

Federal Court



Cour fédérale

Date: 20141218

Docket: IMM-5466-13

Citation: 2014 FC 1218

Ottawa, Ontario, December 18, 2014

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**OMER CENGIZ DEMIR, MELIKE DEMIR,
AND MUSTAFA SAMET DEMIR AND
HATICE MELEK DEMIR
(BY THEIR LITIGATION GUARDIAN
OMER CENGIZ DEMIR)**

Applicants

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] For the following reasons, the Court agrees with the applicants that it would be unsafe to rely on the decision under review. Their claims for refugee protection must be determined anew.

Background

[2] The applicants are a family from Turkey. They claimed refugee protection on three bases: (1) their Alevi religion, (2) membership in the Freedom and Solidarity Party [ODP], and (3) the actions of the husband's mother-in-law.

[3] It is candidly acknowledged that there were discrepancies in the evidence of both Omer and his wife that required explanation. Among other concerns, the Member did not accept the explanations offered and found that they failed to establish that there is a serious possibility of persecution on a Convention ground or that they would personally be subjected to a danger of torture or face a risk to their lives or a risk of cruel and unusual treatment or punishment. The determinative issue was credibility.

[4] The Member found that on the parent's IMM 5669 form that they got the name for ODP wrong. They wrote "Ozgurluk ve Demokras Partisi" instead of the correct "Özgürlük ve Dayanışma Partisi". The Member drew a negative credibility finding from this discrepancy as well as from Omer's limited knowledge of the party's platform: "If the claimant were truly a sympathizer or supporter of a particular political party for over 15 years, surely he would be able to provide the correct name of the party."

[5] Omer's brother, Mustafa Demir testified at the hearing. He had been found by the Board to be a refugee following his arrival in Canada from Turkey in 2001. He testified that the culminating incident that led to him leaving Turkey was the treatment he and Omer received following a meeting of the ODP. His evidence in that respect was as follows:

We participated in a planning meeting for the international peace day. It was August of 2011. We had several friends with us after

we left that place. We were stopped by the police and were detained with shoving and pushing. Then afterwards we were detained and questioned. It was about what we were doing there and what we were talking about. This is one of the incidents that we experienced together.

He testified that he was a sympathizer of the ODP and that he and Omer had attended activities of the party “several times.”

[6] The Member asked no questions of Mustafa and disposed of his testimony in a single paragraph of her decision, as follows:

The brother of the principal claimant testified at the claimants’ hearing on their behalf. The principal claimant’s brother cannot be said to be a disinterested party to this proceeding and as the panel has found the allegations and testimony put forth by the claimants themselves not to be credible or reliable, the panel places little weight on the testimony provided by the principal claimant’s brother.

[7] The Member correctly notes that the refugee determination process is forward looking. As such, she compares the testimony of the applicants’ treatment as members of the Alevi faith with “the current situation for Alevis in Turkey” and concludes that their fears are not consistent with objective documentary evidence. In this regard, at paragraphs 31 and 32, the Member writes as follows:

[31] The objective evidence before the panel suggests that although Alevis are still subject to some discriminatory state practises, they are able to practice their beliefs relatively freely and their situation has improved in recent years.

Alevis freely practiced their beliefs and built cem houses (places of gathering), although these have no legal status as places of worship and were often referred to as “cultural centers.” ... [footnote

reference: Exhibit 2, National Documentation Package (NDP) for Turkey 29 June 2012, Item 2.3 – Turkey Operational Guidance Note v 6.0 Issued August 2011.]

[32] Indeed an RIR dealing with the situation of Alevis notes that the Alevi community is “one religious minority that does not appear to face increased pressure in the current intolerant climate.” The report also states that while criticism is widespread in the private sphere, it is no longer socially acceptable for traditionalist Sunnis to disparage Alevis in public and the Alevi sector was expected to form an important section of the electorate supporting the ruling Justice and Development Party. [footnote reference: Exhibit 3, National Documentation Package (NDP) for Turkey 29 June 2012, Item 12.2 – RIR TUR43515.E.]

[8] The Operational Guidance Note issued by the UK Border Office which is quoted by the Member in paragraph 31 above, states that it relies on the US State Department International Religious Freedom Report 2010: Turkey <http://www.state.gov/j/drl/rls/irf/2010/148991.htm> [US Religious Freedom Report 2010].

[9] Although the US Religious Freedom Report 2010 was current when the hearing was held, the Member took 70 days to issue her decision and by that time, the report had been updated. At the date of decision, the most recent report was the Turkey International Religious Freedom Report for 2012 [2012 Report]. This 2012 Report is contained within the Board’s National Documentation Package. This is relevant because the applicants submit that the content of that 2012 Report does not reflect the statement quoted by the Member at paragraph 31 nor her finding that the applicants are not at risk in Turkey because of their religion.

Issues

[10] There are only two issues that require the Court's attention: (1) Whether the Member erred in not considering the most recent country condition document, namely the 2012 Report and (2) whether the Member erred in her treatment of the evidence of the principal claimant's brother.

Analysis

[11] The respondent points out that while the US documentation may have changed, the UK document, which was also updated in May 2013, contains the same passage relied upon by the Member. As a result, the Minister submits that the key document relied on by the Member is unchanged and her decision is reasonable.

[12] This Court has held that while it is not its role to undertake a detailed review of documents not discussed to determine their effect on the ultimate decision, it is the Court's role to assess whether those documents could have affected the result. Justice Mactavish in *Lee v Canada (Minister of Citizenship and Immigration)*, 2009 FC 782 expressed the test to be whether the Court was persuaded that an unreferenced document "was clearly not material to the application or that it could not have affected the result."

[13] Counsel for the Minister correctly acknowledged that if upon review of the two US reports, the Court was persuaded that the more recent 2012 Report was material to the claim or could have affected the result, then this application must be allowed and the refugee claim redetermined. I have reached that conclusion.

[14] The 2012 Report is a substantial rewrite of the previous report. Substantial portions that support the finding of the Member, including that which was expressly relied on by the UK Guideline have been deleted from the earlier report, including the following:

The government generally respected religious freedom in practice. There was no change in the status of respect for religious freedom by the government during the reporting period.

...

Alevis freely practiced their beliefs and built cem houses (places of gathering), although these have no legal status as places of worship and were often referred to as "cultural centers."

[15] More critically, the 2012 Report contains new information that strongly suggests that Alevis are persecuted in Turkey, including the following passages:

There were reports of societal abuses and discrimination based on religious affiliation, belief, or practice. Christians, Bahais, non-Sunni Muslims, including the Alevi population, and members of other religious minority groups faced threats and societal suspicion. Jewish leaders expressed growing concern within the Jewish community over the continued expression of anti-Semitic sentiments in the media and by some elements of society. Persons wishing to convert from Islam experienced harassment and violence from relatives and neighbors.

...

Alevis stated they often faced obstacles when attempting to establish cemevis (places of worship).

...

Threats against non-Sunni Muslims created an atmosphere of intimidation for some members of minority religious groups. In July an angry mob threw stones at the home and burned down the stables of an Alevi family in the village of Surgu in Malatya, after the family allegedly asked a Ramadan drummer not to wake them for the meal before sunrise. After the incident, prosecutors indicted both the Alevi family and the Sunni mob. Prosecutors asked for a sentence of 14 years imprisonment for family members for allegedly inciting the mob to burn down their own stables, and

they asked for 10 years for the drummer and a maximum of six and a half years for 48 “protestors.” In October prosecutors filed another case against the Alevi family for “aspersion,” requesting 15 years’ imprisonment for allegedly giving the wrong date for the attack in their first statement. Both cases continued at year’s end.

[16] As was noted in the Applicants’ Memorandum, these changes to the treatment of Alevis is also reflected in the 2013 Country Reports on Human Rights Practices and the UK’s 2013 Operational Guidance Note for Turkey.

[17] This Court is of the view that these documents are relevant and could impact the determination previously made. Accordingly, the application must be allowed.

[18] The Court is troubled by the very short shrift given to Mustafa’s testimony. It has been previously observed that it is not a sufficient basis to give testimony little weight only because the witness is a family member: *Gonzales Perea v Canada (Minister of Citizenship and Immigration)*, 2008 FC 432; *Leonce v Canada (Minister of Citizenship and Immigration)*, 2011 FC 831; *Safi v Canada (Minister of Citizenship and Immigration)*, 2005 FC 714.

[19] Here, the brother testified that he and the principal claimant attended meetings many years ago of the very political party the claimant says he supported. That evidence should not be given “little weight” merely because it was offered by a relative. As the applicants noted, if the Member wished to test that evidence, the brother’s PIF was available to the Board as he had previously been accepted as a refugee – apparently in part based on attendance at such meetings.

[20] For these reasons, his evidence was deserving of some weight. It appears to have been given none.

[21] Neither party proposed a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is allowed, the decision is set aside, the applicants' claims for protection are to be determined by a different Board Member, and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5466-13

STYLE OF CAUSE: OMER CENGIZ DEMIR ET AL v MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 8, 2014

JUDGMENT AND REASONS: ZINN J.

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