Federal Court  Cour fédérale

Date: 20130705

Docket: IMM-8513-12

Citation: 2013 FC 752

Ottawa, Ontario, July 5, 2013

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

ZEYNEL UYGUR
NEJLA EKICI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants seek judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the *Act*] of the decision of the Refugee Protection Division of the Immigration and Refugee Board [the Board] made on August 2, 2012, which determined that they were not Convention refugees pursuant to section 96, nor persons in need of protection pursuant to section 97 of the *Act*.

[2] Ms Ekici and Mr Uygur, mother and son, are citizens of Turkey who arrived in Canada in March 2009 within days of each other, both making a brief stopover in the United States of America. The applicants are Alevi and assert that they were detained several times due to their religious beliefs and their family's political activities, which included taking part in demonstrations. They assert that the family home was raided, and that they were detained by the authorities on several occasions dating back to 2002 and beaten on some occasions. Mr Uygur also claims that he was detained in 2007 and 2008 for distributing political pamphlets and again in January 2009 at which point he was forced to sign a statement indicating that he was involved with illegal groups, which was not true.

[3] The Board provided a thorough and lengthy decision and, after considering all the evidence and the extensive negative credibility findings, individually and cumulatively, found that on a balance of probabilities the applicants were not being pursued by Turkish authorities as they alleged. The Board accepted that the applicants were Alevi and acknowledged that there was discrimination against Alevis in Turkey. However, based on all the objective country condition evidence, the Board concluded that on a balance of probabilities, the applicants would not face discrimination amounting to persecution, or a risk of harm as a result of being Alevi.

[4] The Board noted that the applicants' hearing had been adjourned several times to accommodate Ms Ekici's headaches and other illness. The Board refused the applicants' request for an indefinite postponement of their hearing given that the applicants had over two and a half years to prepare for their hearing and despite that the female applicant's headaches had been a long-standing problem, she had not pursued an appointment with a specialist until after the hearing had

been scheduled. However, the Board did grant a further adjournment to accommodate the female applicant and, as a result, the hearing took place over five sittings and over a seven month period.

[5] The Board made several negative credibility findings from the applicants' evidence, including:

- Mr Uygur had said he was not a member of the Pir Sultan Abdal Association but later provided a membership card and other inconsistent information about whether he had one or two of such cards. The membership cards were undated and unsigned;

- Mr Uygur provided inconsistent information about when he became a member of the Pir Sultan Abdal Association , which was either in 2004 or in 1998-99 when he attended with his mother;

- Mr Uygur had limited knowledge of the Pir Sultan Abdal Association and its origins and activities. In addition, he did not have any receipts to support his claim that he had made donations to the group. He also had little knowledge of other Alevi organisations that he had indicated he was involved with;

- Mr Uygur provided vague information about the political pamphlets he had distributed and was unaware of their content;

- Mr Uygur could not provide any details of the demonstrations he attended in Turkey;

- Ms Ekici demonstrated a very limited understanding of what it meant to be Alevi;

- The applicants had not become involved in the Canadian Alevi Association for two years after their arrival, despite their alleged strong support for Alevis in Turkey. Their explanation that it was inconvenient to travel by bus and subway to the association was not accepted by the Board. In addition, they provided inconsistent dates about their membership in the Canadian Alevi Association; and,

- The applicants' oral evidence was that they left Turkey legally. However, Mr Uygur's Personal Information Form [PIF] stated that he used an agent to leave Turkey. Objective evidence indicated that if a person were really wanted by the authorities in Turkey, they would not have been able to leave legally.

[6] The Board found that the applicants had failed to establish their claims of persecution or political profile, perceived or otherwise, with credible and trustworthy evidence. The applicants had provided contradictory, inconsistent and incomplete evidence, had given evasive and changing testimony at the hearing, and had not provided sufficient corroboration of their claims.

[7] The Board concluded that the applicants were not Convention refugees as they did not have a well-founded fear of persecution for a Convention ground in Turkey. The Board found that they were not persons in need of protection as their removal to Turkey would not subject them to a risk to their lives of cruel and unusual treatment or punishment. The Board also found that there were no substantial grounds to believe that their removal to Turkey will subject them personally to a danger of torture.

Issues

[8] The applicants submit that the Board's credibility findings were unreasonable. The applicants further submit that the Board failed to take into account the psychological reports which indicated that both applicants, and particularly the female applicant, suffered from memory problems as a result of their persecution in Turkey, which could provide an explanation for some of the credibility findings.

[9] In addition, the applicant submits that the Board erred by ignoring the PIF of the applicants' daughter and sister, Fatma, which described her mistreatment due to her political activism. Fatma had been granted refugee status in 2007. The applicants' submit that this evidence was corroborative of the applicants' claims.

[10] The respondent submits that the Board's credibility findings were extensive, justified and are owed deference. The psychologist's reports were considered and cannot be used to bolster credibility, nor do they provide an explanation for the numerous inconsistencies or for the lack of corroboration of the applicants' evidence. The respondent notes that Mr Uygur provided most of the oral testimony and that he did not indicate or exhibit any problems at the time of the hearing. The respondent also submits that the Board did not err by not considering the contents of Fatma's PIF as each claim must be determined on its own merits and the events described in Fatma's PIF would not have sufficiently corroborated the applicants' claims.

Standard of review

[11] The parties agree that the applicable standard of review is that of reasonableness. The jurisprudence emphasizes that where the standard of reasonableness applies, the role of the Court on judicial review is to determine whether the Board's decision "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir* at para 47. There may be several reasonable outcomes and "as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome": *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 59. The Court will not re-weigh the evidence or substitute any decision it would have made.

[12] The Board's credibility findings, given its role as trier of fact, warrant significant deference: *Lin v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1052, [2008] FCJ No 1329 at para 13; *Fatih v Canada (Minister of Citizenship and Immigration)*, 2012 FC 857, [2012] FCJ No 924 at para 65. In this case, the Board considered numerous inconsistencies, vague and evolving testimony, offered the applicants opportunities to clarify their answers, and observed the applicants and heard their testimony at five sittings.

Do the psychologist's reports provide an explanation for the credibility issues?

[13] Psychological reports were prepared by Dr Devins for Mr Uygur in November 2010 and for Ms Ekici in June 2011; in other words, a year and six months respectively before the first of the five sittings of the Board. The reports include a *caveat* from Dr Devins for what he indicates may appear to be redundant or repetitive in reports done for refugee claimants, which is that he uses a standard

and consistent form of assessment, the results of which are described using consistent and similar terms. While I do not question his credentials, methods, experience or explanation, I observe that the report for Mr Uygur and Ms Ekici is in many respects identical word for word. The findings with respect to each applicant were reported by Dr Devins after a one hour interview — one in November 2010 and the other in June 2011.

[14] The applicant and respondent both agree that the psychological report cannot be used to support the claims of persecution simply because the same events were communicated to the doctor.

[15] The applicant submits, however, that the psychological reports provide an explanation for some of the Board's credibility findings. I do not agree.

[16] The report regarding Ms Ekici indicates that she has headaches for which she takes over-the-counter medication and she has stress related symptoms including problems with concentration and memory. The report also notes that this would be exacerbated under the stress of a refugee hearing. The report also notes that she becomes distracted and forgetful in day-to-day activities (including forgetting names and telephone numbers and misplacing her keys). Exactly the same examples are noted regarding Mr Uygur.

[17] The psychological report for Mr Uygur was very similar. He also suffers headaches which are treated with over-the-counter medication. Dr Devins noted that his stress-related symptoms include problems with concentration and memory.

[18] In both reports, Dr Devins notes that "Stress-related cognitive problems can lead to difficulties in providing clear and consistent testimony. Should such problems become evident, it will be important to understand that they likely reflect the disorganizing effects of traumatic stress rather than an effort to evade or obfuscate."

[19] The Board acknowledged the psychologist's reports and noted that the reports could not be regarded as a "cure-all" for the deficiencies in the testimony. The Board also noted that it was aware of the stress inherent in the hearing process. The Board had repeated several questions to the applicants to provide an opportunity for more clarity. In addition, the applicants had many adjournments to permit Ms Ekici to attend to her headaches and stress. As noted by the respondent, most of the testimony was provided by Mr Uygur, not by Ms Ekici.

[20] The case law has focussed on whether the Board's consideration of a psychiatric or psychological report is reasonable, and as such, will vary with the particular circumstances.

[21] In *Krishnasamy v Canada (Minister of Citizenship and Immigration)*, 2006 FC 451, [2006] FCJ No 561, a psychiatric report was requested and submitted as a result of incoherent and inconsistent testimony given by Mr Krishnasamy. The Board considered the report and found that it did not provide a satisfactory clarification. Counsel for Mr Krishnasamy also submitted that the psychiatrist's letter could address the overall credibility concerns, including his evasiveness and inconsistency.

[22] Taking into account the Board's assessment of the evidence, Justice Layden-Stevenson noted the following:

> [21] Whether the report was tendered to explain Mr. Krishnasamy's behaviour during the May segment of the hearing, as I believe it was, or whether, arguably, it constituted a means by which to justify his previous testimony is of no consequence because, in my view, the ID Member's treatment of the psychiatric report was not patently unreasonable.
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> [22] In *Karli v. Canada (Minister of Citizenship and Immigration)* (2005), 137 A.C.W.S. (3d) 1007; 2005 FC 276, one of the issues was whether the board properly assessed the medical evidence and, in particular, medical reports relating to the applicant's moderate cognitive impairment. The applicant argued that the board erred in its appreciation of two medical reports in the context of its negative assessment of his credibility. In dismissing the applicant's application for judicial review, Chief Justice Lutfy, at paragraphs 13 and 14 stated:
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> ¶ 13 In my view, the member set out her reasons for her negative finding of credibility in clear and unmistakable terms. Her thorough questioning of the applicant on the first day of the hearing to test his ability to participate in the process was precipitated by her earlier review of the medical reports. She allowed the designated representative to assist the claimant during the hearing by repeating questions, when necessary, in more direct and simpler terms. In the two penultimate paragraphs of her decision dealing with the psychiatric and psychological assessments, she found that these medical reports did not affect her negative finding of credibility.
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> ¶ 14 In my view, this conclusion was open to her. She was alert and sensitive to the medical reports prior to and throughout the hearing. She knew the applicant had cognitive challenges. On my review of the transcript, her negative finding of credibility was one she was able to make, even taking into account the medical reports...
>
> [23] These comments are apposite here. The ID Member's reasons, as well as the transcript, reveal that the Member was "alert and sensitive" to the psychiatric report. Moreover, the negative finding of credibility was open to the ID notwithstanding the report. If the ID had failed to consider the report, or had disbelieved its contents, the situation might well be different. However, that is not the case. The Member was aware of Mr. Krishnasamy's diagnosis and did not fail to acknowledge it in the credibility assessment. The

> ID Member's determination that the psychiatric report did not provide the better explanation for the inconsistencies and evasiveness in Mr. Krishnasamy's evidence was a determination for the Member to make. The conclusion is neither patently unreasonable, nor unreasonable, in the circumstances. It is settled law that the court's function is not to substitute its opinion for that of the decision maker, even where it might have arrived at a different result.
> [My emphasis]

[23] The issue of psychological reports and their usefulness in addressing credibility findings was raised more recently in *Pjetri v Canada (Minister of Citizenship and Immigration)*, 2013 FC 376, [2013] FCJ No 429. At paras 42-45, Justice Noël provides the following comments with respect to the proper approach to be used with this type of evidence:

> **42** Mr. Pjetri submits that the RPD did not provide any explanation as to whether his psychological situation explains the omissions or lack of detail. This is what was done throughout the decision and specifically at the beginning when the RPD stated that it would usually allow for "more leeway" but that in the circumstances, the contradictions and omission are too obvious to be attributable only to PTSD (*Krishnasamy v Canada (Minister of Citizenship and Immigration)*, 2006 FC 451 at para 23, 2006 CarswellNat 969). Although the psychological report indicates that Mr. Pjetri suffers from PTSD, the RPD found that such consideration was not relevant to the inconsistencies noted by the RPD, which is a reasonable determination (*Paplekaj v Canada (Minister of Citizenship and Immigration)*, 2012 FC 947 at paras 18-19, 221 ACWS (3d) 940). Moreover, there was no evidence of memory loss in the case of Mr. Pjetri put before the RPD that could explain the lack of credibility of his story.
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> **43** As for Ms. Vucaj, the RPD did address the content of her psychological report. It specifically referred to it at the beginning of its decision and it was one of the considerations for allowing Ms. Metcalf's assistance at the hearing. The RPD's credibility findings were justified: her inability to provide dates was one of the components of the RPD's reasoning on credibility as a number of other important factors justified an adverse inference as to the credibility of her claim:

> 1. She did not provide evidence to show that she was hospitalized or documents to explain that it was impossible to retrieve her medical record in Albania.
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> 2. She did not provide a copy of the report prepared by the police while she was at the hospital.
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> 3. She gave contradictory answers with respect to the date she was hospitalized and the period during which she lived with her late husband's family.
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> 4. She gave inconsistent evidence as to who requested the divorce.
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> **44** Although memory problems are listed as one of the symptoms of Ms. Vucaj's psychological condition, it was reasonable for the RPD to determine that it is not a sufficient explanation considering the numerous inconsistencies in her testimony and her failure to provide supporting documents.
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> **45** Furthermore, a reading of the transcript shows that the RPD was alert and sensitive when dealing with both Applicants. The RPD was aware of the state of mind of each Applicant, relied when needed on Ms. Metcalf and was sensitive to the individuals when it questioned them. This sensitive approach allowed the RPD to make an in-depth assessment of the situation, consider the answers given by the Applicants and then make the necessary pertinent credibility findings.

[24] In the present case, the Board did not err in its assessment of the psychologist's reports. The Board did not ignore the reports, but reasonably found that they did not provide an explanation for the negative credibility findings arising from the testimony of the applicants. The Board's extensive credibility findings, which included the inconsistent and evolving testimony, as well as the inability of the applicants' to provide details of the key aspects of their claims of political persecution, went beyond those that could be attributed to the applicants' stress as exacerbated by the hearing process.

Did the Board err in not considering Fatma's PIF as corroborating evidence?

[25] The applicants submit that the Board ignored the PIF of their sister and daughter, Fatma, which mentioned that her political activities also involved her mother and brother and that this corroborates the applicant's claims that they were targeted, in part, due to Fatma. I acknowledge that the Board did not refer to this PIF in its reasons.

[26] The applicants rely on *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 FCJ No 1425, 83 ACWS (3d) 264 [*Cepeda*], noting that although the Board need not refer to each piece of evidence, the more important the evidence, the greater the burden on the Board to consider it.

[27] In *Cepeda*, Justice Evans noted at paragraph 17:

> "… In other words, the agency's burden of explanation increases with the relevance of the evidence in question to the disputed facts. Thus, a blanket statement that the agency has considered all the evidence will not suffice when the evidence omitted from any discussion in the reasons appears squarely to contradict the agency's finding of fact. Moreover, when the agency refers in some detail to evidence supporting its finding, but is silent on evidence pointing to the opposite conclusion, it may be easier to infer that the agency overlooked the contradictory evidence when making its finding of fact. "

[28] While the applicants submit that this evidence was important and corroborative, it is settled law that refugee claims are to be considered on their own merits. The fact that one applicant is granted refugee status based on a similar experience is not binding on the Board as the Board must assess each claim individually, and previous decisions, even regarding family members, may have

been wrongly decided: *Bakary v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1111, [2006] FCJ No 1418 at paras 9 and 10.

[29] In *Cortes v Canada (Minister of Citizenship and Immigration)*, 2008 FC 254, [2008] FCJ No 323, Justice Barnes considered whether the Board had erred by not considering the outcome of earlier refugee hearings of members of the applicants' family. He noted at para 10:

> [10] It was forcefully argued on behalf of the Applicants that the Board erred in its analysis of the significance of the claims to protection successfully brought by Ms. Mantilla Cortes' sister and, more recently, by her niece. There is no doubt that the Board declined to take the disposition of these earlier claims into account but the Applicants cited no authority to establish that the Board was under any legal obligation to do so. The Board's approach to this issue is in accordance with the authorities including *Bakary v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1111, 155 A.C.W.S. (3d) 161, where Justice Yvon Pinard held at paras. 9 and 10:
>
> > [9] As for the respondent's submissions, he first criticizes the IRB for failing to analyze the criterion of membership in a particular social group, i.e. the family. According to him, the IRB's analysis did not dispute that he is a member of the Bakary family which, according to the evidence, has suffered persecution: several members of his family have had to seek refuge abroad, and a number of them have been received in Canada as refugees.
> >
> > [10] In my view, however, a simple reading of the decision discloses that the IRB clearly considered and analyzed the applicant's claim on the basis of his alleged membership in the particular social class of his family. Moreover, a large number of cases decided by this Court have established that the IRB is not bound by the result in another claim, even if the claim involves a relative, because refugee status is determined on a case by case basis, and because it is possible that the other decision was incorrect (see, inter alia, *Rahmatizadeh v Minister of Employment and Immigration*, [1994] F.C.J. No. 578 (F.C.T.D.)

> (QL); *Museghe v. Minister of Citizenship and Immigration*, 2001 FCT 1117; *Singh v. Minister of Citizenship and Immigration*, 2002 FCT 1013; *Matlija v. Minister of Citizenship and Immigration*, 2003 FCT 704; *Gjergo v. Minister of Citizenship and Immigration*, 2004 FC 303 and *Bromberg v. Minister of Citizenship and Immigration*, 2002 FCT 939). Therefore, in my view, the IRB did not fail to consider the criterion of membership in the particular social group of his family.
> (My emphasis)

[30] In the present case, although the Board did not refer to Fatma's PIF, I agree with the respondent that the Board was not required to do so. The fact that the Board previously granted refugee protection for Fatma does not establish a precedent for those with similar claims. Moreover, Fatma's PIF described only one common incident and did not describe the key political activities or beliefs that the applicants allege.

Conclusion

[31] In the present case, the Board found that the applicants lacked credibility and justified these findings extensively. The information in Fatma's PIF could not have overcome the extensive credibility findings and did not address the primary basis of the applicants' claim of persecution due to their own political involvement, particularly their involvement in the Pir Sultan Abdal Association. The Board found that the evidence of the applicants' involvement in and knowledge of the organization was not credible, nor were their other claims of political activism.

[32] As noted above, credibility findings of the Board are to be given significant deference. In the present case, the Board noted many credibility issues and its decision clearly states these findings and provides reasons. The Board did not err in failing to consider that the psychologist's reports

provided a medical explanation for the applicants' inconsistent testimony. From the medical reports, their behaviour at the hearing, and from the Board's own experience, the Board was aware of the stress on the applicants and took this into account. However, this was not sufficient to address the significant credibility findings and the absence of sufficient corroborative evidence.

[33] With respect to the applicants' claims of religious persecution due to their Alevi faith, the Board accepted that they were Alevi despite their limited knowledge, but reasonably found on the basis of the objective country condition documents that they would not face persecution for their religious beliefs.

[34] The application for judicial review is dismissed. No question was proposed for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. No question is certified

"Catherine M. Kane"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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