Federal Court  Cour fédérale

Date: 20170316

Docket: IMM-3287-16

Citation: 2017 FC 283

[REVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, March 16, 2017

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

YILMAZ INCE
CIGDEM INCE

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 under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], of a decision dated May 27, 2016, by which a

pre-removal risk assessment officer [PRRA officer] refused an application for a pre-removal risk assessment [PRRA application] filed by the applicants.

[2] For the reasons below, I must dismiss this application.

II. Facts

[3] The applicants, Yilmaz Ince and Cigdem Ince, are a married couple and are citizens of Turkey.

[4] On June 14, 2011, Ms. Ince was charged in Turkey with distributing propaganda in her workplace on behalf of a terrorist group.

[5] On June 15, 2012, the applicants left Turkey for the United States, and, after travelling through New York and Plattsburgh, they arrived in Lacolle, Canada, on June 22, 2012, and made a claim for refugee protection on June 26, 2012, based on their Kurdish ethnicity and their Alevi religion. When they arrived, the applicants did not mention the charge brought against Ms. Ince in Turkey.

[6] On April 17, 2013, in Turkey, Ms. Ince was convicted *in absentia* of aiding and abetting the members of an illegal organization and sentenced to seven years' imprisonment. A warrant for Ms. Ince's arrest was issued on the same day. Although she was in Canada at the time, she was represented by her counsel at the trial in Turkey. Ms. Ince stated that she had also appealed the decision within seven days from the time it was rendered.

[7] On May 1, 2013, the applicants were heard by the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB] and were represented by experienced counsel. In support of his claim for refugee protection, Mr. Ince alleged that he had been harassed while at university, and Ms. Ince stated that the family home and land had been destroyed by terrorists in military uniform in 1994. In November 2011, Mr. Ince was also arrested, detained, beaten and insulted by the police, only to be released three days later without any charges being laid.

[8] The applicants never told the RPD about Ms. Ince's conviction and arrest warrant in Turkey. The RPD ultimately found that the most serious incident of persecution alleged by Ms. Ince was indirect and had occurred more than 19 years earlier. It also found that the event of November 2011 was an isolated one and that, even if the police officers' conduct had been discriminatory, it was not sufficiently serious to constitute persecution. The RPD therefore held that the events experienced by Mr. Ince, whether considered separately or together, were not persecution. The RPD therefore denied the applicants' claim for refugee protection on May 16, 2013, concluding that there was no reasonable chance or serious possibility that the applicants would be persecuted or personally subjected to a risk to their lives or to a risk of cruel and unusual treatment or punishment should they return to Turkey.

[9] The application for judicial review of the RPD's decision was subsequently dismissed by the Federal Court.

[10] The applicants then filed a PRRA application based essentially on the same risks alleged before the RPD, but also on the basis of Ms. Ince's sentence of seven years' imprisonment in Turkey for distributing propaganda in her workplace on behalf of a terrorist group. The unfavourable decision rendered with respect to the PRRA application is the subject of this application for judicial review.

III. Decision

[11] The PRRA officer first considered the new evidence filed by the applicants to determine whether it was admissible under paragraph 113(a) of the *IRPA*. The PRRA officer noted that the information in the new documentary evidence was merely general information about Turkey rather than information relating to the personal risk that would be faced by the applicants if they were removed to Turkey. Accordingly, the PRRA officer found that the new documentary evidence, including multiple affidavits by friends and relatives of the applicants in Canada, was insufficient to persuade the officer to reach a different conclusion from that reached by the RPD.

[12] The officer next considered the admissibility of the judgment and reasons of the assize court of Elbistan that had convicted Ms. Ince on the charge of distributing propaganda in her workplace on behalf of a terrorist group and sentenced her to seven years' imprisonment. The officer found that Ms. Ince had been aware of the charge and her conviction and that she could have reasonably presented this evidence to the RPD. The PRRA officer also noted that Ms. Ince had the services of a translator available to her and that, in accordance with the normal procedure, the applicants had been asked whether they had provided all of the information

relating to their claim for refugee protection. The officer also noted that the applicants were represented by experienced counsel, and that no complaint had been filed against him.

[13] The PRRA officer then found, in the alternative, that Ms. Ince was fleeing prosecution, not persecution. The officer concluded that the crime of which Ms. Ince had been convicted had an equivalent provision in the Canadian *Criminal Code* and that the sentence imposed was not disproportionate with respect to international standards. Moreover, the PRRA officer explained that while the Turkish justice system was not perfect, he was nevertheless satisfied that the applicant benefited from the protection of the Turkish state.

[14] For the reasons above, the PRRA officer found that the conditions in Turkey had not deteriorated since the RPD's decision was rendered to the point that the applicants faced a risk of persecution or torture, a risk to their lives or a risk of cruel and unusual treatment or punishment if removed to Turkey.

IV. Issues

[15] There are three issues:

A. Did the PRRA officer err unreasonably in refusing to admit the new evidence submitted by the applicants?

B. Did the PRRA officer err unreasonably in concluding that Ms. Ince's conviction was evidence of prosecution rather than persecution?

C. Did the PRRA officer err unreasonably in concluding that the new evidence admitted was insufficient to refute the IRB's finding that the discrimination experienced by the applicants did not constitute persecution?

V. Standard of review

[16] The standard of review applicable to the decision of a PRRA officer is reasonableness (*Cabral De Medeiros v Canada (Citizenship and Immigration)*, 2008 FC 386 at para 15). In particular, the pre-removal risk assessment is based on findings of fact, and the decision of a PRRA officer must therefore be accorded deference by the Court (*Kaybaki v Canada (Solicitor General)*, 2004 FC 32 at para 5).

[17] Reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process, and also with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47. It is not the Court's role to reweigh the evidence and substitute its own decision for that of the PRRA officer.

VI. Relevant provisions

[18] The following provision of the *IRPA* is applicable:

Consideration of application	**Examen de la demande**
113 Consideration of an application for protection shall be as follows:	**113** Il est disposé de la demande comme il suit :
(a) an applicant whose claim to refugee protection has been	**a)** le demandeur d'asile débouté ne peut présenter que

rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;	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 circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;

VII. Analysis

A. *Did the PRRA officer err unreasonably in refusing to admit the new evidence submitted by the applicants?*

[19] For the reasons that follow, I find that the PRRA officer's decision falls within the range of "possible, acceptable outcomes which are defensible in respect of the facts and law".

[20] Subsection 113(a) of the *IRPA* states that, in a PRRA, "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 reasonably have been expected in the circumstances to have presented, at the time of the rejection". These conditions leave no room for discretion on the part of the officer: *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at paras 34, 35, 38, 63; *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at paras 13, 14. It is clear that, in this case, we are not dealing with evidence that "arose after the rejection" or that "was not reasonably available". The applicants therefore argue that they could not reasonably have been expected, in the circumstances, to have presented, before the rejection, the evidence of the charge against the applicant Cigdem Ince in Turkey or her subsequent conviction.

[21] Despite the applicants' argument, I am not persuaded that the officer's analysis on this point was unreasonable. The applicants submit that (i) they were in a poor psychological state when they filed their claim for refugee protection, (ii) they were in a rush, (iii) their counsel and their translator had suggested that they keep their narrative brief, (iv) they were unaware of the importance of including all of their fears in their narrative and (v) they feared having problems with the Turkish authorities if they included the new evidence in their narrative.

[22] The applicants argue that the officer erred by failing to consider all of their explanations for their failure to present the new evidence in the context of their claim for refugee protection. They note that the officer referred to their argument regarding the advice they received from their counsel and translator but did not mention any of their other arguments. The applicants submit that the officer should have considered the other arguments.

[23] It is common ground that the applicants benefited from the legal advice of qualified counsel during the relevant period. The applicants did not allege that they had been poorly advised. I find that this fact refutes arguments (iii) and (iv) set out in paragraph [21] above.

[24] As for points (i) and (v), I am aware that it is common for a refugee protection claimant to be in a poor psychological state and to fear the authorities from his or her country of origin. The applicants' evidence to this effect is weak and does not persuade me that their situation is exceptional. In my view, the fact that the officer did not comment on this explicitly is not unreasonable.

[25] Finally, regarding point (ii) at paragraph [21] above, even if the applicants were in a rush to write their narrative when filing their claim for refugee protection, they had plenty of time to amend it before their claim was rejected. The officer was not required to mention this fact explicitly.

[26] Moreover, I am not convinced that this was merely an involuntary omission. On two occasions, once in their claim for refugee protection and once in their personal information form, the applicants replied "no" to a question asking whether they had been charged with a crime. The applicants seem to have made a strategic decision not to mention the charge against Ms. Ince.

B. *Did the PRRA officer err unreasonably in concluding that Ms. Ince's conviction was evidence of prosecution rather than persecution?*

[27] Considering my finding above that the PRRA officer did not err in refusing to admit the new evidence relating to Ms. Ince's charge and conviction in Turkey, there is no need to address this issue.

[28] However, if the judgment against Ms. Ince had been admissible in evidence, it is entirely possible that I would have found the PRRA officer's conclusion that Ms. Ince was not a victim of persecution to be unreasonable. The officer cited the report from the US Department of State in his decision in support of his finding that the conditions in Turkey had not deteriorated for the applicants to any significant degree. A reading of the executive summary of the report suggests several problems in Turkey regarding (i) criminal charges brought against individuals associated

with dissident publications, (ii) protecting vulnerable populations and (iii) prison conditions. Some of these problems seem to have worsened over the course of 2015.

[29] I also note that the journalist with whom Ms. Ince had allegedly had the meetings that resulted in her conviction has been granted refugee status in Switzerland.

C. *Did the PRRA officer err unreasonably in concluding that the new evidence admitted was insufficient to refute the IRB's finding that the discrimination experienced by the applicants did not constitute persecution?*

[30] Because the new evidence regarding Ms. Ince's charge and conviction in Turkey was not accepted, the references in the evidence to the conditions in Turkey for those charged with crimes (more specifically, the crime of supporting terrorism by distributing a publication) or for prisoners are not relevant. Therefore, the assessment of the reasonableness of the officer's analysis must be performed on the basis of the deterioration of the conditions in Turkey for those of Kurdish ethnicity or of the Alevi religion.

[31] The applicants' arguments on this point are weak. Most of their arguments are not limited to the categories of ethnicity or religion, and those that are have no connection to the applicants' personal experience. I am not prepared to find that the officer's analysis was unreasonable in this respect.

VIII. Conclusions

[32] For these reasons, this application for judicial review must be dismissed. The parties agree that there is no serious question of general importance to certify.

[33] Before concluding, I wish to add that I am sympathetic to the situation in which the applicants find themselves. It seems to be uncontested that Ms. Ince has been sentenced to seven years' imprisonment in Turkey and that there is a risk that she would be arrested and imprisoned upon arrival were she to be returned there. Furthermore, as I mentioned above, I have concerns about whether Ms. Ince's conviction was just and about the prison conditions in Turkey. Therefore, despite the fact that it was correct for the officer not to accept the evidence regarding this conviction, there is still reason to believe that Ms. Ince would face serious risks if she were returned to Turkey. This consideration does not allow me to set aside the officer's decision because he did not err in ignoring the applicants' new evidence. However, I hope the applicants are able to find a way to have these serious risks evaluated reasonably before they are removed to Turkey.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application is dismissed.

2. No serious question of general importance is certified.

"George R. Locke"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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