

Federal Court



Cour fédérale

Date: 20180216

Docket: IMM-3271-17

Citation: 2018 FC 177

Ottawa, Ontario, February 16, 2018

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

BAGTYGUL OZJAN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Delivered from the Bench at Toronto, Ontario on January 31, 2018)

I. PROCEEDING

[1] Ms. Bagtygul Ozjan [the Applicant] has applied for judicial review of a decision of the Refugee Appeal Division [RAD], dated July 5, 2017 [the Decision]. The RAD concluded that the Applicant is neither a Convention refugee nor a person in need of protection. This application is

brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

II. BACKGROUND

[2] The Applicant is a 33 year-old citizen of Turkmenistan. In 2010 she married Mr. Ozcan, a citizen of Turkey, who is of Kurdish ethnicity and is of the Alevi faith. When she married, the Applicant became Alevi. She had previously been a Sunni Muslim. The Applicant lived with Mr. Ozcan in Turkey until they were forced to flee due to his pro-Kurdish activities. At the time of the RAD decision, the Applicant and Mr. Ozcan had one child, a three year-old daughter, who is also a Turkish citizen. Since the RAD's Decision, the Applicant has given birth to a second daughter in Canada.

[3] In a decision dated February 1, 2017, the Refugee Protection Division concluded that Mr. Ozcan and his Turkish daughter are Convention refugees.

[4] However, the Applicant is a citizen of Turkmenistan and not Turkey. The RPD concluded that she did not make a claim against Turkmenistan and denied her refugee claim on the basis that she could return to Turkmenistan.

[5] Before the RAD, the Applicant argued that she had in fact advanced a claim against Turkmenistan at the RPD. The Applicant submitted that although she mistakenly made a claim against Turkey in her Basis of Claim form, and relied on her husband's narrative about his risks

in Turkey, she also notified the RPD that the country of reference for her claim was Turkmenistan.

III. THE DECISION

[6] The RAD acknowledged that the Applicant's counsel provided a letter to the RPD clearly indicating that her claim was against Turkmenistan and that her husband testified before the RPD about the risks she faces in Turkmenistan as an Alevi and as the wife of a foreigner. As a result, the RAD found the RPD erred in finding the Applicant did not advance a claim against Turkmenistan. The RAD therefore decided to conduct its own analysis about whether the Applicant would be at risk if she returned to Turkmenistan.

[7] The RAD considered the following evidence: her husband's testimony before the RPD about the risks she would face upon return to Turkmenistan, the Applicant's submissions to the RAD, and the National Documentation Package [NDP] on Turkmenistan which included material on human rights violations such as trafficking, forced labour, rape and domestic violence.

[8] The Applicant advanced her religion and her marriage to a foreign national as well as concerns about human rights violations as her grounds for fearing persecution in Turkmenistan. The RAD recognized that the situation for religious minorities in Turkmenistan is "less than ideal" and acknowledged reports that individuals are detained and tortured for religious reasons, as well as evidence that some minority groups face discrimination and ostracism. However, the

RAD found that there was insufficient documentary evidence to support the Applicant's submission that she would be prevented from practicing as an Alevi.

[9] The RAD also considered the Applicant's submission that she would face harassment as a woman married to a foreign national. The RAD noted that during Mr. Ozcan's testimony to the RPD, he explained that the Applicant has been stopped and questioned in the past about her marriage to a foreigner. However, the RAD determined that the Applicant did not establish that that harassment amounted to persecution. The RAD also noted she did not submit any documentary evidence to support her argument that she would be at risk as a woman married to a foreign national.

[10] Lastly, the RAD rejected the concerns based on human rights violations on the basis that no specifics were provided about the Applicant's plans or prospective lifestyle in Turkmenistan to show that she could potentially experience the problems described in the documents.

IV. DISCUSSION& CONCLUSIONS

[11] The criticism of the RAD's Decision flows from its treatment of the documentary evidence. It is suggested that the RAD:

1. erred in concluding that the evidence failed to show that she was at risk as an Alevi;
2. erred in ignoring relevant evidence in Item 5.1 of the NDP, entitled "Turkmenistan: Social Institutions and Gender Index 2014" published by the Organization for Economic Co-operation and Development, which highlights the situation of women in Turkmenistan; and

3. erred in failing to consider the documentary evidence as a whole.

A. *Religion*

[12] The Applicant did not testify that she or any other Alevis had experienced problems practicing their faith in Turkmenistan and the documents in the NDP made no reference to Alevis.

[13] The RAD looked at the US DOS 2013 Report on Religious Freedoms and noted that, Sunni Muslim is the majority religion and that there were conflicting laws and policies about religious freedom. However, the report also acknowledged that the government's overall respect for religious freedom was poor. There was some difference noted in the treatment of "some" registered and unregistered religions but there was no mention of the Alevis and no description of whether or not they had registration or had been victims of restrictive practices. In contrast, Jehovah's Witnesses and Protestants were identified as being at risk.

[14] In my view, the RAD's conclusion that "there is insufficient evidence in the National Documentation Package that supports the Applicant's allegation that she would be prevented from practicing her Alevi faith" is reasonable, in the absence of any reference to Alevis in the NDP and in the absence of any first hand evidence from the Applicant or her husband about mistreatment they or other Alevis experienced.

B. *Marriage to a Foreign National*

[15] The documents in the NDP made no reference to harassment of women married to foreigners in Turkmenistan. In my view, the RAD reasonably concluded that the Applicant's evidence of harassment did not rise to the level of persecution.

C. *Human Rights*

[16] On the question of human rights violations, the RAD noted that the Applicant failed to show that she was at risk. The RAD's analysis was hampered by the Applicant's failure to provide any evidence about the circumstances in which she expected to live in Turkmenistan.

V. CONCLUSION

[17] The Decision is reasonable and the Application for judicial review will be dismissed.

VI. CERTIFICATION

[18] No question was posed for certification for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the Application for judicial review is hereby dismissed.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3271-17

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