

Federal Court



Cour fédérale

Date: 20210317

Docket: IMM-7829-19

Citation: 2021 FC 235

Ottawa, Ontario, March 17, 2021

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

**DILBER BAYRAM
RESAT CAN BAYRAM
JALAN BAYRAM**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review of a decision of the Refugee Appeal Division (“RAD”), dismissing their appeal of a decision by the Refugee Protection Division (“RPD”), which found that the Applicants are neither Convention refugees nor persons in need of protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001,

c 27 (“IRPA”). The RAD found that the Applicants were not credible and did not establish a *sur place* claim.

[2] The Applicants submit that the RAD unreasonably refused to admit the new evidence submitted upon appeal, and it unreasonably determined that the Applicants were not credible.

[3] As discussed in detail below, I find that the RAD unreasonably gave the Applicants’ corroborative evidence little or no weight. I therefore grant this application for judicial review.

II. Facts

A. *The Applicants*

[4] The Applicants, all of whom are citizens of Turkey, are a family of three: Ms. Dilber Bayram is the mother of Mr. Resat Can Bayram (19 years old) and Ms. Jalan Bayram (14 years old).

[5] The Applicants fear persecution in Turkey based on Ms. Bayram’s political actions and their profile as Alevi Kurds. Ms. Bayram claims to have supported pro-Kurdish political parties in Turkey, including the Peoples Democratic Party (“HDP”), for which she attended rallies and handed out flyers in support of during the 2015 election.

[6] Ms. Bayram alleges that Turkish police detained her twice: first during the Gezi Park protest in June 2013 and second after the Saturday Mothers protest on July 25, 2015. In both

instances, the police detained Ms. Bayram for several hours, questioned her about her affiliations with pro-Kurdish political organizations, and beat and mistreated her. In the latter instance, the police sexually assaulted Ms. Bayram.

[7] During her second detention, the police advised Ms. Bayram that they would begin watching her. Ms. Bayram claims that she then began to notice strange men observing her when she left her home.

[8] On August 21, 2015, the Applicants and Ms. Bayram's husband came to Canada. Ms. Bayram attempted to convince her husband to allow the family to apply for refugee protection in Canada, but he refused. Ms. Bayram claims that her husband is a businessman and wanted to travel freely between Turkey and Canada.

[9] In May 2016, Ms. Bayram learned that the police visited her home in Istanbul and questioned her neighbour, Ms. Nuray Kanmazer, regarding Ms. Bayram's whereabouts. After that incident, Ms. Bayram further pressed her husband to make a claim for refugee protection, but he still refused. The couple ultimately separated because of that disagreement, and Ms. Bayram made a claim for refugee protection with her children in June 2016.

B. *RPD Decision, First RAD Decision, and First Judicial Review*

[10] In a decision dated September 7, 2017, the RPD rejected the Applicants' claim for refugee protection because it found that the Applicants were not credible. The RPD noted numerous inconsistencies in Ms. Bayram's testimony and held that the Applicants' supporting

evidence did not overcome those credibility concerns. Finally, the RPD found that the Applicants' identities as Alevi Kurds did not establish a *sur place* claim.

[11] The Applicants appealed the RPD's decision to the RAD. In a decision dated October 2, 2018, the RAD confirmed the RPD's determination. The Applicants then filed an application for leave and judicial review of the RAD's decision to this Court. The Respondent consented to the order sought by the Applicants in that application, submitting that the RAD committed an error of natural justice in rendering its decision. In an order dated January 21, 2019, Justice Strickland set aside the RAD's decision and returned the matter to a different panel for redetermination.

C. *Decision Under Review: The RAD's Redetermination*

[12] In a decision dated November 25, 2019, the RAD redetermined the Applicants' appeal of the RPD's decision and again confirmed that the Applicants were neither Convention refugees nor persons in need of protection. That decision is the subject of this application for judicial review.

[13] As a preliminary matter, the RAD refused to admit the new evidence submitted by the Applicants upon appeal, including an affidavit sworn by Mr. Ali Can Orhan, dated November 9, 2017.

[14] In finding that the Applicants were not credible, the RAD noted numerous inconsistencies in Ms. Bayram's testimony. In particular, the RAD found that Ms. Bayram's testimony was inconsistent regarding why the Applicants did not apply for refugee protection

until 10 months after they arrived in Canada, the events surrounding Ms. Bayram's separation from her husband, why Ms. Bayram was followed by the police in Turkey, why Ms. Bayram applied for Canadian visas, and the omission of Ms. Bayram's claim that she was an election observer for the HDP in 2015 from her Basis of Claim ("BOC").

[15] The RAD confirmed the RPD's finding that the Applicants' supporting evidence did not overcome the above credibility concerns. The Applicants' supporting evidence includes:

1. an affidavit sworn by Mr. Cavit Bayram, Ms. Bayram's cousin, dated May 25, 2017;
2. a support letter from Mr. Ilhami Akpinar, an HDP member, dated July 26, 2017;
and
3. an email from Ms. Nuray Kanmazer, Ms. Bayram's neighbour in Turkey, dated May 22, 2017.

[16] Finally, the RAD confirmed the RPD's finding that the Applicants failed to establish a *sur place* claim.

III. Issues and Standard of Review

[17] This application for judicial review raises the following two issues:

- A. *Did the RAD unreasonably determine that the Applicants were not credible?*

B. *Did the RAD unreasonably refuse to admit the Applicants' new evidence?*

[18] It is common ground between the parties that the applicable standard of review is reasonableness. I agree (*Akintola v Canada (Citizenship and Immigration)*, 2020 FC 971 at para 7, citing *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]; *Ifogah v Canada (Citizenship and Immigration)*, 2020 FC 1139 at paras 35, 43).

[19] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[20] Where a decision provides reasons, those reasons are the starting point for review (*Vavilov* at para 84). A decision's reasons need not be perfect; as long as the reasons allow the reviewing court to understand why the decision-maker made its decision and determine whether the conclusion falls within the range of acceptable outcomes, the decision will normally be reasonable (*Beddows v Canada (Attorney General)*, 2020 FCA 166 at para 25, citing *Vavilov* at para 91). However, where a decision-maker's rationale for an essential element of the decision

is not addressed in the reasons and cannot be inferred from the record, the decision will normally be unreasonable (*Vavilov* at para 98).

[21] For a decision to be unreasonable, an applicant must establish that the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). A reviewing court must refrain from reweighing or reassessing evidence before the decision-maker, and it should not interfere with findings of fact absent exceptional circumstances (*Vavilov* at para 125).

Credibility determinations are therefore to be provided “significant deference” upon review (*Azenabor v Canada (Citizenship and Immigration)*, 2020 FC 1160 at para 6, citing *N’kuly v Canada (Citizenship and Immigration)*, 2016 FC 1121 at para 21).

IV. Analysis

A. *Did the RAD unreasonably determine that the Applicants were not credible?*

[22] The Applicants submit that the RAD unreasonably weighed the following evidence that corroborates their claim: (1) the affidavit of Mr. Cavit Bayram, Ms. Bayram’s cousin; (2) the support letter from Mr. Akpinar, an HDP member; and (3) the email from Ms. Kanmazer, Ms. Bayram’s neighbour in Turkey. I shall address each of these arguments respectively.

(1) The affidavit of Mr. Cavit Bayram

[23] Mr. Cavit Bayram claims to be an Alevi Kurd who supported the HDP in Turkey before successfully seeking refugee protection in Canada. In his affidavit, Mr. Cavit Bayram states that

Ms. Bayram is his cousin, that they attended pro-Kurdish meetings in Turkey together, and that Ms. Bayram was detained in 2013 and 2015 by Turkish police. Mr. Cavit Bayram also states that Turkish police arrested him during a protest on March 8, 2016 and questioned him about Ms. Bayram's whereabouts.

[24] The RAD found that Mr. Cavit Bayram's affidavit was not credible because the Applicants omitted the March 8, 2016 arrest in their BOC narrative and RPD testimony, and because Ms. Bayram herself was not credible. At paragraph 35 of its decision, the RAD states:

The Appellants provide no explanation for this omission and inconsistency. I find this is a significant omission and inconsistency, especially considering the principal Appellant claims that it was information she received from a neighbour in May 2016 that police came to her home looking for her that caused her to finally make a claim for protection. I would expect that if the principal Appellant's cousin was interrogated and questioned about her, this would be information included in her BOC narrative and testimony to the RPD. Given this inconsistency and omission, and the fact that the principal Appellant was also not a credible witness with respect to her alleged political activities and alleged incidents of persecution, I find the cousin's affidavit is not credible.

[25] In my view, the RAD unreasonably relied upon its credibility concerns regarding Ms. Bayram in discounting the credibility of Mr. Cavit Bayram's affidavit.

[26] With respect to the omission of the March 8, 2016 arrest in the Applicants' BOC, it is trite law that the RAD may draw a negative inference about the credibility of the Applicants based on the omission of events central to their claim from their BOC and testimony (*Ogaulu v Canada (Citizenship and Immigration)*, 2019 FC 547 at para 18, citing *Zeferino v Canada*

(*Citizenship and Immigration*), 2011 FC 456 at para 31; see also *Villarroel v Canada (Citizenship and Immigration)*, 2014 FC 417 at para 17). This inference, however, does not reasonably extend to the entirety of the Applicant's corroborative evidence.

[27] Corroborative evidence, such as Mr. Cavit Bayram's affidavit, must be examined independently of concerns regarding the Applicant's credibility before it is rejected; otherwise, the corroborative evidence is not believed simply because the Applicants are not believed (*He v Canada (Citizenship and Immigration)*, 2019 FC 2 [*He*] at para 25, citing *Yu v Canada (Citizenship and Immigration)*, 2015 FC 1138 at paras 31-37; *Lu v Canada (Citizenship and Immigration)*, 2016 FC 846 at paras 33-35; *Sterling v Canada (Citizenship and Immigration)*, 2016 FC 329 at para 12). For example, in *Chen v Canada (Citizenship and Immigration)*, 2013 FC 311 [*Chen*] at paras 19-20, Justice Rennie of this Court (as he then was) held that it was unreasonable for the RPD to find that evidence was not credible on the basis that it corroborated events which the RPD had previously found not credible. In doing so, the RPD had "inverted" its reasoning process (*Chen* at para 20).

[28] The Applicants rely on *Oranye v Canada (Citizenship and Immigration)*, 2018 FC 390 [*Oranye*] at para 27, for the authority that the Applicants' BOC narrative and RPD testimony have no reasonable bearing on the credibility of Mr. Cavit Bayram's affidavit. I agree with the Respondent that *Oranye* is distinguishable from the case at hand: the RAD did not mask an authenticity finding by deeming the affidavit to be of little probative value, but rather transparently asserted that the affidavit was not credible. However, I find that *Oranye* is

instructive insofar as the Applicants' BOC and RPD testimony does not logically bear on the affidavit's credibility, a proposition that aligns with the authorities cited above.

[29] I find that *Liu v Canada (Citizenship and Immigration)*, 2020 FC 576 [*Liu*], as relied upon by the Respondent, is not dispositive of the case at hand. In *Liu*, Justice Norris held that "a general finding of lack of credibility on the part of a claimant can affect the assessment of other relevant evidence submitted by that claimant, including documentary evidence, and can ultimately cause the claim to be rejected" (at para 90, citing *Rahman v Canada (Citizenship and Immigration)*, 2019 FC 71 [*Rahman*] at para 28). In coming to that conclusion, however, Justice Norris warned against decision-makers engaging in "circular reasoning" and outlined the decisions cited in *He* as instances for when the principle in *Rahman* may not reasonably apply (*Liu* at paras 89-90).

[30] The distinguishing factor between this case and those cited in *He* is that the RAD also relied on the finding that the Applicants' BOC and RPD testimony omitted any mention of Mr. Cavit Bayram's March 8, 2016 arrest. The Respondent asserts that this lack of corroboration is a reasonable ground for impugning Mr. Cavit Bayram's credibility (*Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 [*Magonza*] at para 19).

[31] To the extent that the RAD relies on a lack of corroboration to ground its credibility concerns regarding Mr. Cavit Bayram, I find that its reasons for doing so are unreasonably interwoven with its credibility concerns regarding the Applicants. The RAD does not focus on how the affidavit discusses an event not corroborated by the evidence and assess Mr. Cavit

Bayram's credibility in relation to that novel claim. Instead, the RAD finds that given the materiality of the March 8, 2016 arrest, it expects the Applicants to have discussed that event in their evidence, faults the Applicants for not doing so, and then uses the Applicants' omission to find that Mr. Cavit Bayram is not credible.

[32] In light of the above, I find that the RAD's assessment of Mr. Cavit Bayram's affidavit is not sufficiently transparent, intelligible and justified (*Vavilov* at para 15). I am unable to discern whether the RAD provided the affidavit with an independent credibility assessment, or it simply extended its credibility concerns regarding the Applicants into its assessment of the affidavit — an ambiguity exacerbated by the RAD's finding that Mr. Cavit Bayram is not credible because Ms. Bayram herself is not credible.

(2) The support letter from Mr. Akpinar

[33] In his letter, written under an HDP letterhead, Mr. Akpinar states that he is of Kurdish ancestry, has supported the Kurdish political movement since 2000, and now works for the HDP. Mr. Akpinar corroborates that Ms. Bayram was a political organizer for the HDP in Turkey, and that she was arrested in 2013 and 2015.

[34] While the RAD did not conclude that Mr. Akpinar's letter was inauthentic, it afforded his letter little weight because it was not sufficiently reliable. The RAD provides two reasons for that finding. First, the RAD took issue with the Applicants' failure to submit the original version of the letter or the email to which the letter was attached. Second, the RAD took issue with Mr. Akpinar's failure to describe how he knew of Ms. Bayram's political actions and arrests.

[35] I agree with the Applicants that the case at hand is analogous with *Oranye*, in that the RAD made veiled authenticity findings by questioning whether the letter was actually sent by Mr. Akpinar and the HDP. In *Oranye*, the RAD afforded low probative value to affidavits submitted by the applicants due to the applicants' failure to submit the envelopes in which the affidavits were mailed (at para 19). In finding the RAD's decision to be unreasonable, I stated at paragraph 21:

[...] The only thing that a mailing envelope illustrates is a document's provenance; however, in this case, the affidavits are presumably of interest for their content, not their origin. The affidavits' origins and method of arrival in Canada would only be of interest if the RPD suspected that the Applicant was lying about them, which would go to the Applicant's credibility. If, for example, the RPD did not believe that the letters were truly sent by the Applicant's cousin in Nigeria, a clear finding of fact to that end ought to have been made and supported by the evidentiary record. Here, the RPD made no such finding, and I cannot discern why the absence of the mailing envelopes was relevant to the RPD and RAD. [...]

[emphasis in original]

[36] In my view, the RAD in this case committed the same error as in *Oranye*. The only consideration relevant to the email is the letter's origins, which relates to the letter's authenticity. If the RAD doubted the letter's origins, in that it did not believe Mr. Akpinar sent the letter, then the RAD needed to make a clear finding to that end by stating the letter is inauthentic and affording it no weight (*Magonza* at paras 30-31). The RAD cannot reasonably fault the Applicants for failing to establish the origins of the letter while accepting the letter as authentic and affording it some weight.

(3) The email from Ms. Kanmazer

[37] In her email, Ms. Kanmazer identifies herself as Ms. Bayram's neighbour and friend. She states that the police came to Ms. Bayram's home in Turkey and asked for Ms. Bayram's whereabouts. According to Ms. Kanmazer, the police returned several times after their initial visit to determine whether Ms. Bayram had returned.

[38] The RAD gave Ms. Kanmazer's email no weight primarily because it held that the email was not probative of Ms. Bayram's alleged political actions and arrests. At paragraph 40 of its decision, the RAD states:

In particular, the email does not corroborate any of the principal Appellant's allegations of what has happened to her in Turkey. The letter simply refers to the police coming to her home in Istanbul and have asked where she is [*sic*]. There are no details about why they came to the principal Appellant's house. Based on the content of the letter, the police could have come to her home for any myriad of reasons.

[39] The RAD also impugned the email's credibility because Ms. Kanmazer failed to elaborate upon whether the police explained their reasons for visiting Ms. Bayram's home, and because there were no corresponding documents to authenticate Ms. Kanmazer's identity.

[40] In my view, the RAD's finding that Ms. Kanmazer's email was of no probative value is not internally coherent or justified in relation to the relevant country condition evidence (*Vavilov* at para 85). Item 13.1 of the March 31, 2017 National Documentation Package ("NDP") on Turkey details how police have raided pro-Kurdish political activists in Istanbul and placed

“thousands” on trial for “overbroad” terrorism charges, including individuals for which “there is little evidence of logistical or material support for terrorism.” While it is certainly possible that the police repeatedly visited Ms. Bayram’s home and asked of her whereabouts for “any myriad of reasons,” the country condition evidence indicates that some of those reasons are more probable than others. Indeed, this outcome was recognized by the RPD, which states at paragraph 70 of its decision that it is “troubled by the deteriorating situation in Turkey and the historic discrimination [of Alevi Kurds] that appears to continue to this day,” particularly those who engage in pro-Kurdish political activities.

[41] The Respondent contends that it is “absurd” to require the RAD to assume why the police visited Ms. Bayram’s home. I do not agree. The RAD is required to assess the evidence on record and determine on a balance of probabilities whether the police visited Ms. Bayram’s home. This process is one of inference, not bald assumption. The RAD found that the email has no probative value because there is no manner by which it could infer why the police would visit Ms. Bayram’s home. This conclusion is unreasonable because it is not justified in light of the country condition evidence outlined above, which indicates that the police in Turkey search for and persecute pro-Kurdish activists, such as the one Ms. Bayram claims to be.

[42] In coming to its conclusion, the RAD again seemingly assesses Ms. Kanmazer’s email based on the predetermined finding that Ms. Bayram is not credible with respect to her political affiliations, rather than considering how the email corroborates Ms. Bayram’s narrative. The RAD’s finding that it is equally possible the police visited Ms. Bayram’s house due to her political actions as opposed to any other reason is only coherent if one starts from the

presupposition that Ms. Bayram is not a pro-Kurdish activist. This approach is unreasonable because the RAD must examine Ms. Kanmazer's email independently of concerns regarding Ms. Bayram's credibility before the email is rejected (*He* at para 25).

[43] In light of my determination that the RAD unreasonably assessed the Applicants' corroborative evidence, I find it unnecessary to address the remaining issues raised by the Applicants. In my view, the RAD's assessment of the corroborative evidence contains flaws that are sufficiently central and significant to render its decision unreasonable (*Vavilov* at para 100).

V. Obiter

[44] I would be remiss not to mention the concerns I have with the language employed by the RAD in its decision with respect to "regular Kurds." At paragraphs 54-55 of its decision, the RAD states:

I see little evidence that suggests that regular Kurds and Kurdish Alevi are singled out for mistreatment in Turkey today. Rather, it is those who are politically and socially active who appear to be most at risk. Regular Kurds and Alevis have almost certainly witnessed increased insecurity and infringements on their rights of social engagement and access to Kurdish and Alevi services and media. However, these circumstances do not normally rise to the level of persecution. The evidence does not lead me to conclude that average Kurds and Alevis routinely face arbitrary detention, mistreatment and torture, nor do they face discrimination that rises to the level of persecution.

The Appellants' profile is that of a regular Alevi Kurds [*sic*]. The principle Appellant did not credibly establish a risk profile as a politically active individual. I find, on a balance of probabilities, that the Appellants' profile is such that they would be unlikely to

attract the attention of Turkish authorities were they return to Turkey today.

[45] The implicit reasoning in the RAD's statement is that to be politically and socially active is to be irregular. Ms. Bayram does not claim to be an insurgent who resorts to violence over democratic means; she claims to have handed out pamphlets for the political party that she supports, to have volunteered as an election observer, and to have attended peaceful protests. Ms. Bayram, in other words, claims to have participated in political activities that are normal in Canada, if not encouraged. To engage in such activities should therefore not be construed as irregular, regardless of where one does so.

[46] Furthermore, Canada does not confer refugee protection to individuals because they are irregular; it confers refugee protection primarily to those who fear persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion. These categories of identity are contained in everyone, albeit in different manifestations and under different circumstances. It is not irregular for individuals to express these facets of their identity, and the language used by the RAD should reflect this consideration.

VI. Conclusion

[47] I find that the RAD's decision is unreasonable. I therefore grant this application for judicial review.

[48] The parties have not identified a question of general importance for certification. I agree that none arises.

JUDGMENT IN IMM-7829-19

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted. The decision under review is set aside and the matter returned for redetermination by a differently constituted panel.
2. There is no question to certify.

"Shirzad A."

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7829-19

STYLE OF CAUSE: DILBER BAYRAM, RESAT CAN BAYRAM AND
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DATED: MARCH 17, 2021

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