

Federal Court



Cour fédérale

**Date: 20130927**

**Docket: IMM-12478-12**

**Citation: 2013 FC 990**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Ottawa, Ontario, September 27, 2013**

**PRESENT: The Honourable Mr. Justice Annis**

**BETWEEN:**

**MUSTAFA SAHIN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), of a decision of the Refugee Protection Division (RPD) dated October 23, 2012, which found that the applicant was neither a Convention refugee nor a person in need of protection.

## **Background**

[2] The applicant is a Turkish citizen of Kurdish ethnicity, born in 1979. He turned 19 in 1998 and normally should have started his compulsory military service, but obtained a three-year deferment of military service to finish his studies. In order to do so, he had to sign an agreement to the effect that he would complete his service after his studies. He did not raise his conscientious objection, fearing that he might be perceived as a terrorist.

[3] In 2000 the end of his deferment was approaching, but he believed in non-violence and did not want to serve or fight against his people. His father therefore helped him leave Turkey on a student visa and join an older brother in Switzerland. He attended a language school, but this could not count as university studies for the purpose of obtaining an extension of the deferment. The deferment expired in 2001. His Turkish passport expired in 2006. He obtained a diploma in French in 2007. He then remained in Switzerland without status because it was impossible for him to seek asylum in that country without being deported to Turkey. In 2011, he took his brother's passport and left for Canada. He claimed refugee protection on the basis of his nationality, race, and on the fact that he is a conscientious objector.

## **Impugned decision**

[4] The panel determined that there was not a serious possibility that the applicant would be persecuted on the basis of his race and nationality. There is no absolute or partial right to conscientious objector status and the fear of prosecution for refusing to submit to compulsory military service does not constitute a well-founded fear of persecution as per the definition of

refugee. The applicant has not established that he would face a danger of torture, a risk to life, or a risk of cruel and unusual treatment or punishment, were he to return to Turkey.

[5] The panel noted that the Federal Court restricted the definition of conscientious objection in cases where refugee claimants refuse to participate in any military actions. This applicant had not demonstrated any deep religious or philosophical beliefs that led him to object to military service, or that he belonged to an organization of conscientious objectors. He did not tell military authorities that he refused to serve; he never publicly opposed military service or war, and he benefitted from a law of general application that allowed him to defer his service until after he had completed his studies. He failed to show that, if he were convicted of draft-evasion or desertion, he would be subject to additional punishment due to his status as a conscientious objector. The possibility of receiving a maximum three-year sentence does not constitute persecution in the absence of aggravating circumstances.

[6] The panel rejected the refugee claim.

### **Issues**

[7] The issues are the following:

- a. Was it reasonable for the panel to conclude that the applicant was not a conscientious objector?
- b. Was it reasonable for the panel to conclude that the penalties for evasion of military service that is compulsory under a law of general application do not constitute persecution?

## Standard of Review

[8] Both issues are reviewable on a standard of reasonableness (see for example *Etiz v Canada (Minister of Citizenship and Immigration)*, 2013 FC 308, at paras 16-17).

## Analysis

*1. Was it reasonable for the panel to conclude that the applicant was not a conscientious objector?*

[9] In this case, the applicant is seeking to avail himself of the third exception in *Lebedev v Canada (Minister of Citizenship and Immigration)*, 2007 FC 728 at paragraph 14:

[14] Thus, an applicant generally cannot claim refugee status under the *United Nations Convention Relating to the Status of Refugees* (the Convention) – and accordingly, under s. 96 of the IRPA, just because he does not want to serve in his country’s army. According to Hathaway, however, there are three exceptions to the general rule above. ... The third and final exception applies to those with “principled objections” to military service, more widely known as “conscientious objectors”.

[10] The applicant submitted that the RPD failed to examine the possibility of persecution on the basis of his Kurdish origin, arriving at its conclusion without having analyzed this point. I find that the applicant never claimed that he was persecuted because of the fact that he was Kurdish – either in his written narrative, or in his testimony at the hearing. As a result, the panel did not need to dispose of that ground.

[11] The applicant further argued that the RPD did not question him about his religious beliefs during the hearing and that his allegations on this point were not contradicted.

[12] Given the oral and documentary evidence, the Board reasonably concluded that the applicant is not a conscientious objector. Its reasoning is based on the following:

- a. The applicant did not belong to an organization of conscientious objectors;
- b. When the applicant was first called up for compulsory military service, he did not inform military authorities that he was a conscientious objector and that he would refuse to serve in the army;
- c. The applicant complied with the Turkish law of general application. In fact, the applicant benefitted from this law to obtain a three-year deferment to continue his studies and thus postpone his military service. By acting in this way the applicant acknowledged the legitimacy of the compulsory military service system for at least three years;
- d. The applicant never publicly objected to having to serve in the army; and
- e. The applicant never took part in any anti-war demonstrations.

[13] The conclusion of the Conclusion fell within a range of possible, acceptable outcomes having regard to the facts presented.

2. *Was it reasonable for the panel to conclude that the penalties for evasion of military service that is compulsory under a law of general application do not constitute persecution?*

[14] The applicant claimed the RPD disregarded evidence that Kurdish draft-evaders had been beaten and mistreated in prison and that several of them had died, as well as evidence that Turkish draft-evaders can be prosecuted repeatedly, which can also amount to persecution.

[15] With regard to these allegations, I agree with the respondent that the panel concluded that:

The Turkish law requiring compulsory military service is a law of general application; the claimant has offered no proof to substantiate his assertion that he would be sentenced to an additional prison term as a Kurdish conscientious objector. On the contrary, the documentary evidence indicates that he would be sentenced in the same way as all other draft evaders. The possibility of the claimant being imprisoned for up to three years is not persecution, as the Federal Court has recognized.

[16] In *Ates v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 322, the Federal Court of Appeal determined that prosecutions and incarcerations of a conscientious objector for refusing to do his military service does not constitute persecution based on a Convention refugee ground.

[17] In this case, the Board did not accept that the applicant was a conscientious objector or that he would face consequences, other than legal prosecution, if he refused to complete his military service. The Board found that the applicant would not face a risk if he were to return to Turkey, and rejected the section 97 claim.

[18] This Court has already ruled that the possibility of being imprisoned for up to three years in such circumstances does not amount to persecution and that the fact that Turkish prisons are not of the same standard as Canadian prisons does not rise to the level of torture or risk to life or risk of cruel and unusual punishment. (See for example *Ozunal v Canada (Minister of Citizenship and Immigration)*), 2006 FC 560, at para 28.)

### **Findings**

[19] The Board is entitled to considerable deference. It reasonably found that the evidence adduced by the applicant to rebut the negative findings and to support his allegations did not succeed in doing so. The Board reasonably determined that the applicant would not face a risk upon his return, even if he were to be perceived as being a conscientious objector.

[20] For these reasons, the application is dismissed.

**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES that** the application for judicial review is dismissed.

“Peter Annis”

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Judge

Certified true translation  
Sebastian Desbarats, Translator



**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-12478-12

**STYLE OF CAUSE:** MUSTAFA SAHIN  
v  
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** August 14, 2013

**REASONS FOR JUDGMENT  
AND JUDGMENT:** BEAUDRY J.

**DATED:** September 27, 2013

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