

Federal Court



Cour fédérale

Date: 20180406

Docket: IMM-3234-17

Citation: 2018 FC 372

Ottawa, Ontario, April 6, 2018

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**ARZU OZKOSE
ALARA GUMRUKCU**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This judicial review pertains to a decision by the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada rejecting the Applicants' refugee claim principally on credibility grounds.

II. Background

[2] The Applicants alleged persecution in Turkey as a result of the principal Applicant's political, ethnic, and religious profile and her husband's political profile. In particular, the Applicant relies on her Kurdish ethnicity and Alevi religious beliefs, as well as her husband's and her own political actions as opponents of the current government.

[3] The Applicant claimed that she was detained and threatened multiple times by the authorities and that she was subjected to beatings and sexual assaults while detained.

[4] In the RPD's decision, the Member found the Applicant not to be credible and that much of her narrative was a fabrication. In many instances the Applicant's excuse for not including details of an event alleged was her belief that she could explain matters later.

[5] The Member, having found the Applicant not to be credible, then addressed the documentary evidence as follows:

[127] The panel acknowledges that the claimant states at paragraph 3 of the BOC that in the 1980s, many members of the Alevi community, including her own relatives, were killed by the right wing, government supported paramilitary. The refugee definition is forward looking. The panel finds that it had insufficient credible and trustworthy evidence to find that the claimant or her daughter were targeted by the authorities before the attempted coup or that she would be targeted and persecuted by the authorities thereafter because they are Kurdish, Alevi or for any other reason.

[128] The panel found the claimant to be generally not credible. In *Mathews v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1387 at para 7-8, the court held that sometimes the Board's concerns about the credibility or trustworthiness of the

claimant's evidence causes it to doubt the very essence of the claim. The court held that in those circumstances, the Board need not look to general country condition evidence to determine whether the claim was well-founded: *Mathews v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1387 at para 7-8.

[129] In *Ozbay v Canada* (MCI), 2014 FC 674 (CanLII), the court held that general documentary evidence, in the face of a version of events that is not believed, will not be sufficient to turn the tide. The panel finds that these principles apply in this case. The panel found the claimant repeatedly fabricated material allegations with respect to the police and her mistreatment throughout the claim. It finds that her on-going fabrication of material evidence caused the panel to doubt the very essence of her claim. The onus is on the claimant to provide credible and trustworthy evidence to establish her claim and to provide a credible link to the documentary evidence upon which she relies. It finds that she has failed to do so in both instances.

[6] The Applicant argued that (1) the credibility findings were unreasonable and myopic, and (2) the refusal to consider country conditions was an error of law and otherwise unreasonable.

III. Analysis

[7] The standard of review of this mixed law and fact decision is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190). On the issue of refusal to examine country conditions the Applicant also made a purely legal argument that the Member erred in law in relying on certain cases.

A. *Credibility*

[8] For the purposes of this judicial review, there is little utility in describing each and every finding of fact which underpins the lack of credibility – a few examples will suffice.

As a general conclusion, the Member addressed each allegation and provided a cogent and relevant rationale for rejecting the evidence as not credible or as not holding meaningful weight.

[9] For example, the expert medical reports were assigned little weight because they were based on facts which the Member found not to be credible.

[10] The Member found numerous discrepancies and omissions in the Applicant's Basis of Claim [BOC] which rebutted the presumption of truthfulness. There were inconsistencies in the number of arrests she alleged and material omissions in her allegations of fanatic Muslims colluding with the police force, her allegations of religious persecution, her allegations of police questioning, and her allegations regarding her social media profile.

[11] The RPD did not accept the Applicant's explanation for her omission in her BOC of an alleged rape and did so having regard to the Gender Guidelines.

[12] The RPD put little weight on documents such as a "statement of suspect's testimony" and a subpoena because of questions about the provenance of the documents.

[13] This thorough and complete decision went on to address several other similar matters.

[14] The Applicant would have this Court second-guess the RPD who enjoyed the benefits of hearing testimony, seeing the witness, and examining the evidence in detail. The RPD's reasons were logical, relevant, thorough, and fair. There is no reason for the Court to intervene.

B. *Country Conditions*

[15] The Applicant argues that the RPD improperly ignored country condition documents which report that Kurdish-Alevi persons suffer discrimination and persecution in Turkey. The Applicant contends that despite a negative credibility finding, the RPD was required to consider country conditions in a forward looking analysis of the Applicant's risk.

[16] The Applicant's contention is not supported by the case law. In *Canada (Citizenship and Immigration) v Sellan*, 2008 FCA 381 at paras 2-3, 384 NR 163, the Federal Court of Appeal put the obligation to refer to country conditions despite negative credibility as follows:

[2] The Judge also certified a question, namely: where there is relevant objective evidence that may support a claim for protection, but where the Refugee Protection Division does not find the claimant's subjective evidence credible except as to identity, is the Refugee Protection Division required to assess that objective evidence under s. 97 of the *Immigration and Refugee Protection Act*?

[3] In our view, that question should be answered in the following way: where the Board makes a general finding that the claimant lacks credibility, that determination is sufficient to dispose of the claim unless there is independent and credible documentary evidence in the record capable of supporting a positive disposition of the claim. The claimant bears the onus of demonstrating there was such evidence.

[17] In *Fernando v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1349 at para 31, 153 ACWS (3d) 958, Justice Blais succinctly put the matter in the following terms:

[T]he key factor in determining whether an assessment of the documentary evidence before the Board will be required even if the claimant is found not to be credible, will depend on the nature of said evidence and its relationship to the claim.

[18] That same general approach has been relied upon in such cases as *Mathews v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1387, 127 ACWS (3d) 528, and *Joseph v Canada (Citizenship and Immigration)*, 2011 FC 548, 202 ACWS (3d) 806.

[19] In the present case, the RPD did not ignore the documentary evidence or the allegation of future harm, as is clear from paragraph 127 of the RPD's decision, quoted above. At paragraph 129, the RPD addressed the need to provide a link between the Applicant's true circumstance and the country conditions.

[20] The burden is on the Applicant to establish such a link, and she did not. Not all Kurdish-Alevi people are subject to persecution or physical harm; the Applicant had not been subject to such in the past, as was found by the RPD. While some Kurdish-Alevi people have been abused, the Applicant did not establish why she would have that risk in the future if she had not experienced that risk in the past. The only way to establish the link would be to believe the Applicant's narrative, which she failed to establish as credible.

[21] Therefore, the Applicant's legal proposition is in error and the facts do not support her contention of persecution as a Kurdish-Alevi person.

IV. Conclusion

[22] For these reasons, this judicial review will be dismissed. There is no question for certification.

JUDGMENT in IMM-3234-17

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

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3234-17

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