

Federal Court



Cour fédérale

Date: 20180329

Docket: IMM-2251-17

Citation: 2018 FC 357

Vancouver, British Columbia, March 29, 2018

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

GIZEM TURETKEN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review brought by Ms. Gizem Turetken, a citizen of Turkey, by which Ms. Turetken seeks to quash a decision rendered by the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada on April 5, 2017 [Decision].

[2] Ms. Turetken is a woman from a secularist and leftist background. She sought refugee protection following an aggravation of the political situation in Turkey in 2015-2016. After assessing her claim, the RPD found Ms. Turetken was not a Convention Refugee or a person in need of protection as contemplated by ss. 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [IRPA], concluding she was not in danger of torture or cruel and unusual treatment or punishment, or facing risk to life, in Turkey.

[3] The RPD concluded Ms. Turetken's testimony was not credible, and that she had failed to prove the subjective and objective components of a well-founded fear of persecution. The RPD also found Ms. Turetken had unreasonably delayed her departure from Turkey and that an Internal Flight Alternative [IFA] was available to her.

[4] Ms. Turetken raises several grounds in her challenge to the Decision. For the reasons set out below, I dismiss her application for judicial review.

II. Background

A. *Factual context*

[5] Ms. Turetken is a citizen of Turkey. She is married to a Canadian citizen, with whom she has a Canadian child. She self-identifies as a leftist and secularist. She claims that, because of her political and religious beliefs, she has participated in demonstrations in support of human rights in Turkey.

[6] She says she was beaten by police and detained for a brief period due to her participation in a demonstration in 2013. She also claims she felt increasingly uncomfortable in Turkey following general elections in 2015, during which the AK Party lost and later regained its majority. She says she received death threats from Islamic nationalists.

[7] Following political turmoil in June 2016, she, her husband and her child travelled to the United States of America [USA] on a visitor visa. They arrived in the USA in December 2016 with the intention of commencing sponsorship proceedings for her to immigrate to Canada. Concluding the processing time was too lengthy, Ms. Turetken applied for refugee protection in Canada. In doing so, she admits that she used the Canadian refugee system to jump the sponsorship application queue. Her refugee claim was deemed eligible as an exception to the Safe Third Country Agreement, but was ultimately refused.

B. *Decision under review*

[8] In the Decision, the RPD concluded Ms. Turetken had failed to establish that there existed a reasonable chance or a serious possibility she would be persecuted for a Convention ground, that she would be in danger of torture, that she would face risk to life, or that she would be subjected to cruel and unusual treatment or punishment should she return to Turkey.

[9] In reaching this conclusion, the RPD found the determinative issue was her failure to establish the objective component of a well-founded fear of persecution. Credibility was a key factor. The RPD noted that, though Ms. Turetken did not attempt to embellish her claim, credibility concerns arose because of differences between her written and oral accounts. The

RPD observed that Ms. Turetken was unable to provide a single incident of a threat being made to her life, despite claims of being threatened by Islamic extremists. The RPD also found the discriminatory incidents to which Ms. Turetken was subjected, though abhorrent, did not amount to persecution. As a result, the RPD determined she had failed to show she would be personally subjected to the harm feared (see s. 97(1) of the IRPA and *Salibian v. Canada (Minister of Employment and Immigration)*, [1990] 3 F.C. 250, [1990] F.C.J. No. 454 (FCA)).

[10] With respect to Ms. Turetken's claim of subjective fear, the RPD drew a negative inference from the fact that she had made no efforts to secure status in Canada before 2017. This, despite the fact her husband and son are Canadians, and the alleged incidents of discrimination began in 2013. The RPD stated it would have expected individuals who fear for their personal safety to flee at the earliest opportunity and to seek refugee protection as soon as they are beyond the reach of their persecutors.

[11] Crucially, the RPD also found that a viable IFA was available to Ms. Turetken. It concluded there was no serious possibility of persecution in Izmir, the city where Ms. Turetken and her husband own a home, and where her parents and sister currently reside. The RPD noted that Ms. Turetken's mother and sister live in Izmir without any serious incident. Furthermore, both she and her husband had worked in Izmir in the past. The RPD concluded that Ms. Turetken is able to live in Izmir while her sponsorship application for permanent residence in Canada is processed (*Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706, [1991] F.C.J. No. 1256 (FCA); *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589, [1993] F.C.J. No. 1172 (FCA)).

C. *Relevant legislative provisions*

[12] The relevant statutory provisions of the IRPA are ss. 96 and 97, attached hereto as Appendix A.

D. *Standard of review*

[13] Given that the RPD is interpreting and applying its home statute, the standard of review is the deferential standard of reasonableness (*Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654; *Commission scolaire de Laval v. Syndicat de l'enseignement de la région de Laval*, 2016 SCC 8, [2016] 1 S.C.R. 29 at para 32; *Tervita Corp v. Canada (Commissioner of Competition)*, 2015 SCC 3, [2015] 1 S.C.R. 161 at para 35).

[14] With respect to the claimant's credibility, the RPD's conclusions are factual and command a high degree of deference (*Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339 at para 59 [*Khosa*]). Since *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 [*Dunsmuir*], courts have applied the reasonableness standard when considering findings of fact and mixed fact and law. A reasonableness review requires deference to the decision-maker, as it is "grounded in the legislature's choice to give a specialized tribunal responsibility for administering the statutory provisions, and the expertise of the tribunal in so doing" (*Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd*, 2016 SCC 47, [2016] 2 S.C.R. 293 at para 33).

III. Issue

[15] The only issue in this matter is whether the Decision meets the test of reasonableness. That is, does the decision-making process show justification, transparency and intelligibility and does the Decision fall within “a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir* at para 47; *Khosa* at para 59; *Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*] at paras 16 [*Newfoundland Nurses*]). Ms. Turetken challenges the reasonableness of the decision based upon factual findings made by the RPD and an alleged conflation of the tests required by ss. 96 and 97 of the IRPA.

IV. Analysis

[16] Ms. Turetken challenges, *inter alia*, the RPD’s use of her delay in seeking protection to reach a negative credibility finding in relation to her claim of subjective fear and in concluding she did not have a well-founded fear of persecution. She also contends the RPD failed to adequately consider the current political climate in Turkey when deciding she did not face risk.

[17] With respect, these submissions largely constitute an invitation to reweigh the evidence that was before the RPD to then arrive at a different outcome. I decline this invitation. It is not the function of this Court to reweigh the evidence considered by the Officer (*Khosa* at para 61). As noted in paragraph 16, a reasonableness review requires the Court to give due consideration to the justification, transparency and intelligibility of the decision-making process, and to

determine whether the Decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[18] Likewise, a reviewing court should not embark upon a “line-by-line treasure hunt for error” but must approach the reasons and outcome of the Decision as an “organic whole” (*Kanthasamy v. Canada (Citizenship and Immigration)*, 2015 SCC 61, [2015] 3 S.C.R. 909 at para 138; *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd*, 2013 SCC 34, [2013] 2 S.C.R. 458 at para 54; *Newfoundland Nurses* at para 14). Accordingly, this Court must approach the Decision with a view to “understanding, not to puzzling over every possible inconsistency, ambiguity or infelicity of expression” (*Ragupathy v. Canada (Citizenship and Immigration)*, 2006 FCA 151, [2007] 1 F.C.R. 490 at para 15).

[19] Considering this, I see no basis for Ms. Turetken’s evidentiary challenge to the Decision. Although she may disagree with the RPD’s findings, this does not render them unreasonable. There is no indication the RPD made findings unsupported by the facts or failed to consider evidence that called for a different outcome. Rather, I am of the view RPD carefully weighed every factor and considered the applicant’s narrative. The RPD’s factual conclusions arising from the evidence were reasonable.

[20] Ms. Turetken also challenges the RPD’s overall approach to interpreting ss. 96 and 97 of the *IRPA*. She contends the RPD erroneously conflated its assessment of the two sections by requiring evidence of personalized risk for both, which she claims is not required under s. 96. I respectfully disagree with this submission.

[21] It is settled law that the s. 96 requirement of a “well-founded fear of persecution” consists of both a subjective and objective component. While the subjective component does not require personalized risk, the objective component may. The objective component requires concrete evidence of a state’s inability to protect its nationals. Such evidence can take the form of testimony from similarly situated individuals, but often takes the form of the claimant’s own testimony of past personal incidents (*Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, 103 D.L.R. (4th) 1; See also *Djouah v. Canada (Citizenship and Immigration)*, 2013 FC 884, [2013] F.C.J. No. 917; *Pikulin v. Canada (Citizenship and Immigration)*, 2010 FC 979, [2010] F.C.J. No 1244).

[22] I am not satisfied the RPD required evidence of personalized risk in relation to s. 96; it required evidence of objectively well-founded persecution. Both the s. 97 requirement of personalized risk and the s. 96 requirement of objectively well-founded persecution can be evidenced by testimony of past personal incidents. Consequently, the RPD was entitled to rely upon its credibility assessment of Ms. Turetken in assessing both ss. 96 and 97. Having reasonably reached a negative credibility finding in relation to Ms. Turetken’s testimony of past personal incidents, it was within reason for the RPD to conclude Ms. Turetken had neither established the objective component of the well-founded fear of persecution requirement pursuant to s. 96 or the personalised risk requirement under s. 97. This does not amount to an erroneous conflation of the two assessments.

[23] Finally, I would note the RPD’s finding that a viable IFA was available to Ms. Turetken is, if reasonable, sufficient to dispose of the within application for judicial review.

[24] In reaching its conclusion on an IFA, the RPD considered Ms. Turetken's past employment in Izmir, the fact that her Canadian husband had operated a business there, and the fact that she has parents and a sister currently living there. Ms. Turetken did not challenge any of these facts or rebut the existence of an IFA. As a result, the RPD's IFA findings must be presumed to be reasonable and true. Being a determinative issue, this is sufficient to dismiss the application for judicial review (*Ventura v. Canada (Minister Citizenship and Immigration)*, 2012 FC 10, [2012] F.C.J. No. 5 at para 60; *Cienfuegos v. Canada (Citizenship and Immigration)*, 2009 FC 1262, [2009] F.C.J. No 1591 at paras 25-26).

V. Conclusion

[25] For the foregoing reasons, the application for judicial review is dismissed without costs.

JUDGMENT in file IMM-2251-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed without costs;
2. No question is certified for consideration by the Federal Court of Appeal.

"B. Richard Bell"

Judge

APPENDIX A

*Immigration and Refugee Protection Act, citation***Convention refugee**

96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Person in need of protection

97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist,

Définition de réfugié

96 A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Personne à protéger

97 (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire,

of torture within the meaning of Article 1 of the Convention Against Torture; or

d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualifié de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

Naseem Mithoowani FOR THE APPLICANT

Marcia Pritzker Schmitt FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lorne Waldman Professional Corporation FOR THE APPLICANT
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario