Federal Court  Cour fédérale

Date: 20151223

Docket: IMM-1938-15

Citation: 2015 FC 1413

Ottawa, Ontario, December 23, 2015

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

MEHMET SINKIL
FATIMA SINKIL

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA or the Act] challenging an officer [the Officer]'s decision refusing the Applicants' Pre-Removal Risk Assessment [PRRA] application. The Court heard this application together with the Applicants' application in IMM-1939-15 to have the refusal of their permanent residence application on humanitarian and compassionate [H&C] grounds judicially reviewed. This application only concerns the PRRA decision.

[2] For the reasons that follow, the application is dismissed.

I. Background

[3] The principal Applicant and his wife are both Turkish citizens of Kurdish ethnicity. They first entered Canada in 2008, with their three children at the time, and made claims for refugee protection, which were refused in 2011. The Applicants applied for leave for judicial review and the Federal Court ordered that the two eldest sons' claims be re-determined. A new determination ensued and the two eldest sons were found to be Convention refugees based on their objection to performing military service in Turkey.

[4] The chronology of events applying to the Applicants are as follow:

- The principal Applicant claimed that his problems in Turkey began in 1990;
- In 1995, the principal Applicant travelled to Germany and reavailed himself to Turkey;
- In 1997, 2002, 2004, 2005, the principal Applicant travelled to the U.S. and he reavailed himself to Turkey each time;
- In 2008, the principal Applicant and his family entered Canada and made refugee protection claims, which were refused on May 25, 2011;

- On September 13, 2011, leave to commence judicial review of the failed refugee claims was granted and as a result, the two eldest sons' applications were sent for redetermination at which point they were recognized as Convention refugees;

- On December 12, 2011, the Applicants and their daughter's judicial review was denied;

- In August 2012, the Applicants and their daughter's PRRA application was rejected;

- On October 14, 2012, the Applicants and their daughter were removed from Canada and returned to Turkey as a result of their failed refugee claim and PRRA application;

- On December 30, 2012, the Applicants travelled to the U.S.;

- On December 31, 2012, the Applicants sought admission to come into Canada to make a refugee claim, but were found ineligible to make such a claim and were not entitled to make a PRRA;

- On December 31, 2012, the Applicants departed Canada and remained in the U.S. until June 2013;

- In June 2013, the Applicants reavailed themselves to Turkey;

- On August 14, 2013, the principal Applicant, unaccompanied by his family, returned to the U.S., and made no claim for asylum during his stay;

- On May 21, 2014, the principal Applicant's family joined him in the U.S.;

- On June 10, 2014, the Applicants arrived in Canada seeking protected status at which point the Applicants were ordered deported from Canada as they were ineligible to make a refugee claim and a PRRA was initiated;

- On March 17, 2015, the Applicants' PRRA application was refused, which is one of two decisions for which the Applicants are seeking judicial review, the other being their permanent residence application on humanitarian and compassionate grounds refused on March 19, 2015 (IMM-1939-15).

II. Issues

[5] The issues raised in this application are the following:

1. Did the Officer violate the principles of fairness and fundamental justice by making adverse credibility findings against the Applicants without granting the Applicants an oral hearing?

2. Did the Officer breach the principles of procedural fairness and fundamental justice by relying on incorrect extrinsic evidence without allowing the Applicants an opportunity to respond?

3. Did the Officer err by failing to conduct an analysis under section 97 of the Act?

III. Analysis

A. *Oral hearing*

[6] The Applicants argue that an oral hearing was required in accordance with section 167 of the *Immigration and Refugee Protection Regulations* [IRPR or *Regulations*] because they presented new evidence of risk. It is in the form of a statutory declaration from the principal Applicant and a letter stating that a warrant for arrest was issued for the principal Applicant from a Turkish lawyer. They argue that, if believed and accepted, the evidence would have resulted in a positive determination given the Turkish government's human rights record.

[7] I disagree with this submission. The evidence provided in the statutory declaration was not supported by other evidence in the record and the principal Applicant had therefore not met the legal burden as the evidence presented did not prove the facts required on the balance of probabilities.

[8] The Officer's rejection of the Applicants' claim was based upon objective evidence, not on a finding of credibility. The finding of no subjective fear was based upon the evidence of the

principal Applicant's continual series of reavailments over a number of years, and in particular that in 2013 after the 2012 incidents, upon which the asylum claim is based. This conclusion was similarly supported by his failure to seek protection in the United States at the first opportunity after claims of being beaten and tortured in Turkey.

[9] Other findings demonstrating the insufficiency of the Applicants' evidence included:

1. There was no evidence that the principal Applicant and his daughter were taken to the hospital.

2. There was no evidence that the Applicants' daughter was treated for tear gas.

3. There was no medical evidence concerning the principal Applicant's statement that he was beaten or that he sought any medical treatment after being tortured for two days.

4. There was no reason for the authorities to further investigate the principal Applicant after having arrested him at the Geza Park demonstrations.

5. Despite being watched by the authorities, the principal Applicant was able to leave Turkey.

6. There was no evidence that the Applicants' daughter, who was not issued a US visa and remains in Turkey, has any reported difficulties.

[10] Similarly, there was no corroborating objective evidence that the principal Applicant learned in 2013 that he was sought by authorities and that a warrant for his arrest had been issued, which allegedly lead him to leave the United States and seek asylum in Canada. The Officer quite properly had a reasonable basis to reject this evidence because no warrant was provided in the lawyer's one paragraph letter, without which the letter had no discernible weight.

[11] The law is clear that the Applicants must meet the evidentiary burden. That the legal burden is not met because the evidence presented does not prove the facts required on the balance of probabilities: *Ferguson v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067. It is also common ground that the practice of seeking corroborating evidence is a matter of common sense: *Juarez v Canada (Minister of Citizenship and Immigration)*, 2006 FC 288 at para 7.

B. *Extrinsic evidence*

[12] It is acknowledged that the Officer erred in relying on incorrect extrinsic evidence when he stated "Additionally, my research on anti-terror laws indicate there is no article 10 and that article 10 was annulled by the Constitutional Court's decision, dated 31.03.192." [Emphasis added]

[13] However, I agree with the Respondent that by use of the term "additionally", coming as it did after all of the other grounds provided in the reasons described above, renders the comment an afterthought and not central to the decision . In my view, when all of the evidence is

considered as a whole, this error does not warrant the Court's intervention: *Selliah v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 160.

C. *Failure to conduct a section 97 analysis*

[14] I also reject the Applicants' contention that the Officer erred by failing to conduct an analysis under section 97 of the IRPA. The Officer concluded that there was "insufficient objective evidence that the applicants will suffer any harm upon their return to Turkey". He specifically found that the Applicants were not in need of protection citing the wording of section 97.

[15] This conclusion and the decision as a whole falls within a reasonable range of acceptable outcomes based on the facts and law.

[16] Accordingly, the application is dismissed and no question is certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed and no question is certified for appeal.

"Peter Annis"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1938-15
STYLE OF CAUSE:	MEHMET SINKIL AND FATIMA SINKIL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	NOVEMBER 24, 2015
JUDGMENT AND REASONS:	ANNIS J.
DATED:	DECEMBER 23, 2015

APPEARANCES:

Lorne Waldman	FOR THE APPLICANTS
Sally Thomas	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Walmand & Associates Toronto, Ontario	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT