

Federal Court



Cour fédérale

Date: 20230925

Docket: IMM-7584-22

Citation: 2023 FC 1288

Ottawa, Ontario, September 25, 2023

PRESENT: Mr. Justice O'Reilly

BETWEEN:

ABDOLBASET RAMAZANZADEH

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr Abdolbaset Ramazanzadeh, a Kurdish citizen of Iran, arrived in Canada in 2019 and sought refugee protection. He claimed to fear political persecution in Iran.

[2] In 2022, the Immigration Division found Mr Ramazanzadeh to be inadmissible to Canada because he had been a member of the Kurdish Democratic Party of Iran (KDP-I), a group alleged to have been associated with acts of subversion against the Iranian government.

[3] Mr Ramazanzadeh maintains that the ID treated him unfairly by relying on a Kurdish-language interpreter who spoke a different dialect from him. He also submits that the ID erred in finding him to be a member of the KDP-I, and by confusing the KDP-I with a different organization, the Iranian Kurdistan Democratic Party (KDP). He asks me to quash the ID's decision and order another panel to reconsider the question of his inadmissibility to Canada.

[4] There are three issues:

1. Did the ID treat Mr Ramazanzadeh unfairly by relying on faulty interpretation?
2. Was the ID's conclusion on the issue of membership based on interpretation errors? and
3. Was the ID's conclusion that the KDP-I was the same organization as the KDP unreasonable?

[5] The first two issues derive from Mr Ramazanzadeh's dissatisfaction with the accuracy of the interpretation at his hearing. It is unnecessary for me to address those issues because I am satisfied that this application for judicial review should succeed on the third ground. I find that the ID's conclusion that the KDP and the KDP-I were the same organization was not supported by the evidence and therefore, unreasonable. I will, therefore, order a new hearing at which Mr Ramazanzadeh may be assisted by an interpreter.

II. The ID's Decision

[6] The Minister of Public Safety and Emergency Preparedness urged the ID to find that Mr Ramazanzadeh was inadmissible to Canada. The Minister alleged there were reasonable grounds

to believe that Mr Ramazanzadeh had been a member of an organization that engaged in or instigated the subversion by force of the government of Iran (relying on s 33, and paragraphs 34(1)(b) and 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] – See Annex for full text).

[7] The ID made three key findings in concluding that Mr Ramazanzadeh was a member of the KDP, an organization intent on overthrowing the Iranian government. First, the KDP and the KDP-I were the same organization. The acts of one could, therefore, be attributed to the other. Second, the KDP was involved in violent subversive activities. Third, Mr Ramazanzadeh was a member of the KDP-I. Because the KDP-I and the KDP were the same organization, he was also a member of the KDP.

1) *The KDP and the KDP-I were the same organization*

[8] The ID noted that there were two alleged organizations mentioned in the evidence – the KDP and the KDP-I. The Minister contended that the KDP and the KDP-I were essentially the same organization based on their shared history, headquarters, leadership, and objectives.

[9] The ID reviewed the history of the KDP, beginning with its founding in 1946, and concluded that the group was an “organization for the purpose of paragraph 34(1)(f).” Mr Ramazanzadeh asserted that he supported the KDP-I, not the KDP. The ID found that the KDP-I, despite splitting from the KDP in 2006, was also an “organization” because it had a leadership structure and military element.

[10] The ID accepted the Minister's contention that the two groups were essentially the same organization for purposes of determining inadmissibility under IRPA. Mr Ramazanzadeh disputed that proposition pointing out that there were significant differences between the two organizations. The KDP-I, according to Mr Ramazanzadeh, renounced armed struggle and no longer shares a common goal with the KDP. Its military forces act only in self-defence, he claimed. The ID accepted that the KDP-I was less involved in large-scale clashes and engaged more in raising awareness and building networks in Iranian communities. However, the ID noted that the KDP-I has engaged in fighting the Islamic Revolutionary Guard Corp and Iranian border guards. In addition, it concluded that the leaders of the two organizations and their troops work together closely. The ID found it unnecessary to decide whether the KDP-I acted defensively or aggressively – the issue was whether it maintained a guerrilla fighting unit, however employed.

[11] The ID agreed with Mr Ramazanzadeh that the two organizations have different goals: The KDP works to overthrow the Iranian government and achieve autonomy, while the KDP-I seeks to advance the rights of Kurds within Iran. The ID noted, however, that these goals did not conflict. In fact, the ID found that the acts of the KDP could be attributed equally to the KDP-I considering their close links. Further, the acts of the KDP prior to the split in 2006 could also be ascribed to the KDP-I.

[12] Accordingly, the ID treated the two groups as the same organization.

2) *The KDP was involved in violent subversive activities*

[13] The ID found that the KDP has engaged in or instigated subversion by force of the government of Iran. The ID noted that the long-term objective of the KDP has been to overthrow the Khomeini regime in Iran. Armed conflict in pursuit of that goal had resulted in thousands of deaths between 1983 and 2004. After a period of calm, violence resumed in 2016, albeit on a smaller scale, with targeted assassinations.

3) *Mr Ramazanzadeh was a member of the KDP-I*

[14] The Minister's position was that Mr Ramazanzadeh's activities showed that he was a member of the KDP. In response, Mr Ramazanzadeh maintained that he was not a member of the KDP or the KDP-I. He was a mere supporter of the KDP-I.

[15] The ID noted that the meaning of "member" is broad and can include both formal and informal membership. The factors to be considered are: the person's knowledge of the organization, its methods, and goals; the person's willingness to participate in the organization's activities; the degree to which the person furthers the organization's objects; the duration and nature of the person's involvement (*eg* military); the person's stated intentions; and the person's membership in related groups.

[16] The ID proceeded on the basis that where, as here, there are related groups, membership in one may indicate membership in the other. Based on its finding that the KDP and the KDP-I were the same organization, the ID determined that it needed only to consider whether Mr Ramazanzadeh was a member of the KDP-I. If so, that would mean that he was also a member of the KDP.

[17] The ID considered Mr Ramazanzadeh to be an informal member of the KDP-I. He did not have a membership card, pay membership fees, donate or raise funds, or receive any formal training. However, since 2011, he supported the KDP-I by distributing promotional materials and, in 2018, participated in a shutdown of the city of Baneh in response to an Iranian missile attack, including by helping spread news of the shutdown through social media. In addition, he held meetings with active members of the KDP-I to discuss the organization's activities and objectives. The ID found Mr Ramazanzadeh's actions went beyond mere support or sympathy. His conduct was sufficient, according to the ID, to establish the minimum criteria for membership – either an institutional link with the KDP-I, or knowing involvement in its activities (citing *Sinnaiah v Canada (Citizenship and Immigration)*, 2004 FC 1576 at para 6).

III. Was the ID's conclusion that the KDP-I was the same organization as the KDP unreasonable?

[18] As mentioned, the Minister urged the ID to find that the KDP and the KDP-I were the same organization for the purpose of deciding whether there were reasonable grounds to believe that Mr Ramazanzadeh was a member of a violent, subversive organization. Before me, the Minister maintains that the ID's finding on that issue was reasonable because of the close connections between the two groups.

[19] I disagree with the Minister's position on this point. Although there are some ties between the two groups, there are also significant differences that the ID discounted.

[20] In support of its finding that the two groups were the same, the ID cited the following:

- A. The groups have a common origin and history dating back to 1946;

- B. the KDP-I still maintained a fighting unit after its split from the KDP in 2006;
- C. the two groups have headquarters adjacent to one another in the city of Koya;
- D. while the goals of the two groups are different, they do not conflict; and
- E. the leaders of the two groups work closely together and their military units are linked.

[21] However, there was other evidence that pointed to a different conclusion. This evidence was cited by the ID, but not weighed against the evidence on which it relied.

[22] The KDP-I split from the KDP in 2006 because the KDP-I sought to pursue goals other than a violent overthrowing of the Iranian government. In particular, the KDP-I turned away from armed conflict to engage in raising awareness and building networks in Kurdish communities. It does not seek an independent Iranian Kurdish state; rather, it attempts to advance the interests of Kurds within Iran. Its remaining military resources are used almost exclusively to defend against attacks by Iranian forces.

[23] Some of the evidence on which the ID relied to find that Mr Ramazanzadeh was a member of the KDP-I was also relevant to the question of whether the KDP-I and the KDP were the same organization. The ID accepted that Mr Ramazanzadeh began supporting the KDP-I in 2011, well after it split from the KDP. His activities included distributing literature on behalf of the KDP-I, which is consistent with its goals of raising awareness within the Kurdish population. He had also been involved in sharing information about a shutdown of the city of Baneh in 2018, which had been urged by many groups in Iran. The shutdown was a defensive response to a

missile attack by Iranian forces. Later, he met with some KDP-I officials to discuss the shutdown and to express his disapproval of engaging in armed conflict. He received assurances that the KDP-I was not involved in armed struggles.

[24] Taken as a whole, this evidence does not support the ID's finding that the KDP and the KDP-I were the same organization. The ID's reasons are also not internally coherent. In particular, while the ID initially acknowledged that the two groups had different goals, it concluded that they could be considered to have a common objective since those goals were not contradictory. Later in the decision, the ID went further and twice stated that the two groups actually have the same goal.

[25] The ID's approach resulted in a finding that a person who distributes literature and information, and meets with the leaders of a group that has renounced violence, seeks to raise awareness, and build networks in the Kurdish community, can be considered to be a member of an organization that seeks to carry out a violent take-over of the Iranian government and has killed thousands in the pursuit of that goal. I find that the ID's conclusion that the KDP and the KDP-I were the same organization is unreasonable – considering the evidence as a whole, its decision is not transparent, intelligible, or justified.

IV. Conclusion and Disposition

[26] The ID's finding that the KDP and the KDP-I were the same organization was unreasonable because it contained internal contradictions and did not take proper account of evidence to the contrary (see *Canada (Minister of Immigration and Citizenship v Vavilov*, 2019

SCC 65 at paras 85, 126). I must, therefore, allow this application for judicial review and order another panel of the ID to reconsider the question of Mr Ramazanzadeh's inadmissibility to Canada. No question of general importance arises.

JUDGMENT IN IMM-7584-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed, and the matter is returned to another panel of the Immigration Division for reconsideration.
2. No question of general importance is stated.

"James W. O'Reilly"

Judge

Annex

Immigration and Refugee Protection Act, SC 2001, c 27**Loi sur l'immigration et la protection des réfugiés, LC 2001, c 27**

Rules of interpretation

Interprétation

33. The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.

33. Les faits — actes ou omissions — mentionnés aux articles 34 à 37 sont, sauf disposition contraire, appréciés sur la base de motifs raisonnables de croire qu'ils sont survenus, surviennent ou peuvent survenir.

Security

Sécurité

34. (1) A permanent resident or a foreign national is inadmissible on security grounds for:

34. (1) Emportent interdiction de territoire pour raison de sécurité les faits suivants:

[...]

[...]

(b) engaging in or instigating the subversion by force of any government;

(b) être l'instigateur ou l'auteur d'actes visant au renversement d'un gouvernement par la force;

[...]

[...]

(f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b), (b.1) or (c).

(f) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle est, a été ou sera l'auteur d'un acte visé aux alinéas a), b), b.1) ou c).

FEDERAL COURT
SOLICITORS OF RECORD

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