

Federal Court



Cour fédérale

**Date: 20131210**

**Docket: IMM-11313-12**

**Citation: 2013 FC 1241**

**Ottawa, Ontario, December 10, 2013**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**ERGUN GEBETAS**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Overview**

[1] This Court has repeatedly confirmed that the accumulation of contradictions between a claimant's testimony, Port of Entry [POE] statements and Personal Information Form [PIF] may legitimately serve as a basis for a negative credibility finding (*Trochez v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1016; *Cienfuegos v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1262 at para 1).

## II. Introduction

[2] The Applicant seeks a judicial review of a decision by the Refugee Protection Division [RPD] of the Immigration and Refugee Board, dated October 15 2012, wherein, it was determined that the Applicant was not Convention refugee under section 96 nor a person in need of protection under section 97 of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [IRPA].

## III. Background

[3] The Applicant, Mr. Ergun Gebetas, is a citizen of Turkey, born in 1989. He states that he is of Alevi faith and Kurdish ethnicity.

[4] According to the Applicant's PIF, he first became involved with the Democratic Society Party [DTP], a Kurdish nationalist political party, in 2007. He explains that, although he never joined the party, he became active in demonstrations and was detained by police five times between March 2009 and February 2010. He also states that he suffered beatings and threats during these detentions.

[5] On February 4, 2010, the Applicant obtained a 5-year United States [U.S.] visitor visa from the U.S. Embassy in Turkey to attend an English language program.

[6] The Applicant left Turkey on February 27, 2010 and arrived in the U.S. the same day. The Applicant remained in the U.S. for approximately 2 weeks. During this time, he applied for a visitor's visa to come to Canada but the visa application was refused by Canadian immigration authorities for not being "bona fide" (PIF at p 7).

[7] The Applicant arrived to Canada on March 12, 2010, and made a refugee claim on the same day.

[8] The RPD heard the Applicant's refugee claim on June 13, 2012 and October 2, 2012.

[9] On October 15, 2012, the RPD refused the Applicant's claim for refugee status in Canada.

#### IV. Decision under Review

[10] The RPD did not accept that the Applicant was a Convention refugee or a person in need of protection on the basis of an adverse credibility finding.

[11] In particular, the RPD found the following inconsistencies and contradictions in the Applicant's narrative to be fatal to his claim:

- a) The Applicant failed to make any reference to the DTP political party despite having been allegedly tortured for his affiliation to the organization. The Applicant also indicated he had never been a supporter of any organization in his POE document;
- b) The Applicant failed to indicate in his POE document that his fear of persecution if returned to Turkey was also based, in large part, on him being a conscientious objector to military service;
- c) The Applicant's counsel argued that the Applicant did not know he could make a conscientious objection claim as part of his refugee protection application; however, the Applicant's testimony directly contradicted this statement, as he specified that he did make the claim in his refugee application, but that the interpreter failed to add it to the document;

- d) The Applicant indicated that in March 2009, he began fearing for his life; however, he remained in Turkey until February 2010 and continued to attend school, work and even participate in further protests;
- e) The Applicant first traveled to the U.S. as a visitor for 2 weeks before arriving in Canada to make his refugee claim.

[12] The RPD also found that the Applicant had not provided sufficient evidence to demonstrate how, as an Alevi, he had difficulty practicing his religion or would have difficulty practicing it if returned to Turkey today.

#### V. Issue

[13] Is the RPD's decision reasonable?

#### VI. Relevant Legislative Provisions

[14] The following legislative provisions of the *IRPA* are relevant:

##### Convention refugee

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

##### Définition de « réfugié »

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

each of those countries; or

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.

Person in need of protection

Personne à protéger

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

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 le 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.

Person in need of protection

Personne à protéger

(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.

## VII. Position of the Parties

[15] The Applicant claims that the RPD erred in law with respect to its assessment of his credibility by failing to consider his explanation for why he remained in Turkey for over a year despite fearing for his life, by relying on omissions in the POE document to draw a negative credibility finding and by attacking the Applicant's credibility in an over-zealous manner.

[16] The Applicant also argues that the RPD erred in law by ignoring the documentary evidence; specifically, the letters he provided from his father and friend, as well as two psychological reports by Dr. Celeste Thirlwell.

[17] Lastly, the Applicant argues that the RPD erred in drawing a negative inference from the fact that he visited the U.S. immediately before making a claim in Canada for refugee protection.

[18] In response to the Applicant's arguments, the Respondent submits that the RPD did consider the Applicant's explanations for remaining in Turkey and discussed the evidence extensively regarding what he did once he realized his life was at risk.

[19] The Respondent also submits that the RPD did not err in its assessment of the omissions in the POE document. The Respondent notes that the omissions in the POE document were material to central issues in the Applicant's claim and should have been included. These omissions reasonably led to negative inferences against the Applicant's credibility.

[20] Further, the Respondent maintains that the RPD was not over-zealous in assessing the Applicant's credibility; in fact, it demonstrated reasonable consideration and sensitivity to the Applicant's nervous mental state when assessing his overall credibility.

[21] The Respondent submits that the RPD took all of the documentary evidence regarding the Applicant's mental state into account, as well as letters from his father and friend; however, it reasonably found that, as the underlying facts were deemed not to be credible, little weight could be attributed to these documents.

[22] Finally, the Respondent submits that the RPD did not act unreasonably by finding that the Applicant's failure to claim refugee protection during his vacation to the U.S. before arriving to Canada undermined his credibility.

#### VI. Standard of Review

[23] The applicable standard for issues involving the RPD's weighing of evidence or findings of credibility is the standard of reasonableness (*Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315 (FCA) at para 4).

[24] The standard of reasonableness is concerned with "the existence of justification, transparency and intelligibility in the decision-making process" and with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

[25] It is important to note that it is not the role of this Court to substitute its view of the facts for that of the RPD (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 at para 14).

#### VIII. Analysis

[26] The Court agrees with the RPD that important omissions, contradictions and implausibilities regarding central allegations of the Applicant's claim were dispositive of the claim (*Chavez v Canada (Minister of Citizenship and Immigration)*, 2007 FC 10 at para 13-15; *Moscol v*



*Canada (Minister of Citizenship and Immigration)*, 2008 FC 657 at para 21-22; reference is also made to *Sellan v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 381).

[27] The Applicant's narrative was inherently inconsistent with a subjective fear of persecution. As noted by the Respondent, the Applicant continued to attend school, work and even participate in further protests despite fearing for his life after March 2009. This behaviour is completely at odds with his assertion that he feared for his life and needed to leave the country. The Court does not find that the RPD ignored any of the Applicant's explanations on this point, but rather, found that those explanations demonstrated a lack of well-founded fear. The Court also does not accept the Applicant's contention that this conclusion was drawn in an over-zealous manner by the RPD.

[28] Likewise, the Court is satisfied that the RPD took all of the documentary evidence into account, including the psychological reports and the letters from the Applicant's father and friend. In assessing the weight to attribute to these documents, the RPD reasonably concluded that, as the underlying facts were deemed not to be credible, it could attribute little weight to them. This is not a reviewable error.

[29] As stated by this Court numerous times, general findings of lack of credibility can affect all relevant evidence submitted by an applicant, including documentary evidence, and ultimately cause the rejection of a claim (*Ayub v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1411 at para 8-9; *Nijjer v Canada (Ministry of Citizenship and Immigration)*, 2009 FC 1259; *Alonso v Canada (Minister Citizenship and Immigration)*, 2008 FC 683).

[30] The Court also finds that the RPD did not err in attributing significant weight to the omissions in the Applicant's POE document. This Court has repeatedly confirmed that the accumulation of contradictions between a claimant's testimony, POE statements and PIF may legitimately serve as a basis for a negative credibility finding (*Trochez*, above; *Cienfuegos*, above).

[31] Finally, the Court finds that the RPD did not act unreasonably in finding that the Applicant's failure to claim refugee protection during his stay in the U.S. before arriving in Canada undermined his credibility. There was no legal impediment to the Applicant remaining in the U.S. and filing an asylum claim in the U.S.; the Applicant held a 5-year U.S. visitor visa. In his PIF narrative, the Applicant explained:

39. ... With this person's assistance, I flew to the United States on 27 February 2010.

40. Then I made my way to the Canadian border and made a refugee claim. My intention had always been to come to Canada because my sister is here and I would be totally alone in the US. [Emphasis added.]

(Certified Tribunal Record at p 34).

[32] This explanation, in the Court's view, is an unacceptable reason to delay seeking asylum in another country and strongly indicates a lack of subjective fear of persecution. As stated in *Olaya v Canada (Minister of Citizenship and Immigration)*, 2012 FC 913, the mere fact that an applicant has one relative living in Canada is not a sufficient basis to overcome the fact that he or she did not claim refugee status in the U.S. "as quickly as possible" (reference is also made to *Gilgorri v Canada (Minister of Citizenship and Immigration)*, 2006 FC 559 at para 24 to 27).

IX. Conclusion

[33] For all of the above reasons, the Applicants' application for judicial review is dismissed.

**JUDGMENT**

**THIS COURT ORDERS that** the Applicant's application for judicial review be dismissed with no question of general importance for certification.

"Michel M.J. Shore"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

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