Date: 20070720

Docket: IMM-2867-06

Citation: 2007 FC 759

Ottawa, Ontario, July 20, 2007

PRESENT: The Honourable Mr. Justice Blanchard

BETWEEN:

ULAS CAY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

1. Introduction

[1] The Applicant, Ulas Cay, seeks judicial review of a decision of the Immigration and Refugee Board (the Board) dated May 4, 2006, in which he was found to be neither a Convention refugee nor a person in need of protection.

2. Background

[2] The Applicant is a 29 year-old citizen of Turkey. He claims to have a well-founded fear of persecution because of his family's religious and ethnical profile as an Alevi Kurd and on the basis of his political opinions. He also claims to be a "person in need of protection".

[3] The Applicant is married and has one son. Prior to coming to Canada, he owned a restaurant in Marmaris and his family lived in Yalova, a city located 50 kilometres east of Istambul. He has 9 years of formal education and worked as a cook. From May 1997 to November 1998, the Applicant completed his military service.

[4] The Applicant alleges that since his school years he has been harassed by the Turkish authorities because of his nationality and religion. He alleges that he became involved with the Hadep party, as early as 1994 according to his testimony. Later, he continued his political activities with the Yalova chapter of the Dehap party which later became the People's Democratic Party.

[5] The Applicant alleges that he was arrested and detained on four occasions in 1997, 1999, 2002, and 2004. He alleges that during these detentions, he was beaten and mistreated. Each time he was released without charges. He alleges that his family has always been involved politically and religiously, that their house was raided by the police authorities and that his father and brothers were also arrested and detained. He alleges that in April 2004, one of his brothers was charged with "anti-state activities & harbouring radical leftist militants".

[6] The Applicant also alleges that on June 12, 2004, a warrant of arrest was issued against him for suspected activities against the State. On June 13, 2004, he left Turkey with a false passport. He fears arrest, detention and mistreatment at the hands of Turkish Authorities if he were to return to Turkey.

2. Impugned decision

[7] The Board found the Applicant not credible and consequently found that he was neither a "Convention refugee" nor a "person in need of protection".

[8] On the basis of the documentary evidence, the Board determined that no evidence was produced to support that the Applicant could be persecuted because of his religion.

[9] The Board found that the main issue in the claim was whether the Applicant had been actively involved in asserting his Kurdish origin and as a consequence arrested and mistreated and as a result faces a risk of persecution should he return to Turkey.

[10] The Board found the Applicant's testimony to be confusing and not spontaneous. The Board also noted inconsistencies, contradictions, additions and omissions and, as a consequence, found his testimony not to be credible.

[11] The Board questioned the Applicant about the two psychological assessments submitted wherein the Applicant was diagnosed as suffering from Post-Traumatic Stress Disorder (PTSD). The Board found inconsistencies between answers given to the Doctor and responses to

questions offered at the hearing that the Applicant was unable to explain. The Board found that these discrepancies undermined the applicant's credibility. The Board also found, based on documentary evidence, that the arrest warrant was a fake document and as a result gave no probative value to the psychological reports.

[12] The Board also gave no probative value to a letter submitted from the President of Dehap Yalova dated December 15, 2005, which letter essentially corroborated the Applicant's version of events that formed the basis for his claim. The Board discounted the letter because of its finding that the Applicant lacked credibility.

3. Issues

[13] The Applicant contends that the Board erred in law or in fact in making its credibility findings. In particular, the Applicant argues that the Board erred in its treatment of the medical reports, the arrest warrant and the letter from the President of Dehap Yalova. I propose to deal with each of these findings in turn below.

4. Standard of review

[14] The Board is entitled to base its decision on evidence adduced in the proceedings which it considers credible and trustworthy in the circumstances: paragraph 175(1)(c) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27. A reviewing Court will afford a tribunal great deference on its factual determination and will intervene only when it considers that the decision is based "…on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it" (paragraph 18.1(4)(*d*) of the *Federal Courts Act*, R.S.,

1985, c. F-7, s.1; 2002, c. 8, s.14). The Federal Court of Appeal has found that the applicable standard of review for factual determinations and credibility findings is patent unreasonableness: *Aguebor v. Minister of Employment & Immigration* (1993), 160 N.R. 315 (F.C.A.), at para. 4.

5. Analysis

[15] The Applicant filed two psychological reports by Dr. Rabie. Dr. Rabie is a Doctor of Psychology and his credentials are not challenged in this proceeding. The first report dated July 11, 2005, followed a two hour assessment on June 27, 2005. In his report Dr. Rabie concluded that "a diagnosis of Posttraumatic Stress Disorder was appropriate in this case." A follow-up assessment of 1¼ hour duration was conducted by Dr. Rabie on December 30, 2005, approximately one month before the first hearing date. In his report dated January 3, 2006, the Doctor noted that the Applicant's condition had significantly improved at that point but stated that, "…it is highly likely that when he first arrived in Canada, Mr. Cay was so confused and terrified that he may not have conducted himself in an entirely rational fashion."

[16] The Applicant argues that his PTSD had an impact on his Port of Entry (POE) statements, the Personal Information Form (PIF) and on his testimony at the hearing and explains his difficulties in providing evidence. The Applicant contends that the Board committed a reviewable error in rejecting the Psychological report because of a serious lack of credibility. Since the Board's negative credibility findings were based, to a significant extent, on discrepancies between the Applicant's POE and PIF evidence and his other evidence.

[17] It is clear that a number of the Board's negative findings regarding the Applicant's credibility were based on inconsistencies, omissions or discrepancies between the POE and/or PIF evidence and the Applicant's testimony at the hearing. I note from the Board's reasons the following findings:

(1) The Board noted that when questioned about his political involvement at the POE, the Applicant stated he feared for his life because of his brother's political involvement. He did not mention that he was personally involved. The Board found that this omission undermined the veracity of his story.

(2) The Board noted that the Applicant had stated he became politically involved in 1996 in his PIF, but he testified that this occurred in 1994-95.

(3) The Applicant omitted to mention in his PIF that he was involved in a "campaign of signatures". The Board found that the Applicant changed and embellished his answers and concluded that the discrepancies undermine the Applicant's credibility.

(4) The Applicant stated in his PIF that he had being arrested on four occasions and was mistreated by Turkish authorities. Yet in response to questions at the POE, he did not mention being arrested or detained. The Board concluded that this "important" omission undermines the veracity of his story.

[18] The second Psychological report indicates that the Applicant had made a significant recovery from his “formal mental condition”. There is therefore no evidence that the other credibility findings of the Board based on discrepancies and omissions in the Applicant’s evidence are in any way impacted by the PTSD diagnosis. It follows, in my view, that those findings were reasonably open to the Board on the evidence. The above findings relating to inconsistencies or omissions observed from the POE or PIF evidence, however, are problematic. The second Psychological report clearly states that it is highly likely that the Applicant was not rational at the time the POE notes and PIF were prepared. The problems which the Board identified with the Applicant's evidence and behaviour were by no means inconsistent with the manifestations of the syndrome described in the reports. The Board failed to deal with this evidence in considering its credibility finding. It simply determined that “…because of serious lack of credibility, the tribunal does not give any probative value to the psychological assessments.” The Board erred in so doing, since it could not simply dismiss evidence which may have had an impact on credibility determinations on the basis that the Applicant was found to be not credible.

[19] The Board is required to be “sensitive and alert” to such psychological reports, *Krishnasamy v. M.C.I.*, 2006 FC 451 at para. 23. The PTSD diagnosis should have been considered as part of the Board’s credibility analysis, and not rejected, as the Board did, because of the Applicant’s lack of credibility. The Board was not alert and sensitive to the Applicant’s particular circumstances, as described in the reports, at the time he prepared his PIF or when he answered questions at the POE. It follows, therefore, that the above mentioned negative credibility findings which flowed from discrepancies and omissions in the POE and PIF evidence

are suspect and are, in my view, sufficiently important to the ultimate decision of the Board to warrant the Court's intervention.

[20] While my above finding is determinative of this application, I think it useful to make the following observations regarding the Board's treatment of the arrest warrant and the letter from the President of Dehap Yalova. Both documents were given no probative value, because of the Applicant's lack of credibility. Where a tribunal finds a claimant not to be credible, it can reject the claimant's documentary evidence solely on that basis unless independent corroboration is adduced to offset the panel's negative conclusion on credibility, *Hamid v. Canada*, [1995] F.C.J. No. 1293 (QL). Here, while no corroborative evidence was before the Board, its overall credibility finding is tainted for reasons discussed above. It follows that it was not open to the Board to reject the two documents solely on the basis that the Applicant was not credible.

[21] The arrest warrant, however, was rejected for other reasons. First, the Board found the document to be a fake document because, according to the documentary evidence, Turkish authorities do not issue such documents. Second, the Board found that the Applicant could not explain why the warrant was issued in Istanbul for an alleged offence which occurred in Istanbul, when the Applicant resided in Yelova and there is a tribunal in Yelova. The Board concluded that because of the Applicant's "lack of credibility" and the documentary evidence on "such documents", it afforded no probative value to the warrant of arrest.

[22] A review of the documentary evidence relied on by the Board to support its finding, indicates that it is easy to obtain false documents in Turkey to prove that an asylum-seeker was

wanted by the Turkish authorities. The Norwegian Country of Origin Information Centre Report, dated October 2004 noted:

> … All lawyers I asked about this invalidated the possible authenticity of such documents. Neither law enforcement authorities nor any other Turkish official were entitled to issue such a confirmation. Neither detention-orders, nor warrants were handed out to the suspect or any other third person before the suspect was detained.

[23] The documentary evidence at issue does not expressly indicate that the courts are not entitled to issue warrants. It expressly states that neither "law enforcement authorities" nor any other "Turkish official" were entitled to issue such "confirmation". It is unclear whether a Court is to be considered a "Turkish official". Further, the evidence does not unequivocally establish that judicial warrants are not issued; it states that the warrants are not handed to the suspect prior to detention.

[24] In my view, it was not open to the Board to find that the warrant was a fake document on the basis of the above documentary evidence alone. Nor was it open to the Board to base its finding in respect to the warrant of arrest on the fact the warrant issued in Istanbul for an alleged offence which occurred in Istanbul. There is no evidence to suggest why such a warrant would necessarily have to be issued by a tribunal in one's place of residence, particularly, in this instance given Yalova's proximity to Istanbul and the Applicant's family ties to Istanbul. Further, the Board does not invoke its particular expertise in making its determination. Without evidence, the Board's observation is speculative. Finally, the Applicant cannot be expected, in the circumstances, to explain why the warrant was issued in Istanbul and not in Yalova.

[25] I therefore find that it was not open to the Board to give no probative value to the warrant for these other reasons. The Board's finding is not supported in the evidence. The arrest warrant, if accepted, was evidence that could have corroborated the Applicant's claim and may well have impacted the Board's ultimate negative decision.

5. Conclusion

[26] For the above reasons, I am of the view that the Court's intervention is warranted. The application for judicial review will be allowed. The matter is to be returned for reconsideration before a differently constituted panel of the Immigration and Refugee Board in accordance with these reasons.

[27] The parties have had the opportunity to raise a serious question of general importance as contemplated by paragraph 74(*d*) of the *Immigration Refugee Protection Act*, S.C. 2001, c. 27, and have not done so. I am satisfied that no serious question of general importance arises on this record. I do not propose to certify a question

ORDER

THIS COURT ORDERS that:

1. The application for judicial review is allowed.

2. The matter is to be returned for reconsideration before a differently constituted panel of the Immigration and Refugee Board in accordance with these reasons.

3. No serious question of general importance is certified.

"Edmond P. Blanchard"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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