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Docket: IMM-2054-07

Citation: 2008 FC 372

Ottawa, Ontario, March 27, 2008

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

KALENDER YENER

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] In matters of credibility, it is only when the Board bases its findings on inferences drawn from the evidence that the Court can determine whether or not the inferences were reasonably drawn. (*Frimpong v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 274, [2001] F.C.J. No. 497 (QL).)

[2] A tribunal must not base credibility findings on irrelevant considerations. (*Attokora v. Canada (Minister of Employment and Immigration)* (F.C.A.), [1989] F.C.J. No. 444 (QL).)

II. Judicial Procedure

[3] This is an application, pursuant to s. 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), to judicial review a decision of the Refugee Protection Division of the Immigration and Refugee Board (Board), dated April 27, 2007, wherein, the Board determined that the Applicant was not a Convention refugee nor a person in need of protection.

III. Background

[4] The Applicant, Mr. Kaender Yener, was subject of a hearing before the Board, on January 23, 2007. By decision, dated April 27, 2007, the Board determined that Mr. Yener is not a Convention refugee and is not a person in need of protection.

[5] The evidence presented at the hearing included Mr. Yener's Personal Information Form (PIF), documents in support of his refugee claim, documentary evidence on the country conditions, in Turkey, and his oral testimony.

[6] Mr. Yener is a citizen of Turkey. His claim for refugee protection was based on his fear of persecution, risk of torture and cruel and inhumane treatment, and risk to life at the hands of the Turkish police and security forces, Sunni Muslim fundamentalists and Turkish nationalists because of his Kurdish ethnicity, Alevi religion, leftist political opinion, and human rights activities.

[7] Mr. Yener explains that he fears persecution, torture, and risk to life because of his race and nationality (Kurdish), his religion (Alevi), his political opinion and his membership in a particular

social group. The persecution, he fears, includes arbitrary detention, physical assault, torture, cruel, inhumane, or degrading treatment, and other threats to his life and freedom. Mr. Yener fears the Turkish authorities and he alleges there is no safe place for him anywhere in Turkey.

[8] Both of Mr. Yener's parents were Kurdish and Alevi and they all spoke the Kurdish language, Kurmanji. Because of his Kurdish Alevi background, Mr. Yener faced humiliation, insults, and beatings by his nationalist teachers and fellow students during his primary, secondary and high school years.

[9] At the end of 1979, a fight had occurred at his high school between religious fundamentalist and Alevi students in which someone had been shot. Even though Mr. Yener was not there when the incident happened, he was falsely accused, by nationalists and fundamentalists, of participating in this fight. Mr. Yener was not charged or questioned by the police at the time. From March 1982 to November 1983, Mr. Yener completed his compulsory military service, no charges were brought and no investigation carried out in relation to these false allegations.

[10] It wasn't until December 1984, that the police did come to Mr. Yener's apartment building and arrested him on false charges in connection with the events that had taken place at his former high school, in 1979. Mr. Yener was taken to an unknown location where he was blindfolded and tortured, which included hosing with highly pressurized water, electric shocks and psychological torture. Held there for three days, eventually, he was brought to trial, together with a Kurdish friend and both were convicted. Mr. Yener was sentenced to 6 years and 8 months and served three full

years. During his period in custody, Mr. Yener was beaten and mistreated by both guards and soldiers in Iskenderun Covered Prison. He served his last eight months in Reyhanli Prison, in Hatay Province, and was released in December 1987.

[11] After his release from prison, Mr. Yener experienced harassment, humiliation, and repeated brief detentions by the police for no legitimate reason.

[12] In the beginning of 1990, subsequent to paying a sum of money, Mr. Yener obtained a position as a general labourer with the Municipality of Iskenderun. Shortly after being hired, the employer's attitude towards Mr. Yener changed. Mr. Yener's employer assigned him the worst tasks and repeatedly threatened to fire him for no legitimate reason. Mr. Yener became active in the union of municipal workers which gave his employer another reason to harass him. Mr. Yener's complaints to the police and the district prosecutor were unsuccessful and uninvestigated.

[13] After Mr. Yener and a friend were fired from their position, in December 1992, they staged a hunger strike to protest their unfair, wrongful dismissal. This hunger strike received both media attention and sympathy from non-governmental organizations. Due to media pressure, the municipality announced it would rehire them but reneged on its promise. Instead, Mr. Yener and a friend received monetary compensation.

[14] In 1993, Mr. Yener became the founding director of the Human Rights Association branch, in Iskenderun. He continued to work as an active member and volunteer with the Human Rights Association, until 2005.

[15] In August 1993, Mr. Yener opened his own business, a bookstore, “Secenek Book Store”, in Iskenderun. At the same time, he worked for a legally approved leftist newspaper, “*Emecin Bayragi*” (Flag of Labour), as a reporter and correspondent, for Hatay region. In addition to his reporting duties, Mr. Yener organized the distribution of the paper in the Hatay province.

[16] A few days after opening his bookstore, the police raided the store, broke, and damaged the furniture and seized books that they falsely claimed were banned. They insulted Mr. Yener as an Alevi Kurd and threatened him with death if he did not stop his activities with the Human Rights Organization (IHD) and the media. Mr. Yener was continually harassed by Turkish nationalists because of his leftist affiliations, his Kurdish Alevi background and his work for the leftist newspaper. The window of his store was broken on numerous occasions.

[17] In June 1995, Mr. Yener was prosecuted for producing leaflets and distributing a leftist newspaper, even though it was legally sanctioned. He was convicted and fined 78,000 Turkish Lira, in May 1998.

[18] In March 2003, Mr. Yener attended a protest and commemoration on behalf of the victims of the 1995 killings of Kurds and Alevis, in Gazi District of Istanbul. The protest was held in

Iskenderun, in Boyacilar Park. After the event's press conference, Mr. Yener was detained by the police together with ten or eleven other persons who attended the protest. He was held overnight and released after the police took his statement. He was then summoned to give his statement to the Public Prosecutor, in April 2003. The prosecutor took the statement and told Mr. Yener that he would "open a file" on him. Before releasing Mr. Yener, the prosecutor threatened him that if he continued his involvement with protest activities, he would be charged.

[19] One day in the beginning of 2004, when Mr. Yener went to open his bookstore, he found the windows broken and his books destroyed. Slogans, such as "An End to Leftists" were scrawled on the walls. Mr. Yener complained to the Public Prosecutor but the latter did not investigate or even record the complaint. After this incident, Mr. Yener decided to close his bookstore as he could no longer tolerate the police raids, the damage to the inventory and the harassment he experienced on a regular basis. Instead, he opened a propane tank store.

[20] On February 27, 2005, Mr. Yener was working for the Human Rights Association, in Iskenderun, to prepare for the upcoming Newroz celebration to be held the next month. Suddenly, police arrived at the Association office and detained Mr. Yener along with the directors of the Association. They were taken to an unknown location, where Mr. Yener was blindfolded, put in a cell, and made to wait for long hours. He could hear the screams of other persons being tortured. After a while, police brought Mr. Yener elsewhere and subjected him to torture, including falaka, electric shock and hosing with highly pressurized water. They forced him to sign a statement which they had prepared. When Mr. Yener refused to sign, they increased the torture. The police tried to

force Mr. Yener to give names of people from illegal organizations who were organizing this Newroz celebration. When Mr. Yener denied these false allegations, the police tortured him even more harshly. After two days, the police brought Mr. Yener to a state hospital for a doctor to certify that he had not suffered any injuries. Mr. Yener was then released. The police refused to allow the Newroz celebration to proceed, in Iskenderun.

[21] After his release, Mr. Yener recognized that he was under surveillance by plain-clothed police. He received threatening phone calls, both at his home and work place. The calls included threats to his family. Mr. Yener's life had become intolerable. He realised he could no longer live safely, in Turkey. He closed his business in May 2005. He spoke with his nephew who lived in Canada and asked to be invited for a visit. With an invitation letter and his financial documents, Mr. Yener applied for a Canadian visitor visa. Mr. Yener was afraid he would encounter difficulties from the police at the airport on his departure from Turkey. Through friends, he found a police officer who worked at the airport to arrange his safe exit for a fee of 300,000 Turkish Lira. With his help, Mr. Yener was able to leave Turkey without incident.

[22] Mr. Yener arrived in Canada on May 18, 2005 and made his refugee claim, on June 1, 2005.

IV. Decision under Review

[23] The Board determined Mr. Yener not to be a Convention refugee and not a person in need of protection due to credibility concerns.

[24] The Board was satisfied that Mr. Yener proved his nationality. It also found that Mr. Yener's fear of persecution in Turkey was by reason of his ethnicity, religion, and political opinion. The Board, nevertheless, found Mr. Yener not to be a credible and trustworthy witness with respect to central elements of his refugee protection claim, particularly, his alleged problems at the hands of the Turkish police and/or security forces due to his Kurdish ethnicity and activities, his Alevi religion, his leftist political views and activities, and his human rights activities.

[25] The Board noted that in evidence before it were documents relating to Mr. Yener's interview with an Immigration Officer regarding his refugee protection claim in Canada, on June 1, 2005. According to these documents, the Immigration Officer asked Mr. Yener of what and of whom he was afraid of if he returned to his country. Mr. Yener explained that he feared being detained, tortured and killed in Turkey by the police government authorities, nationalists and fundamentalists. The Immigration Officer also asked Mr. Yener whether he had been detained. According to the Officer's notes, Mr. Yener had been arrested and detained on four occasions. In December 1984, Mr. Yener was detained for three years because he was alleged to have been involved in a fight/riot between Alevi and religious nationalists. Someone was injured; Mr. Yener was convicted of assault and released, in December 1987. Mr. Yener was detained, in June of 1995, for one day, due to his working in the distribution department of a newspaper (Emergin Bayragi) which, the government decided, published illegal articles. Mr. Yener was arrested, on March 11, 2003, and detained for two days, on February 26, 2005, because he was organizing preparations for the Newroz celebration, a Kurdish holiday.

[26] The Board further noted that the documentary evidence did not indicate that Mr. Yener had told the Immigration Officer about having been tortured and seriously mistreated while in police detention, in December 1984 and on February 27, 2005, and while incarcerated between 1984 and 1987. Mr. Yener was asked whether he told the Immigration Officer about the incidents involving torture and other forms of mistreatment. Mr. Yener testified that he had provided this information to the Immigration Officer, on June 1, 2005. (Transcript, pp. 388-389.)

V. Issues

- [27] (1) Did the Board err in its assessment of the Applicant's credibility?
- (2) Did the Board err in determining that the Applicant's claim for protection was not subjectively and objectively well-founded?

VI. Standard of Review

[28] In *Perera v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1069, [2005] F.C.J. No. 1337 (QL), Justice Michel Beaudry observed that the Court has consistently adopted a standard of patent unreasonableness for issues of credibility:

[14] The Board's role to assess evidence and the credibility of an applicant is widely recognized for being part of its primary function. In this regard, the Federal Court of Appeal has determined that the standard of review when dealing with a question of credibility is patent unreasonableness.

[15] There is no longer any doubt that the Refugee Division, which is a specialized tribunal, has complete jurisdiction to determine the plausibility of testimony: who is in a better position than the Refugee Division to gauge the credibility of an account and to draw the necessary inferences? As long as the inferences drawn by the tribunal are not so unreasonable as to warrant our intervention, its findings are not open to judicial review (*Aguebor v. Canada*

(*Minister of Employment and Immigration*) (1993), 160 N.R. 315 at pages 316 and 317 (F.C.A.)).

[16] This was recently reiterated by the Federal Court in *Umba v. Canada* (*Minister of Citizenship and Immigration*), [2004] F.C.J. No. 17 at para. 31, where Justice Martineau confirmed, after applying the pragmatic and functional approach, that the appropriate standard of review when dealing with the assessment of documentary evidence and the plausibility of the Applicant's testimony is patent unreasonableness:

[31] In light of the above, in the particular case before us, I would find that the balancing of the above-mentioned four factors militates in favour of the application of two standards of judicial review: (1) the patent unreasonableness standard in the case of the analysis of the documentary evidence and the assessment of the applicant's credibility; [...]

[29] Based on the foregoing, the standard of review to be applied, in the case at bar, is that of patently unreasonable.

VII. Relevant Legislation

[30] Paragraph 95(1)(b) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), provides:

95. (1) Refugee protection is conferred on a person when

(b) the Board determines the person to be a Convention refugee or a person in need of protection; or

...

95. (1) L'asile est la protection conférée à toute personne dès lors que, selon le cas :

b) la Commission lui reconnaît la qualité de réfugié ou celle de personne à protéger;

[...]

Section 96 and subsection 97(1) of the IRPA defines the expression “refugee” and “person in need of protection”:

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

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

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.

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, 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 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.

VIII. Analysis

Guidelines for Credibility Findings

[31] The Federal Court has established clear guidelines to be followed when assessing credibility findings by first instant tribunals:

- (a) When a claimant swears to tell the truth, this creates a presumption that those allegations are true, unless there is reason to doubt their truthfulness (*Maldonado v. Minister of Employment and Immigration*, [1980] 2 F.C. 302, para. 5.);
- (b) When a refugee tribunal rejects a claim on the basis of credibility, it must clearly state so and it must give its reasons for the credibility findings. Failure to explain the reasons, constitutes a reviewable error (*Hilo v. Canada (Minister of Employment and Immigration)* (F.C.A.), [1991] F.C.J. No. 228 (QL));
- (c) A tribunal must guard against over-zealousness when attacking the credibility of a refugee claimant (*Attokora*, above.);
- (d) A tribunal must consider the totality of evidence before it when assessing the credibility of a refugee claimant (*Owusu-Ansah v. Canada (Minister of Employment and Immigration)* (F.C.A.), [1989] F.C.J. No. 442 (QL));
- (e) In matters of credibility, it is only when the Board bases its findings on inferences drawn from the evidence that the Court can determine whether or not the inferences were reasonably drawn (*Frimpong*, above);
- (f) A tribunal must not base credibility findings on irrelevant considerations (*Attokora*, above);

- (g) A finding that the claimant is or is not a credible witness is not determinative of the question of whether or not the claimant is a convention refugee. The claimant is a refugee whether credible or not, if the subjective and objective components of the test for refugee status have been met (*Attokora*, above);
- (h) If a tribunal rejects certain portions of the claimant's testimony but accepts others, the tribunal must make a determination as to whether or not, based on the evidence accepted by the tribunal as credible, the person would qualify as a convention refugee (*Rajaratnam v. Canada (Minister of Employment and Immigration)* (F.C.A.), [1991] F.C.J. No. 1271 (QL)).

Immigration Officer's Interview Notes

[32] The main reason for the Board's finding of lack of credibility was the alleged omission from the Immigration Officer's interview notes of the mistreatment and torture to which Mr. Yener was subjected during his police detention, in December 1984, during his incarceration between 1984 and 1987 and during his police detention, on February 27, 2005. The Board noted, in its Reasons, that the Immigration Officer had given Mr. Yener every opportunity to provide additional information on the aspect of police and prison guard brutality or torture while detained and incarcerated, in Turkey; and that Mr. Yener was provided with an interpreter during the interview. (Decision, p. 12.)

[33] Based on the evidence before it, the Board accepted that Mr. Yener was an Alevi Kurd who was a human rights activist, one of the directors of the local human rights association, in Iskenderun, and a reporter for a leftist newspaper. (Application Record, Vol. II, Applicant's Memorandum of Argument, para. 53.)

[34] The Board further accepted that Mr. Yener was detained, convicted and incarcerated in Turkey, from 1984 to 1987; that he was held responsible for distributing writings of a leftist nature, in May 1995, and fined 78,000 Turkish Lira; and that he was detained by police, in March 2003 and February 2005.

[35] The country condition documentary evidence, before the Board, indicated that the police and security forces routinely torture and mistreat persons in detention.

[36] This Court finds that the Board erred in three respects. First, Mr. Yener testified that he had, in fact, told the Immigration Officer of his mistreatment and torture while in detention. The Board failed to treat Mr. Yener's explanation and to provide any cogent reasons as to why Mr. Yener's explanation was unreasonable. (*Hilo*, above.)

[37] The Board was not present at Mr. Yener's interview with the Immigration Officer and the conclusion that the Officer gave Mr. Yener every opportunity to provide additional information, is based on speculation.

[38] Citizenship and Immigration Canada (CIC), document "PP1 Processing claims for protection in Canada" states in paragraph 8.7 – Assess Admissibility, Appropriate questions: "[t]he officer should ask the claimant the standard questions on the refugee claim..."; however "[t]he officer should not ask the claimant to elaborate on the basis of the claim unless the information relates to admissibility and eligibility. It is not the officer's responsibility to determine the credibility

of the claim for refugee protection”; thus, it is reasonable to conclude that the information found in the Immigrations Officer’s notes would not contain all the details of the claim. (CIC, PP1 – Processing Claims for Refugee Protection in Canada.)

[39] A review of the Immigration Officer’s rough notes indicates that, in the record of examination, under section C “Admissibility and Eligibility Information”, the Officer referred to Schedule 1 Background Information, Question 4J. Question 4J refers to whether a person has been detained. Since the sole reason for that question is in connection with a claimant’s admissibility, it is logical that the Officer would only list Mr. Yener’s arrests and the reason for those arrests. (Application Record, Vol. I, Documentary Evidence, p. 153.)

[40] Furthermore, according to Schedule 1, Mr. Yener did indicate that he feared torture, detention, and death, in Turkey, at the hands of the police, government, nationalists and fundamentalists. Similarly, in the Record of Examination, the Officer wrote that Mr. Yener could not return to Turkey “because of police oppression, and religious and nationalists fascists.” (Application Record, above, pp. 153, 229, 231; Record of Examination, pp. 242-244.)

[41] In view of the consistent testimony of Mr. Yener, his personal corroborative documents and the objective documentary evidence before it, the Board’s conclusion of lack of credibility is patently unreasonable. (Application Record, Vol. I, Documentary Evidence, pp. 201, 203-204, 256, 290-291.)

Medical Report regarding December 1984 and February 2005 Detentions

[42] The Board found that the documentary evidence in respect of detainees in police custody, in Turkey, provided information which did not corroborate Mr. Yener's inability to seek medical treatment and obtain a medical report to verify his torture at the hands of the police, in February 2005. (Application Record, Vol. I, Responses to Information Requests (RIR) TUR43495.E, p. 290.)

[43] The Board concluded that Mr. Yener's explanations for his failure to seek medical attention and to obtain a medical report to verify that he was tortured by the police, February 2005 and in December 1984, to be unreasonable and to undermine the credibility of his arrest, detention and torture at the hands of the Turkish police, in February 2005. (Application Record, Vol. I, Decision, p. 13).

[44] With respect to the medical reports, this Court finds that the Board, not only erred in its findings, but it also erred in its reliance on certain selective portions of the evidence while ignoring relevant information which necessitated the evidence, be read, as a whole, in context.

[45] With respect to the Board's contradictory findings, it, on the one hand, questioned the credibility of Mr. Yener's arrest and detention by the police, in February 2005, and, on the other hand, it found it plausible that Mr. Yener was, in fact, detained, in February 2005.

[46] The Board's conclusion, that the documentary evidence did not corroborate Mr. Yener's testimony about the medical report in connection with the February 2005 incident, is patently unreasonable. The Board misunderstood the evidence and selectively relied on portions of the evidence while ignoring relevant information. The Board selectively quoted from RIR TUR43495.E, in finding that detainees are required to undergo a medical examination every 24 hours, that they are held in police custody, after being transferred to another location, and after charges are laid; furthermore, the police presence during medical examinations of detainees, is prohibited, unless, requested, otherwise, by the doctor or the detainee and that medical examinations for police purposes have been eliminated. Severe prison terms and fines have been adopted for medical practitioners who falsify reports to hide torture.

[47] In reading RIR TUR43495.E, the alleged contradictions between Mr. Yener's testimony and the Board's findings can be dispelled. The document clearly states the opposite of that which is expressed by the Board:

Various sources indicated that many of the aforementioned detention regulations and measures and legislative reforms adopted to target torture have not been implemented or have been implemented unevenly...

With respect to medical examinations, there have been reports of detainees being examined by a doctor in the presence of the police without the prior request of the doctor (ibid., 35; COE 18 June 2004, 17; Norway 7-17 Oct. 2004, 13, 20). Furthermore, some doctors continued to provide copies of medical examination records to the police despite the abolishment of such a requirement (ibid., 19; EU 6 Oct. 2004, 35). Further, according to HRW, "[c]ertain police units ... [have] attempt[ed] to suppress or influence medical reports which record ill treatment" (Sept. 2004).

(Application Record, Vol. I, RIR TUR43495.E, p. 295.)

[48] In addition, the Board considered information in respect of measures taken by the Turkish government, in 2002, to support an adverse credibility finding with respect to the torture, Mr. Yener suffered, in 1984. (*Naqvi v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 996, [2005] F.C.J. No. 1242 (QL).)

Applicant's Passport

[49] The Board noted that, while Mr. Yener mentioned, in his PIF narrative, that he found a police officer who worked at the airport and paid him 300,000 Turkish lira in order to avoid difficulties when leaving Turkey, he did not mention that he paid a bribe to a passport official. The Board concluded that Mr. Yener's failure to mention this bribery allegation, in the PIF narrative, significantly undermined the credibility of his allegation. (Application Record, Vol. I, Decision, pp. 14 and 16.)

[50] The RIR on whether a Turkish citizen, who is the subject of an arrest warrant, can obtain a passport, legitimately or through bribery, clearly indicates that bribery is a means by which individuals have obtained passports to leave Turkey. The documents note:

Regarding the acquisition of a Turkish passport through bribery or any other fraudulent means by an individual who has an arrest warrant against him or her, during the period February 2001 through August 2004, there were various reports of persons who were in possession of fraudulent Turkish passports when they were arrested by Turkish authorities... as well as reports of persons who were arrested by the Turkish authorities for their involvement in the distribution of fraudulent passports... Additional information on whether a Turkish citizen who is the subject of an arrest warrant can obtain a passport through bribery or any other fraudulent means could not be found among the sources consulted by the Research Directorate.

(Application Record, Vol. I, RIR TUR42998.E, 1 October 2004, p. 315.)

[51] The Board engaged in a microscopic analysis of the evidence and erred. This Court has held that the PIF is not to be an “encyclopaedic recitation” of the evidence. Mr. Yener provided a detailed narrative and his *viva voce* testimony, when viewed in its totality, was entirely consistent with the PIF narrative. The omission of the bribery at the passport office was not a central element of Mr. Yener’s claim but a rather peripheral one. The Board’s conclusion that this omission significantly undermined Mr. Yener’s credibility, is patently unreasonable. (*Feradov v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 101, [2007] F.C.J. No. 135 (QL), para. 19.)

Delay in Leaving Turkey

[52] The Board noted that Mr. Yener departed for Canada, on May 18, 2005. When he was asked why he did not leave Turkey earlier than May 2005, the Board found Mr. Yener’s explanation for his delay in leaving Turkey, to be unreasonable. The Board further concluded that the delay undermined the credibility of Mr. Yener’s alleged past arrests, detentions and acts of police brutality in Turkey because of his Kurdish ethnicity, Alevi religion, leftist political views and activities, and it was inconsistent with a subjective fear of persecution, in Turkey. (Application Record, Vol. I, Decision, pp. 16-17.)

[53] The evidence before the Board demonstrates that Mr. Yener testified that he was convicted and charged in the past and was not able to get a passport for ten years. Also, as he stated, even though he had suffered, he did not want his five year old daughter to grow up without a father;

therefore, it was only after the most recent threats that Mr. Yener decided to leave Turkey. The transcript further reveals that Mr. Yener was never specifically asked about the period between April 6, 2005 (when he received a visitor's visa for Canada) and May 18, 2005. (Application Record, Vol. II, Transcript, p. 374.)

[54] Based on the foregoing, this Court finds that the Board ignored Mr. Yener's explanations. (*Ahmed v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1076, [2004] F.C.J. No. 1296 (QL).)

Applicant's Profile

(i) Alevi Kurds

[55] The Board found Mr. Yener's fear of persecution in Turkey, by reason of his Alevi religious beliefs and activities, not objectively well-founded. (Application Record, Vol. I, Decision, pp. 21-24.)

[56] Mr. Yener submits that the Board erred in its analysis of his profile. Mr. Yener feared persecution, torture and risk to his life in Turkey because he was an Alevi Kurd who was a human rights activist, one of the directors of the local Human Rights Association, in Iskenderun, and a reporter for a leftist newspaper.

[57] It is the totality of Mr. Yener's profile which was the cause for his persecution, in Turkey. Instead of considering Mr. Yener's profile, as a whole, the Board made a disjunctive analysis of

each component and found that Mr. Yener would not suffer persecution on the sole basis of his Kurdish ethnicity, or on the sole basis of his Alevi religion. This, in and of itself, constitutes a reviewable error. His profile has to be considered as a whole in context.

(ii) Media/Press and Human Rights Activities

[58] When analyzing Mr. Yener's involvement in media/press and human rights activities, in Turkey, the Board accepted that the members of non-governmental human rights organizations, in Turkey, such as IHD, and journalists, have periodically been the victims of threats and police harassment, arrests, detentions, investigations and charges by prosecutorial officials; nevertheless, the Board found that Mr. Yener's human rights and press or media profile, in Turkey, was dissimilar from those individuals who would currently be targeted for threats by Turkish nationalist groups and harassment, arrests, detentions and charges at the hands of the police and government authorities. (Application Record, Vol. I, Decision, p. 26.)

[59] The Board noted that, according to Mr. Yener's two IHD membership cards, he was a member of the Iskenderun branch of the IHD, between July 1997 and July 1999, and between, May 2002 and May 2004. The Board found that, apart from being one of a number of local directors, there was no evidence that Mr. Yener held any high-ranking official position or office with the IHD, in Iskenderun, and that he was never a member of any pro-Kurdish political party, in Turkey. (Application Record, Vol. I, Decision, above.)

[60] The Board, in fact, erred, because it failed to consider the evidence before it. (Application Record, Vol. II, Applicant's Memorandum of Argument, para. 64.)

[61] Mr. Yener testified that he was a founding member of the Iskenderun branch of the human rights association (IHD), in Turkey. The branch was established in 1993. Mr. Yener was participating in the associations' press releases, marches and demonstrations, in membership drives and all activities of the IHD. Mr. Yener was one of the directors of the Iskenderun branch of IHD. Mr. Yener was involved and active in the association until he came to Canada, in May 2005, and continues to be a member today; therefore, the Board erred in its finding that Mr. Yener was an active member of IHD, only, between July 1997 and July 1999, and between, May 2002 and May 2004. The Board completely ignored Mr. Yener's testimony that he was a member since 1993 and continued to be a member today. The Board's assumption that, if he returned to Turkey, Mr. Yener would no longer be involved in human rights activities, is, therefore, absolutely flawed. (Application Record, Vol. II, Applicant's Memorandum of Argument, above.)

[62] The Board further ignored Mr. Yener's testimony that the Turkish authorities have the list of the directors of the IHD since it is compulsory to notify the authorities. The Board's finding that "apart from being one of a number of local directors," there was no evidence to indicate that the Mr. Yener held any high-ranking official position with the IHD, in Iskenderun, Turkey, is patently unreasonable. Mr. Yener was not simply a member of the IHD but a director of the local branch and, as such, held a high-ranking position within the association. (Application Record, Vol. II, Applicant's Memorandum of Argument, above.)

[63] There was no evidence before the Board that only high-ranking IHD officials were subjected to persecution, in Turkey. In fact, according to the evidence, “the most common targets are ‘leftists and Kurdish human rights activist.’” The Board erred in its finding that Mr. Yener would not suffer persecution due to his media/press and human rights activities, in Turkey. (Application Record, Vol. I, RIR TUR43495.E, 28 April 2005, p. 291; Vol. II, Applicant’s Memorandum of Argument, above; Transcript, pp. 364-366.)

Applicant’s Arrest and Detention in March 2003 and February 2005

[64] The Board found it plausible that Mr. Yener was detained by police, in March 2003 and February 2005. It determined that Mr. Yener’s detentions were part of a police initiative to preserve public order and to protect the public at large and that it was not for the purposes of specifically targeting Mr. Yener because of his Kurdish ethnicity, Alevi religion, leftist political views and activities or his IHD human rights membership and activities. (Application Record, Vol. I, Decision, p. 28.)

[65] A careful review of the facts demonstrates that there was no evidence before the Board that the police had a legitimate purpose in detaining Mr. Yener, either, in March 2003 or in February 2005, together with the other directors of IHD. There was absolutely no evidence before the Board to suggest that the IHD supported the Pro-Kurdish Kurdistan worker’s party (PKK), a terrorist organization, was associated with the PKK in any form, or was engaged in terrorist activities as an organization per se; clearly, the only reason for Mr. Yener’s arrest and detentions, in 2003 and 2005, was that he was specifically targeted for arrest, detention and torture, because he was an Alevi Kurd,

who was a human rights activist, a director of the local human rights association, in Iskenderun, and a reporter for a leftist newspaper. The Board erred in finding that Mr. Yener was not subjected to persecution, in Turkey.

[66] Without logical inherence, the Board either misconstrued or ignored evidence or did both, on the basis of the record which stands uncontradicted. Mr. Yener was tortured and ill treated while in detention.

[67] Contrary to the Federal Court of Appeal's decision in *Retnem v. Canada (Minister of Employment and Immigration)* (F.C.A.), [1991] F.C.J. No. 428 (QL), the Board further erred because it failed to consider the cumulative nature of Mr. Yener's past experience, in Turkey, from 1984 to 2005. The incidents occurred over a period of many years and the aggregate of those experiences was enough to create a well-founded fear of persecution.

IX. Conclusion

[68] It is clear that the Board erred when assessing the credibility of Mr. Yener's assertions. It selectively chose to give weight to certain elements and discredited others. The Board clearly erred in neglecting to bring together all the elements of Mr. Yener's narrative, the country conditions, and Canada's legislative framework for refugee status.

[69] Based on the foregoing, this Court finds that the Board's decision is patently unreasonable. Consequently, the application for judicial review is allowed and the matter is remitted for redetermination by a differently constituted panel.

JUDGMENT

THIS COURT ORDERS that the application for judicial review be allowed and the matter be remitted for redetermination by a differently constituted panel.

“Michel M.J. Shore”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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