

**Date: 20081113**

**Docket: IMM-4826-07**

**Citation: 2008 FC 1257**

**Toronto, Ontario, November 13, 2008**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**EGEMEN ULUS OZER**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Alleging persecution in Turkey based on his Alevi faith, his Kurdish ancestry and his political opinion, Mr. Egemen Ulus Ozer claimed refugee protection in Canada in 2006. A panel of the Immigration and Refugee Board denied his claim in 2007. It found that Mr. Ozer had been harassed but not persecuted.

[2] Mr. Ozer maintains that the Board erred in not recognizing his experiences in Turkey as persecution. He characterizes the Board's decision as unreasonable and asks me to order a new hearing before a different panel. I agree that the Board's decision should be overturned and, therefore, I will allow this application for judicial review.

[3] The question is whether the Board's decision was reasonable.

## I. Factual Background

[4] Mr. Ozer claimed to be an advocate for Alevi and Kurdish rights in Turkey. He recounted an attack by Turkish police in 1999 after he had protested police treatment of Alevi, Kurdish and leftist students. He maintained that he was arrested, detained for two days, and tortured after this incident.

[5] Mr. Ozer also claimed to have been attacked by police in 2000 at a university demonstration. Further, he was harassed and insulted during his service in the military from 2002 to 2004. He also says that he was detained by police after attending an Alevi meeting in 2004. In addition, he claimed to have been beaten by police while attending an Alevi, leftist student meeting in 2005. Finally, he says he was arrested, detained and tortured in 2006 after promoting an Alevi celebration. At that point, he decided to leave Turkey for Canada. He said that he obtained help from his family to bypass the usual security checks to obtain a passport.

## II. The Board's Decision

[6] The Board found that Alevis are discriminated against in Turkey, but not persecuted. Kurds, it said, are also discriminated against, but Mr. Ozer's experiences show that he did not have any serious difficulties connected with his ethnicity. The Board did acknowledge that Mr. Ozer had problems as a result of his political activities, as outlined above.

[7] However, while accepting that Mr. Ozer was “largely credible”, the Board found that some of his testimony was exaggerated. It concluded that if the police were really concerned about Mr. Ozer’s activities, they would not have released him after arrest. Nor would he have been able to secure the security clearance needed to obtain a passport.

[8] The Board noted that Mr. Ozer had provided some medical and psychological evidence corroborating his various injuries, but it found that this evidence did not prove how his injuries had been sustained.

[9] In the end, the Board found that some activist Alevi Kurds are at risk of persecution in Turkey, but Mr. Ozer had not shown that he fell into that category. Accordingly, there was no more than a mere possibility that he would be persecuted if returned to Turkey.

### III. Was the Board’s Decision Reasonable?

[10] Mr. Ozer argues that the Board failed to deal with the core of his claim. It found that he was a credible witness but exaggerated some of his experiences. However, for the most part, the Board never states which parts of his narrative it believed and which parts were embellished. As a result, it is unclear why his claim was denied.

[11] The Board did seem to make one clear finding related to Mr. Ozer's credibility. Mr. Ozer said that he believed that he was monitored by police after his arrest and detention in 2006. The Board doubted this could be true since Mr. Ozer was able to obtain a security clearance for his passport and leave the country without difficulty. Had the police truly been interested in him, he would not have been able to get a security clearance from them.

[12] In my view, the Board's reasons do not make clear why Mr. Ozer's claim was denied. It is not unusual for refugee claimants to exaggerate their experiences, perhaps believing that they stand a better chance in persuading the Board to allow their claims if they do so. But where, as here, the Board concludes that a claimant was generally credible, yet may have embellished his claim, it has an obligation to consider whether the claimant may still meet the definition of a refugee.

[13] A Board's finding that a claimant has exaggerated his or her experiences does not detract from its responsibility to weigh the evidence, despite the exaggerations, and decide whether the claim of persecution is justified. As Justice Marceau stated in *Yaliniz v. Canada (Minister of Employment and Immigration)* (1988), 7 Imm.L.R. (2d) 163, at p. 164 (C.A.),

It seems to us that the Board should have asked itself whether, even assuming some exaggerations, the applicant had not shown that he had been undoubtedly the victim of harassment of a variety of forms amounting to persecution, making thereby his fear to go back not only genuine but objectively founded.

Justice Marceau's comments are equally applicable here.

[14] Taking the Board's single example, perhaps Mr. Ozer did exaggerate when he said that the police were monitoring him. That finding was certainly open to the Board. However, the Board appears to have accepted that Mr. Ozer was indeed arrested, detained and tortured in 2006. It does not make any finding to the contrary. The question remains, therefore, whether Mr. Ozer has a well-founded fear of persecution if returned to Turkey, even if he was not monitored by police in 2006.

[15] I note also that the Board's finding regarding the security clearance was, in any case, not supported by the evidence. Mr. Ozer had testified that he paid a bribe in order to bypass the security clearance process. In this way, he avoided coming to the attention of the police when he obtained his passport.

[16] In my view, the Board's analysis of Mr. Ozer's claim was incomplete and the conclusion at which it arrived, therefore, is not reasonable.

#### IV. Conclusion and Disposition

[17] The Board failed to analyze the essence of Mr. Ozer's claim. Accordingly, its conclusion that Mr. Ozer is not a refugee is not reasonable as it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v. New Brunswick*, 2008 SCC 9, at para. 47). Therefore, I must allow this application for judicial review and order a new hearing before a different panel of the Board.

[18] Neither party proposed a question of general importance for me to certify, and none is stated.

**JUDGMENT**

**THIS COURT'S JUDGMENT IS that**

1. The application for judicial review is allowed. The matter is referred back to the Board for a new hearing before a different panel;
2. No question of general importance is stated.

“James W. O’Reilly”

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Judge

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

**DOCKET:** IMM-4826-07

**STYLE OF CAUSE:** EGEMEN ULUS OZER v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 11, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT:** O'REILLY J.

**DATED:** NOVEMBER 13, 2008

**APPEARANCES:**

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