

Federal Court



Cour fédérale

Date: 20140709

Docket: IMM-5928-13

Citation: 2014 FC 674

Ottawa, Ontario, July 9, 2014

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

AHMED OZBAY

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

ORDER AND REASONS

[1] **UPON** a judicial review application made with respect to a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada [RPD] made on July 30, 2013;

[2] **AND UPON** the RPD's dismissal of the application made pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA];

[3] **AND UPON** hearing the parties, reviewing the record and considering further the judicial review application made pursuant to section 72 of the IRPA;

[4] The Court concludes that the judicial review application must be dismissed for the reasons that follow.

[5] The applicant is a Turkish citizen. He met his wife in 1994, as she was residing with her uncle who, according to her, was abusive towards her. Her parents were living in the United States at the time and have continued to do so. It is the applicant's mother who gave shelter to the person who would become the applicant's wife. That started in April 1994 and was followed, according to the applicant and, to some extent, his wife, by a number of death threats and attacks against the applicant. These have been described as death threats in the nature of honour killings, a phenomenon that is known to happen in Turkey.

[6] The couple had a daughter in 1996. That same year, the applicant travelled to the United States for the purpose of persuading the parents of the mother of his child to allow a marriage to take place, but also with the view to gaining status in the United States. Although the mother would have been amenable to a marriage, it appears that the father did not provide his consent. Having consulted an American lawyer, the applicant was advised that he could not get asylum in the United States because he had gained access to the country using a false passport. Following the denunciation made by his spouse's brothers, he was expelled from the United States in December 2004, some eight years after arriving in the United States.

[7] Fourteen months later, in January 2006, the applicant claims that a cousin of his spouse attacked him and stabbed him in the hand in a café.

[8] A second child was born later in 2006.

[9] The applicant's spouse and their two children obtained permanent residence in the United States in 2009. It appears that they were sponsored by the father who had refused to give his consent to the marriage with the applicant. Shortly thereafter, in July 2009, the applicant's spouse and their two children returned to Turkey. On August 6, 2009, the applicant and the mother of their two children married. It seems that only the mother's consent was obtained for the marriage to take place, as it was done without the father's knowledge. It appears that the applicant's wife and their two children went back to the United States because they came back again to Turkey in July 2010 and visited the village where, apparently, the applicant was residing. On August 14, 2010, one of his wife's cousins, the same who apparently stabbed the applicant in January 2006, shot at him with a firearm while the applicant was working in the field. Evidently, the shots did not hit their target and the applicant would have filed a complaint with the police, which complaint was not followed up according to the applicant.

[10] Following that latest incident, the applicant left his home on August 20, 2010 and went to a friend's home in Istanbul. He claimed that he changed residences on a regular basis in order to avoid being found. His wife and two children returned to the United States in September 2010.

[11] Having been deported from the United States in 2004, the applicant chose to seek a Canadian visa which he obtained on December 8, 2011. A week later, on December 15, 2011, the applicant was arriving in Canada and he sought refugee protection on January 12, 2012.

[12] Thus, to summarize, the applicant lived in the United States between 1996 and 2004, before being returned to his country of nationality where he stayed for seven years. During that time, his wife lived in Turkey until 2009 when she was able to become a permanent resident of the United States, where her parents had been since at least 1994. While a permanent resident of the United States, starting in 2009, she came back twice to Turkey, including once to get married to the applicant.

[13] It is not disputed in this judicial review application that the applicant does not qualify under section 96 or the IRPA because there is no nexus with any of the five Convention grounds. Rather, the RPD considered the application on the basis of section 97.

[14] The RPD found the credibility of the applicant to be failing. It found that the applicant contradicted himself on a number of occasions and with respect to essential elements of his claim; it also concluded that the applicant sought to adjust and embellish his testimony before the RPD; indeed, the RPD was of the view that there were numerous implausibilities and that the behaviour shown by the applicant was not consistent with that of a person who fears for his life.

[15] In view of those findings, the RPD did not discuss some other evidence that had been presented on behalf of the applicant. The lack of credibility was enough, in the view of the RPD,

to conclude that there was no serious possibility that he would be personally subjected to torture or a risk to his life if he were to return to Turkey.

[16] The applicant put forth two arguments in support of his contention that judicial review ought to be granted. First, he claimed that the RPD ignored a significant portion of the evidence which would tend to demonstrate his fear of persecution. Second, he claimed that the RPD erred in its determination that the testimony was not credible. Counsel for the applicant did not press the second issue at the hearing of the judicial review application. Rather, it is counsel for the respondent who spent most of his time showing, in a persuasive manner in my view, that the claimant's testimony, and his story altogether, was not credible. At the very least, the finding made by the RPD is reasonable, as the notion is understood since the decision of the Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9; [2008] 1 SCR 190:

[47] ... In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[17] In my view, it was perfectly reasonable to conclude that the version of events given by the applicant was not credible. The death threats, in the nature of honour killings in Turkey, that would have been made by the uncle and family of the applicant's wife, against both the applicant and his wife, did not make the applicant's wife leave Turkey for the United States, where her parents were already residing, for fifteen years (between 1994 and 2009). Indeed, the applicant stayed in the United States for eight years before, in 2004, being expelled from the United States. He stayed in Turkey for seven years while his wife, with their two children, became a permanent

resident of the United States in 2009. There is no documentary support for the alleged incidents, including the applicant's stabbing in 2006 and firearms shot in his direction in 2010.

[18] No one disputes that there are honour killings or attacks in Turkey. However, that does not support the contention put forward by the applicant, that, in his circumstances, this is what had taken place.

[19] The applicant contends that other evidence submitted to the RPD was not considered by the RPD which, in the view of the applicant, would suffice for this Court to intervene and send the matter back for a redetermination. In my view, that contention faces an insurmountable obstacle in the decision of the Federal Court of Appeal in *Canada (Citizenship and Immigration) v Sellan*, 2008 FCA 381 [*Sellan*]. Paragraphs 3 and 4 of the decision are, in my view, dispositive of this case:

[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.

[4] This leads to the question of whether there was in the record before the Board any evidence capable of supporting a determination in the respondent's favour. In our view, there was clearly no such evidence in the record. We are satisfied that had the Judge examined the record, as he was bound to, he would no doubt have so concluded. In those circumstances, returning the matter to the Board would serve no useful purpose.

[20] I believe that such is the case in the matter at hand. The story, as told by the applicant, lacked credibility. Furthermore, it is not disputed that honour killings, or attacks, happen in

Turkey. But such is not the issue. As for other evidence and in particular the evidence led by the applicant's wife, it was dealt with adequately by the RPD. It is clear from the reasons of the RPD that the version given by the applicant's wife was considered and the RPD concluded that it was not credible either. The RPD seems to have taken issue with her lack of fear for a period of fifteen years prior to her leaving for the United States; in spite of the alleged fear, not only did she stay in Turkey in spite of her parents living in the United States, but she and their two children came back to Turkey twice after gaining permanent residence in the United States. That is not the behaviour of someone who fears for her life concluded the RPD. That is reasonable.

[21] It is for the RPD to determine the plausibility of testimonies (*Aguebor v (Canada) Minister of Employment and Immigration* (1993), 160 NR 315 (FCA)). While it is certainly true that a claimant's allegations are presumed to be true (*Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (CA)), that presumption will of course be rebutted by inconsistencies and contradictions in testimonies, and the overall implausibility of the story. That would be so "if the facts as presented are outside the realm of what could reasonably be expected" (*Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776).

[22] The applicant tried to make hay out of the documentary evidence that confirms the existence of honour killings in Turkey and the prevalence of corruption in law enforcement.

[23] The lack of credibility of the applicant and his wife was fatal to the claim. General documentary evidence, in the face of a version of events that is not believed, will not be sufficient to turn the tide.

[24] The issue in this case is not whether or not the applicant is married, or whether honour killings are known to happen in his country of nationality. It is rather whether or not he has been subjected to the risks he claims. The RPD did not make any reviewable error in its assessment of the credibility of witnesses and the plausibility of the version of events given.

[25] As a result, the application for judicial review is dismissed. There is no serious question of general importance.

ORDER

THIS COURT ORDERS that the application for judicial review is dismissed. There is no serious question of general importance.

"Yvan Roy"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5928-13

STYLE OF CAUSE: AHMED OZBAY v MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JUNE 2, 2014

ORDER AND REASONS: ROY J.

DATED: JULY 9, 2014

APPEARANCES:

Jason Benovoy

FOR THE APPLICANT

Adrian Bieniasiewicz

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Goulet et Associés
Gatineau, Quebec

FOR THE APPLICANT

William F. Pentney
Deputy Attorney General of
Canada
Ottawa, Ontario

FOR THE RESPONDENT