

Federal Court



Cour fédérale

Date: 20140730

Docket: IMM-2606-13

Citation: 2014 FC 760

Ottawa, Ontario, July 30, 2014

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

FATIH YASIK

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of the decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated March 11, 2013, in which it concluded that he was not a Convention refugee nor a person in need of protection pursuant to sections 96 or 97, respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

Background

[2] The Applicant is a citizen of Turkey, an ethnic Kurd and is of the Alevi faith. He claims that, beginning in 2009, he was subjected to a number of detentions and arrests resulting from his political activities. In November 2010, he was participating in a demonstration when he was arrested, held for one day and tortured by the police before being released without charge. In January 2011, he was arrested when distributing flyers on the anniversary of the disappearance of two Kurdish politicians while in state custody. At that time he was held and tortured for two days. He was again released without charge but not before a high ranking police officer threatened him with death if he was arrested again. Subsequently, the police harassed and subjected him to random searches and beatings. In March 2011, he was picked up, questioned and beaten by police. Unable to tolerate further such treatment, in May 2011 he obtained a US visa. He flew to the US on June 12, 2011. There, he retained a human smuggler who arranged his entry into Canada on August 3, 2011 where he made a claim for refugee protection.

Decision Under Review

[3] The RPD found that the Applicant was not a Convention refugee pursuant to section 96 of the IRPA because he did not have a well-founded fear of persecution in Turkey on any of the five Convention grounds. Nor was he a person in need of protection pursuant to section 97 as, on the balance of probabilities, his removal to Turkey would not subject him personally to a risk to life or a risk of cruel and unusual treatment or punishment, or to a danger of torture.

[4] The RPD stated that the determinative issue was credibility and that it also considered the well-foundedness of the Applicant's alleged fear due to his Kurd and Alevi identity.

[5] The RPD stated that there were several concerns that, collectively, led to its finding that the Applicant was not credible. In the result, it also found that the events of persecution alleged did not occur and, therefore, that there was insufficient credible evidence to conclude that there is a serious possibility that such events would occur in the future.

[6] The RPD noted that the claim was undocumented until the day of the hearing. At the hearing, the Applicant submitted a package of documents which he testified had been sent to him from his cousin in Turkey. His cousin had picked up all of the documents, except one, from a lawyer that the Applicant had consulted but not retained. He could not provide the envelope which the package of documents had arrived in or the envelopes in which some of them may have been delivered within Turkey. The Applicant stated that he had consulted a lawyer in Turkey to seek protection from his alleged agents of persecution. When asked why he had not stated this in his Personal Information Form (PIF) narrative he explained that there were so many things that he mentioned only some and not all of them. The RPD did not accept that explanation and noted that he was represented by counsel when he completed the PIF. The RPD found this to be an embellishment at the hearing and drew from it a negative credibility inference. Consequently it found that the documents "are at the very least assigned a lesser weight by the Panel, and in fact this provides some cause to find these documents to be not genuine."

[7] The RPD questioned how legal and medical documents would be sent by the authorities to the Applicant's lawyer if he had not met or retained him. The Applicant explained that he had previously retained the lawyer on another matter, which the RPD found to contradict his testimony that he had never met the lawyer. Additionally, the Applicant could not document the existence of the lawyer or his relationship with him. From this, the RPD made another negative inference as to credibility and found this to be another reason to conclude that the documents alleged to originate from the lawyer were not genuine.

[8] As to a medical report contained in the package of documents allegedly received from the lawyer and which concerned treatment following his January 2011 detention, the RPD also noted that the Applicant's PIF did not refer to this treatment. The RPD questioned why it was dated January 2011 when he testified that it was received by his lawyer four or five months before the hearing, being late 2012. The RPD did not accept his explanation that this was a file copy of the report. It also noted the absence of a medical report from Canada that might have corroborated his allegations of torture. The RPD found the claim of medical care to be an embellishment and drew a negative inference as to credibility.

[9] As to an investigation note dated April 14, 2011 which the RPD found to be more like a notice to appear, it was addressed to the police from the prosecutor and required the Applicant, who was described as a suspect, to appear in court four days later. When asked why he would be described as a suspect as he had been detained and released, the Applicant stated that it was to give evidence but he did not recall if he had been told this upon his release. He was also asked why the document was sent to his house, given that it was addressed to the police, but he had no

explanation for this. He also stated that it came to his house in May although it was dated April 14 and was a notice to appear four days later. Further, that he was away during this time but he could not explain why his parents, who were at home, did not tell him about the document until six months before the hearing. Based on this, the RPD found the document was not genuine.

[10] The RPD stated that its finding that all of the documents submitted by the Applicant were not genuine was not the only reason that it determined that the Applicant was not credible. It also noted an inconsistency in his evidence concerning his opportunity to consult with counsel during the March 2009 detention which was unsatisfactorily explained and led to a negative inference as to credibility.

[11] The RPD noted that, after his failed application for a Canadian visa in 2008, the Applicant made no attempt to leave Turkey between 2008 and 2011 although he claimed he had problems before 2009 and that they increased in severity. His explanation was that he felt he should wait a while before seeking another visa and that he had heard that it was only Canada which accepted refugees. The RPD noted his testimony that he started to more seriously fear Turkey in January 2011, but did not apply for a US visa until April 2011 and that he did not leave Turkey for a month after he received his visa. The RPD did not accept his explanation that it took that length of time to prepare his documents or to receive his visa and to borrow money. Nor did it accept his explanations as to why he spent two months in the US without making a claim for asylum, being a lack of money and because he was advised that Turkish asylum claims do not succeed in the US. The RPD also made a negative inference as to credibility based on an

inconsistency in his testimony as to whether or not the person who gave this advice was a lawyer.

[12] Given these delays and the failure to consider an asylum claim in the US, the RPD found that the Applicant did not have a subjective fear of remaining in or returning to Turkey and, because he alleged to have had that fear, it made a negative credibility finding. Further, that his testimony at the hearing that he was threatened with additional death threats by the police, when he had mentioned only one such threat in his PIF, was not satisfactorily explained and was found to be an embellishment from which a negative inference was drawn.

[13] As to the question of whether the Applicant required protection from conscription in the Turkish military, at the hearing, he claimed to be a conscientious objector. However, he did not state this in his PIF and the RPD did not accept his explanation that he did not think of it at the time. This was again found to be an embellishment from which a negative inference as to credibility was drawn and from which the RPD also found that the Applicant did not require Canada's protection from conscription. And, based on its other credibility findings, it did not accept any of the stated reasons for not wanting to serve in the military and found that the Applicant simply did not wish to do his Turkish compulsory military service.

[14] As to the question of whether the Applicant required protection because he is Alevi and Kurdish, the RPD reviewed the country documentation and found that Kurds who aggressively advocate for Kurdish rights might face persecution but, based on its credibility finding, concluded that the Applicant did not have that profile. And, while the documentation speaks of

discrimination and some attacks on Alevi, there are millions of Alevis in Turkey and only a small number of attacks. In both cases, mere inclusion in either the ethnic or religious group did not lead to persecution. Thus, there was only a mere possibility that the claimant would be attacked and not a serious possibility of being persecuted.

Issues

[15] I would frame the issues in this application as follows:

1. Is the RPD's credibility finding reasonable?
2. Did the RPD fail to address other grounds of persecution alleged by the Applicant?

Standard of Review

[16] It is established jurisprudence that credibility findings are essentially pure findings of fact that are reviewable on a reasonableness standard (*Zhou v Canada (Minister of Citizenship and Immigration)*, 2013 FC 619 at para 26 [*Zhou*]; *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (CA)). Similarly, the weighing of evidence and the interpretation and assessment of evidence is also reviewed on a reasonableness standard (*Zhou*, above, at para 26).

[17] Reasonableness is concerned with the justification, transparency and intelligibility of the decision-making process, but also with whether the decision falls within a range of possible,

acceptable outcomes defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47 [*Dunsmuir*]).

Analysis

ISSUE 1: Is the RPD's credibility finding reasonable?

Applicant's Position

[18] The Applicant submits that the RPD's credibility findings are unreasonable because it adopted an overzealous and sometimes careless approach to the evidence resulting in credibility findings that are generally unsupported by the record. Based on these credibility findings, and contrary to the jurisprudence (*Yener v Canada (Minister of Citizenship and Immigration)*, 2008 FC 372 at para 31), it unreasonably found that the documents were not genuine.

[19] The Applicant also submits that the RPD erred in failing to assess the authenticity of the documents he submitted. Foreign documents are presumed to be valid unless there is evidence to the contrary (*Ramalingam v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 10 at para 5 (TD) [*Ramalingam*]). Here, they contained seals, stamps and signatures which have been recognized as security features going to authenticity (*Zheng v Canada (Minister of Citizenship and Immigration)*, 2008 FC 877 at paras 18-19 [*Zheng*]; *Ru v Canada (Minister of Citizenship and Immigration)*, 2011 FC 935 at paras 39-42, 48 [*Ru*]), however, the RPD focused only on the manner in which the documents were obtained.

Respondent's Position

[20] The Respondent submits that the RPD found the Applicant not to be credible for many reasons. The Applicant does not take issue with any of these reasons, but argues that the RPD ought to have considered the authenticity of his documents. There is only a presumption that foreign documentation is valid and the RPD is entitled to assess the weight to be afforded to the documents (*Cheikhna v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1135). It also provided valid reasons for doubting their authenticity (*Benmaran v Canada (Minister of Citizenship and Immigration)*, 2011 FC 755 [*Benmaran*]). Documents whose authenticity has not been undermined may, in appropriate circumstances, be assigned little or no weight, provided that the RPD explains why it did so (*Grozdev v Canada (Minister of Citizenship and Immigration)*, [1996] FCJ No 983 (TD); *Memacaj v Canada (Minister of Citizenship and Immigration)*, 2012 FC 762 at para 53). Further, it is within the RPD's jurisdiction to decide questions of credibility and afford weight to the evidence (*Brar v Canada (Minister of Employment and Immigration)*, [1986] FCJ No 346 (CA); *Castro v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 787 (TD)).

Analysis

[21] The RPD determined that there were multiple reasons that, cumulatively, caused it to find that the Applicant was not credible. The Applicant imputes many of those findings and refers the Court to the evidence which he considers contradicts the decision.

[22] Having reviewed each finding, the record and the submissions of the parties, it is my view that while it may be possible to disagree with some of the RPD's findings and that there may be some errors of analysis, viewed in whole, the decision falls within the range of possible acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190).

[23] With respect to the RPD's findings of omissions from the Applicant's PIF concerning the consultation with a lawyer, medical assistance in Turkey, other death threats, and, that the Applicant was a conscientious observer, I would note that it is open to the RPD to base credibility findings on omissions and inconsistencies between Port of Entry notes, PIFs and a claimant's testimony at the hearing (*Sheikh v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 238 (CA); *Kaleja v Canada (Minister of Citizenship and Immigration)*, 2011 FC 668 at para 18; *Shatirishvili v Canada (Minister of Citizenship and Immigration)*, 2014 FC 407 at para 29 [*Shatirishvili*]).

[24] The Applicant testified that he had a lawyer in Turkey with whom he discussed his problems. When asked if he actually discussed his problems and obtained an opinion, the Applicant stated that he did not because he did not have enough time. When asked if he was a client of the lawyer, he replied that he had not retained him officially but that they had been in touch continuously because the Applicant was asking him questions and he was answering. He also stated that he had spoken to the lawyer in Turkey over telephone in an to attempt to obtain protection from the authorities in relation to his experiences in 2011, but that he did not meet him personally. When asked why he did not mention that he spoke to a lawyer regarding seeking

protection in his PIF, he replied that there were many things, and therefore he did not mention everything briefly. The RPD noted that the Applicant was represented by counsel when he prepared his PIF.

[25] In my view, while alone this was not a particularly significant omission, the RPD was not obliged to accept the Applicant's explanation and it was open to it to find this to be an embellishment and to draw a negative inference to credibility, particularly in light of the RPD's other credibility concerns (*Sandhu v Canada (Minister of Citizenship and Immigration)*, 2005 FC 370 at para 5).

[26] Similarly, the RPD found that the Applicant had omitted to include in his PIF that he received medical assistance in Turkey as a result of the alleged assault while in custody in January 2011. His explanation for this was, again, that he did not mention everything in his PIF. The RPD was not obliged to accept this explanation (*Gulabzada v Canada (Minister of Citizenship and Immigration)*, 2014 FC 547 at para 9; *Houshan v Canada (Minister of Citizenship and Immigration)*, 2010 FC 650 at para 19) and, in my view, it was a significant omission as a hospital attendance would serve to confirm both the existence and severity of the assault. The RPD also noted that he did not produce the medical report until the day of the hearing.

[27] The Applicant also testified at the hearing that he did not complain about the illegal police brutality to the prosecutor because in all four instances the police had threatened him with death. The RPD noted that in his PIF, the Applicant had only mentioned that he was threatened

in this manner in connection with the January 2011 incident. It did not find his explanation that he had been particularly brutally beaten in January 2011 to satisfactorily explain the omission. Again, this was a reasonable finding.

[28] The fourth omission concerned the Applicant's testimony at the hearing that he was a conscientious objector. The RPD found that this was not included in the Applicant's PIF in which he stated the following:

I strongly object serving in the Turkish army for many reasons. The Turkish army has been involved in the grave human rights violations against the Kurdish civilians in east and southeast of Turkey for many years. I will be persecuted in the army because of my profile.

[29] A conscientious objector is defined as an individual having principled objections to military service, which is detailed under the third exception to the general rule that an applicant generally cannot claim refugee status under the *United Nations Convention Relating to the Status of Refugees* (the Convention), and accordingly under section 96 of the IRPA, just because he does not want to serve in his country's army (James Hathaway, *The Law of Refugee Status* (Markham: Butterworths, 1991) [Hathaway]).

[30] Persons claiming refugee status based on their conscientious objection to military service essentially form two specific groups: those who object to military service in general and those who object to serving in a particular conflict (*Lebedev v Canada (Minister of Citizenship and Immigration)*, 2007 FC 728 [*Lebedev*]; *Hinzman v Canada (Minister of Citizenship and Immigration)*, 2006 FC 420, aff'd 2007 FCA 171 [*Hinzman*]).

[31] The Applicant stated in his PIF that his objection was based on human rights violations against Kurdish civilians. Before the RPD, he stated that he was against killing and serving in any military service and for the reasons included in his PIF. While the definition of, and distinctions within, the term conscientious objector may not be understood or appreciated by all refugee claimants, in this case the Applicant was represented by counsel when he prepared his PIF and counsel would have appreciated the significance and importance of this term and the necessity of including it in the PIF. In my view, while alone this omission would not be fatal, what is being considered here is a cumulative negative credibility finding and this omission would contribute to that finding.

[32] The next credibility findings to be considered involve the authenticity of the documents submitted by the Applicant and the existence of his lawyer in Turkey.

[33] The RPD noted that the Applicant had not documented his claim in any way until the day of the hearing, even though it had been previously scheduled. There were then four documents provided: the January 11, 2011 medical report; an in absentia arrest warrant dated January 18, 2013; a record of suspect's statement dated January 8, 2011; and, an investigation note or notice to appear from the chief prosecutor's office dated April 14, 2011. The Applicant testified that his cousin had picked up three of these from the Applicant's lawyer in Turkey and mailed them to him together with the notice to appear. He did not have any envelopes in which they were sent or received. His testimony as to the Turkish lawyer is described above.

[34] There is a presumption of validity in regard to foreign issued documents and the RPD is only entitled to doubt their validity if it has a valid reason to do (*Ramalingam*, above; *Cao v Canada (Minister of Citizenship and Immigration)*, 2012 FC 694 at para 15; *Ru*, above, para 42). It is also well established that the assessment of the weight to be given to documents is a matter within the discretion of the tribunal assessing the evidence (*Ru*, above, at para 49).

[35] There is a concern in this matter arising from the fact that the RPD does not address in its decision the fact that documents submitted by the Applicant contain stamps and signatures from authorities but that the RPD did not analyze these features. Jurisprudence has held that official stamps are recognized as security features (*Ru*, above, at para 49; *Zheng*, above, at paras 18-19).

[36] Given this, it is necessary to consider each of the documents and the RPD's findings so as to ascertain if this failure amounts to a reviewable error in these circumstances.

[37] In my view, the RPD may have been overzealous in questioning the authenticity of the medical report because it was dated January 11, 2011. The Applicant explained that he had asked his cousin to obtain the report which he did four or five months before the hearing. The RPD asked why it was dated January 2011 if it was issued four or five months ago. On its face, the document does not have an issuance date. It is possible, as the Applicant explained, that it was a file copy and that the report was made on the date the Applicant was seen at the hospital. However, the RPD also found that the report was not genuine because of other credibility concerns, in particular, that the Applicant omitted to indicate in his PIF that he received medical

attention after the alleged assault in custody of January 2011. Thus, the RPD had a valid reason to doubt the veracity of the document.

[38] In my view, the RPD also reasonably questioned the investigation note which it found was more like a notice to appear. It is dated April 14, 2011, is addressed to the police from the prosecutor, and required the Applicant to appear in court as a suspect four days later, being on April 18, 2011. The RPD found that it was fraudulent because it identified the Applicant as a suspect but he stated that he had been detained and then released by the authorities. The RPD also noted that the Applicant stated that he believed it was sent to his house in May, yet it was addressed to the police, and required him to attend court in April. In my view, the RPD was not inconsistent in finding that the investigation note was more like a notice to appear, because that is precisely what it appears to be. The RPD's questioning of why a notice for the Applicant to appear would be directed to the police was a reasonable concern as was why his parents, who he stated received the investigation note at their home, had not alerted him to it until six months ago.

[39] The RPD does not discuss the in absentia arrest warrant or the record of suspect's statement. However, it made a general finding that all of the documents sent by the lawyer were not genuine because it did not believe that the lawyer existed and because there was no envelope to prove that the documents were sent from Turkey. It was therefore reasonable for the RPD to question their authenticity. In any event, the omission to refer to these two documents is not determinative as the conclusion would have been the same (*Benmaran*, above, at para 11).

[40] As noted above, the Applicant did not mention his Turkish lawyer in his PIF and raised it for the first time at the hearing. A reading of the transcript of the hearing adds little clarity to the Applicant's relationship with the lawyer. The RPD acknowledged that it did not ask the Applicant to provide the name or location of the lawyer. Therefore, the Applicant is correct in stating that the RPD did not put this to the Applicant nor was he offered an opportunity at the hearing to provide documentation detailing the existence of the lawyer. However, the Applicant stated that he did not have a letter from the lawyer confirming his assistance. And, neither the Applicant, nor his counsel, stated at the hearing that they had documents to prove that the lawyer existed or that such verification could be obtained.

[41] Given these circumstances, and in light of the RPD's other credibility findings, in my view, it was reasonable for the RPD to question whether the lawyer existed and to find that he did not. Even if the lawyer did exist, the RPD's cumulative negative credibility findings, including its findings concerning the medical report and investigation note, would alone have been sufficient to ground its conclusion.

[42] The RPD also reasonably drew an adverse inference because the Applicant first indicated that he was provided with an opportunity to consult with counsel during his alleged detention of March 2009 and then testified that he did not think that he was offered the right. It did not accept his explanation that the event occurred several years ago.

[43] That said, the RPD did make errors in its analysis. For example, it drew an adverse inference as to credibility in finding that the Applicant's testimony was inconsistent as to

whether he spoke with a lawyer in the US. However, a review of the transcript indicates that the RPD drew an inconsistency where there was none. The Applicant stated that he did not speak with a lawyer in the US. The RPD also drew a negative inference as to the Applicant's credibility because he alleged, but the RPD found that he did not have, a subjective fear of remaining in or returning to Turkey. In my view, this is a peculiar and very dubious finding.

[44] Notwithstanding these errors, the credibility determination, which was cumulative, remains supported by a number of reasonable findings (*Gomez Herrera v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1386 at para 7; *Shatirishvili*, above, at para 35).

ISSUE 2: Did the RPD fail to address other grounds of persecution alleged by the Applicant?

Applicant's Submissions

[45] The Applicant submits that contrary to the RPD's finding, he raised three grounds of persecution in his PIF, as described in *Lebedev*, above, at paras 29-33, which might arise from objection to military service (see also *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, para 168; *Zolfagharkhani v Canada (Minister of Employment and Immigration)*, [1993] 3 FC 540; *Hinzman*, above). These exceptions include:

- (1) the claimant would suffer some a form of discriminatory treatment before during or even after compulsory military service based on race, religion, nationality, membership, or political opinion;
- (2) the claimant is a conscientious objector;

- (3) the claimant objects to serving in a war that is internationally condemned and contrary to principles of international and humanitarian law.

[46] The Applicant submits that the RPD erred in failing to address the other grounds of his persecution, being the first and third exceptions above, and that this warrants overturning the decision (*Ghirmatsion v Canada (Minister of Citizenship and Immigration)*, 2011 FC 519 at para 106 [*Ghirmatsion*]). Instead, it restricted its examination to whether he was a conscientious objector. The additional grounds are central to his claim and are not merely “an afterthought not supported by evidence” (*Suppaiah v Canada (Minister of Citizenship and Immigration)*, 2013 FC 429). He stated that he fears being persecuted in the army because of his profile and he listed his objections to serving in the Turkish army. He also testified that he is a conscientious objector. The documentary evidence corroborates his objections and required the RPD to take them seriously.

Respondent's Submissions

[47] The Respondent submits that the RPD did consider the Applicant's assertion of being a conscientious objector. Further, that the Applicant's evidence during the hearing when asked why he did not state that he was against killing for conscientious reasons was that he did not think of it at the time. Moreover, he was not found to be of a profile that would place him at a risk of persecution and there is no indication that the additional ground was central to his claim. The RPD considered whether he would be persecuted as a result of his ethnicity and religion, but reasonably found that he did not have the profile and therefore there was no serious possibility that he would be persecuted. The onus was on the Applicant to raise arguments concerning

participation in a war that is internationally condemned. The RPD reasonably did not accept that he was a genuine conscientious objector.

Analysis

[48] It is of note that in his application for leave and judicial review, the Applicant raised only one issue, being whether the RPD erred in analyzing his documents and, therefore, reached unreasonable credibility findings. The Applicant did not mention the issue of his objections to service in the Turkish military. Given this, it is difficult to accept, as the Applicant submits, that from the outset this ground of persecution has been a central and consistent part of his claim.

[49] In his PIF the Applicant states:

I also fear that I will be forced to perform the mandatory military service. I strongly object serving in the Turkish army for many reasons. The Turkish army has been involved in the grave human rights violations against the Kurdish civilians in east and southeast of Turkey for many years. I will be persecuted in the army because of my profile.

[50] In my view, the RPD appears to have considered and reasonably rejected the Applicant's alleged grounds of persecution. The RPD noted the Applicant's claim that he feared conscription. It found that it was possible that he would be conscripted, but that he had not produced any call notices. He explained that this was because he was exempted from conscription as he was in university. The RPD found that it was also possible that he completed his military service.

[51] The RPD also noted his allegation at the hearing that he is a conscientious objector but reasonably rejected this submission. While in his PIF he stated that he did not wish to serve in the Turkish military because it is involved in human rights violations against his own people, the Kurds, and because he would be maltreated in the military, he did not claim that he was a conscientious objector. The RPD did not accept his explanation that he did not think of it at the time finding that this would be a very significant reason why a person would not want to serve. The RPD found this to be an embellishment at the hearing and drew an adverse inference as to credibility. Significantly, considering its other credibility concerns, the RPD stated that it also did not accept any of the Applicant's stated reasons for not wanting to serve and found that he simply did not wish to do so.

[52] In *Lebedev*, above, Justice de Montigny confirmed that a claimant generally cannot claim refugee status under the Refugee Convention and, therefore, section 96 of the IRPA, solely because he does not want to serve in his country's army. However, that there are three exceptions to this being:

- i) when conscription for a legitimate and lawful purpose is conducted in a discriminatory way or the punishment for desertion is biased in relation to a Convention ground;
- ii) when there is an implied political opinion that the military service is fundamentally illegitimate under international law;
- iii) when individuals have "principled objections" to military service (i.e. conscientious objectors)

[53] Conscientious objection applies to those who are completely opposed to war because of their politics, ethics or religion and raises subjective issues. Selective objection refers to cases which an applicant opposes a war he feels violates international standards of law and human rights and requires both a subjective and objective assessment of the facts. Thus, a decision-maker must evaluate the sincerity of an applicant's beliefs and determine whether the conflict objectively violates international standards. The two types of objections should be treated as distinct categories.

[54] The Applicant refers to *Ghirmatsion*, above, in support of his view that the RPD erred in failing to address two grounds of persecution that he claimed. In that case a visa officer did not address the applicant's fear of persecution on the basis of having left the country illegally.

Justice Snider stated that:

[103] The Respondent argues that the Officer testified that she did not find the Applicant to be credible; therefore, she was under no obligation to consider all of the relevant bases for persecution. This would be a sound response if (a) the credibility findings are reasonable; and (b) if the credibility findings clearly foreclosed all other grounds of persecution.

[104] I acknowledge that, in general, a negative credibility finding (if reasonable and made with regard to the evidence) will mean that the decision maker does not have to look further into the claim. For example, if a visa officer concludes that a claimant was never imprisoned, it follows that a claim based on a fear of being returned to detention is not sustainable. However, if the claimant puts forward facts that raise an additional ground of persecution, that part of the claim still needs to be assessed, unless the visa officer clearly finds that part of the claim to also lack credibility.

[...]

[106] It would have been open to the Officer to consider this additional ground of persecution and reject it; however, this is not what the Officer did. She had no explanation for why she did not assess this risk. The Respondent asks this Court to accept that the

Officer was under no obligation to consider these additional risks because she did not find the Applicant's story to be credible. However, that was not the reason why the Officer did not consider these additional grounds of persecution. She had no explanation. This is a reviewable error that, on its own, would warrant overturning the Officer's decision.

[55] In the present case, unlike *Ghirmatsion*, above, the RPD clearly addressed the Applicant's claim to be a conscientious observer and then went on to explicitly reject the other bases of his reasons for not wishing to serve in the Turkish military because of its credibility findings. It should also be noted that general findings of a lack of credibility can affect all relevant evidence submitted by an applicant and ultimately cause the rejection of a claim (*Nijjer v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1259; *Alonso v Canada (Minister of Citizenship and Immigration)*, 2008 FC 683).

[56] In any event, the Applicant's claim as advanced could not succeed on this ground (*Etiz v Canada (Minister of Citizenship and Immigration)*, 2013 FC 308, at para 11; *Arpa v Canada (Minister of Citizenship and Immigration)*, 2014 FC 334, at paras 20, 22). In my view, neither the Applicant's evidence, or the limited documentary evidence he submitted in support of his position, would have been sufficient to establish the depths or sincerity of his belief so as to establish that he was a conscientious observer, or, that he would be required to participate in military activities considered to violate existing international standards. Nor did it establish that if conscripted he would be persecuted because of his profile. That is, he did not establish that he fell within the established exceptions to the general rule that a claimant cannot claim refugee status because he does not wish to serve in his country's army.

[57] For the reasons set out above, this application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed; and
2. No question of general importance was proposed or arises for certification.

"Cecily Y. Strickland"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2606-13

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