

Federal Court



Cour fédérale

Date: 20140715

Docket: IMM-5756-13

Citation: 2014 FC 696

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, July 15, 2014

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

KALENDER TOPRAK

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application under section 72(1) of the *Immigration and Refugee Protection Act* (IRPA) for judicial review of a decision dated July 16, 2013, by the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB) in which the member rejected the application for protection submitted by the applicant, Kalender Toprak.

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

I. Factual background

[3] The applicant, Kalender Toprak, is a Turkish citizen, and he alleges that he fears the nationalists and the Turkish police because of his Kurdish ethnic origin and his Alevi religion.

[4] As a result of his uncle's political involvement in the 1978 events in Kahramanmaraş that affected his entire family, the applicant's father changed his surname in 1980 from Topal to Toprak. In 1994, the applicant's family moved from the village of Elbistan to Hatay, Iskenderun. They transferred all the family records to Hatay so that they no longer had links to Elbistan given that the village is associated with Alevi Kurds.

[5] In 2003, the applicant moved to Izmir, in western Turkey, which is recognized as one of the most liberal cities in the country.

[6] In 2007, in Izmir, during the celebration of Newroz, the Kurdish New Year, the applicant was arrested in a crowd of 600 to 700 people, detained, threatened and released the next day. This happened when the demonstrators refused to obey the police who were ordering them not to raise the banners and placards. The applicant explained his arrest by saying: [TRANSLATION] "I am a Kurd and I was there ... the police don't choose people, they make arrests indiscriminately." He was threatened but not charged.

[7] In November 2009, he was again arrested for a day when he was part of a group of 50 people accompanying members of parliament who were participating in a Kurdish rally of the Democratic Society Party (DTP), now the Peace and Democracy Party (BDP), a Kurdish political party. A group of nationalists attacked them, and the police intervened to defuse the situation. The applicant says he was beaten at the time of his arrest and again at the police station. He was threatened with [TRANSLATION] “a mysterious death” if he participated in such events in the future. He was detained for a day.

[8] In August 2011, during the month of Ramadan, he was attacked by a group of Islamists at a rally in Izmir for the feast of “Ashure”. He claims that the police did nothing and did not take his complaint.

[9] On July 2, 2012, at a demonstration commemorating the massacre of Alevi intellectuals burned in a hotel in the city of Sivas in 1993, the applicant was taken in a confrontation with the police in Sivas, who refused to allow the crowd to go to the hotel where the events commemorating the massacre were taking place. Since he was among the demonstrators refusing to obey the police, when the police wanted to disperse the crowd, he was beaten, arrested and detained. The police threatened him, saying that he could disappear or be burned.

[10] Following this last incident, the applicant made the decision to leave Turkey, and he departed in February 2013 and came to Canada where he claimed refugee protection.

II. Impugned decision

[11] The RPD, despite doubts about the applicant's credibility in terms of his Alevi and Kurdish identity, gave him the benefit of the doubt with respect to his allegations concerning his ethnicity and religion.

[12] The RPD also noted that the applicant recounted three events where he was arrested and again expressed doubts about the applicant's credibility regarding his vague testimony with long hesitations but again gave him the benefit of the doubt.

[13] The RPD also noted that the documentary evidence in the record states that the Turkish government generally permits the free exercise of religion, as indicated in a United Kingdom Home Office report in 2010. It noted the problems suffered by Alevis, who are discriminated against although their situation has improved over the years. Members of Kurdish political parties are regularly detained for short periods and are sometimes victims of harassment as members of an illegal society.

[14] The documentary evidence also shows that Kurds who publicly or politically affirm their Kurdish identity or promote the use of the Kurdish language in the public domain risk censure, harassment and prosecution. The RPD cited a 2012 report from the United States Department of State stating that some celebrations were banned or postponed for arbitrary reasons, and violence was noted:

The government harassed and prosecuted persons sympathetic to some religious, political and Kurdish nationalist or cultural viewpoints.

...

Other significant human rights problems during the year include: Security forces committed unlawful killings. Authorities obstructed demonstrations. Security forces allegedly used excessive force during sometimes violent protests related to Kurdish issues, students' rights and labour in opposition activities. The government obstructed the activities of human rights organizations, particularly in the southeast.

Similar comments were made about the situation in 2009.

[15] After assessing all the evidence, the RPD concluded that Alevi Kurds are not persecuted generally but appear to be discriminated against and, in some cases, persecuted. With respect to the applicant personally, the RPD found that it was not apparent from his testimony or the evidence that he had a well-founded prospective fear of persecution and therefore would be persecuted if returned to Turkey.

[16] The RPD based this conclusion on the behaviour of the police towards the applicant. He was arrested randomly at demonstrations without being sought by the police because of his identity. Moreover, the police never pursued the applicant. He was released after each detention, obtained a passport and was able to leave Turkey.

[17] In addition, the RPD noted that the applicant did not fit the profile of a political or Kurdish activist and was not a member of any political party. He was arrested randomly when participating in various demonstrations by being part of a group of demonstrators who were

disobeying the police; there was no connection between these events. The documentary evidence shows that it is particularly Kurds with a public and politicized profile who are harassed, pursued or targeted by the police.

[18] Moreover, the applicant does not claim that he had any problems regarding employment, and he worked as a mechanic in Turkey until 2013. He acquired an education and also does not allege housing problems. He remained at the same place in Turkey from January 2003 to his departure for Canada.

[19] At the same time, the member concluded that the incidents the applicant experienced were random. He would not face a reasonable fear of persecution for his real or imputed political opinion, ethnicity or religion if returned to Turkey.

III. Issues

[20] The applicant alleges that the issues are as follows:

1. The RPD erred in fact and in law by failing to assess all the evidence regarding the situation in Turkey presented by the applicant as well as by the National Documentation Package;
2. The member erred in law by not providing detailed reasons in support of her decision;
3. The member erred in fact and in law by finding that the applicant did not have a public and politicized profile and that the incidents he experienced were random;

4. The member erred in fact in her findings about how the events unfolded at the Newroz demonstrations over the last few years;
5. The member erred in fact and in law by concluding that there was no well-founded prospective fear of persecution for this application.

[21] In my view, the issue is as follows:

1. Does the RPD's decision contain an error of law or is it unreasonable?

IV. Standard of review

[22] The parties agree that questions of fact and law are reviewable on a reasonableness standard. However, the applicant alleges that the member's failure to provide reasons in support of her decision is reviewable on a correctness standard.

[23] I do not agree. The reasons go to the existence of justification, transparency and intelligibility within the decision-making process and attract a reasonableness standard (*Dunsmuir v New Brunswick*, [2008] 1 SCR 190, 2008 SCC 9). The weighing, interpretation and assessment of evidence are also reviewable on a standard of reasonableness (*Yildiz v Canada (Citizenship and Immigration)*, 2013 FC 839 at paragraph 43; *Oluwafemi v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1045, [2009] FCJ No 1286 at paragraph 38).

[24] The issue of whether the treatment of the applicant amounts to persecution is a question of mixed fact and law: see, for example, *Talman v Canada (Solicitor General)*, 93 FTR 266, [1995] FCJ No 41 (QL), at paragraph 15 (FCTD); *Yurteri v Canada (Minister of Citizenship and*

Immigration), 2008 FC 478, at paragraph 33, [2008] FCJ No 619; *GebreHiwet v Canada (Minister of Citizenship and Immigration)*, 2010 FC 482, at paragraph 13, [2010] FCJ No 561; *Nimalleswaran v Canada (Minister of Citizenship and Immigration)*, 2005 FC 449, at paragraph 10, [2005] FCJ No 559.

V. Analysis

[25] It is clear from the issues raised by the applicant that he is challenging the RPD's assessment of the evidence. This task falls within its highly discretionary power. Accordingly, its decision is largely free from the Court's intervention as long as there was sufficient evidence before the RPD for it to find as it did.

[26] First, with respect to the RPD's conclusion that the conduct of the police towards the applicant at the time of his arrests and following his detentions does not show that he was targeted or persecuted, I find it to be reasonable and supported by the evidence of the applicant himself. The applicant admits that he was arrested randomly three times in five years at the demonstrations in question and that he was not targeted because of his identity. It was to be expected that he would be arrested for refusing to obey the police and that he could be beaten (without scars) during conflicts with the police.

[27] He was subsequently released by the police after a brief detention without being charged or experiencing other problems or harassment on the part of the authorities. He did not have any difficulties regarding his right to education, his employment or his housing; he lived at the same place in Turkey from January 2003 until his departure.

[28] The death threats in 2012 were similar to those made in 2009 and are of no consequence; they do not justify the applicant's departure based on a reasonable fear of persecution, especially since he remained in Turkey for another year after his arrest without any incident occurring before he left for Canada.

[29] At the hearing, the applicant spent a great deal of time trying to show that the RPD ignored the evidence of persecution suffered by the Kurds, which was reported in the Responses to Information Requests (RIR). After reviewing the documentation in the RIRs, I do not see a real distinction in terms of the level of persecution suffered by some members of the Kurdish community described in that documentation and that described in the RPD's decision, as cited above in the summary of facts.

[30] In any event, the basis of the RPD's decision is that the applicant did not fit the profile of members of the community targeted by the authorities and persecuted. Although the applicant disputes this finding, there is substantial evidence to support it including the fact that the applicant, despite having participated in political demonstrations that resulted in his arrest and detention, did not face sufficient serious and systematic consequences to constitute persecution within the meaning of the *IRPA*.

[31] After a comprehensive review of the decision and the record, I find that this conclusion was not unreasonable on the evidence that was before the RPD.

[32] Accordingly, the application for review is dismissed. There is no serious question of general importance requiring certification.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that

1. the application for judicial review is dismissed; and
2. there is no serious question of general importance requiring certification.

“Peter Annis”

Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5756-13

STYLE OF CAUSE: KALENDER TOPRAK v MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

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JUDGMENT AND REASONS: ANNIS J.

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