

Date: 20071005

Docket: IMM-5568-06

Citation: 2007 FC 1026

Ottawa, Ontario, October 05, 2007

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

ABDULVEHAP DUNDAR

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the "Board"), wherein the Board determined that the applicant was not a Convention refugee, nor a "person in need of protection". The Board found that the applicant failed to provide sufficient credible evidence to establish his claim.

BACKGROUND

[2] The applicant alleges that he is a Kurdish Alevi and that as a university student he became interested in politics and began to support the People's Democratic Party (HADEP) in 1996.

[3] Specifically, he alleges that in December 1998, July 2003, and July 2004, he was detained by police, interrogated and mistreated for several days at a time.

[4] The applicant then decided to leave Turkey and was issued a student visa on September 1, 2004. He left Turkey for Canada on October 12, 2004.

[5] The applicant's refugee determination hearing was held on August 21, 2006 in which he claimed fear of persecution by the Turkish authorities because of race and political opinion.

[6] The IRB found that the applicant had failed to provide sufficient credible and trustworthy evidence to establish his claim.

[7] The Board determined that while the applicant was a cooperative witness, his responses regarding his leftist political activities were general in nature.

[8] Further, the Board asserted that the applicant failed to disclose any reliable documents regarding his support for political activities. The Board found the applicant's explanation unsatisfactory as to why he failed to obtain a letter confirming his involvement in leftist politics.

The Board also noted that there was no reliable objective documentation regarding the Applicant's allegations of mistreatment. The documentary evidence indicates that there has not been any report of ill-treatment against Alevis during the period of January 2002 to April 2005.

[9] The Board also based its decision on a Statutory Declaration from a Hearings Officer relating to a "secondary interview" carried out with the applicant. The declaration revealed that over the course of the interview, the applicant admitted to providing false information on his Personal Information Form and that his purported involvement with HADEP was contrived to further his refugee claim.

[10] Despite the applicant's explanation that he was subject to pressure and intimidation during the secondary interview, that he did not fully understand what was happening, and had no choice but to recant on his earlier allegations, the Board gave significant weight to the Statutory Declaration.

[11] In summary, the Board concluded that the claimant's superficial testimony, his lack of diligence in obtaining documents, and the information contained in the Statutory Declaration from the Hearings Officer, led it to conclude that on a balance of probabilities the applicant was not involved in political activities which resulted in any mistreatment at the hands of Turkish authorities.

[12] Credibility findings are questions of fact and are therefore reviewable on a standard of patent unreasonableness (*Aguebor v. Canada (Minister of Employment and Immigration)*, (1993)

160 N.R. 315 (QL), *Asashi v. Canada (Minister of Citizenship and Immigration)*, [2005] FC 102, [2005] F.C.J. No. 129 (QL), at para. 6; *Canada (Minister of Citizenship and Immigration) v. Elbarnes*, [2005] FC 70, [2005] F.C.J. No. 98 (QL), at para. 19). Findings reviewable on this standard will remain undisturbed unless they are “clearly irrational” or “evidently not in accordance with reason” (*Canada (Attorney General) v. Public Service Alliance of Canada*, [1993] 1 S.C.R. 941, at pp. 963-64).

[13] While presented by the applicant as relating to credibility, the Board’s acceptance of the Statutory Declaration into evidence is in my view a procedural fairness issue.

[14] The jurisprudence of the Federal Court reveals that an applicant must raise allegations of procedural fairness at the earliest practical time. The earliest practical time has been defined as

[...] when the applicant is aware of the relevant information and it is reasonable to expect him or her to raise an objection. (*Benitez v. Canada (Minister of Citizenship and Immigration)*, [2006] FC 461, [2006] F.C.J. No. 631 (QL), at para. 220).

Thus, applicants bear the burden of raising objections to violations of procedural fairness when they occur.

[15] Given that the applicant failed to object at the refugee determination hearing, regardless of the existence of any duty on the part of the Board to require that transcripts and recordings of the secondary interview be made available, the applicant is now precluded from raising this argument.

[16] Indeed, at the commencement of the hearing, the Board member specifically asked the applicant's counsel if he had any objections to the disclosure of the Statutory Declaration, and received a negative response. Therefore, the applicant has waived his right to raise this issue on judicial review.

[17] As for the negative credibility determination, it is well established that the "determination of an applicant's credibility is the heartland of the Board's jurisdiction" (*R.K.L. v. Canada (Minister of Citizenship and Immigration)*), [2003] FCT 116, [2003] F.C.J. No. 162 (QL), at para. 7). Thus, this Court may not lightly substitute its decisions on credibility for those of the Board.

[18] A refugee claimant bears the onus of establishing elements in his or her claim for protection (*Gill v. Minister of Citizenship and Immigration*), [2004] FC 1498, [2004] F.C.J. No. 1828 at para. 25). In *Samseen v. Canada (Minister of Citizenship and Immigration)*, [2006] FC 542, [2006] F.C.J. No. 727 (QL), at para. 14, this principle was held to include "giving truthful, coherent and non-evasive answers to basic questions about events which are alleged to have happened to him and which form the basis of his claim. [...]"

[19] Moreover, in evaluating the merit of a refugee claim, "[...] the Board [is] entitled to take into account the applicant's lack of effort to obtain corroborative evidence to establish [elements of his claim] and to draw a negative inference of his credibility based on this." (*Samseen, supra*, at para. 30). Therefore, while corroborative evidence is not determinative of a refugee claim, the Board is free to inquire into its absence.

[20] Indeed, this inquiry flows directly from Rule 7 of the Refugee Protection Division Rules, SOR/2002-228, which sets out that

[..] the claimant must provide acceptable documents establishing identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they were not provided and what steps were taken to obtain them.

[21] In *Amarapala v. Canada (Minister of Citizenship and Immigration)*, [2004] FC 12, [2004] F.C.J. No. 62 (QL), at para. 10, Kelen J. addressed this issue when he asserted that:

It is well established that a panel cannot make negative inferences solely from the fact that a refugee claimant failed to produce any extrinsic documents to corroborate a claim. But where there are valid reasons to doubt a claimant's credibility, a failure to provide corroborating documentation is a proper consideration for a panel if the Board does not accept the applicant's explanation for failing to produce that evidence.

[22] I concur with Kelen J.'s approach to corroborative evidence. Where valid reasons to doubt a claimant's credibility exist, the Board may draw negative credibility inferences from a failure to provide supporting evidence. However, in my opinion, these inferences may only be drawn where the applicant has also been unable to provide a reasonable explanation for his or her lack of corroborating material.

[23] In the present case, the Board indicated that it had other valid reasons for doubting the applicant's allegations. The applicant's general answers regarding his political activities, and commitment in his testimony and the Statutory Declaration indicating that he had fabricated elements of his refugee claim, together with his inadequate explanation for failing to provide

corroborating material were sufficient to impugn his credibility in the present case. This conclusion is all the more reasonable considering the objective documentary evidence indicating that Alevis do not suffer persecution in Turkey and that Kurds are not persecuted solely for being Kurds.

[24] The applicant has not convinced me that there is any basis for the Court to interfere. The findings are based on the evidence and the Board has given reasons in clear and unmistakable terms.

[25] For these reasons, the application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS that the application for judicial review is dismissed.

“Danièle Tremblay-Lamer”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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