

Federal Court



Cour fédérale

Date: 20170329

Docket: IMM-2003-16

Citation: 2017 FC 329

Toronto, Ontario, March 29, 2017

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

**MUGE KOCACINAR
MEHMET KOCACINAR
OLCAY KOCACINAR**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Mehmet Kocacinar (the “Principal Applicant”), his wife Ms. Olcay Kocacinar (the “Female Applicant”) and his sister Ms. Muge Kocacinar (the “Minor Applicant”) (collectively “the Applicants”), seek judicial review of a decision, dated April 13, 2016, of the Immigration and Refugee Board, Refugee Protection Division (the “Board”) dismissing their claims to be convention refugees or persons in need of protection, within the meaning of section 96 and

subsection 97(1), respectively, of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Applicants are citizens of Turkey and Arab Alevis. The Principal Applicant and the Female Applicant sought protection on the grounds that they are at risk due to their political activities. The Minor Applicant claims to have been harassed by a man seeking to force her to marry him and the police refused to provide assistance. The Principal Applicant also sought protection from compulsory military service.

[3] The Board determined that the Principal Applicant failed to provide credible evidence that he was a political activist and was targeted by Turkish authorities. It based its negative credibility finding upon the Principal Applicant’s inability to recall the results of the election that occurred immediately prior to his departure. With respect to the issue of military service, the Board found that the Principal Applicant intended to pay a fee to avoid service and accordingly, he was not at risk.

[4] The Board rejected the claim of the Female Applicant on the grounds that she was not a political activist and was not in danger from the Turkish authorities. The Female Applicant could not recall if an election occurred in 2011, at the time the Principal Applicant claimed to be a delegate for the party. Further, she provided inconsistent information about the length of time that she was politically active. The Board based its negative credibility findings on these deficiencies.

[5] The Board determined that the Minor Applicant's evidence did not agree with the country condition documents and was internally inconsistent. Specifically, it found that her claim that the police would not assist an Arab Alevi to avoid a kidnapping and forced underage marriage was not reflected in the country documents.

[6] The Board found that the Minor Applicant's claim, of being afraid to leave her house, was inconsistent with her testimony that she continued to attend school during the period that she was hiding from her alleged attacker. It noted that she also gave differing accounts of her interactions with police, including inconsistencies in the number of times that she contacted the police.

[7] The Applicants now argue that the Board breached procedural fairness in its treatment of the evidence corroborating the political activity of the Principal and Female Applicants. The Principal Applicant submits that the Board also erred in not determining his claim for protection on the basis of military service.

[8] The Principal Applicant also submits that the Board erred in its treatment of evidence relating to his psychological health. The Board gave little weight to the psychological report which said that the Principal Applicant and Female Applicant suffered from post-traumatic stress ("PTSD") because it found the underlying claims of traumatic events not to be credible.

[9] The Principal Applicant argues that he experienced difficulties presenting evidence at the hearing due to his PTSD. He submits that the Board relied on these difficulties to find that he

was not credible. He argues that the Board erred by using the negative credibility findings to dismiss the report.

[10] The Principal Applicant submits that the psychological report was submitted to provide the Board with an understanding of the difficulties that he might experience at the hearing. He argues that it is unreasonable to dismiss the report on the basis that he was not credible because he exhibited the difficulties described in the report.

[11] The Principal Applicant further argues that it was unreasonable for the Board to give more weight to the first sitting than the second sitting, since he experienced difficulties caused by his PTSD at the initial sitting. He submits that the Board should have considered his “relative mental condition” at the two hearings and weighed the evidence accordingly.

[12] The Minor Applicant submits that the Board erred in making a negative credibility finding that is unintelligible and unsupported by the evidence. She argues that the documentary evidence supports her testimony that the police do not protect Alevis. She submits that this directly opposes the Board’s finding that there is no evidence that the authorities refuse to protect Alevis.

[13] The Minister of Citizenship and Immigration (the “Respondent”) submits that the Board considered the documentary evidence but was not persuaded that the Applicants’ evidence was credible.

[14] The Respondent argues that the Board was entitled to make its own credibility assessment of the evidence of the Principal Applicant and was not required to defer to the opinion of the psychologist, as expressed in the report of the psychologist.

[15] Further, the Respondent submits that the Board was entitled to weigh the corroborating evidence in light of its overall findings about the credibility of the Applicants' evidence. He argues that the Board was entitled to make plausibility findings on the basis of common sense and rationality; such negative findings did not require contradictory evidence.

[16] The first matter to be addressed is the applicable standard of review. Issues of procedural fairness are reviewable on the standard of correctness; see the decision in *Mission Institution v. Khela*, [2014] S.C.R. 502 at paragraph 79.

[17] Credibility findings and the overall merits of the decision are reviewable on the standard of reasonableness; see the decisions in *Aguebor v. Minister of Employment & Immigration* (1993), 160 N.R. 315 (Fed. C.A.) at paragraph 4 and *Kayumba v. Canada (Minister of Citizenship & Immigration)*, 2010 FC 138 at paragraphs 12-13.

[18] As discussed in the decision *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 at paragraph 47, the reasonableness standard requires that the decision is intelligible, transparent, justifiable, and falls within a range of acceptable outcomes that are defensible in respect of the facts and the law.

[19] I am not satisfied that the Board reasonably evaluated the credibility of the Principal Applicant and the Female Applicant. I see merit in the arguments of these parties about the manner in which the Board treated the psychological report.

[20] In my opinion, the Board's findings about the credibility of the Principal Applicant and the Female Applicant do not meet the reasonableness standard set out above.

[21] I also see merit in the submissions of the Minor Applicant about the way the Board treated the documentary evidence about the availability of police protection for the minority Alevi population. The Board's negative credibility findings against the Minor Applicant, on the basis of its consideration of the documentary evidence, are not reasonable.

[22] The claims of all the Applicants were joined pursuant to Rule 55 of the *Refugee Protection Division Rules*, SOR/2012-256 (the "Rules"). According to the decision in *Ramnauth et al. v. Canada (Minister of Citizenship and Immigration)* (2004), 247 F.T.R. 239 (F.C.), joined claims must still be assessed on an individual basis.

[23] I have considered the basis of each Applicant's claim for protection. I am satisfied that the Board's decision about each Applicant fails to meet the standard of reasonableness. Accordingly, this application for judicial review is allowed, the decision of the Board is set aside and the matter is remitted to a differently constituted panel of the Board for redetermination. There is no question for certification arising.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision dated April 13, 2016 of the Immigration and Refugee Board, Refugee Protection Division is set aside and the matter is remitted to a differently constituted panel of the Board for redetermination. There is no question for certification arising.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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