

CANADA / JUDGMENT

Cali v. Canada (Citizenship and Immigration)

2025 FC 587

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Federal Court

DECIDED

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Cali v. Canada (Citizenship and Immigration)

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IMM-13673-23

Decision Content

Date: 20250401

Docket: IMM-13673-23

Citation: 2025 FC 587

Ottawa, Ontario, April 1, 2025

PRESENT: Mr. Justice McHaffie

BETWEEN:

YILMAZ CALI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview [1] Yilmaz Cali is seeking judicial review of the refusal of his application for a Pre-Removal Risk Assessment [PRRA] dated December 31, 2022. In his PRRA application, Mr. Cali stated that he had been targeted by Turkish authorities because of his refusal to act as a village guard and that he had received threats from members of the Kurdistan Workers' Party [PKK]. He also described the discrimination, harassment and abuse he faced in Turkey because of his Kurdish ethnicity.

- [2] A senior immigration officer [the Officer] with Immigration, Refugees and Citizenship Canada accepted Mr. Cali's personal statement "as facts". Nevertheless, the Officer determined that Mr. Cali had submitted insufficient evidence to establish the risks he would face if he returned to Turkey because he had not submitted evidence corroborating the central events of his narrative.
- [3] For the following reasons, the Court finds that the Officer's decision does not meet the requirements of a reasonable decision for two reasons. The Officer's decision is not internally coherent. The Officer accepted Mr. Cali's factual account as true, but at the same time, concluded that facts contained in the account had not been proven. These two findings cannot reasonably coexist. Second, the Officer's decision is not reasonable because it does not give any consideration to the risks Mr. Cali would face in Turkey because of his Kurdish ethnicity. Even if Mr. Cali did not directly raise his ethnicity as a separate ground of persecution, it is incumbent on PRRA officers to consider the grounds of risk that clearly emerge from the record, even if they were not explicitly raised by an applicant.
- [4] The application for judicial review must therefore be allowed, and Mr. Cali's PRRA application is referred back for redetermination by another officer.

II. Issue and standard of review [5] The parties agree that a refusal of an application for a PRRA is subject to the standard of reasonableness (Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 at paras 16–17, 23–25 [Vavilov]; Bouekassa v Canada (Citizenship and Immigration), 2021 FC 655 at para 28).

- [6] The sole issue is whether the Officer's decision to refuse Mr. Cali's PRRA application is reasonable.
- [7] When reviewing an administrative decision on the standard of reasonableness, the Court does not undertake its own analysis of the facts, evidence or law to draw its own conclusions. The Court must instead consider the outcome of the administrative decision in light of its underlying rationale, and ensure that the decision as a whole is transparent, intelligible and justified: Vavilov at paras 15, 81, 86, 94, 100. A decision cannot be set aside unless the reviewing court is satisfied that there are sufficiently serious shortcomings in the

decision such that it does not meet the requirements for a reasonable decision: Vavilov at para 100. A decision may be unreasonable if there is a failure of rationality internal to the reasoning process or if it is in some respect untenable in light of the relevant factual and legal constraints that bear on it: Vavilov at paras 96, 101–105.

III. Analysis A. Mr. Cali's PRRA application [8] Mr. Cali entered Canada in August 2022 and made a refugee protection claim. The claim was ineligible under paragraph 101(1)(e) of the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA], because Mr. Cali arrived from the United States. He was sent back to the United States but returned to Canada shortly thereafter by crossing the border illegally. A removal order was issued against him, and he was granted an opportunity to apply for a PRRA under section 112 of the IRPA.

- [9] In his PRRA application, Mr. Cali filed a personal statement and affidavit describing the violence in his village during the 1990s at the hands of the PKK and the efforts made by Turkish authorities to hire locals to act as village guards against the PKK, including Mr. Cali's father. In 2006, a female cousin of Mr. Cali committed a suicide attack on behalf of a PKK splinter group. As a result, Mr. Cali's family was targeted by the media. Mr. Cali completed his compulsory military service at the age of 20, during which he was humiliated and beaten because of his Kurdish background.
- [10] In 2017, Mr. Cali's father retired from his position as a village guard. The authorities have tried several times to recruit Mr. Cali for this position, but he has always refused. The military threatened him to persuade him to become a guard, while the PKK threatened him because his cousins accepted positions as village guards. In 2020, Mr. Cali began working for the Ministry of Health. At work, he was persecuted and threatened, and his boss again encouraged him to leave his position to become a village guard. He was then beaten by several of his boss's guards, who asked him again to become a village guard. He moved to another city, but after a while, the authorities harassed him again, telling him to quit his job and return to his village to become a guard. In May 2022, Mr. Cali was taken to a room at his workplace where four people beat him, threatened him with a weapon, and said that he would have to return to his village to become a guard or he would be killed. After this incident, Mr. Cali left Turkey but alleges that his family continues to receive threats.
- [11] In support of his PRRA application, Mr. Cali filed documents about his father and his village guard position, reports about the suicide attack committed by his female cousin, and a statement from a male cousin who found himself in a similar situation and who obtained refugee status in Germany.

B. The Officer's decision [12] In his decision, written in English, refusing Mr. Cali's PRRA application, the Officer referred to Mr. Cali's statement described above. The Officer noted that Mr. Cali described incidents of discrimination he experienced as a Kurd, but that his allegations of risk in his PRRA application revolved around his refusal to become a village guard and not his ethnicity.

- [13] The Officer summarised the incidents described in Mr. Cali's statement and made brief reference to the other evidence submitted. He went on to state, "I accept and acknowledge all of these as facts."
- [14] Nevertheless, the officer noted that Mr. Cali did not submit evidence to corroborate the central events of his allegations of risk, nor did he provide an explanation for the absence of such evidence. For example, the Officer noted that there was no evidence confirming his employment with the Ministry of Health or his employment after his move; that Mr. Cali did not make a statement about the consequences of his physical abuse; that there is no corroborating evidence of the threats his family has received since his departure; and that his allegations were not supported by objective country condition evidence describing the forced recruitment of Kurds to act as village guards. The Officer therefore concluded that Mr. Cali had not presented sufficient evidence to establish his risks.
- [15] Regarding the risk posed by the PKK, the Officer also noted that Mr. Cali's statement did not describe any threats or other incidents after February 2022, particularly after he left the village, that could indicate that his life would be in danger. The Officer therefore concluded that Mr. Cali had not presented sufficient evidence to demonstrate the risk posed by the PKK.
- [16] Noting that the burden of proving the factual basis of the allegations of risk rests with the applicant, the Officer concluded that Mr. Cali would not face a serious risk of persecution under section 96 of the IRPA, or to a risk described in section 97 of the IRPA, should he return to Turkey.

C. The Officer's decision does not bear the hallmarks of a reasonable decision (1) There is a significant inconsistency in the Officer's decision [17] Pursuant to paragraph 113(b) of the IRPA and section 167 of the Immigration and Refugee Protection Regulations, SOR/2002-227, a hearing must be held in a PRRA application if there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97; if this evidence is central to the decision; and if this evidence, if accepted, would justify allowing the application for protection: *Tekie v Canada* (Minister of Citizenship and Immigration), 2005 FC 27 at paras 12–16. Not holding a hearing before making a negative credibility finding respects neither the duty of procedural fairness nor the principles of fundamental justice: *Singh v Minister of Employment and Immigration*, 1985 CanLII 65 (SCC), [1985] 1 SCR 177 at paras 59, 107–08.

- [18] Thus, the jurisprudence of this Court includes numerous decisions dealing with the difference, especially in the context of PRRA applications, between a determination of insufficient evidence and a determination on the applicant's credibility: see, among others, *Zokai v Canada* (Citizenship and Immigration), 2005 FC 1103 at paras 11–12; *Ferguson v Canada* (Citizenship and Immigration), 2008 FC 1067 at paras 7–8, 25–34; *Strachn v Canada* (Citizenship and Immigration), 2012 FC 984 at paras 32–36; *Gao v Canada* (Citizenship and Immigration), 2014 FC 59 at paras 28–47; *Majali v Canada* (Citizenship and Immigration), 2017 FC 275 at paras 27–33, 41–42; *Ahmed v Canada* (Citizenship and Immigration), 2018 FC

1207 at paras 26–33, 38; *AB v Canada (Citizenship and Immigration)*, 2019 FC 165 at paras 23–28; *Islam v Canada (Citizenship and Immigration)*, 2022 FC 261 at paras 35–46; *Iwekaeze v Canada (Citizenship and Immigration)*, 2022 FC 814 at paras 26–29; *Kiss v Canada (Citizenship and Immigration)*, 2024 FC 363 at paras 17–26. The case law holds that it is possible that an officer could improperly frame “true credibility findings as findings regarding sufficiency of evidence”, and refers to “veiled credibility findings”: *Strachn* at para 34; *Majali* at paras 19, 30–31; *Kiss* at para 22.

- [19] As Mr. Cali points out, this Court has recognized that it may be difficult in some cases to distinguish between a finding of insufficient evidence and a credibility finding: *Gao* at para 32; *Kiss* at para 22.
- [20] In this case, the Officer does not explicitly question Mr. Cali’s credibility. On the contrary, he accepts and acknowledges all the elements of his story “as facts”. The Minister submits that it can be concluded that the Officer did not make a negative finding on Mr. Cali’s credibility. I accept this position. Indeed, the Officer’s conclusion is quite clear: The facts presented by Mr. Cali in his narrative and affidavit are accepted as the facts relevant to the determination of his application.
- [21] That being said, it is inconsistent for the Officer to find at the same time that these same facts are not proven. A fact cannot be both taken as proven on the basis of the evidence provided and not proved. This is not simply poor phrasing on the Officer’s part, nor is it a minor or peripheral error. From reading the Officer’s reasons, one cannot understand his reasoning on a central issue in determining the PRRA application, namely, whether or not the facts on which Mr. Cali bases his application are accepted. The Court is satisfied that this is an error or deficiency that is sufficiently serious or significant to render the decision unreasonable: *Vavilov* at paras 100, 102–04.
- [22] The Court therefore concludes that the Officer’s decision does not meet the requirements of a reasonable decision and must be set aside.
- (2) The decision did not address a potentially central issue [23] The conclusion above is sufficient to grant Mr. Cali’s application for judicial review. Nevertheless, it should be noted that the Officer’s decision is also unreasonable because the Officer did not undertake a substantive assessment of the risks Mr. Cali would face in Turkey because of his Kurdish ethnicity.
- [24] As noted, Mr. Cali raised his Kurdish ethnicity in his application, referring to, among other things, abuses during his military service. Other aspects of his narrative also concern the issue of his ethnicity, including the issue of his recruitment as a village guard against the PKK.
- [25] The Officer adequately noted that Mr. Cali’s application is based primarily on the threats and risk associated with his refusal to serve as a village guard, and not directly on his Kurdish ethnicity. However, this Court has concluded that “[i]t is also incumbent on PRRA officers to

consider risk grounds that are apparent on the record, even if these are not specifically raised by the applicant” [emphasis added]: *JAMA v Canada (Citizenship and Immigration)*, 2014 FC 668 at para 19. As Justice de Montigny, then of this Court, observed, the origin of this duty can be traced from the following comments of the Supreme Court of Canada in *Canada (Attorney General) v Ward*, 1993 CanLII 105 (SCC), [1993] 2 SCR 689:

I note that the UNHCR Handbook [Handbook on Procedures and Criteria for Determining Refugee Status] states that it is not the duty of a claimant to identify the reasons for the persecution. It is for the examiner to decide whether the Convention definition is met; usually there will be more than one ground. . . . While political opinion was raised at a very late stage of the proceedings, the Court has decided to deal with it because this case is one involving human rights and the issue is critical to the case.

[Emphasis added; *Ward* at 745–46]

- [26] This Court found that this obligation applies not only to the tribunal responsible for determining most refugee claims (which is now the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB]), but also to the officers responsible for ensuring that Canada respects its commitments to the principle of non-refoulement through applications for protection under section 112 of the IRPA: *Jama* at para 19; *Nsungani v Canada (Citizenship and Immigration)*, 2019 FC 107 at para 35; *Pacheco v Canada (Citizenship and Immigration)*, 2018 FC 872 at para 55; *Cao v Canada (Citizenship and Immigration)*, 2020 FC 500 at para 28.
- [27] The Minister rightly submits that applicants bear the burden of proving the merits of their PRRA application: *Gao* at paras 32, 45; *Sallai v Canada (Citizenship and Immigration)*, 2019 FC 446 at para 63; *Garces Canga v Canada (Citizenship and Immigration)*, 2020 FC 749 at para 39. However, the existence of this burden, which is primarily factual, does not undermine an officer’s obligation to consider the reasons for risk that are clearly apparent from the record, even if they are not clearly identified by the applicant.
- [28] In his decision, the Officer made two comments about Mr. Cali’s Kurdish ethnicity. First, the Officer noted that, although Mr. Cali described incidents of discrimination he experienced as a Kurd, his allegations of risk are based on his refusal to become a village guard and not on his ethnicity. Second, the Officer noted that Mr. Cali’s allegations were not supported by objective country condition evidence describing the forced recruitment of Kurds to act as village guards. The Officer makes no further analysis of the risk Mr. Cali would face as a Kurd if he were to return to Turkey.
- [29] The Minister submits that Mr. Cali did not provide the Officer with any reference to objective documentation on the situation of Kurdish men in Turkey. He argues that it is not incumbent on PRRA officers to review the National Documentation Package [NDP], a tool published by the IRB for each country, to find relevant documents to which an applicant did not refer.

[30] However, Justice de Montigny in *Jama* also confirmed that “officers have a duty to consult recent and publicly available reports on country conditions even when they have not been submitted by the applicants” [emphasis added]: *JAMA* at para 18, citing, among others, *Rizk Hassaballa v Canada* (Citizenship and Immigration), 2007 FC 489 at para 33 and *Jessamy v Canada* (Citizenship and Immigration), 2009 FC 20 at para 81; see also *Nadarasa v Canada* (Citizenship and Immigration), 2016 FC 224 at paras 7–8; *Ngabo v Canada* (Citizenship and Immigration), 2024 FC 1425 at para 16; but see *Woldemichael v Canada* (Citizenship and Immigration), 2020 FC 655 at para 30. This does not mean that an officer must examine the NDP in its entirety to support the applicant’s claim: *Azzam v Canada* (Citizenship and Immigration), 2019 FC 549 at para 16. However, in this case, the decision does not provide any analysis of the NDP regarding the treatment of Kurds in Turkey, despite the facts accepted by the Officer regarding Mr. Cali’s experiences.

[31] The Court therefore finds that the Officer’s decision is also unreasonable because of the absence of an analysis of the risk related to Mr. Cali’s Kurdish ethnicity.

IV. Conclusion [32] The application for judicial review is therefore allowed, and Mr. Cali’s PRRA application is referred back for redetermination by another officer.

[33] The parties did not present any questions for certification. I agree that none arise.

JUDGMENT in IMM-13673-23

THIS COURT’S JUDGMENT is as follows:

The application for judicial review is allowed.

The decision of a senior immigration officer refusing the applicant’s application for a Pre-Removal Risk Assessment is set aside, and the application is referred back for reconsideration by a different officer.

“Nicholas McHaffie”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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