Federal Court  Cour fédérale

Date: 20101208

Docket: IMM-2185-10

Citation: 2010 FC 1246

Ottawa, Ontario, December 8, 2010

PRESENT: The Honourable Mr. Justice Kelen

BETWEEN:

SEZGIN KARADENIZ

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), dated March 22, 2010, concluding that the applicant is not a Convention refugee or person in need of protection pursuant to sections 96 or 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 (the Act) because the applicant does not have a well-founded fear of persecution in Turkey on a Convention ground, nor would his removal to Turkey subject him personally to a risk to his life, or to a risk of cruel and unusual treatment or punishment, or to a risk of torture.

FACTS

Background

[2] The applicant is a 26 year-old citizen of Turkey. He arrived in Canada with his cousin in August 2008 and claimed refugee protection based upon his religion and his political and social views and activities. The applicant's claim was initially joined with his cousin's but was disjoined at the hearing because his cousin had returned to Turkey.

[3] The applicant and his family are members of the Alevi religion and supporters of the Labour Party, a leftist political party in Turkey. The persecution faced by the family on account of their Alevi religion caused the applicant's brother to flee Turkey to Canada in 2002, where he was granted refugee protection.

[4] The applicant became politically engaged after completing his compulsory military training in 2005. The discrimination that he experienced in the military caused him to become more conscious of the plight of minorities in Turkey, including Alevis and Kurds. In March 2006, the applicant and his cousin joined an Alevi group called the Pirsultan Abdal Cultural and Solidarity Association and joined the Labour Party.

[5] In connection with their membership in these two organizations, the applicant and his cousin attended a number of cultural celebrations and political demonstrations. On seven occasions, the applicant and his cousin were arrested while attending such events, and it is the applicant's treatment on these seven occasions that ultimately drove him from Turkey. In brief, the applicant's account of the seven arrests is as follows:

1. On March 21, 2006, the applicant and his cousin were arrested at a Kurdish New Year celebration in Istanbul and held for two days at the police station, where the applicant was abused and interrogated about his relationship with the Kurdistan Workers' Party (the PKK), to which the applicant says he is unaffiliated.
2. On March 21, 2007, the applicant and his cousin were again arrested at a Kurdish New Year celebration in Istanbul and the applicant was again interrogated about his connection to the PKK. Knowing about his previous arrest, the police threatened the applicant with serious physical harm should he be found at a pro-PKK demonstration in the future.
3. In November of 2007, the applicant and his cousin attended a political demonstration organized by the Labour Party and some other leftist organizations in Alanya. The applicant and his cousin photographed the demonstration, including police abuses during the ensuing raid. They were arrested, had their photographs confiscated, and were ultimately interrogated and held for four days. Upon their release, they were warned against participating in future demonstrations in Alanya.
4. Two days later, they were re-arrested and interrogated about passing information about the police to foreigners. They were detained for three days and subsequently fired from their jobs because their manager did not want problems with the police.
5. On March 22, 2008, the applicant and his cousin went to Ankara to join in a large protest organized by the Labour party in response to a government crackdown on Labour Party and leftist leaders in Turkey. The applicant and his cousin were arrested while photographing a police raid on Labour Party headquarters. The applicant and his cousin were detained for ten days, and mistreated while in custody.

6. On May 1, 2008, the applicant and his cousin attended a May Day celebration in Istanbul, following which they helped distribute flyers criticizing the government. The cousins were arrested and interrogated in the anti-terror branch of the Security Directorate, where they were detained for ten days. Upon their release, they were warned that if they were ever caught inciting people against the state again, they would be held permanently in custody.
7. On July 2, 2008, the cousins attended an Alevi commemoration event in Istanbul. The cousins were again arrested on a police raid, and held for fifteen days. They were threatened with death and told that they could easily be framed as being involved in a notorious plot to overthrow the government.

[6] Following these incidents, the applicant feared for his life and fled to Canada. His family informs him that the police have been looking for him and that some of his family members have been arrested for their own political activities. In addition, the applicant stated that his cousin was arrested by Turkish police at the airport upon his return to Turkey on February 12, 2010, and has not been heard from since the arrest.

Decision Under Review

[7] On March 22, 2010, the Board dismissed the applicant's refugee claim because he did not have a well-founded fear of persecution for Convention grounds nor was he a person in need of protection because his removal to Turkey would subject him to a risk to his life, or to cruel and unusual treatment or punishment, or to torture.

[8] The Board's reasons turned upon its credibility findings. In particular, the Board found that the applicant failed to provide credible evidence to support his fear of persecution upon his return to Turkey. The Board found that the applicant had failed to show, on a balance of probabilities, the allegations of material fact upon which his claim was based – namely, the persecution he suffered upon his arrest on seven separate occasions.

[9] The Board cited three reasons for its rejection of the applicant's evidence. First, the Board found that the applicant's description of his arrests was inconsistent with documentary evidence regarding country conditions in Turkey. Second, the Board drew a negative inference from the absence of any corroborative documentation regarding the various arrests. Third, the Board questioned the plausibility of the applicant and his cousin being subjected to the exact same treatment on each of the seven arrests.

[10] With regard to inconsistencies between the objective documentary evidence regarding country conditions in Turkey and the applicant's evidence regarding his arrests, the Board stated that Turkish law mandates that a suspect may usually be detained for only 24 hours, with prosecutorial discretion to extend the detention to 48 hours. Detainees are entitled to an attorney and one will be provided by the state in the event that a detainee cannot afford his own.

[11] The Board recognized that the documentation reveals that these regulations are irregularly enforced. At para. 8 the Board stated:

> ¶8. . . . There is a significant problem with the physical abuse of detainees. The police detained and harassed members of human rights organizations media personnel and human rights monitors. Demonstrators were often detained for a few hours at a time….

[12] However, the Board further found that, especially in urban areas, detainees are usually able to consult with an attorney shortly after being detained, and are generally allowed prompt access to family members. The Board questioned the likelihood that on seven separate occasions the applicant would be arrested and detained, without charge, by the police, and never once have the regulations properly observed by the police:

> ¶8. . . . The only times the authorities in part complied with the law was on the first two detentions when the claimant states that he was able to communicate with his family. Other than this each of the seven detentions themselves, occurring without a warrant, were illegal according to Turkish law, the length of detention was well outside of what was permitted, he was never offered legal counsel though five of these alleged detentions occurred in the largest cities in Turkey, urban areas where the Bar Associations indicate detainees are provided with legal counsel, during the last five detentions including the last three more lengthy detentions he was not allowed to communicate with his family, again in contrast to what the lawyers and human rights monitors state occurs. . . .

[13] The Board asked the applicant why he had never requested a lawyer, but was not persuaded by his explanations. The Board concluded in the same paragraph:

> ¶8. . . . . Now if only a few of these alleged arrests had been inconsistent with the documentation it would have been easier for me to accept as credible such anomalies, however as indicated all seven arrests of both the claimant and his cousin appear inconsistent. I also find it hard to accept as credible the claimant's evidence with respect to never requesting or consulting a lawyer. The claimant presents a profile of himself as someone who is a strong supporter of leftist political parties and someone who has worked to support the Alevi community by denouncing and demonstrating against abuse and discrimination. However when the claimant and his cousin are subjected to one illegal detention after another he never asserted his right for legal counsel even once. Furthermore on each occasion after he was released he did not take any action to publicize or protest how he and his cousin had been treated.

[14] With regard to the absence of evidence to support the applicant's allegations, the Board found that given that on at least some of the occasions the applicant seems to have been arrested while engaging in high-profile activities – for example, the arrest that occurred while photographing the police raid on the headquarters of the Labour Party and the arrest of its leader – the absence of any mention of the arrest of a photographer in media reports of the incidents is suspicious. Finally, the Board found that because the applicant stated that the Labour Party was aware of his detentions and abuses, some corroborating letter or indication of support for the applicant from the Labour Party would be expected. The Board concluded at para. 10 that "[c]umulatively, the lack of any corroborative documents further undermines the claimant's credibility."

[15] Finally, the Board doubted the plausibility of the applicant's claim that the seven incidents of illegal arrest that he suffered were suffered in the exact same way by his cousin. The Board concluded at para. 10:

> ¶10. . . . While I could accept as credible that the claimant and his cousin experienced many similar incidents the allegation that all seven arrests occurred as alleged is outside the realm of what I believe could be reasonably expected given the totality of the evidence and bearing in mind prevailing country conditions. . . .

[16] The Board therefore rejected the applicant's evidence, and found that he did not provide reasonable explanations to assuage the Board's concerns.

[17] The Board also found that the applicant's Alevi identity alone would not support a positive determination of his refugee claim. The Board held that although members of the Alevi minority

face some forms of discrimination in Turkey, there was insufficient evidence before the Board to support a claim of persecution based solely on membership in the religious group.

LEGISLATION

[18] Section 96 of the Act, grants protection to Convention refugees:

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,	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) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	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) 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	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.

[19] Section 97 of the Act grants protection to persons whose removal would subject them personally to a danger of torture, or to a risk to life, or to a risk of cruel and unusual treatment or punishment:

97. (1) A person in need of protection is a person in Canada whose removal to their	97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait

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	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) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	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 (i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country, (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, (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and (iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant : (i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays, (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 le sont généralement pas, (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) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

ISSUES

[20] The applicant submits that the Board erred in arriving at its credibility determination. In particular, the applicant submits that the Board's credibility determination raises three issues:

1. Did the Board err by making unreasonable implausibility findings?

2. Did the Board err by making unreasonable credibility findings?
3. Did the Board err by making an adverse credibility finding based on the absence of corroborative documents?

As the first two issues largely overlap, I shall consider them together.

STANDARD OF REVIEW

[21] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, 2008] 1 S.C.R. 190, the Supreme Court of Canada held at paragraph 62 that the first step in conducting a standard of review analysis is to "ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of (deference) to be accorded with regard to a particular category of question": see also *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, per Justice Binnie at para. 53.

[22] As I recognized in *Wu v. Canada (Citizenship and Immigration)*, 2009 FC 929, at para. 17, credibility and plausibility determinations are factual in nature. Post-*Dunsmuir* jurisprudence has established that the appropriate standard of review applicable to these factual determinations is reasonableness: see also, for example, *Saleem v. Canada (Citizenship and Immigration)*, 2008 FC 389, at para. 13; *Malveda v. Canada (Citizenship and Immigration)*, 2008 FC 447 at paras. 17-20; *Khokhar v. Canada (Citizenship and Immigration)*, 2008 FC 449 at paras. 17-20, and my recent decision in *Dong v. Canada (Citizenship and Immigration)*, 2010 FC 55, at para. 17.

[23] The standard of review is therefore reasonableness. In reviewing the Board's decision using a standard of reasonableness, the Court will consider “the existence of justification, transparency and intelligibility within the decision-making process” and “whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law”: *Dunsmuir*, *supra*, at paragraph 47; *Khosa*, *supra*, at para. 59.

ANALYSIS

Issues No. 1 & 2: Did the Board err by making unreasonable implausibility or credibility findings?

[24] The applicant notes that the Board made several implausibility findings in its determination that the applicant was not credible. In particular, the Board found it implausible that the applicant did not ever request a lawyer, that the applicant and his cousin were both treated identically on all seven occasions in which they were arrested, and that the applicant did not take any action to publicize or protest how he and his cousin had been mistreated in custody.

[25] The applicant submits that none of these implausibility findings were supported by the evidence before the Board. The Board must presume that a refugee claimant’s allegations are true unless there are reasons to doubt their truthfulness. In contrast, the applicant submits that the Board may only make plausibility findings where “the facts presented are outside the realm of what could reasonably be expected”: *Valtchev v. Canada (Minister of Citizenship and Immigration)* [2001] F.C.J. No. 1131 at para. 7. In this case, the applicant submits that the evidence provided by the applicant to the Board was not outside the realm of what could reasonably be expected, and, thus, the plausibility findings made by the Board were not adequately supported by the evidence.

[26] The burden of establishing a claim for refugee protection lies upon the claimant. The Board is the primary fact-finder and is in the best position to evaluate the credibility of the claimants. This includes findings of credibility based on plausibility findings. As stated by the Federal Court of Appeal in *Aguebor v. M.E.I.* (1993), 160 N.R. 315 at paras. 3 and 4:

> ¶3. It is correct, as the Court said in *Giron*, that it may be easier to have a finding of implausibility reviewed where it results from inferences than to have a finding of non-credibility reviewed where it results from the conduct of the witness and from inconsistencies in the testimony. The Court did not, in saying this, exclude the issue of the plausibility of an account from the Board's field of expertise, nor did it lay down a different test for intervention depending on whether the issue is "plausibility" or "credibility".
>
> ¶4. 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. In *Giron*, the Court merely observed that in the area of plausibility, the unreasonableness of a decision may be more palpable, and so more easily identifiable, since the account appears on the face of the record. In our opinion, *Giron* in no way reduces the burden that rests on an appellant, of showing that the inferences drawn by the Refugee Division could not reasonably have been drawn. In this case, the appellant has not discharged this burden.

[27] In its reasons, the Board considered the applicant’s evidence on these points. At the hearing, the Board asked the applicant why he never requested an attorney despite knowing he was legally entitled to one. As the Board stated at para. 8 of its reasons, “No explanation was provided as to why he never considered requesting a lawyer during any of these detentions or at any time afterward.” The Board explicitly considered the applicant’s answers regarding why on all seven occasions the law would have been so seriously disobeyed by the arresting authorities, and how he

and his cousin would have been subjected to precisely the same arrests and treatment on all seven occasions. At para. 8 the Board found:

> ¶8. . . . For a number of reasons I am not persuaded by the claimant's explanations. Firstly the documents before me appear to provide information of what is in fact happening in Turkey. The sources consulted in the US Department of State report and the United Kingdom's Operational Guidance note include human rights monitors, human rights activists and attorneys operating in Turkey. I therefore take these documents to be a reflection of the reality in Turkey not the presented façade. Now if only a few of these alleged arrests had been inconsistent with the documentation it would have been easier for me to accept as credible such anomalies, however as indicated all seven arrests of both the claimant and his cousin appear inconsistent. I also find it hard to accept as credible the claimant's evidence with respect to never requesting or consulting a lawyer. The claimant presents a profile of himself as someone who is a strong supporter of leftist political parties and someone who has worked to support the Alevi community by denouncing and demonstrating against abuse and discrimination. However when the claimant and his cousin are subjected to one illegal detention after another he never asserted his right for legal counsel even once. Furthermore on each occasion after he was released he did not take any action to publicize or protest how he and his cousin had been treated.

[28] The Board's reasons therefore demonstrate that the Board engaged with the applicant's evidence and explanations for his actions. It was open to the Board to draw inferences based upon its knowledge and on common sense. While the Court agrees with the applicant that the Board ought not to have implied that it expected the applicant to be able to explain why he had been repeatedly treated poorly by police, the Board's reasons demonstrate that it neither ignored nor misconstrued the evidence before it.

[29] The Board specifically refers to the documentary evidence that supports the applicant's position, and specifically references the applicant's explanations for areas of concern to it. It is not

the role of this Court on judicial review to reweigh the evidence, nor to substitute its decision for that of the Board. In this case, the Board's treatment of the evidence falls within the range of reasonable outcomes in accordance with the facts and law. The plausibility and credibility determinations made by the Board are reasonable.

Issue No. 3: Did the Board err by making an adverse credibility finding based on the absence of corroborative documents?

[30] With regard to the documentary evidence, the applicant further submits that the Board erred by drawing an adverse credibility finding from the fact that there was no documentary evidence to support the applicant's refugee claim. The applicant submits that while documentary evidence can be helpful in bolstering a claim, its absence alone cannot undermine an applicant's credibility. There is no legal requirement for a refugee claimant to corroborate his sworn testimony. By demanding documentary evidence, the applicant therefore submits that the Board was imposing an erroneously high evidentiary burden on the applicant.

[31] The respondent submits that while the applicant does not have a legal obligation to provide supporting evidence, he does bear the burden of establishing his claim to protection on a balance of probabilities. Given the Board's credibility concerns, the respondent submits that it was reasonable for the Board to look for corroborating evidence of the applicant's story.

[32] The Court accepts that the Board may draw adverse credibility findings from a claimant's failure to corroborate his claims in cases where credibility is an issue: see, e.g., *Muchirahondo v. Canada (Citizenship and Immigration)*, 2008 FC 546, at para. 18, and *Juarez v. Canada (Citizenship and Immigration)*, 2006 FC 288, at para. 7.

[33] Although the Board may have been clearer on the point, the Court accepts that in this case the Board had found the applicant's credibility in issue, and, therefore, sought corroborative evidence.

[34] The Court further finds that the Board's finding that the applicant should have been able to provide at least some documentary evidence of his claims was reasonable. The Board found it implausible that the applicant had neither any media reports or other documentation regarding any of the arrests, supporting documentation from the Labour Party or its members, or corroborating letters from a lawyer or from family members regarding his cousin's arrest at the airport upon his return to Turkey prior to the hearing. The Board held at para. 9:

> ¶9. I am also concerned that there are no corroborative documents. I think it is reasonable to expect some documentation given the nature of the allegations the claimant has made.

[35] The Board explained that given the applicant's own description of the high-profile nature of the applicant's activities, some of the many media reports of the demonstrations and their aftermath likely would have mentioned him, if not by name then as a photographer.

> ¶9. . . . Given the nature of these events it is reasonable to expect there to be some reference if not to the claimant by name then to the fact that a photographer documenting the arrest was detained. The claimant also alleged that his cousin, the former co-claimant, was arrested when he returned to Turkey on February 12, 2010, and that he has not been heard from since. I find it hard to accept that the media would not have been advised by family or friends of the claimant's cousin or by others of this arrest which apparently occurred at the airport as the claimant's cousin arrived from Canada. Furthermore the claimant has indicated that the Labour Party was aware that the claimant and his cousin were being subjected to these detentions and abuses. There is no letter from the party to corroborate any of these incidents. The party never protested or publicized what

> had happened. Cumulatively, the lack of any corroborative documents further undermines the claimant's credibility.

[36] The Board was not requiring the applicant to provide any one of the types of corroborative evidence it suggested. Instead, as the Board stated, it found that the total absence of any documentation was implausible. The Court finds that this holding was reasonably open to the Board. The Board's holding that the absence of such documentations "further undermines the claimant's credibility" does not mean that the Board was using this absence of evidence to draw an adverse credibility finding. Rather, the Board was recognizing that the presence of such evidence could have greatly bolstered the applicant's case. As described above, the Board had already drawn a negative credibility determination based upon the applicant's testimony.

[37] As described above, the Board stated that it had three primary concerns: the inconsistency between the claimant's description of the arrests and the documentary evidence before the Board; the absence of corroborative documents; and the plausibility of the applicant and his cousin receiving identical treatment on all seven occasions. It was based on these three concerns that the Board made its ultimate determination.

[38] The Board concluded at para. 11:

> ¶11. As a cumulative result of these three primary concerns, and absent reasonable explanations, I do not accept on a balance of probabilities that key events alleged by the claimant in fact occurred. Most significantly I do not accept that the claimant was subjected to arrest or detentions in Turkey as a result of his involvement in Alevi events or the Labour Party. Consequently I find that the claimant has failed to prove, on a balance of probabilities, the allegations of material fact on which his refugee claim is based. . . .

[39] This finding was reasonably open to the Board on the evidence before it.

CONCLUSION

[40] The Court finds that the Board's findings regarding the plausibility of the applicant's story and the applicant's credibility were reasonably open to it based upon the evidence. The Board considered the applicant's explanations, but was not ultimately persuaded on a balance of probabilities. As its findings were reasonable, this Court has no basis for interfering with the Board's decision.

CERTIFIED QUESTION

[41] Both parties advised the Court that this case does not raise a serious question of general importance which ought to be certified for an appeal. The Court agrees.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

The application for judicial review is dismissed.

"Michael A. Kelen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2185-10
STYLE OF CAUSE:	*Sezgin Karadeniz v. The Minister of Citizenship and Immigration*
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	November 24, 2010
REASONS FOR JUDGMENT AND JUDGMENT:	KELEN J.
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