

Federal Court



Cour fédérale

Date: 20250602

Docket: IMM-16652-23

Citation: 2025 FC 978

Ottawa, Ontario, June 2, 2025

PRESENT: Madam Justice Pallotta

BETWEEN:

**MUHAMMET EMIN BAGCI AND
MUHAMMED FATIH BAGCI**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicants, Muhammet Emin Bagci and Muhammed Fatih Bagci, are citizens of Türkiye who claimed refugee protection under a Safe Third Country Agreement exception after entering Canada from the United States in January 2023. They seek judicial review of a Refugee Protection Division (RPD) decision that found they are not Convention refugees or persons in need of protection under sections 96 or 97 of the *Immigration and Refugee Protection Act*,

SC 2001, c 27. The applicants were barred from appealing the negative RPD decision to the Refugee Appeal Division.

[2] The applicants are brothers whose refugee protection claims were joined and decided together with a third brother's claim. The RPD accepted the third brother's claim and its decision on the third brother's claim is not challenged.

[3] The applicants both claimed refugee protection based on Convention grounds of membership in a particular social group, as bisexual men, and religion, as atheists. Credibility was the determinative issue.

[4] The RPD found that neither applicant is bisexual, as alleged. Their testimony was not credible and the documentary evidence they filed was insufficient to overcome the concerns. The RPD further found that none of the events they claimed caused them to flee Türkiye had occurred.

[5] Regarding religion, the RPD found that Muhammet Emin Bagci does not believe in God and Muhammed Fatih Bagci is not interested in religion. While both men had registered as atheists with the Turkish government, the RPD found they did not face a prospective risk of being targeted by the state. Furthermore, the objective evidence did not support a conclusion that upon return, the applicants would face a serious risk of harm that would threaten their basic human rights or rise to the level of persecution.

[6] The applicants submit the RPD's decision is unreasonable. They allege the RPD: (A) made a veiled or implied adverse credibility finding based on a factually incorrect assumption that there was a delay in claiming refugee protection; (B) unreasonably rejected their testimony about sexual orientation and made negative credibility findings without considering their circumstances and reasonable explanations, and without applying *Guideline 9: Proceedings Before the IRB Involving Sexual Orientation, Gender Identity and Expression, and Sex Characteristics [Guidelines]*; (C) unreasonably rejected documentary evidence; and (D) made confusing, contradictory, and unclear findings about the applicants' atheism, and made findings that contradicted the country condition evidence in the National Documentation Package (NDP) for Türkiye about the threats they would face.

[7] The sole issue on this application is whether the RPD's decision is unreasonable, based on the alleged errors above.

[8] The guiding principles for reasonableness review are set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. The Court's role is to conduct a deferential but robust form of review that considers whether the decision, including the reasoning process and the outcome, was transparent, intelligible, and justified: *Vavilov* at paras 13, 99.

[9] For the reasons below, the applicants have not established that the RPD's decision was unreasonable.

(A) *Factual error*

[10] The RPD stated that the applicants arrived in Canada in October 2022 and signed their claims on March 23, 2023. The applicants state they actually entered Canada on January 4, 2023 and did not delay seeking protection, and they submit the RPD made a veiled or implied adverse credibility finding based on a delay in claiming protection.

[11] The applicants have not established a reviewable error. The RPD did not find that the applicants delayed claiming protection and did not rely on a perceived delay to deny their claims. Even if the dates were inaccurate, no findings turned on them.

(B) *Findings on sexual orientation*

[12] The applicants submit the RPD merely mentioned the *Guidelines* in its introduction, and did not follow or properly apply the *Guidelines* in making credibility findings. In particular, the applicants contend the RPD made an adverse credibility finding based on a failure to mention their bisexuality at their port of entry interviews, without examining whether there were cultural, psychological, or other barriers that might reasonably explain the omission. The applicants also submit the RPD's reasons exhibited an approach that the *Guidelines* caution against, by relying on a lack of stereotypically expected behaviours to find that Muhammet Emin Bagci's same-sex relationship did not occur, and by ignoring his testimony about the relationship.

[13] I am not persuaded that the RPD failed to follow the *Guidelines*. I agree with the respondent that the RPD considered the kinds of barriers that may affect a claimant's testimony, as set out in the *Guidelines*. The RPD accepted some of the applicants' responses to its concerns

and did not accept other responses. As the respondent correctly points out, the *Guidelines* are not a “cure-all” (*Okunowo v Canada (Citizenship and Immigration)*, 2020 FC 175 at para 66) and it was open to the RPD to find that the applicants had not established their sexual orientation on a balance of probabilities.

[14] The RPD assigned little weight to the applicants’ basis of claim (BOC) narratives. This was because the applicants wanted to coordinate their narratives, which meant there were few differences between them, and neither narrative described the personal experiences and discoveries that led each applicant to conclude he was bisexual. Consequently, the RPD focused on each applicant’s oral testimony.

[15] Beginning with Muhammet Emin Bagci, the RPD found he did not establish that he is a bisexual man, and I am not persuaded of a reviewable error. The RPD stated it had little specific evidence to assess: Muhammet Emin Bagci did not say he is bisexual at his port of entry interview, his BOC lacked individual allegations regarding his bisexuality, and he gave vague testimony about one alleged same-sex relationship that was not mentioned in his BOC. The RPD put these concerns to Muhammet Emin Bagci at the hearing and did not accept the responses he gave. Muhammet Emin Bagci testified that his BOC did not mention the relationship because it did not last long, it was not something he felt was significant enough to include, and since the applicants coordinated their BOCs, he left out a relationship that was only about him. While the RPD accepted that the applicants wanted their BOCs to stress their common experiences, it did not accept that Muhammet Emin Bagci would be so loyal to the approach that he would leave out an actual relationship, particularly given its importance to risk.

[16] I do not agree with the applicants that the RPD relied on the absence of stereotypically expected behaviour, like making dinner or watching a show, to find that Muhammet Emin Bagci's same-sex relationship did not occur. As noted above, the RPD's concern was the lack of specific information about the relationship. Muhammet Emin Bagci had not volunteered information about what the couple did together, and it was in this context that the RPD gave examples of the kind of information he might have volunteered.

[17] Contrary to the applicants' allegations, the RPD did not ignore Muhammet Emin Bagci's testimony regarding the relationship. Rather, it found that his testimony was vague and evasive, he described his only same-sex relationship in cursory and perfunctory way, and he provided little information to overcome concerns about whether the relationship occurred.

[18] Similarly, the RPD found that Muhammed Fatih Bagci's BOC did not contain individual allegations regarding his bisexuality, he did not say he is bisexual at his port of entry interview, and he provided limited testimony about his bisexual orientation which failed to establish he is bisexual as alleged.

[19] The applicants have not established that the RPD's assessment of their allegations about their sexual orientation was unreasonable.

(C) *Documentary evidence*

[20] The applicants submit that the RPD unreasonably rejected their supporting documentary evidence, specifically: (i) a letter from a community health worker at Access Alliance

Multicultural Health and Community Services (Access Alliance) stating that the three Bagci brothers were registered members of Access Alliance's LGBTQ+ newcomer program, and summarizing the persecution and harm they endured in Türkiye; and (ii) a letter from an LGBTQ2S center in Toronto, The 519, stating that Muhammed Fatih Bagci had been issued a membership number. The applicants rely on *Ojie v Canada*, 2018 FC 342 at paragraph 46 for the principle that letters like the ones they submitted can be useful to support a claim of bisexuality in view of the inherent difficulties in proving sexual orientation.

[21] The applicants have not established a reviewable error with the RPD's treatment of the documentary evidence. The RPD afforded little weight to the letter from The 519, which was a form letter confirming Muhammed Fatih Bagci's membership. The RPD gave no weight to the Access Alliance letter on the basis that the writer did not say what she understood the applicants' sexual orientation to be and she grouped the allegations of all three brothers (including the brother whose refugee claim was allowed) without making any distinction between them. The RPD further explained that the writer had no firsthand knowledge and was only relaying what she had been told. I agree with the respondent that the RPD was entitled to weigh the evidence and reasonably assigned the letters little to no weight in establishing the applicants' profiles as bisexuals or the events that precipitated their flight from Türkiye. The RPD reasonably found that the documentary evidence was insufficient to overcome the credibility concerns with the applicants' testimony.

(D) *Findings on atheism*

[22] The applicants argue that the RPD erred in finding they would not face a serious possibility of persecution in Türkiye as atheists. The applicants allege the following:

- (i) The RPD made unclear findings about the applicants' profiles as atheists—they are unable to understand the RPD's finding that it had reason to doubt the veracity of their testimony about their profiles as atheists when the RPD ultimately accepted that Muhammet Emin Bagci does not believe in God and Muhammed Fatih Bagci is not interested in religion.
- (ii) The RPD's findings that the state is not actively pursuing atheists, that atheists enjoy the same fundamental rights as other religions, and that the applicants do not face a prospective risk of being targeted by the state for being registered atheists are fundamentally at odds with the NDP evidence cited in later paragraphs of the RPD's decision. The NDP evidence clearly supports a serious risk and possibility of persecution for atheists in Türkiye, including criminal penalties for people who "publicly degrade the religious values of a section of the public". Furthermore, while the Constitution protects people from having to divulge their religious thoughts, people who are outspoken and express their views in public can be prosecuted. The applicants contend the RPD did not meaningfully analyze this evidence and its impact on their claims, which is particularly problematic given that the RPD found that the applicants have been "outspoken".

- (iii) The RPD also failed to consider death threats made by the applicants' uncle, who is a conservative Islamist with political connections to one of the ruling nationalist parties, and failed to consider that their atheism would be perceived as anti-Islam, anti-government political opinion by the Turkish authorities and they would be subject to persecution.
- (iv) The RPD erred in rejecting evidence that the applicants were prevented from changing their names by family pressure and threats, and erred in finding they could have changed their names as an expression of their detachment from Sunni Islam if they wished.

[23] I am not persuaded that the RPD unreasonably assessed, without proper regard to the evidence, whether the applicants face a forward-looking risk of persecution as atheists.

[24] Regarding point (i), the RPD had concerns with each applicant's testimony about his atheism, but ultimately accepted some aspects of the testimony to find that Muhammet Emin Bagci does not believe in God and Muhammed Fatih Bagci is not interested in religion. The RPD's general comment that it had reasons to doubt the veracity of both applicants' testimony is not inconsistent with these findings, nor does it render them unclear.

[25] Turning to point (ii), I agree with the respondent that the RPD addressed the NDP evidence and found that the applicants had not credibly established that they would face risk amounting to persecution. I am not persuaded that the RPD's findings were fundamentally at odds with the NDP evidence, or that it took a one-sided approach to the evidence, as the

applicants contend. The NDP evidence the applicants say the RPD did not consider is set out in the RPD's reasons, and the RPD conducted a weighing exercise that took into account the evidence that would favour the applicants' position.

[26] The applicants have not established that the RPD's conclusions that the state is not actively pursuing atheists, that atheists enjoy the same fundamental rights as other religions, and that the applicants do not face a prospective risk of being targeted by the state for being registered atheists are fundamentally at odds with the NDP evidence. The RPD found that "outspokenness, such as in social media, about non-Sunni, non-religious beliefs such as atheism can lead to a risk of conflict in the law" but determined that the applicants had not credibly established this is a risk they would face. The RPD's statement that the applicants had been "outspoken" in registering as atheists was perhaps a confusing choice of words, but the RPD was addressing a 2021 report stating there is no way for Turkish authorities to know that an individual is an atheist unless the individual is "outspoken". Read in context, the RPD was acknowledging that the authorities would know that the applicants had registered. The applicants have not established an error with the RPD's determination that they would not face a prospective risk of being targeted by the state as a result of registering.

[27] Overall, the RPD found the evidence did not demonstrate that Türkiye threatens atheists' basic human rights in a persistent or systematic way. After considering the country conditions described in the NDP evidence, the RPD found that the harm the applicants may face as atheists would not rise to persecution. The applicants disagree with how the RPD weighed the country

condition evidence, but I am not satisfied they have demonstrated a reviewable error with the RPD's findings.

[28] Finally, regarding points (iii) and (iv), the RPD considered the applicants' evidence and found that their allegations about the events that drove them from Türkiye were not believable, including the alleged death threats from their uncle. The RPD found the applicants had not established that they fled Türkiye because they feared members of their family. The RPD also rejected the applicants' reasons for not changing their names in 2021 as they had planned, and found they could have done so if they wished. In my view, these findings were open to the RPD.

[29] The Court's role on judicial review is not to make its own determination, but rather, to decide whether the applicants have established sufficiently serious shortcomings with the RPD's decision so as to justify setting it aside. In my opinion, the applicants have not met their burden in this regard. As the applicants have not established a basis for interfering with the RPD's decision, I must dismiss this application.

[30] The parties did not propose a question for certification. I find there is no question to certify.

JUDGMENT IN IMM-16652-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. No question of general importance is certified.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-16652-23

STYLE OF CAUSE: MUHAMMET EMIN BAGCI AND MUHAMMED
FATIH BAGCI v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 26, 2024

JUDGMENT AND REASONS: PALLOTTA J.

DATED: JUNE 2, 2025

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