Date: 20080617

Docket: IMM-4693-07

Citation: 2008 FC 749

Toronto, Ontario, June 17, 2008

PRESENT: The Honourable Maurice E. Lagacé

BETWEEN:

YUSUF KARAOGLAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] A Turkish citizen, the applicant fears persecution at the hands of Turkish nationalists and the police and security forces in Turkey as a result of his Kurdish ethnicity, political opinion and activities with two pro-Kurdish political parties in Turkey. The Refugee Protection Division (the Board) denied refugee protection to the applicant due to a finding of a lack of credibility in his account of persecution. The applicant seeks a judicial review of that decision pursuant to s. 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 (the Act) and requests that the matter be referred back to a differently constituted panel for redetermination.

I. The Facts

[2] In 1999, the applicant moved from the Kurdish city of Agri to take a position on a construction project in the western town of Balikesir. He alleges harassment by the police and Turkish nationalists during his stay there, including a brief detention after which he returned to Agri.

[3] In March 1999, the applicant participated in a *Newroz* or Kurdish New Year celebration. He claims that he was one of the peaceful demonstrators arrested at random and detained for two days, during which he was interrogated about the Kurdistan Worker's Party (PKK) and beaten.

[4] In November 1999, the applicant was called up for military service. He alleges that he was beaten several times and was generally maltreated by Turkish officers and soldiers. Following his discharge from the army, he returned to Agri and then took another position in Balikesir.

[5] In Balikesir, he regularly attended at the offices of HADEP, a pro-Kurdish political party regarded by the Turkish security forces as the political wing of the PKK. The HADEP offices were a place to socialize with other Kurds, and to get assistance with various problems the local Kurds were facing. The applicant participated in several HADEP protests, made small financial contributions and supported the party during national elections in 1999 and 2002. He also supported DEHAP, the successor party to HADEP, which was shut down by the Turkish Constitutional Court on March 13, 2003.

[6] In June 2005, the applicant was taken to a police station, and questioned about his political sympathies and links to the PKK. He alleges that he was beaten when the police misinterpreted his lack of information as a deliberate refusal to cooperate. He also asserts that the police told him to stay away from the DEHAP offices.

[7] The applicant claims that he was next arrested in mid-August 2005, after police searched his home. He was again detained overnight and beaten. After arranging for a visa through a smuggler, he fled Turkey and applied for refugee status in Canada in October 2005. That application was dismissed by the Board on October 19, 2007.

II. The Impugned Decision

[8] The Board found the applicant's claim not to be credible based on his failure to detail some of his allegations during his port of entry interview, including the dates of his alleged arrests and detentions by Turkish police. The board found that the details now presented were embellishments which damaged the credibility of his story. The Board also found the applicant's explanation for his delay in leaving Turkey to be unreasonable and inconsistent with a subjective fear of persecution in Turkey.

[9] Turning to the documentary evidence, the Board found that it was plausible that the applicant was briefly detained by Turkish police as part of an initiative to preserve public order, but that he would not have been specifically targeted for his ethnicity or political views. The Board

found that if such detentions had occurred, they did not constitute serious harm amounting to persecution.

III. Issues

[10] The applicant submits a list of seven errors allegedly made by the Board in its decision. These errors can be restated as the follows:

1. Did the Board err with its findings on credibility?
2. Did the Board err in failing to assess the risk to the applicant from his connection with the DTP political party?
3. Did the RPD Board err in his treatment of sections 96 and 97 of the Act?

IV. The Standard of Review

[11] The standard of review applicable to a finding of credibility or fact on the part of a Board is one of reasonableness. This is a deferential standard which recognizes that certain questions before administrative tribunals do not lend themselves to one specific, particular result but instead give rise to a number of possible and reasonable conclusions his is a deferential standard which recognizes that certain questions before administrative tribunals do not lend themselves to one specific, particular result but instead give rise to a number of possible and reasonable conclusions (*Dunsmuir*

v. New Brunswick, 2008 SCC 9, [2008] S.C.J. No. 9, at paragraph 47). Where the decision at issue falls within that spectrum, the Court should not interfere.

[12] On a question of law, however, the review should conform to a correctness standard.

V. Analysis

A. *Credibility Findings*

[13] The applicant asserts that he provided reasonable explanations for the member's concern about omissions of details from his Port of Entry (POE) and Personal Information Form (PIF) declarations. He also claims that the Board erred in expecting that a claimant will volunteer all information relevant to his claim, including that which is not persecutory in itself. He further contests specific points of the member's decision and claims that the member was overzealous in trying to find faults.

[14] But the applicant was specifically asked for the details of his refugee claim by the immigration officer at entry and omitted then allegations of a serious nature going to the heart of his claim that were considered by the Board in its negative credibility finding. Decisions of this nature are at the heart of the discretion of the Board and the finding was, unfortunately for the applicant, open to the Board to make and should not be overturned unless there is no ground for the decision, which is not the case here.

[15] Amongst details of the refugee claim not included in the POE but elaborated later in the process, the Court notes: the allegation that the applicant was allegedly blindfolded by police in mid-August 2005, the dates of his detentions, his problems with Turkish nationalists, and his maltreatment during his army service. He also failed to mention, until being questioned by his counsel about his testimony before the Board, the difficulties he allegedly faced in getting his passport and leaving Turkey.

[16] The Board found that the elaboration of the applicant's claim at the various stages of the process of detailing his refugee claim were attempts to embellish his claim and therefore undermined his credibility. The applicant cites jurisprudence of this Court to establish that the omission of minor or elaborative details from the PIF does not allow the RPD member to draw negative inferences. While that is a true statement of the law, the Court agrees though with the Board that in this affair the allegations which were omitted by the applicant were serious and numerous such that it was entitled to find the story as a whole incredible. That finding was reasonable and opened on the evidence, and will not be set aside.

B. *Connection with the DTP Political Party*

[17] The applicant also asserts that the Board erred in not assessing his risk as a member of the DTP party, a successor to the DEHAP party. He claims that his membership is a material part of his

claim and that he provided the Board with a letter from the Chairman of the party attesting to his support.

[18] The Court notes that the DTP party arose from the closure of the DEHAP party after the applicant's departure from Turkey, and that the applicant testified that the membership of the two parties was the same. The Board assessed the risk to the applicant from his association with two successive pro-Kurdish political parties in Turkey. The Court does not see that the Board's failure to specifically name the third incarnation of the same party in its assessment as ignoring a material aspect of the claim.

C. *Separate Section 97 Analysis*

[19] The applicant also claims that the Board erred in failing to separately analyze any risk he might face which would make him a person in need of protection for the purposes of section 97 of the Law. The applicant also notes that the Federal Court of Appeal has held that the analysis of section 96 and section 97 risks are different and that a negative credibility finding does not automatically cancel out a section 97 risk: *Li v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 1.

[20] The respondent asserts that the risk threshold of substantial grounds on a balance of probabilities as required by section 97 is higher than that that of a mere possibility under section 96. From this point, the respondent maintains that the Board need not conduct a lengthy analysis of the

applicant's exposure to risk where the member has found that there is insufficient evidence to meet the threshold set out in section 96.

[21] The Court disagrees with the respondent on this point. While it is true that the thresholds are different under the different sections of the Act, and even in the various paragraphs of the Act, as set out in *Li*, above, it does not then follow that the Board is relieved of its duty to assess the evidence in one section on the basis of the finding in another. A failure to assess the country conditions evidence for an objective risk to a claimant for the purposes of section 97, where such evidence exists, is an error. But the absence of such evidence may obviate the need to undertake the section 97 analysis: *Lappen v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 434, [2008] F.C.J. No. 566; *Bouaouni v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1211, [2003] F.C.J. No. 1540; *Brovina v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 635, [2004] F.C.J. No. 771.

[22] That said, however, the Court's reading of the Board's decision in this instance shows a reasonable assessment of the country conditions documentary evidence in relation to the risk to the applicant. While it would have been preferable for the Board to conduct entirely separate analyses of the risks alleged by the claimant under section 96 and paragraphs 97(1) (*a*) and 97(1)(*b*), it was not necessary here since the reasons of the impugned decision indicate that the member did assess sufficiently the objective risk to the claimant in the country conditions evidence.

VI. Conclusion

[23] In brief and after considering all the circumstances in issue, this is a case where the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. The result may not be what the applicant expected, and this is obviously for that reasons that the applicant points out to evidence favouring a different result. But this Court, having already concluded that the decision is reasonable on all the issues, will resist this type of invitation, that is to analyse the evidence differently than the Board did in order to substitute its own conclusion to the Board's conclusion. This is not the role of this Court.

[24] Consequently the Court will dismiss the application.

[25] No question of general importance was put forward for certification, and none will be certified.

JUDGMENT

FOR THE FOREGOING REASONS THIS COURT dismisses the application.

"Maurice E. Lagacé"
Deputy Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Michael Crane	FOR THE APPLICANT
Neeta Logsetty	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Michael Crane Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT