAN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 6, 2025

JUDGMENT AND REASONS: BROWN J.

DATED: NOVEMBER 17, 2025

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