

Federal Court



Cour fédérale

Date: 20111110

Docket: IMM-1561-11

Citation: 2011 FC 1299

Toronto, Ontario, November 10, 2011

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

CELAL ERDURAN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The Applicant in the present Application is a Turkish citizen who first claimed protection on the basis of fear of persecution and risk because he had evaded military service in Turkey. In support of his claim the Applicant provided detailed reasons in his Personal Information Form (PIF) dated March 12, 2007. Subsequent to the filing of this first PIF, the Applicant filed a second PIF dated March 23, 2010 in which he claimed protection on two additional grounds, not in conflict with the first: his Kurdish ethnicity, and his identity as a gay man.

[2] In written submissions to the RPD, Counsel for the Applicant explained why the second PIF citing the additional claims was filed:

In the case at bar, the claimant was still struggling to come to terms with his sexuality, did not have a lawyer, and was assisted by individuals from his own community whom he had witnessed engaging in homophobic behaviour. His testimony and evidence have been detailed, and consistent. None of his testimony or evidence has been contradictory but rather new, or expanded information.

(Applicant's Application Record, p.56)

The Applicant also explained the amendments within his narrative in the second PIF:

The events that are mentioned in my first narrative were real. But the reasoning behind them (my sexuality and family background) was not expressed. I was not comfortable with my translator or my gayness. Today I am openly gay; my friends know that I am gay. It will be impossible for me to go back to Turkey after all these changes. I am afraid I could be a subject of physical abuse and persecution either in the Turkish Army or the homophobic Turkish society. Therefore I do not want to return to my own country.

(Applicant's Application Record, p.31)

It is not contested that it is not unusual for an Applicant to file an amendment to an original PIF to establish new grounds of claiming. Consequently, in the present case, three grounds were before the RPD for determination.

[3] In the normal course, a proper disposition of a claim with three separate grounds for claiming would involve consideration of each ground independently, and all grounds considered cumulatively, resulting in a determination as to which of the four options available might support the claim. Instead of approaching the Applicant's claim in this way, the RPD expressed the following conclusions as a result of the filing of the second PIF:

As a result of the two versions of this PIF narrative and lacking a reasonable explanation, I am satisfied that the claimant was not a credible witness.

[Emphasis added]

[...]

Due to the omission from the first version of the PIF and lacking independent evidence to support the claimant of being Kurdish ethnicity, I am satisfied, on a balance of probabilities, that the claimant has created this ethnicity to advance his refugee claim. As a result, I make a negative inference.

[...]

I am satisfied that due to the omissions of being both gay and of Kurdish ethnicity from the original PIF narrative, a document the claimant indicated was translated to him and was complete and true and correct, that the claimant has demonstrated he is willing to create a story to advance his refugee claim.

(Decision, paras. 5, 8 and 13)

And with respect to Counsel for the Applicant's explanation for filing the second PIF, the RPD said this:

Counsel makes submissions at page 20 [of the Applicant's Record] as to why these amendments were necessary. He submits the claimant is still suffering from conflicting sexuality. I do not agree. If the claimant fled Turkey fearful of serving in the military as a gay man of Kurdish ethnicity, then this is the core of his claim.

(Decision, para. 14)

[4] It is important to note that the Applicant did give an explanation for the amendment to his PIF that was rejected out of hand by the RPD without providing a reason; this is unfair. In my opinion, the impugning of the Applicant's credibility because he filed an amended PIF unfairly had the effect of impeding a proper examination of the substance of the Applicant's claim. As a result, I

find that the RPD breached the duty of fairness owed to the Applicant, and, therefore, the decision under review was made in reviewable error.

ORDER

THIS COURT ORDERS that:

The decision under review is set aside and the matter is referred back for redetermination by a differently constituted panel.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-1561-11

STYLE OF CAUSE: CELAL ERDURAN V. THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 10, 2011

REASONS FOR ORDER: CAMPBELL J.

DATED: November 10, 2011

APPEARANCES:

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