

Federal Court



Cour fédérale

Date: 20141128

Docket: IMM-4591-13

Citation: 2014 FC 1151

Ottawa, Ontario, November 28, 2014

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

**EMINE GULAL, ERCAN GULAL,
and NESIL GULAL**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is an application for judicial review of the June 24, 2013 decision (the Decision) of the Refugee Protection Division of the Immigration and Refugee Board (RPD) finding the Applicants to be neither Convention refugees nor persons in need of protection under sections 96 or 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*).

II. Facts

[2] The Applicants, Ercan Gulal (the Applicant) and his wife Emine Gulal, are citizens of Turkey who claim to be Convention refugees due to their political opinions and activities, their ethnicity (Kurdish) and religious beliefs (Alevi). The third Applicant is their four-year-old daughter (Nesil Gulal) who is also a citizen of Turkey.

[3] Before coming to Canada, the Applicant was involved in Kurdish and left-wing political parties (HADEP, DEHAP, DTP and BDP). According to his Personal Information Form (PIF) narrative, the Applicant was beaten, tortured and detained several times by Turkish authorities and anti-Kurdish radicals.

[4] In his PIF narrative, the Applicant alleges that he was beaten by anti-Kurdish radicals at least five times while leaving a coffee shop after political meetings. The Applicant alleges that he was beaten twice with a wooden stick. He allegedly has scars on his arm and forehead due to these beatings. The Applicant alleges that he could not complain to the police because the police do not protect Kurdish political militants.

[5] The Applicant also alleges in his PIF narrative that he was persecuted by Turkish authorities and was: (i) detained for a day and beaten on May 1, 2009; (ii) detained for three days and tortured during the third week of December 2009; (iii) detained for two days and tortured beginning on September 1, 2010; and (iv) detained for two days and tortured on March 21, 2011.

[6] Based on a death threat made against the Applicant upon his release in March 2011, the Applicant and his wife decided to leave Turkey. The Applicants fled to the USA first as it was impossible to get a visa for Canada. While the Applicants got their visa on June 30, 2011, they did not leave Turkey until October 14, 2011.

III. Decision

[7] The Applicant's lack of credibility concerning his political activities and the alleged beating and detentions led the RPD to find that the Applicants are not Convention refugees or persons in need of protection pursuant to sections 96 and 97 of the *IRPA*. Moreover, the RPD considered that the Applicants do not need protection on the sole basis of their profile as Kurdish and Alevi.

[8] The RPD found the Applicant not credible for the following reasons:

1. While the Applicant mentioned at paragraph 7 of his PIF narrative that he was beaten at least five times at a coffee shop, he stated at the hearing that he was beaten severely only twice before finally stating that he was beaten exactly five times. The RPD noted that the Applicant could not explain these inconsistencies and drew "minor" negative inferences as a result.
2. While the Applicant testified that he saw a doctor and received medical treatment for the beatings, he could not provide any medical document to support this allegation. Moreover, the Applicant did not mention that medical treatment in his

PIF, even though section 31 of the PIF instructs a refugee claimant to indicate if he has received medical treatment. Therefore, the RPD found this allegation of medical treatment to be an embellishment of the Applicant's allegations.

3. The Applicant could not recall when the first of his alleged four detentions in Turkey took place. When the RPD asked him the question a second time, he remembered the year the detention happened but not the month.
4. When the Applicant was asked when his second detention was, he first mentioned that it was on September 1, 2010. When asked to confirm this date he added that there was another detention between the first detention and September 1, 2010. The Applicant was able to confirm the date of this intermediate detention only when the RPD informed him that, according to his PIF narrative, it happened in the third week of December 2009.
5. While the Applicant initially stated at the hearing that he was detained for two days in the third week of December 2009, he stated in his PIF narrative that this detention lasted three days. The Applicant confirmed that the period of the detention was three days only after being reminded of what he said in his PIF.
6. The RPD noted that the Applicant submitted a medical note during the hearing with respect to the alleged detention of September 1, 2010. However, the RPD had the following concerns about this document:

- a. The Applicant did not provide the original of this report.
 - b. While the Applicant's counsel stated that he received the report by e-mail, he was unable to produce this e-mail.
 - c. While the Applicant allegedly received this report in September 2010, his father allegedly found it just a few days before the hearing.
 - d. This report indicates the Applicant's birth date correctly, which would have made him 23 when the report was written. However, this report indicates that the Applicant was 26 when he sought medical assistance.
 - e. Finally, the Applicant did not mention this medical treatment in his PIF narrative.
7. The Applicants received their visas to the USA on June 30, 2011, but did not leave Turkey until October 14, 2011. While the Applicant indicated that he had to stay in Turkey to sell some land to pay his agent, he could not provide any documents to corroborate those allegations. When asked why he did not pay his agent from the USA, the Applicant answered that his agent held their passports until the payment was made. However, the Applicant did not mention this explanation in his PIF.

8. The Applicant submitted very shortly before the hearing a letter from a lawyer claiming that he assisted the Applicant pertaining to his problems with the authorities of Turkey. However, the Applicant did not provide the original of the letter. Additionally, the Applicant did not mention in his PIF narrative that he engaged a lawyer in Turkey, even though section 31 of the PIF requests the details of any step taken to obtain state protection.

[9] The RPD also concluded that the Applicants do not require Canada's protection simply because they are Alevi and Kurdish.

[10] After reviewing the country documentation the RPD found that Kurds who aggressively advocate Kurdish rights might face persecution. However, the panel did not believe this to be the case for the Applicant and found, therefore, that "there is not a serious possibility of the claimants being persecuted because they are Kurdish."

[11] With regard to the Applicant's religion, the RPD noted, based on the country documentation, that while there are millions of Alevi in Turkey, a small number of attacks against them are alleged. Therefore, the RPD concluded that there is no serious possibility that the Applicants would be persecuted because they are Alevi, "even in association with being Kurdish."

IV. Issues

[12] This matter raises the following issues:

1. Did the RPD err in assessing the Applicant's credibility?
2. Did the RPD err in considering the evidence?
3. Did the RPD fail to undertake a forward-looking analysis to assess the likelihood of persecution?

In my opinion, these questions can be answered in one single analysis by determining whether the RPD reasonably found the Applicants not to be Convention refugees pursuant to section 96 of the *IRPA* or persons in need of protection pursuant section of the 97 *IRPA*.

V. Analysis

A. *Standard of review*

[13] In the present case, the issues in dispute are questions of mixed fact and law to be reviewed under the standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9). In addition, it is clearly established that the standard of review applicable to the assessment of credibility is reasonableness (*Suntharalingam v Canada (Citizenship and Immigration)*, 2014 FC 987, at para 29). Significant deference is due on the findings of a tribunal in matters of credibility (*Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319, at para 22).

B. *Is the decision reasonable?*

[14] The Applicant submits, that “unless there are inherent contradictions in a claimant’s evidence, or a direct conflict with the documentary evidence, a claimant’s evidence must be considered credible” (*Lachowski v Canada (Minister of Employment and Immigration)*, (1992), 18 Imm. L.R. (2d) 134 at 144). However, as argued by the Respondent, “presumption of truth may be rebutted where evidence is not credible or is implausible” (*Veloz Gudino v Canada (Citizenship and Immigration)*, 2009 FC 457, at para 18).

[15] The Applicant submits that the RPD erred in making an adverse credibility finding because he was unable to remember the date of the first detention. I disagree with the Applicant. The transcript of the hearing indicates that he was even unable to remember the month of his first detention. While this detention constitutes one of the key facts that allegedly led the Applicant to leave his country, it seems that he was unable to indicate around what time of the year it happened. This is reasonable support for the RPD’s conclusion that the Applicant “simply failed to memorize his story properly.”

[16] While the Applicant stated at the hearing that he was beaten severely twice and was beaten five times in total, he stated in his PIF that he was beaten “at least five times severely.” The Applicant argues that the RPD’s focus on this distinction overlooked the more important issue in the present case, namely the fact that Turkish authorities have beaten the Applicant. However, the RPD acknowledged that the negative inferences it drew with regard to these inconsistencies were “minor ones because of the legitimate possibility of some confusion over

the wording.” In my opinion, the RPD reasonably weighed the effect of these inconsistencies on the Applicant’s overall credibility. It is important to bear in mind the cumulative effect of these inconsistencies and the others highlighted by the RPD. Together, they show that there were problems with the Applicant’s ability to prove any of the various beatings and detentions that he alleged. I do not accept the Applicant’s argument that the RPD’s negative inferences at the beginning of the hearing with regard to the alleged beatings had a polluting effect on the RPD’s analysis of the Applicant’s other allegations of mistreatment.

[17] The Respondent submits, and I agree, that the Applicant did not provide enough corroborative evidence to support his claim, in light of the inconsistencies. In the present case, the Applicant did not document his four arrests. Moreover, the Applicant alleges that he and his family were forced to stay in Turkey after obtaining visas to the USA because he had to sell a land to pay his agent \$16,000. However, the Applicant did not document the sale of the land in any way. This was important because this sale of the land was the reason asserted by the Applicant for not leaving Turkey sooner. Without the explanation, one is left with the fact that the Applicant voluntarily delayed his departure. This suggests that he was not genuinely fearful. The conclusion of the RPD that the story of the sale of land was another embellishment at the hearing was entirely reasonable.

[18] Furthermore, there were credibility concerns with respect to the Applicant’s medical report as mentioned above. I agree with these concerns. Even though each individual concern may seem minor, their cumulative effect is important. The applicant was given a clear

opportunity to produce the email to which the report was allegedly attached, but it was never submitted to the RPD.

[19] The Applicant argues that a letter from the BDP confirming that he was a supporter of BDP was unreasonably dismissed. In my view, it was reasonable for the RPD to give the letter little weight in light of the overall credibility concerns.

[20] The Applicant also challenges the RPD's dismissal of his fears should he be deported to Turkey as a failed refugee claimant. However, the Applicant has not cited any evidence that such fear is well-founded.

[21] The Applicant argues that the RPD failed to conduct a forward looking analysis by failing to turn his mind to the likelihood of future mistreatment. I disagree with the Applicant. The RPD considered the evidence to determine whether the Applicants would be subject to persecution if they returned to Turkey because they are Kurdish and Alevi. The RPD reasonably concluded that the above-mentioned credibility problems lead to the conclusion that the Applicant failed to demonstrate that he may face persecution because of his political profile. The RPD then considered the Applicant's ethnicity and religious beliefs distinct from any political activity. Having considered the Applicant's arguments on this issue, I am not satisfied that the RPD's analysis was inadequate, insufficient or unreasonable. The Applicant's arguments were heavily reliant on persecution against Kurds in Turkey who are politically active. However, based on its negative credibility findings, the RPD's analysis was concerned with Kurds who are not politically active.

VI. Conclusion

[22] In my opinion, this appeal should be dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that:

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

“George R. Locke”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4591-13

STYLE OF CAUSE: EMINE GULAL, ERCAN GULAL, AND NESIL GULAL
v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

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