

Federal Court



Cour fédérale

Date: 20110317

Docket: IMM-3635-10

Citation: 2011 FC 321

Toronto, Ontario, March 17, 2011

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

FERHAT PARLAK

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application concerns a Pre-Removal Risk Assessment (PRRA) decision with respect to the Applicant's identity as both Alevi and Kurd, as well as his activities in support of the now outlawed Democratic Society Party (DTP) should he be required to return to Turkey. The application letter by Counsel for the Applicant specifically sets out the claim for protection as follows:

It is not my submission that the overall discrimination against Alevis constitutes persecution with respect to Ferhat. In Ferhat's case it has the effect of amplifying the negative treatment he has received in Turkey throughout his life, including discrimination based on his ethnicity as a Kurd. In my submission, the persecution that Ferhat has been subjected to in the past, and the future persecution that he

will experience, is due to Ferhat's identity as a Kurd, and a supporter of the DTP.

[Emphasis added]

(Applicant's Application Record, p. 23)

[2] In support of his claim, the Applicant supplied detailed evidence that: his political identity is as an activist in the pro-Kurdish movement and a supporter of the DTP; he suffered punishment from state authorities in Turkey as a result of his activities; and further, given his political identity, if he is required to return to Turkey he will suffer more than a mere possibility of persecution and probability of risk.

[3] In my opinion, the Applicant's claim was not clearly understood by the PRRA Officer who rendered the decision. In the decision the following statements are made:

The burden of proof rests with the applicant; that is the onus is on the applicant to provide evidence to substantiate all of the grounds of his application. In the case before me, I find that the applicant has not provided sufficient objective evidence that he is at risk in Turkey. I do not find that the applicant faces any greater risk of generalized violence than other Alevi Kurds living in Turkey.

(Decision, p. 7)

[...]

The research clearly indicates that the human rights situation continues to improve in Turkey and is committed to a policy of zero tolerance of torture. The applicant has not lived in Turkey for more than one year. I have been presented insufficient evidence that he is an active member of the DTP or that he is currently wanted by the government for his involvement with the DTP. The applicant has presented insufficient evidence that the authorities have a continued interest in him or that he is being sought by anyone in Turkey.

[Emphasis added]

(Decision, p. 8)

Indeed, the Applicant has based his claim for protection on the argument that, if he is required to return to Turkey, because of his political identity, which he is not required to change, he most certainly will be at greater risk than other Alevi Kurds. In addition, the Applicant's argument does not depend on him being an active member of the DTP or being currently wanted by the authorities in Turkey. I find that the quoted statements introduce unwarranted factors into the decision-making on the claim and, as a result, the decision is unreasonable.

ORDER

Accordingly, the decision under review is set aside and the matter is referred back for redetermination before a different PRRA officer with the following directions: the Applicant is at liberty to file supplementary evidence and argument to update the current application; and the redetermination is to be conducted on the basis of the updated record.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3635-10

STYLE OF CAUSE: FERHAT PARLAK v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 16, 2011

**REASONS FOR ORDER
AND ORDER BY:** CAMPBELL J.

DATED: MARCH 17, 2011

APPEARANCES:

Jennifer Egsgard FOR THE APPLICANT

Bradley Bechard FOR THE RESPONDENT

SOLICITORS OF RECORD:

Jennifer Egsgard FOR THE APPLICANT
Barrister & Solicitor
Refugee Law Office
Toronto, Ontario

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario