

Federal Court



Cour fédérale

**Date: 20171006**

**Docket: IMM-1097-17**

**Citation: 2017 FC 889**

**Ottawa, Ontario, October 6, 2017**

**PRESENT: The Honourable Mr. Justice Locke**

**BETWEEN:**

**LEYLA OYMALI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. BACKGROUND**

[1] The applicant, Leyla Oymali, applies for judicial review of a negative decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada.

[2] The applicant, a citizen of Turkey, asserts a fear of persecution on account of her Kurdish ethnicity and her long-term support of, and involvement with, the Hizmet movement (Hizmet).

Specific allegations by the applicant of her involvement with Hizmet include the following:

1. At university in Bilecik in the late 1990s, she lived in a Hizmet house, eventually becoming a big sister of the house, and then head of all such houses in Bilecik;
2. After graduating, she continued as a full-time volunteer within the movement;
3. After 2008, she worked as a project manager for organizations affiliated with Hizmet; as part of this work, she began using her account at Bank Asya to collect and distribute charitable donations;
4. In 2012, she began posting on a Twitter account about Hizmet.

[3] The applicant claims that the situation with the ruling party began to deteriorate in 2013 when the government initiated a campaign against Hizmet resulting in the arrest of thousands of followers, including several of her friends. Fearing that her house would be raided, she gave away all of her books and personal notes about the movement, and burned photographs and other evidence that she thought could be used against her. Despite her concerns, she participated in a number of peaceful protests in Turkey.

[4] In June 2016, after receiving her father's blessing, she left Turkey to enter Canada on a Visitor's visa. The Applicant then submitted a refugee claim. Shortly after her arrival, there was a failed coup which the ruling party concluded was supported by Hizmet.

[5] Shortly after arriving in Canada, the applicant received a telephone call from the landlord in charge of her office's premises in Turkey. She did not answer the call, but learned in a subsequent exchange of messages that someone had called the landlord asking for the applicant's phone number.

[6] The Refugee Protection Division (RPD) rejected the applicant's claim on September 21, 2016, identifying various credibility concerns with respect to some of her key allegations. The impugned decision of the RAD was the result of an appeal of the RPD's decision.

[7] After her hearing before the RPD, but before its decision, the applicant learned from her brother that he had been unable to use the Power of Attorney she had given him to sell her car because her name had been blacklisted.

[8] Before the RAD, the applicant relied on the following new evidence:

1. A printout of banking records from her account at Bank Asya from January 2007 to October 2016;
2. A letter from her brother indicating that he had been unable to use the Power of Attorney she had given him to sell her car because her name had been blacklisted; and
3. Statements by the applicant concerning the foregoing new evidence.

[9] The RAD agreed to accept this new evidence.

II. IMPUGNED DECISION

[10] The RAD found that it was implausible for the applicant to retrieve bank records while her name was on a blacklist. The RAD also noted that the bank account was still active which implied that it is not perceived to be affiliated with Hizmet as alleged by the applicant. The RAD also found that the applicant's ability to retrieve the bank records undermined the credibility of the letter from her brother.

[11] With regard to the landlord's message about the person seeking her phone number, the RAD was concerned about unresolved inconsistencies as to whether the person was working with the government or was unidentified. The RAD was also concerned about inconsistencies as to why the applicant used her Turkish mobile phone and did not answer calls from unknown persons. At one point, she indicated that she did not answer calls on her Turkish mobile phone in order to avoid roaming fees. At another point, it appears that the reason was fear. The RAD was also concerned about inconsistencies as to how messages came to be deleted from the applicant's phone. At one point, she indicated that she had accidentally deleted them. At another point, she indicated that she deliberately deleted them out of fear.

[12] The RAD found that the applicant's delay in leaving Turkey, from 2013 when problems for Hizmet began until 2016 when she left, undermined the credibility of her subjective fear and of her risk allegations.

[13] The RAD also found that the applicant's ability to leave Turkey on her own passport undermined her allegation that she was being sought by Turkish authorities.

[14] With regard to the applicant's association with Hizmet, the RAD noted that there was no corroboration of her allegation that the organizations she volunteered with after graduation from university were affiliated with Hizmet, or that the Turkish Government perceived them to be so. The RAD concluded that the applicant does not fit the profile of those being arrested, fired or denied their rights to their passport.

[15] The RAD also found insufficient evidence (i) that the applicant is wanted because of her involvement in demonstrations in Turkey, or (ii) to identify her as the author of posts on Twitter supportive of Hizmet.

[16] The RAD also found that there is less than a serious possibility of persecution or torture that would result from the applicant having a bank account with Bank Asya and using it to administer a charitable fund.

### III. THE ISSUES

[17] The applicant identifies errors by the RAD in respect of three issues:

1. Treatment of the new evidence;
2. Assessment of risk to the applicant; and
3. Assessment of credibility;

[18] Because of the overlap of some of these issues as they relate to the RAD's findings, I will address those findings with which the applicant takes issue.

#### IV. ANALYSIS

##### A. *Standard of Review*

[19] The applicant's arguments concern the RAD's assessment of the evidence, not with the standard of review that it applied to the RPD's findings. Accordingly, the standard of review that I am to apply is reasonableness unless one of the situations in which correctness is the applicable standard of review applies. With the exception the applicant's assertion that the RAD relied on special knowledge to which she should have been allowed to respond (see paragraph 22 below), I am satisfied that no such situation exists here in the present case.

##### B. *Evidence of Blacklisting of the Applicant*

[20] The applicant argues that it was unreasonable for the RAD to infer that she is not blacklisted from the fact that she was able to obtain her bank records, and that she was able to leave Turkey on her own passport. The applicant argues that these were implausibility findings which should be made only in the clearest of cases.

[21] This argument would be stronger if there were not numerous grounds leading the RAD to conclude that the applicant was not blacklisted. In addition to managing to obtain bank records and leaving Turkey on her own passport, the RAD noted numerous inconsistencies in the

evidence of blacklisting, as well as other reasons to believe that she was not blacklisted, such as not fitting the usual profile of government targeting and her bank account not being frozen.

[22] Considering the evidence as a whole, I find that the RAD's doubt that the applicant was blacklisted was reasonable. In my view, this finding by the RAD did not require any special knowledge that necessitated giving the applicant a chance to respond.

C. *Active Status of Bank Account*

[23] The applicant argues that the RAD erred when it concluded that her bank account remained active. By "active", I understand the RAD to have noted that the account was not frozen. I expect that it reached that conclusion based on the balance showing and its apparent availability to the applicant. The applicant's focus on whether activity in the account comprised bank fees or some other type of transactions does not counter the RAD's conclusion.

[24] In my view, the RAD did not misunderstand the evidence, and reached a reasonable conclusion on this issue.

D. *Affiliation of the Applicant with Hizmet*

[25] The applicant notes that the RPD found that the organizations with whom she volunteered and on behalf of whom she used her bank account were affiliated with Hizmet. The applicant argues that the RAD seems to reverse the RPD's finding in this regard without any analysis.

[26] The RAD did indeed reverse the RPD's finding in this regard. However, it did justify this finding, explaining its concern that there was no corroborative evidence of such affiliation.

Though the applicant argues that it was improper for the RAD to require corroboration, I disagree. The numerous other reasonable credibility concerns cited by the RAD gave ample justification for it to demand corroboration of the applicant's claims.

E. *Twitter Posts*

[27] The applicant argues that the RAD ignored evidence that so-called "anonymous" Twitter posts may be linked to the author. Regardless, I am satisfied that it was reasonable for the RAD to conclude that there is insufficient evidence to establish that the applicant has been identified in association with the Twitter posts in question.

F. *New National Documentation Package*

[28] The applicant notes that a new National Documentation Package (NDP) for Turkey became available on January 31, 2017, but that the RAD does not appear to have considered it in its decision made on February 17, 2017.

[29] The applicant is right that the latest NDP should be considered in assessing risks. However, I have seen nothing to indicate that any of the information in the new NDP that was not considered by the RAD might have made a difference to its decision.



G. *National Documentation Package on File*

[30] The applicant took the Court through a number of documents in the NDP. However, these must be considered in light of the RAD's reasonable conclusions that the applicant's profile within Hizmet was minor, and that the organizations for which she acted as a volunteer were not shown to be affiliated with Hizmet.

[31] I am not convinced that the RAD reached an unreasonable conclusion in its assessment of the NDP and the application thereof to the applicant.

H. *Call from Landlord*

[32] The applicant characterizes the inconsistency that concerned the RAD on this issue as minor and therefore insufficient to justify a negative credibility finding.

[33] In my view, it was reasonable for the RAD to find that the RPD's questioning of the applicant on this issue was not confusing. It was likewise reasonable for the RAD to find that the inconsistency in the applicant's evidence concerning the identity of the person who called the landlord was significant. This evidence was one of the only real indications of the government's alleged interest in the applicant.

[34] Finally, it was reasonable for the RAD to find that the inconsistencies concerning the use of her Turkish mobile phone and the deletion of data thereon were sufficient to give rise to credibility concerns.

I. *Departure from Turkey without Difficulty*

[35] The applicant argues that it was unreasonable for the RAD to draw an inference from the fact that she was able to leave Turkey uncontested using her own passport. She argues that the authorities' interest in her at the time could have been informal.

[36] I see nothing unreasonable in the RAD's analysis. Her ability to leave Turkey uncontested fairly indicates that she was not wanted. This conclusion was in line with the RAD's other reasonable conclusions concerning the applicant's minor role with Hizmet such that she would not be of interest to the Turkish authorities.

J. *Delay in Leaving Turkey*

[37] The applicant argues that she provided a reasonable explanation for not leaving Turkey before 2016 despite deteriorating conditions since 2013: the situation was not so serious as to warrant leaving until 2016 when her father suggested she leave. She argues that it was unreasonable for the RAD to agree with the RPD's adverse inference on this issue.

[38] It is not necessary for me to reach a conclusion on this issue. In my view, even if this one conclusion by the RAD were unreasonable, it would not be so important an error as to alter the result. There remains ample evidence that the applicant's role in Hizmet was so minor that she was not wanted by Turkish authorities.

V. CONCLUSION

[39] For the foregoing reasons, I am satisfied that the RAD's decision was reasonable and the present application for judicial review should be dismissed.

[40] The parties agree that there is no serious question of general importance to certify.

**JUDGMENT in IMM-1097-17**

**THIS COURT'S JUDGMENT is that:**

1. The style of cause is hereby amended with immediate effect to reflect the correct respondent, the Minister of Citizenship and Immigration;
2. The present application for judicial review is dismissed.
3. No serious question of general importance is certified.

“George R. Locke”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1097-17

**STYLE OF CAUSE:** LEYLA OYMALI v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 20, 2017

**JUDGMENT AND REASONS:** LOCKE J.

**DATED:** OCTOBER 6, 2017

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