

Federal Court



Cour fédérale

Date: 20110519

Docket: IMM-5441-10

Citation: 2011 FC 597

Vancouver, British Columbia, May 19, 2011

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

CAN KAYA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The Applicant is an Alevi Kurd citizen of Turkey who claims refugee protection on the basis of political activities in Turkey.

[2] The Applicant's claim was filed in Toronto and the hearing of his claim was scheduled for hearing in Toronto on July 22, 2010, even though on the date of his hearing the Applicant resided in Vancouver. The Applicant travelled to Toronto for the hearing and on its commencement made an application for a three-month adjournment to obtain documents and a lawyer to represent him at the

hearing. The RPD member hearing the claim initially agreed to grant the adjournment, but coupled that willingness with the opinion that the claim should be heard in Vancouver. However, the Applicant's consent to the transfer was necessary and the Applicant initially objected to the hearing being held in Vancouver for the reason that he had Alevi Kurd support in Toronto. The RPD did not accept the Applicant's explanation. When faced with the prospect that his adjournment request would not be granted, the Applicant consented to the transfer. Nevertheless, the member denied the request for an adjournment and proceeded to deny the Applicant's claim on the basis of a global negative credibility finding. The present Application is a challenge limited to the member's failure to grant the Applicant the adjournment of the hearing.

[3] In the decision under review the member provides a critical reason for denying the adjournment request, which is also given as a reason for denying the claim:

I make a further adverse credibility finding based on his evidence that after he decided to make a refugee claim sometime after October 2006 he found it necessary to travel to Toronto to make his claim because there was no one to explain the procedure to him in Vancouver. I find this evidence lacks credibility and raises concerns about the veracity of the allegations that he claims as his own personal experiences in Turkey. I find on a balance of probabilities that if the claimant came to Toronto to file his claim it was not because there was no one to explain Canada's refugee procedure in Vancouver to him as alleged. As previously discussed I have reason to believe that the claimant may have a hidden agenda regarding his desire to proceed with his claim only in Toronto. I further find his need to consult with interpreters and community leaders in Toronto who are well versed in Kurdish Alevi refugee claims before filing his claim, suggests to me on a balance of probabilities that the allegations he has put forth as the basis of his personal experiences may not be genuine. [Emphasis added] (Decision, paragraph 23)

While it is true that the Applicant wanted to delay the hearing, in my opinion he provided an understandable reason. I find that there is no evidence to support the member's finding that the Applicant had a "hidden agenda" in wanting his claim to be heard in Toronto. In my opinion, the Applicant's adjournment request was unfairly denied on the basis of an operating unfounded extraneous consideration. As a result, I find that the denial of the adjournment request was unreasonable.

ORDER

Accordingly, I set aside the decision under review and refer the matter back for redetermination before a differently constituted panel.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5441-10
STYLE OF CAUSE: CAN KAYA v. MCI

PLACE OF HEARING: Vancouver, BC
DATE OF HEARING: May 18, 2011

**REASONS FOR ORDER
AND ORDER:** CAMPBELL J.

DATED: May 19, 2011

APPEARANCES:

Judith Boer FOR THE APPLICANT

Keith Reimer FOR THE RESPONDENT

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