

Federal Court



Cour fédérale

Date: 20140529

Docket: IMM-1380-13

Citation: 2014 FC 515

Ottawa, Ontario, May 29, 2014

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

**MEHMET AYDEMIR
VEDAT AYDEMIR**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT
(Reasons given orally in Toronto on April 14, 2014)

[1] The applicants, Mehmet Avdemir [Mehmet] and Vedat Avdemir [Vedat] are cousins [the Applicants] who have applied for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board [the Board] dated January 9, 2013. The Board refused the Applicants' claims for refugee protection on the basis that there was no credible evidence to support their claims.

I. **The Background**

[2] Mehmet was not a member but was a supporter of the DTP/BDP political parties in Turkey. He attended Kurdish New Year celebrations, distributed brochures and served tea and coffee to guests at the party's office. In 2002 and 2005, Mehmet was arrested at the New Year's celebrations. In both cases, he was not demonstrating but was arrested by chance because he was standing near a group chanting pro PKK slogans. In 2002, he was arrested with many others, detained for three days, beaten and released without charge. In 2005, he was detained overnight, beaten and again released without charge.

[3] In 2006, Mehmet was detained after a fight broke out between Kurdish and Turkish workers at his place of employment. All the Kurds were detained. At that time, the false ID he had been using it to avoid compulsory military service was discovered. As a result, he was sent to complete Turkey's fifteen-month compulsory military service. He was not prosecuted.

[4] Vedat was not a member of a political party but he sometimes supported the BDP by distributing flyers and visiting its office. He was also arrested at a New Year celebration but that was in 2004. He was detained overnight and released unharmed. As well, in July of 2007, while speaking Kurdish with friends on the street, he was confronted by Turkish nationalists. The police prevented a fight but then made Vedat and his colleagues wait in a car for several hours and asked them to leave town. Vedat also had a false ID to avoid military service but it was not discovered while he was in Turkey. He has brothers whose false IDs were discovered and they were sent to complete their compulsory military service. They were not prosecuted.

II. The Decision

[5] In my view, the Board reached three conclusions:

- a) Even if the evidence about the Applicants' political activities is believed, it is insufficient to show that police in Turkey would be interested in the Applicants;
- b) Because of implausibilities in the evidence, the evidence about the Applicants' political activities was entirely rejected; and
- c) A prosecution of Vedat for evasion of military service would not be persecutory.

III. Issues

[6] There are three issues:

- a) Are the credibility findings reasonable, given that some of the Applicants' explanations were not discussed in the Decision?
- b) Should risks have been assessed in spite of the negative credibility finding?
- c) Should Vedat's risk of punishment as an evader have been assessed under section 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [the IRPA]

A. *Issue 1 - Credibility*

[7] In my view, given that he was not a party member, it was reasonable to conclude that Mehmet did not fit the profile of a potential informant. I also think it was reasonable of the

Board to conclude that Mehmet would not be the only one police would question about his brother's whereabouts given that his parents and siblings could have been expected to have information as well. Regarding the explanations, I cannot conclude that they were overlooked since one was actually mentioned in the reasons. It therefore seems reasonable to assume that the others were considered.

B. *Issue 2 - Risks*

[8] In my view, once the Board found that none of the evidence about their political involvement was credible, it was not necessary to assess their risk.

C. *Issue 3 – Prosecution for Evasion of Military Service*

[9] There was no documentary evidence about any prosecutions for evasion of military service except on the part of those who claimed to be conscientious objectors. Vedat did not fit that profile. Accordingly, the only evidence before the Board was that Mehmet and Vedat's brothers were not prosecuted and suffered no punishment when their false IDs were discovered. They were sent to serve their compulsory military service but no other action was taken. In these circumstances, it is my view that the Board was not required to consider whether punishment for Vedat's evasion might fall under Section 97 of the IRPA.

IV. Certification

[10] No question was posed for certification.

V. **Comment**

[11] While I was able to understand the Board's Decision, the reasons should have been written in a clearer style. Specific findings should have been made instead of references to what other panels might do and if words such as "alleges" and "claims" are used, they should also be followed by clear statements about the Board's findings.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed.

“Sandra J.Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1380-13

STYLE OF CAUSE: MEHMET AVDEMIR, VEDAT AVDEMIR v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 14, 2014

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

DATED: MAY 29, 2014

APPEARANCES:

Ms. Clarissa Waldman FOR THE APPLICANTS

Ms. Aleksandra Lipska FOR THE RESPONDENT

SOLICITORS OF RECORD:

Waldman & Associates FOR THE APPLICANT
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of
Canada
Ottawa, Ontario