Federal Court  Cour fédérale

Date: 20110215

Docket: IMM-2999-10

Citation: 2011 FC 177

Ottawa, Ontario, February 14, 2011

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

SABRI CEKIM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 ("IRPA") of the decision made on May 3, 2010 by the Immigration and Refugee Board ("Board") of the Refugee Protection Division in Toronto wherein it was determined that the applicant was found not to be a Convention refugee or a person in need of protection.

BACKGROUND

[2] The facts of this case are largely not disputed. The applicant is a Kurdish Alevi who claims a fear of persecution on the grounds of his political activity, religion and nationality. He says he is also a military draft evader and believes he will be persecuted by the military if returned to Turkey. The applicant's political involvement led to a number of arrests. He alleges being mistreated by the police. The applicant obtained a passport in February 2006 and came to Canada in 2007.

DECISION UNDER REVIEW

[3] The Board found the applicant to be not credible. In reaching such a finding, the Board noted that the applicant had provided inconsistent evidence relating to subjective fear; had exaggerated his treatment by the police; provided confusing evidence with respect to his employment and the issuance of his passport; contradicted himself in his oral testimony and failed to provide sufficient supporting documentary evidence that would have substantiated his alleged involvement with the Democratic Society Party ("DTP"), as well as the alleged mistreatment by the police. The contradictory testimony cast doubt on the totality of his oral evidence, including the establishment of a political profile with DTP and that he was a person of interest to the Turkish police. The Board concluded that their focus on the applicant was not serious, persistent or repetitive. It was also found that there was no basis for the claim he would be persecuted as a conscientious objector. What he really feared, the Board concluded, was prosecution, not persecution.

ISSUE

[4] Was the Board's decision reasonable?

RELEVANT STATUTORY PROVISIONS

[5] Sections and 96 and 97 of the *IRPA* set out what it means to be a Convention refugee and a 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,	**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.
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	**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*) 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.
(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.	(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

ANALYSIS

[6] The determinative issue in this case is one of credibility. Accordingly, the standard of review is reasonableness. It is well established that Board Members are in the best position to gauge the plausibility and credibility of an account: *Aguebor v. Canada (Minister of Employment and*

Immigration) (1993), 160 N.R. 315, 42 A.C.W.S. (3d) 886 (F.C.A.) at para. 4; *Aguirre v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 571 at para. 14; *Silvia Mata Diaz v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 319 at para. 34. Further to the Supreme Court of Canada's decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 47, the Court should not interfere with tribunal findings that fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[7] In the present case, the Board accepted that the applicant's philosophical views were such that he participated in certain political activities resulting in police detentions. However, it was not believed, based on the evidence as a whole, that he was targeted by the police, was of ongoing interest to them or that he was tortured. It was open to the Board to make this finding. See generally: *Karadeniz v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 1246.

[8] Particular attention was drawn to five instances where the applicant put forth inconsistent evidence or exaggerated his claim. This led to the Board's findings of implausibility or negative credibility that are central to this judicial review. First, the Board pointed to the inconsistency of evidence on the applicant's subjective fear. At the port of entry ("POE"), it was noted that Mr. Cekim stated that he feared the Nationalist Movement Party ("MHP") if returned to Turkey due to problems spanning from 2004 to 2006. In oral testimony and in his narrative, however, he stated that he was afraid of the Turkish police. His explanation for this inconsistency was that he was afraid to tell the immigration officers in Canada, whom he assumed to be police, that he was afraid of the police.

[9] This Court has held that inconsistencies between an applicant's POE statements and those given before a Board can support a negative credibility finding: *Maimba v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 226 at para. 11. In the instant case, because of the inconsistencies between the applicant's claim as outlined in the POE notes and his later narrative and evidence, it was open to the Board to find that his fear of persecution was not credible.

[10] The Board reasonably found that the applicant had been planning to come to Canada since 2006 because he had heard it was "good for refugees". She found this intention to be a calculated decision, evidenced by the fact that the applicant's entire family raised money to pay for an agent to assist him in coming here. He researched where he wanted to go and waited until December 2007, until the visa was in order. He said he would have tried going to Europe if "here [Canada] did not work". The applicant did not give evidence of any other attempts to go elsewhere any earlier in order to secure safety from his alleged persecution. The Board also noted that he has moved around Turkey with various employment positions. Further, he was able to defer his military service.

[11] It was also reasonable for the Board to find that the applicant embellished his claim by exaggerating the fact that he was beaten during the 2006 detention. His oral testimony was inconsistent with his PIF narrative in this regard. During his hearing, the applicant said he was beaten at the police station. When asked why he had gone into detail about other similar incidents but did not discuss this event at any great length, including omitting it in his PIF narrative, the applicant explained it was because "they did not like as before they just a few slaps and that is all, that is why I did not write it down". Based on this response, it was open to the Board to make a negative credibility finding.

[12] The applicant argues that this exchange was at a point in the hearing where there was confusion with the interpreter. However, a careful review of the transcript shows that this inconsistency and the finding of embellishment cannot be attributed to the interpreter. Although there were certain times in the hearing when clarification was needed, this was not one of them. The interpretive difficulty came before.

[13] The Board also found the applicant to have given confusing evidence surrounding his employment at the time of his fourth detention in July 2007, some of which was inconsistent with his PIF. The Board found that the applicant embellished evidence to strengthen his claim and retreated from earlier evidence when confronted with an inconsistency. The Board took issue with the explanation given with respect to when he was fired from his employment after his detention. The testimony at this point in the hearing was confusing but it was not necessarily an embellishment. With that said, because deference is owed to the decision-maker and an adverse finding was within the range of acceptable outcomes, the Court should not interfere with the decision as a whole to correct the Board's finding on this matter.

[14] It was also reasonable for the Board to make a negative finding from a lack of further documentary evidence: *Kalengestani v. Minister of Citizenship and Immigration.*, 2006 FC 1528 at paras. 10-12. In situations like this, when credibility is at issue, if the applicant fails to corroborate certain claims, the Board is entitled to conclude that an absence of evidence to bolster a claim supports an adverse credibility finding: *Karadeniz, supra* at para. 36. See also: *Muchirahondo v. Canada (Minister of Citizenship and Immigration),* 2008 FC 546.

[15] Finally, with respect to the evidence submitted regarding the applicant's passport, the Board rightly noted that in order to be considered a Convention refugee, the applicant would have to establish a true and well-founded fear of persecution. The applicant received his passport in February 2006 but did not leave Turkey until December 2007. His failure to come to Canada at the earliest possible time after having obtained a passport pointed to a lack of credibility with respect to his subjective fear: *Natynczyk v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 914 at para. 69; *Yurteri v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 478 at para. 26.

[16] Based on the cumulative assessment of the evidence before it, the Board reasonably determined that the applicant did not endure a sustained or systematic violation of fundamental rights. As such, and based on the facts, he could not be considered to be a persecuted person or a person in need of protection. The Board did acknowledge the objective documentary evidence which indicates that certain high profile, politically active Kurds could have severe problems with the Turkish government. However, the applicant in this case did not establish this profile.

[17] The Board made a reasonable decision that was not based on an erroneous finding of fact made in a perverse or capricious manner or without regard to the material before it. The applicant refers to *Ahmed v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1076 and *Veres v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 124 to suggest that the Board failed to deal with explanations that may have resolved problems with his evidence. These cases do not apply here. The Board's findings are both justified and justifiable. It is clear, based on the evidence on record, how the Board arrived at the decision that it did. Therefore, the Board's decision fell within a range of possible, acceptable outcomes defensible in respect of the facts and

law. The decision was neither perverse nor capricious. I am not entitled to reweigh the evidence: *Matsko v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 691 at para. 10.

[18] No serious questions of general importance were proposed and none will be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. There are no certified questions.

"Richard G. Mosley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	SABRI CEKIM and THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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