Federal Court  Cour fédérale

Date: 20140314

Docket: IMM-4388-13

Citation: 2014 FC 249

Ottawa, Ontario, March 14, 2014

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

YILMAZ INCE
CIGDEM INCE

Applicants

And

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

UPON an application made pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the "Act") challenging a decision of the Refugee Protection Division (the "RPD") of May 16, 2013 which concluded that the applicants are not Convention refugees and are not persons in need of protection according to sections 96 and 97 of the Act;

UPON reviewing the Court record and hearing the parties;

UPON reviewing the case law submitted by the parties;

[1] The Court dismisses the application for judicial review for the following reasons.

[2] The applicants, who are husband and wife, are Turkish citizens of Kurdish ethnicity and Alevi faith. They have been married since April 2010.

[3] They obtained American visitor visas in January and February 2012. A few months later, on June 15, 2012, both applicants left Turkey for the United States and they arrived in New York City. Four days later, they left New York City for Plattsburg, New York. They crossed the border at Lacolle, Quebec, Canada on June 22, 2012, and claimed refugee status four days later, on June 26, 2012.

[4] The RPD concluded that the issue to determine was whether or not the applicants suffered persecution while in Turkey. The RPD concluded that such was not the case. Furthermore, the RPD concluded that there is not a reasonable chance or serious possibility that the claimants would be persecuted should they return to Turkey. Indeed, they would not be subjected to a risk to their lives or to a risk of cruel and unusual treatment or punishment, which is the test to be satisfied in order to determine that the person is in need of protection.

[5] In coming to that conclusion, the RPD examined the evidence presented by the applicants who were considered to be credible. At the end of the day, the RPD was of the view that the discrimination and harassment suffered by the applicants did not rise to the level of persecution. In

order to be successful, the applicants must satisfy this Court that such a decision is not reasonable in that it falls outside of the margin of appreciation within the range of acceptable and rational solutions. As the Supreme Court of Canada put it in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190:

> [47] … A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[6] In this case, the applicants complain of discrimination and harassment because of their faith and ethnicity. It is described in general terms with one incident more specific having taken place in 2011 when the husband would have been detained for three days, after having been arrested with two friends. As for the wife, she refers to the fact that the family house, when she was still a youngster, was burnt down by the Turkish authorities, back in 1994. The RPD concludes that these facts alone do not rise to the level of persecution which requires, in the view of the RPD, sustained or systematic violation of basic human rights demonstrative of the failure of State protection (Hathaway, James C., *The Law of Refugee Status*, Toronto: Butterworths, 1991, as referred to by the Supreme Court of Canada in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689). Thus, the RPD describes the test as follows at paragraph 12:

> [12] … What distinguishes persecution – whether from discrimination or non-persecutory discrimination – is the degree of seriousness of the harm. Another criterion of persecution is that the inflicting of harm occurs with repetition or persistence, or in a systematic way, and an isolated infliction of harm can only in very exceptional circumstances satisfy the element of repetition and relentlessness found at the heart of persecution.

Accordingly, the RPD declines to find in favour of the applicants.

[7] The case for the applicants on this application is based on their contention that the RPD failed to consider all the evidence adduced. No one disputes that the test to be applied was properly discussed by the RPD. It is rather that the whole of the evidence was misapprehended by the decision-maker. The applicants also contend that the weight of a decision of the European Court of Human Rights (ECHR) awarding the father of Cigdem Ince 4,000 euros as moral damages for the destruction of his house was minimized by the RPD and should not have been considered to be an indirect persecution as far as one of the applicants is concerned.

[8] With respect, I find the conclusion reached by the RPD to be reasonable.

[9] It is not disputed that discrimination and harassment can rise to the level of persecution. The cumulative effect has to be taken into account. However, in this case, there is no cumulative effect to reach the level of persecution to be had. In effect, the applicants speak of discrimination throughout their lives in spite of the fact that they both went to school, Yilmaz Ince even earning a university degree. Then, Yilmaz Ince alleges one specific incident in 2011 and his wife argues that the destruction of the family house twenty years ago constituted persecution. It has not been shown that the RPD conclusion that the evidence adduced does not amount to persecution does not fall within a spectrum of acceptable outcomes. The same kind of conclusion was reached by Justice Simon Noël in *Smirnova v The Minister of Citizenship and Immigration*, 2013 FC 347, where we can read at paragraphs 24 and 25:

> [24] In the case at bar, the RPD did take into account the cumulative nature of the attacks and ethnic slurs the Applicants

> received when assessing whether the treatment they endured amounted to persecution. In its decision, reference is made to the incident that occurred in 1999, to the Principal Applicant's different employments, the 2005 incident involving her supervisor and the incident in October 2008, when she had an argument with a co-worker and was beaten by RNU nationalists.
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> [25] The RPD did not make any mistake as it did consider whether the aggregate of all these incidents gave rise to cumulative persecution, even though the credibility of the Principal Applicant with regards to some of them is questionable. It correctly considered the Applicants' situation in light of the concepts of discrimination and persecution and determined that the incidents they suffered constitute discrimination but that the treatment they suffered does not reach the level of persecution. The conclusion reached by the RPD falls within the range of acceptable outcomes in fact and law.

[10] Incidents, however painful, that have taken place 20 years ago will have a limited probative value as to what the future reserves. As presented by the applicants, it is as if the burning down of the family house twenty years ago could be evidence of persecution, without more, going forward. As is well known, the risk assessment that had to be made is not retrospective, but rather prospective (*Ortega et al. v The Minister of Citizenship and Immigration*, 2011 FC 657).

[11] In view of my conclusion on the 1994 burning down of the family house, it is not necessary to comment any further on the notion of indirect persecution. Suffice it to say that I would have been satisfied with the analysis done by my colleague Justice Cecily Strickland in *El Achkar v The Minister of Citizenship and Immigration*, 2013 FC 472. As for the decision of the ECHR, nothing in my view rides on this decision. In my estimation, that decision has no bearing on this case before the RPD. The applicants have not shown the assessment made by the RPD was unreasonable.

[12] As a result, the application is dismissed. There are no questions for certification.

ORDER

THIS COURT ORDERS that the application for judicial review is dismissed. There are no questions for certification.

"Yvan Roy"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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