

Federal Court



Cour fédérale

Date: 20221221

Docket: IMM-9676-21

Citation: 2022 FC 1783

Ottawa, Ontario, December 21, 2022

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

ELKAN NURI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Nuri claimed refugee status because he fears persecution as a Uyghur in Turkey. He now seeks judicial review of the dismissal of his claim. I am rejecting his application, because the decision maker reasonably assessed the evidence and found that Mr. Nuri was not objectively exposed to a serious risk if he were to return to Turkey.

I. Background

[2] Mr. Nuri was born in China and is of Uyghur descent. In 2004, he moved to Turkey and obtained Turkish citizenship in 2011. In 2019, he came to Canada and claimed refugee status. Both the Refugee Protection Division [RPD] and the Refugee Appeal Division [RAD] of the Immigration and Refugee Board dismissed his claim.

[3] The RAD found that there was no serious possibility that Mr. Nuri would be persecuted in Turkey. It found Mr. Nuri's testimony credible. Nevertheless, it considered that the dispute with his Turkish employer, his involvement in the Uyghur community in Turkey and his role as an interpreter for the trial of four Uyghur men in Indonesia do not expose him to a serious risk of persecution in Turkey. It noted that nothing happened to Mr. Nuri since these events. Moreover, the RAD reviewed the documentary evidence concerning Uyghurs in Turkey. It noted that Uyghurs without Turkish citizenship were concerned about potential extradition, and that Turkish Uyghurs travelling to China or certain other countries might be arrested. However, that was not Mr. Nuri's situation. Lastly, the RAD analyzed a report written by Mr. Bradley Jardine, who works for the Woodrow Wilson Center and the Oxus Society for Central Asian Affairs. The RAD found that many of the risks outlined by Mr. Jardine would not affect someone in Mr. Nuri's situation, and that Mr. Jardine's conclusion that Uyghur Turkish citizens were at risk was speculative.

[4] Mr. Nuri now seeks judicial review of the RAD's decision.

II. Analysis

[5] I am dismissing Mr. Nuri's application. Mr. Nuri mainly challenges the RAD's assessment of the risk he would face upon returning to Turkey. In doing so, however, he is essentially asking me to reweigh the evidence before the RAD. This is not my role on judicial review. Moreover, Mr. Nuri asserts that the RAD should have given him an oral hearing. I disagree, as the RAD never impugned Mr. Nuri's credibility.

A. *Prospective Risk*

[6] Mr. Nuri highlights four errors that would render the RAD's assessment of risk unreasonable. I will deal with them in a somewhat different order than they were advanced by Mr. Nuri.

(1) Treatment of Mr. Jardine's Report

[7] The main alleged error pertains to the RAD's treatment of Mr. Jardine's report. Mr. Nuri argues that the report clearly established that Uyghurs face increasing risks in Turkey, whether they hold Turkish citizenship or not. Hence, it would have been unreasonable for the RAD to disregard the report.

[8] I disagree with Mr. Nuri. At the outset, I wish to emphasize that Mr. Nuri's case is not about what is happening to Uyghurs in China. As Mr. Nuri is a citizen of Turkey, his claim for refugee status must focus on the risks he is facing in that country. I also emphasize that a

subjective perception of risk is not enough to confer refugee status. The risk must objectively exist.

[9] In this context, the RAD's assessment of Mr. Jardine's report was reasonable. The RAD carefully summarized the main facts presented in the report. It correctly noted that many of the risks highlighted by Mr. Jardine did not pertain to Mr. Nuri's situation. With respect to the risks facing Uyghur Turkish citizens, after having reviewed the report myself, I agree with the RAD's assessment that Mr. Jardine's conclusions are speculative, in that they do not flow logically from the reported facts. In reality, the focus of Mr. Jardine's analysis is the risk that Turkish Uyghurs would face when they travel to China or certain countries that have a close relationship with China. This, however, is irrelevant to the issue at hand. Moreover, the RAD reasonably found that other documentary evidence did not buttress Mr. Nuri's claim that Uyghur Turkish citizens have a well-founded fear of persecution in Turkey.

(2) Extradition Treaty

[10] The second alleged error in the RAD's reasons is its finding with respect to the extradition treaty between China and Turkey, which Turkey has signed but not ratified yet. Mr. Nuri argues that the RAD should have found that the signature of this treaty, even without ratification, gives rise to a more than minimal risk that Turkey could extradite him to China.

[11] The RAD was faced with conflicting evidence in this regard. On the one hand, Turkey increasingly cooperates with China and has toned down its criticism of the treatment of Uyghurs in China. There are also indications that Turkey deported Uyghurs who did not have Turkish

citizenship. On the other hand, there was evidence that Turkey does not extradite its citizens, even though there was some doubt as to how this prohibition would apply in the context of the proposed extradition treaty. There was also evidence that Uyghurs who had obtained Turkish citizenship generally felt safe. Weighing the evidence is the RAD's role. Mr. Nuri has not persuaded me that the RAD's assessment was unreasonable.

(3) Mr. Nuri's Profile

[12] Mr. Nuri also argues that the RAD unreasonably found that he did not have a profile that would put him at risk. I do not agree. Mr. Jardine's report noted that Turkish authorities had arrested a prominent Uyghur activist and a Uyghur poet, as well as Uyghurs demonstrating in front of the Chinese embassy or consulate. The RAD's assessment of Mr. Nuri's profile was justified by this evidence. Given the nature of the activities in which Mr. Nuri was involved, it was reasonable for the RAD to find that Mr. Nuri's profile did not put him at risk.

[13] Moreover, there is no evidence that Mr. Nuri was threatened in any manner by the Turkish authorities, nor that the Chinese government attempted to recruit him to spy on fellow Uyghurs, despite his participation in activities of the Uyghur community for several years. As the RAD noted, if the Turkish or Chinese authorities had any interest in Mr. Nuri, they would already have located him.

(4) Treatment of Uyghurs Without Turkish Citizenship

[14] Lastly, Mr. Nuri impugns the RAD's statement that Mr. Nuri would not face a risk in Turkey "regardless of his citizenship status." He argues that the RAD thereby found that

Uyghurs who do not hold Turkish citizenship are not at risk in Turkey, and that this is clearly contrary to the evidence.

[15] The real issue, however, is whether Mr. Nuri, not Uyghurs in general, is at risk. As we have seen above, the RAD answered that question by noting that Mr. Nuri did not have the profile of a prominent Uyghur activist or public figure. This is an accepted methodology for answering the question. Implicit in this answer is the RAD's rejection of the proposition that all Uyghurs in Turkey have a well-founded fear of persecution. Although there was evidence of various forms of harassment of Uyghurs by the Turkish police, there was nothing unreasonable in the RAD's assessment of the evidence.

B. Oral Hearing

[16] Lastly, Mr. Nuri argues that the RAD should have given him an oral hearing. However, the RAD accepted that his testimony was credible. Hence, even though the RAD admitted new evidence, no issue was raised as to Mr. Nuri's credibility, which is a precondition for an oral hearing pursuant to subsection 110(6) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

C. Family Members' Refugee Status

[17] At the hearing, Mr. Nuri drew my attention to a decision issued by the RPD on November 17, 2022, granting refugee status to Mr. Nuri's sister and parents. He argues that the facts recognized as establishing a well-founded fear of persecution in their case also apply in his.

[18] Potential disparity of outcomes is the natural consequence of the framework established by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraphs 71–72, [2019] 4 SCR 653. In situations like the present one, where there is evidence on both sides of the issue, decision makers may well reach opposite decisions that are equally reasonable.

[19] Moreover, there are important factual distinctions between the two cases. In the parents' and sister's case, the RPD heavily relied on the fact that another relative was suspected of being associated with the Gulen movement, which was enough to put family members at risk. No such evidence was brought forward in Mr. Nuri's case.

[20] Further, the RPD noted that on one occasion, the sister had tried to leave Turkey to claim refugee status in Canada but was prevented from boarding her plane and interrogated by Turkish officials for seven hours. She successfully left the country a month later.

[21] Hence, the RAD's decision in Mr. Nuri's case does not become unreasonable because the RPD issued a different decision with respect to his sister and parents.

III. Disposition

[22] For these reasons, Mr. Nuri's application for judicial review is dismissed.

JUDGMENT in IMM-9676-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified.

"Sébastien Grammond"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9676-21

STYLE OF CAUSE: ELKAN NURI v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: DECEMBER 20, 2022

JUDGMENT AND REASONS: GRAMMOND J.

DATED: DECEMBER 21, 2022

APPEARANCES:

Kes Posgate FOR THE APPLICANT

Stephen Jarvis FOR THE RESPONDENT

SOLICITORS OF RECORD:

Battista Smith Migration Law Group FOR THE APPLICANT
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Ottawa, Ontario