

CANADA / JUDGMENT

Altug v. Canada (Citizenship and Immigration)

2024 FC 2097

COURT

Federal Court

DECIDED

24 December 2024

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Altug v. Canada (Citizenship and Immigration) Court (s) Database Federal Court Decisions Date 2024-12-24 Neutral citation 2024 FC 2097 File numbers IMM-4692-23 Decision Content Date: 20241224 Docket: IMM-4692-23 Citation: 2024 FC 2097 Ottawa, Ontario, December 24, 2024 PRESENT: Madam Justice Azmudeh BETWEEN: MEHMET ALTUG Applicant and THE MINISTER OF CITIZENSHIP AND IMMIGRATION Respondent JUDGMENT AND REASONS I. Overview [1] Mehmet Altug [Applicant], seeks judicial review of a Pre-Removal Risk Application [PRRA] decision made by a Senior Immigration Officer [Officer] on March 11, 2023. The Officer found that he would not face a serious possibility of persecution on a Convention ground and that he would not be subject to a risk of torture, or face a risk to life or risk of cruel and unusual treatment or punishment if he returned to his country of nationality, Turkey (hereinafter referred to as Türkiye, the country's actual name).

- [2] The Applicant is Kurdish and a citizen of Türkiye. He has been in Canada since November 2021. Around April 2022, the Applicant submitted a PRRA application with the assistance of a former counsel.
- [3] The Applicant's PRRA application was based on his Kurdish ethnicity, as well as his political opinion and involvement with the Halkların Demokratik Partisi [HDP] party. The Applicant alleged in an affidavit that he never joined the HDP party, but that he agreed with their cause and that he had organized protests for the HDP.
- [4] The Officer did not question the Applicant's credibility which included the following uncontested facts, which he had provided in an affidavit: He is of Kurdish ethnicity and he comes from a political family; He is not a formal member of the HDP but he has attended HDP protests; The Applicant has organized at least one protest in 2021 in response to the killing of a Kurdish woman while working in an HDP building. This instigated the police's attempt to arrest him but he escaped; Police searched his home and told his family that they had an arrest warrant for him. No arrest warrant was filed and the Applicant blames his former counsel for not filing it; The Applicant continued to remain in hiding until his escape from the country illegally.

- [5] The Officer found that the Applicant's extent of involvement with the HDP was unclear, and that the evidence was insufficient to justify a positive outcome under sections 96 or 97(1) of Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]. II. Issues and Standard of Review [6] The parties submit, and I agree, that the main issue in this case is whether the Officer's PRRA decision was reasonable.
- [7] The Applicant also framed a central issue as being the incompetence of his former counsel amounting to a breach of procedural fairness.
- [8] The standard of review applicable to PRRA decisions is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [Vavilov]; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1645 at para 13; *Shah v Canada (Citizenship and Immigration)*, 2022 FC 1741 at para 15). A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (Vavilov at para 85). The reviewing court must ensure that the decision is justifiable, intelligible, and transparent (Vavilov at para 95). Justifiable and transparent decisions account for central issues and concerns raised in the parties' submissions to the decision maker (Vavilov at para 127).
- [9] With respect to issues of procedural fairness, the standard of review is not deferential. It is for the reviewing court to ask, "with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed" (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69, at para 54 [CPR]). Consequently, when an application for judicial review concerns procedural fairness and a breach of the principles of fundamental justice, the question that must be answered is not necessarily whether the decision was "correct." Rather, the reviewing court must determine whether, given the particular context and circumstances of the case, the process followed by the administrative decision maker was fair and gave the parties concerned the right to be heard, as well as a full and fair opportunity to be informed of the evidence to be rebutted and to have their case heard (CPR at para 56). Reviewing courts are not required to show deference to administrative decision makers on matters of procedural fairness (*Vargas Cervantes v Canada (Citizenship and Immigration)*, 2024 FC 791 at para 16). III. Analysis [10] In this case, through his former counsel, the Applicant provided a sworn statement, proof of his identity and country condition documents. For the reasons that I will elaborate, I find the Officer's focus on what the evidence did not say, without engaging with what it said, or to assess it in the context of the perspective of the persecutor, was unreasonable (*Anshur v Canada (Citizenship and Immigration)*, 2018 FC 567 at para 21).
- [11] This Court has recently affirmed in *Mersha v Canada (Citizenship and Immigration)*, 2023 FC 230 at paragraph 18 [Mersha] the principle set out in *Abusaninah v Canada (Minister of Citizenship and Immigration)*, 2015 FC 234 at paragraph 57, that when a PRRA that takes place without any prior risk assessment, the stakes are particularly high. The level of justification and intelligibility required of a PRRA decision is increased when an applicant has never had a risk assessment in Canada. This is the first time the Applicant's risk in

Türkiye is being assessed at any level since the Applicant was found to be ineligible for referral to the Immigration Refugee Board due to the application of the Safe Third Country Agreement (see *Canadian Council for Refugees v Canada (Citizenship and Immigration)*, 2023 SCC 17 at paras 1-2 for an overview of the agreement). However, for reasons that follow, I find that the Officer's analysis and reasons provided do not reflect the level of intelligibility and justification required in the circumstances. As such, I need not deal with the Applicant's allegations against his former counsel.

- [12] I find this case to be very similar to *Mersha* where this Court overturned the decision of the Officer who had similarly failed to address key points in the Applicant's narrative by mainly focusing on the review of the weaknesses of the supporting evidence.
- [13] In this case, the Officer did not question the credibility of the Applicant's allegations and framed their decision under the rubric of sufficiency. However, on what they accepted, they did not assess it from the perspective of the Turkish authorities in a forward-looking manner (*Zhou v Canada (Citizenship and Immigration)*, 2012 FC 1252 at paras 26-27). To put it differently, once the Officer accepted that the Applicant was Kurdish, came from a political family and held a pro-Kurdish political opinion reflected by HDP, even without joining the party, then the Officer needed to either take the necessary steps to impeach his credibility or assess the forward-looking risk to the Applicant from the perspective of the persecutor. They failed to do either. This gap in logic breaks the chain of reasoning necessary in a reasonable decision.
- [14] Freedom of religion in a refugee context is held to include the right to manifest the religion in public, or private, in teaching, practice, worship and observance (*Fosu v Canada (Minister of Employment and Immigration)* [1994] FCJ No. 1813, 27 Imm. LR (2d) 95). As freedom of political opinion stems from a similar belief in freedom of conscience, one also has a right to express one's genuine political opinion without a serious possibility of persecution (at 97). The Officer did not question the credibility of the Applicant's political opinion, and agreed that that the country conditions document supports the conclusion that those with pro-Kurdish sentiments, who express it, face a serious possibility of persecution. However, due to the Applicant's failure to corroborate evidence of his past persecution, the Officer found that the persecution did not apply to him.
- [15] It was the Applicant's unequivocal evidence he had a history of sympathizing with the Kurdish cause, had a genuine interest in expressing it repeatedly and had organized protests in the process. The Officer agreed that according to the country documents, the state not only persecutes the members of HDP, but also Kurdish political activists. The Officer did not question the Applicant's evidence on his political activities or the genuineness of his political opinion. As such, the Officer did not engage with the question of whether someone of the Applicant's political conviction, the credibility of which was never questioned, regardless of their formal membership in HDP, could express their political opinion on their return to Türkiye without a serious possibility of a prospective risk of persecution.

- [16] The Respondent held that the Officer's focus on the missing evidence, such as expecting to see an arrest warrant, did not amount to credibility finding. However, the Officer did not question the genuineness of his political opinion, but only the sufficiency of his evidence of past persecution. The test for refugee status is forward-looking, and a prospective risk assessment is missing from the Officer's reasons (see *Arocha v Canada (Citizenship and Immigration)*, 2019 FC 468 at para 23. This makes the reasons unjustifiable.
- [17] Contrary to the Respondent's submissions, this is not about the weighing of the evidence by the Officer, to which this Court gives deference. It is about applying the wrong legal test, one that was solely on assessing past persecution and was silent on the prospective risk.
- [18] As stated above, because I find the PRRA reasons to be unreasonable, I need not deal with the Applicant's arguments about the incompetence of his counsel. However, for the redetermination of the PRRA, the Applicant may resubmit an updated application. IV. Conclusion [19] I find that the decision of the Officer was unreasonable. I allow the judicial review. This matter will be remitted to the PRRA office to be decided by a different decision-maker.
- [20] The parties did not propose a certified question and I agree that none arises. JUDGMENT in IMM-4692-23 THIS COURT'S JUDGMENT is that: The Judicial Review is granted. This matter is returned to the PRRA office for determination by a different decision-maker in accordance with these reasons. There are no questions to be certified. "Negar Azmudeh" Judge FEDERAL COURT SOLICITORS OF RECORD DOCKET: IMM-4692-23 STYLE OF CAUSE: MEHMET ALTUG v THE MINISTER OF CITIZENSHIP AND IMMIGRATION PLACE OF HEARING: HELD VIA VIDEOCONFERENCE DATE OF HEARING: DECEMBER 9, 2024 ORDER AND REASONS: AZMUDEH J. DATED: DECEMBER 24, 2024 APPEARANCES: Vakkas Bilsin FOR THE APPLICANT Aleksandra Lipska FOR THE RESPONDENT SOLICITORS OF RECORD: LEWIS & ASSOCIATES LLP Barrister & Solicitor Toronto, Ontario FOR THE APPLICANT Attorney General of Canada Toronto, Ontario FOR THE RESPONDENT

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