

Federal Court



Cour fédérale

Date: 20100611

Docket: IMM-4999-09

Citation: 2010 FC 628

Ottawa, Ontario, June 11, 2010

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

MUSA YAKUT

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Each case has its own narrative. Thus, its own story. Every nuance is important. Each has its own inherent logic, not that of the Court but that of the applicant. If the story holds according to its own logic, then it stands its test as being inherent to its logic or coherence (this is for the first-instance decision-maker, the trier of fact to decide.) Each story has its encyclopaedia of references, dictionary of terms and gallery of portraits, even a background music to the story, whether it is in harmony with the narrative or in a state of cacophony with it.

[2] Subsequent to the above, the Federal Court always has three central questions which, if answered, allow a decision to be rendered:

- a. The first: Why is the party before the Court? (that is the story with each of its nuances as described above.)
- b. The second: What does the party (or parties) want from the Court?
- c. The third: Can the Court give the party (or parties) what they want? (according to its jurisdiction, jurisprudence and the law, the Court recognizes the separation of powers wherein in the executive branch determines policy, the legislative branch, the legislation and the judiciary interprets the legislation in light of the above.)

[3] In regard to the narrative or the story and its nuances, in respect of the risk to an applicant in respect of his/her story:

[33] First of all, it is important to emphasize that the PRRA officer has not only the right but the duty to examine the most recent sources of information in conducting the risk assessment; the PRRA officer cannot be limited to the material filed by the applicant.

(As stated by Justice Pierre Blais in *Hassaballa v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 489, 157 A.C.W.S. (3d) 602.)

[4] [10] The PRRA officer relied on other documents originating from public sources that related to general country conditions and that became available and accessible after the filing of the applicant's submissions. In view of the above finding, it is not necessary to determine whether or not they were "novel" and "significant" in light of the *Mancia* test (above, at para. 27).

(As described by Justice Luc Martineau in *Fi v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1125, [2007] 3 F.C.R. 400.)

[5] The *Mancia* test was developed by Justice Robert Décary of the Federal Court of Appeal in response to a certified question in *Mancia v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 565 (QL), [1998] 3 F.C. 61 (C.A.):

[27] ...

(a) with respect to documents relied upon from public sources in relation to general country conditions which were available and accessible at Documentation Centres at the time submissions were made by an applicant, fairness does not require the post claims determination officer to disclose them in advance of determining the matter; ...

II. Judicial Procedure

[6] This is an application for judicial review of a Pre-Removal Risk Assessment (PRRA) decision, dated July 3, 2009, denying the Applicant's application for a PRRA.

III. Background

[7] The Applicant, Mr. Musa Yakut, was born on May 5, 1964 in Adiyaman, Besni, Turkey. He is a citizen of Turkey.

[8] Mr. Yakut is Kurdish by ethnicity, Alevi by religion and considers himself as a leftist in his political opinion. He was allegedly persecuted in Turkey because of his identity as an Alevi Kurd and his perceived links to the Kurdistan Workers Party (PKK). He was allegedly threatened, arrested, beaten and tortured by the Turkish authorities who suspected him of having ties to the PKK.

[9] Mr. Yakut first arrived in Canada on August 12, 1999 and claimed refugee protection.

[10] The Immigration and Refugee Board (Board) heard Mr. Yakut's claim, accepted that he was an Alevi Kurd and found his account of events from 1994 to 1996 to be plausible; however, the Board found Mr. Yakut's account of subsequent events, which allegedly led him to leave Turkey, to be implausible and to lack credibility.

[11] Based on the objective documentary evidence before it, the board found that Mr. Yakut's fear of persecution on the basis of his ethnicity, nationality, religion and real or perceived political opinion was unfounded. On August 24, 2000, the Board rejected Mr. Yakut's claim to refugee status.

[12] On January 9, 2001, this Court denied leave to judicially review the Board's decision.

[13] On October 2, 2002, Mr. Yakut was invited to make a PRRA application. In support of his PRRA application, Mr. Yakut alleged the same fear that he had alleged before the Board and failed to adduce any new evidence to rebut the Board's credibility findings.

[14] Based on objective documentary evidence, a second PRRA Officer found that Mr. Yakut did not face a personalized risk of harm in Turkey as an Alevi Kurd. On May 22, 2006, the second PRRA Officer denied Mr. Yakut's PRRA application and Mr. Yakut left Canada for Turkey, on July 24, 2006.

[15] Mr. Yakut remained in Turkey for approximately three weeks; from July 25, 2006 to August 15, 2006.

[16] During that three-week period, the Turkish authorities issued Mr. Yakut a national identity card (July 28, 2006) and a Turkish passport (July 31, 2006).

[17] Mr. Yakut alleged that during the same three-week period, the Turkish authorities detained, interrogated, tortured and threatened his life. The authorities also allegedly accused Mr. Yakut of maligning Turkey by claiming refugee protection in Canada and of having links to the PKK.

[18] On August 15, 2006, Mr. Yakut left Turkey for the United States where he remained for approximately six months before illegally entering Canada on the back of a truck, on or about February 1, 2006.

[19] On February 15, 2006, Mr. Yakut attempted to make a second claim for refugee protection. The claim was determined to be ineligible and, on December 17, 2007, Mr. Yakut was offered to make a second PRRA application.

[20] In support of his second PRRA application, Mr. Yakut reiterated his fear of harm as an Alevi Kurd in Turkey, believed to have information on the PKK and submitted that his alleged treatment by the Turkish authorities during his three-week stay in Turkey supports his claim.

IV. Decision under Review

[21] The PRRA Officer was of the opinion based on the evidence that Mr. Yakut did not face personalized risk of harm in Turkey as an Alevi Kurd. Based on evidence, the PRRA Officer specified that Turkish authorities do not issue passports to those suspected of being involved in organizations such as the PKK nor do they allow them to leave the country (PRRA, Applicant's Record (AR) at pp. 10-14).

[22] The PRRA Officer assessed the documents submitted by Mr. Yakut in support of his allegation of being wanted for questioning by the authorities and found them to be of little probative value. The letter from Mr. Yakut's brother was undated and was unaccompanied by a postmarked envelope. There was also no indication of the identity of the translator and no manner by which to assess the quality and the reliability of the letter's translation. The letter was given little weight. (PRRA, AR at pp. 11-12)

[23] Similarly, there was also no indication of the identity of the translator of the document entitled "Certificate" and no way to assess the quality and reliability of the translation. The date of the document does not appear on the translation. Moreover, the author of the "Certificate" does not indicate the sources of his information, the date of the alleged event or the reason why Mr. Yakut was required to give a statement to the police. The PRRA Officer therefore gave the document little probative value. (PRRA, AR at p. 11).

[24] The PRRA Officer also noted the absence of any objective evidence to support his claim of having been mistreated by the Turkish authorities during his three-week stay.

V. Issue

[25] Mr. Yakut alleges that the PRRA Officer failed to convoke him to a hearing under subsection 113(b) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), did not adequately consider his supporting documentation and was remiss by not providing him with an opportunity to respond to the most current country condition documents.

VI. Analysis

[26] The Court is fully in agreement with the position of the Respondent that the decision of the PRRA Officer is reasonable in light of the evidence, the law, and the jurisprudence.

[27] Subsection 113(a) of the IRPA provides that a PRRA application may only be made on the basis of “new evidence”. Subsection 113(b) of the IRPA provides that an officer “may” hold a hearing if he is of the opinion that a hearing is required on the basis of prescribed factors:

113. Consideration of an application for protection shall be as follows:

(a) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not

113. Il est disposé de la demande comme il suit :

a) le demandeur d’asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n’étaient alors pas normalement accessibles ou, s’ils l’étaient, qu’il n’était pas raisonnable, dans les

reasonably have been expected in the circumstances to have presented, at the time of the rejection;

(b) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;

circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;

b) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;

[28] The prescribed factors are set out in section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (Regulations):

167. For the purpose of determining whether a hearing is required under paragraph 113(b) of the Act, the factors are the following:

(a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;

(b) whether the evidence is central to the decision with respect to the application for protection; and

(c) whether the evidence, if accepted, would justify allowing the application for protection.

167. Pour l'application de l'alinéa 113b) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise :

a) l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur;

b) l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;

c) la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.

[29] Consequently, in light of these legislative provisions, the PRRA Officer “may” hold a hearing where the “new evidence” “raises a serious issue of the Applicant’s credibility”.

[30] In the present matter, the evidence did not raise a serious issue of Mr. Yakut’s credibility. Rather, the PRRA Officer found that Mr. Yakut had failed to provide sufficient new evidence of a personalized risk of harm in Turkey. In *Ferguson v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067, 170 A.C.W.S. (3d) 397, Justice Russel Zinn held that such a determination does not bring into question an applicant’s credibility:

[34] It is also my view that there is nothing in the officer's decision under review which would indicate that any part of it was based on the Applicant's credibility. The officer neither believes nor disbelieves that the Applicant is lesbian – he is unconvinced. He states that there is insufficient objective evidence to establish that she is lesbian. In short, he found that there was some evidence – the statement of counsel – but that it was insufficient to prove, on the balance of probabilities, that Ms. Ferguson was lesbian. In my view, that determination does not bring into question the Applicant’s credibility.

[31] There was therefore no duty on the part of the PRRA Officer to hold a hearing under subsection 113(b) of the IRPA.

[32] Mr. Yakut alleges that the PRRA Officer’s assessment of the evidence is unreasonable and that he should not have given the new documents a low probative value. Mr. Yakut is essentially asking this Court to reweigh the evidence which is not a ground for judicial review.

[33] The PRRA Officer gives specific consideration to Mr. Yakut’s documents in her reasons and finds them to be of little probative value. It was reasonably open to the PRRA Officer to do so:

[27] In terms of the Master's thesis submitted by the applicant in support of his claim that Coptic Christians are persecuted in Egypt, it is clear from the reasons that the PRRA officer considered this particular piece of evidence, but found it to be of little probative value. I have reviewed the officer's reasons for dismissing this document, including that the thesis was ten years old and referred to material even older and that it reflected the opinion of the author and his interpretation of the evidence. The PRRA officer stated that she preferred to rely instead on more objective documentation, such as the current country reports. Once again, it was within the purview of the officer to consider the evidence and weigh its probative value, and I can find nothing wrong with the officer's decision to conclude that the document in question was of little probative value (*Augusto v. Canada (Solicitor General)*, 2005 FC 673, [2005] F.C.J. No. 850 (QL)).

(*Hassaballa v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 489, 157 A.C.W.S. (3d) 602).

[34] There is no merit to Mr. Yakut's allegation that the PRRA Officer misunderstood the documentation regarding the issuance of passports in Turkey. Contrary to Mr. Yakut's allegation, the document does not say that passports are only refused to criminals or those with outstanding legal cases. The refusal also applies to people "who are wanted by the authorities" as Mr. Yakut alleged that he was:

All Turkish citizens are entitled to a passport. An applicant must apply in person; an application cannot be made through an agent. The application must be made in the local area where the applicant resides. The regional passport office makes checks to verify his or her identity. These checks include establishing whether the applicant has criminal convictions and/or is wanted by the authorities. The applicant is always asked why the passport is wanted. (Emphasis added).

(PRRA, AR at p. 12).

[35] Although Mr. Yakut was issued a passport by the Turkish authorities and allowed to leave the country, he also claimed that he was arrested, detained and tortured during the same three-week

stay because the authorities wanted him for his alleged ties to the PKK (Application for a PRRA, AR at p. 30).

[36] The PRRA Officer's assessment of the evidence was reasonable.

[37] There is no merit to Mr. Yakut's allegation that the PRRA Officer had a duty to disclose publicly available documents that post-date his PRRA submissions:

[27] Although the BBC and UN documents relied upon by the officer post-date submission of the PRRA application, the information they contained was not so new or novel that the Applicant was prevented from making representations to the officer on their content at the time he submitted his application. Moreover, the information they contained was neither novel nor significant to the point that it could have altered the decision of the PRRA officer. For example, the instability which resulted from the December 2007 elections was known to the Applicant at the time of the application.

[28] ... therefore, the information relied upon by the officer that post-dated submission of the application was not so novel, significant or indicative of changes in general country conditions that its absence would have altered the officer's decision.

(Simuyu v. Canada (Minister of Citizenship and Immigration), 2009 FC 41, [2009] F.C.J. No. 53 (QL)).

VII. Conclusion

[38] Mr. Yakut fails to establish how the documents considered by the PRRA Officer are so "novel" or "significant" that their absence would have altered the PRRA Officer's decision.

[39] For all of the above reasons, the Applicant's application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS that

1. The application for judicial review be dismissed;
2. No serious question of general importance be certified.

“Michel M.J. Shore”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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