

Federal Court



Cour fédérale

Date: 20260210

Docket: IMM-4363-25

Citation: 2026 FC 188

Ottawa, Ontario, February 10, 2026

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

NIYAZI AKAR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mr. Niyazi Akar, challenges the decision of the Refugee Appeal Division [RAD] dismissing his appeal from the Refugee Protection Division [RPD] that found that he had failed to credibly establish that he faces a serious possibility of persecution or a risk of harm under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

[2] I acknowledge that this Court, when conducting a reasonableness review, owes a high degree of deference to the RPD and RAD when the challenged findings relate to the credibility and plausibility of a refugee claimant's story, given their expertise in that regard and considering their role as the trier of fact: *Vall v Canada (Citizenship and Immigration)*, 2019 FC 1057 at paragraph 15.

[3] However, deference cannot shield a decision from meaningful review. The Court would fail litigants and the public if it did not meaningfully review decisions where questionable credibility findings are at issue - findings that could have a meaningful impact on the final determination. This, in my view, is especially the case in matters where risk to life and security are alleged such as where an applicant seeks protection under section 96 or 97 of the Act.

[4] It is improper to examine testimony microscopically looking for an "aha moment" and then basing adverse credibility findings on it. Rather, testimony must be considered holistically and contextually. At a minimum, when assessing credibility this includes:

- a) The age and experiences of the witness;
- b) The physical circumstances of the given testimony;
- c) The consistency of the testimony within the context of the whole of the evidence offered by the witness;
- d) The question that elicited the testimony; and
- e) Whether the witness corrected his evidence voluntarily or had to be pressed to do so.

[5] Each of these considered separately and cumulatively point to the unreasonableness of the RAD conclusion.

Background

[6] The Applicant is a citizen of Türkiye. He describes himself as a Kurdish activist who has supported the Peoples' Democratic Party [HDP] by participating in political activities since 2014. He alleges this support led to harassment, arbitrary detention, and mistreatment by Turkish authorities. Fearing for his safety, the Applicant left Türkiye and sought refugee protection in Canada in 2023.

[7] The RPD identified several credibility concerns regarding the Applicant's account and rejected his refugee claim.

[8] Consistent with the RPD, the RAD accepted that the Applicant is Kurdish, but found insufficient evidence to establish a risk of persecution on that basis. While acknowledging allegations of discrimination and harassment, the RAD concluded that the treatment described did not rise to the level of persecution.

[9] The Applicant raises issues going to procedural fairness and the reasonableness of its credibility findings.

[10] Questions of procedural fairness are reviewable on the standard akin to correctness:

Kambasaya v Canada (Minister of Citizenship and Immigration), 2022 FC 31 at paragraph 19.

Questions of a substantive nature are reviewable on the standard of reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[11] The finding that led to the rejection of the claim and the appeal was that the Applicant did not establish that he was arrested and detained in 2016. That finding coloured the remainder of the decision.

[12] The Applicant's account is set out in his narrative at paragraphs 12 and 13:

12. On 24 February 2016, we Kurdish youth were unfortunately detained during a helicopter-supported police operation in the Pirireis neighborhood of Darıca, Kocaeli, during which all entrances and exits were closed, and we were subjected to beatings and torture for days. Throughout this process, we were threatened that our family members would be tortured in the same way that we were tortured, and our family had to live in constant fear and anxiety.

13. Afterwards, we Kurdish youth were taken under treatment at the hospital, but unfortunately, we could not get a report on the beatings because the doctors decided not to give one. This was a major obstacle for justice to be served and injustices to be exposed. Unfortunately, there is no state organization that we can trust to deal with such incidents.

[13] The Applicant submitted a news article corroborating the February 2016 raid:

In the operation against the terrorist organization PKK in the morning hours in the Darıca district of Kocaeli, 22 people, including HDP District Co-Chair Hikmet Koçak, were detained.

According to the information obtained, Kocaeli Security Directorate Anti-Terror Branch Directorate carried out a helicopter-supported terrorist operation in Darıca. In the operation against the PKK terrorist organization, approximately 500 police officers raided the determined houses at dawn. 21 people were detained in the operations carried out in Piri Reis Neighborhood.

[14] The RAD's conclusion that the Applicant had failed to establish that he was arrested and detained in 2016, rested on four credibility findings:

- a. His testimony regarding the timing of the raid;
- b. His omission in his narrative of having attended a protest just prior to his arrest;
- c. His omission in his claims forms of having been arrested or detained in Türkiye in 2016; and
- d. His testimony with respect to medical treatment he received.

The Timing of the Raid

[15] The RAD (and the RPD) identified credibility concerns as to whether the Applicant was arrested and detained in Türkiye, arising from the following exchange concerning the timing of the raid:

MEMBER: Were you ever detained by the police

CLAIMANT: Yes, we were arrested.

MEMBER: When did this happen?

INTERPRETER: I am just clarifying the year, Mr. Member.

MEMBER: Thank you.

CLAIMANT: It happened in February 2016, around.

MEMBER: Okay. Can you tell me what you were doing before you got detained?

CLAIMANT: So, when before they got me arrested, I was just living my regular life, going to school and coming back when they raided in the afternoon. It was at 5:00 AM.

MEMBER: Sorry, I heard afternoon, and then I heard 5:00 AM. Can you clarify which one it was?

CLAIMANT: It's daytime. It's daytime. There is no afternoon. Daytime, morning.

MEMBER: Okay. If this occurred in the morning, where were you at this time?

CLAIMANT: Home.

MEMBER: Was it just your home that they raided?

CLAIMANT: No, it was in Piri Reis neighborhood residence. It's not only me, but many other people got arrested, including myself and a friend of mine, friends of mine.

...

MEMBER: So, in your narrative, you say that the Kurdish youths were detained, but it doesn't say anything specifically about you being detained. Why is that information missing in the narrative?

CLAIMANT: I wrote there I was within those Kurdish youths. And I had to express myself as one of those Kurdish youths.

[emphasis added]

[16] The RAD, in the passage below, accepted the RPD finding that this testimony as to when the raid happened was contradictory and went to credibility.

[8] I disagree with the Appellant's argument that the RPD mischaracterized his testimony regarding the timing of the raid. While I acknowledge that the Appellant did testify that the raid took place at 5:00A.M., immediately prior to this, he testified that they raided in the afternoon. When asked by the RPD to clarify whether it was in the afternoon or at 5:00A.M., the Appellant stated it was daytime, or morning.

[9] I find that the Appellant's testimony undermines the credibility of his allegation that he was arrested at 5:00A.M. Given the context of his first response, that he was going to school and coming back when they raided in the afternoon, it does not make sense that the raid occurred at 5:00A.M. and I draw a negative credibility inference.

[17] The Applicant was 25 years old when he testified before the RPD. The event he was recollecting occurred 8 years prior, when he was not yet 17 years old. Given the passage of time, his young age and inexperience, a lack of precision and clarity in his testimony is not surprising.

[18] The testimony at issue was given in a virtual hearing held over Microsoft Teams. It was given in the Turkish language, whereas the Applicant's mother tongue is Kurdish. Each of the participants was in a separate location. The transcript indicates that there were some issues with translation, but none that appear that go directly to the evidence at issue. Nonetheless, in the context, one must ask whether the Applicant was truly testifying that the raid occurred in the afternoon after his return from school.

[19] The answer of concern to the RPD and the RAD was given in response to the question: "Can you tell me what you were doing before you got detained?" Importantly, it was not "When were you detained?"

[20] The Applicant's response to the question asked is directed to his daily routine prior to arrest: "So when they got me arrested, I was just living my regular life, going to school and coming back when they raided in the afternoon. It was 5:00 AM."

[21] The RAD did not consider that the Applicant immediately and without prompting, corrected himself. The RAD gave weight only to the first response and failed to explain why:

[9] I find that the Appellant's testimony undermines the credibility of his allegation that he was arrested at 5:00A.M. Given the context of his first response, that he was going to school and coming back when they raided in the afternoon, it does not make

sense that the raid occurred at 5:00A.M. and I draw a negative credibility inference.

[22] In proceeding as it did, the RAD further ignored or failed to explain why it rejected the follow-up testimony elicited by the RPD:

MEMBER: Sorry, I heard afternoon, and then I heard 5:00 AM. Can you clarify which one it was?

CLAIMANT: It's daytime. It's daytime. There is no afternoon. Daytime, morning.

[23] These deficiencies make the RAD finding unreasonable.

His omission in his narrative of having attended a protest just prior to his arrest

[24] The RPD asked the Applicant whether anyone else in his home was arrested during the raid. He said no family members were arrested, which prompted the following question and response:

MEMBER: Why did they only go after you and not your family?

CLAIMANT: Because I was attending an activity in the HDP's building where Kurdish speeches were delivered, and Turkish Government used cameras, face-recognizing cameras, and they raided. Okay. During that incident at home, when I was taken from the home, only I was arrested.

MEMBER: Okay. ...

[25] Both the RPD and RAD mischaracterize this evidence. The RPD stated: "The claimant has omitted an important and material set of allegations from his BOC, including his alleged

attendance at a speech which brought about the raid” [emphasis added]. The RAD made a similar observation:

If the Appellant were arrested and tortured for days due to his attendance at a political protest, this would be of central importance to his claim. It goes to the heart of his fear of persecution by the government due to his political opinion and Kurdish identity. As such, I draw a negative inference from the Appellant’s omission of critical relevant information. [emphasis added]

[26] At no time did the Applicant attest that the raid was due to the speech he attended or that he was arrested because he attended the speech. Rather, he answered the question asked as to why only he and not his family were arrested. It is unreasonable for the RAD to read into the answers given facts not proven and then rely on that mischaracterization to impugn the credibility of the witnesses.

His omission in his claims forms of having been arrested or detained in Türkiye in 2016.

[27] The RAD found:

I further note that the Appellant’s claim forms omit any mention of his having been arrested or detained in Türkiye in 2016. In response to the question on his Schedule A asking whether he has ever been detained, incarcerated or put in jail, the Appellant only mentioned his detention in the United States for illegal entry. In response to the question on Schedule 12 asking whether he has ever been sought, arrested or detained in any country, the Appellant again only noted that he had been detained in the United States for illegal entry. In addition, the record contains a criminal record check from Türkiye. There is nothing on the document to support the Appellant’s allegation that he was arrested, therefore I give it no weight in establishing his allegations.

[28] The RAD, like the RPD before it, relies on these omissions but fails to address the narrative attached to the Claim in which the Applicant clearly asserts that he, among others, was detained by the authorities:

12. On 24 February 2016, we Kurdish youth were unfortunately detained during a helicopter-supported police operation in the Pirireis neighborhood of Darıca, Kocaeli, during which all entrances and exits were closed, and we were subjected to beatings and torture for days. Throughout this process, we were threatened that our family members would be tortured in the same way that we were tortured, and our family had to live in constant fear and anxiety. [emphasis added]

[29] The RAD's omission is more puzzling as it accepted the Applicant's ground of appeal that "his use of the term 'we Kurdish youth' is consistent with his testimony that multiple individuals [including the Applicant] were arrested."

[30] It was unreasonable for the RAD to rely on an alleged omission as going to credibility, when there is no such omission.

His testimony with respect to medical treatment he received.

[31] I agree with the RAD's statement below that the Applicant's testimony in this respect was confusing, but I see nothing that suggests it was evasive:

I find that the Appellant's testimony with respect to whether he received medical treatment after his detention was confusing and evasive. When asked whether he sought medical attention after being released, the Appellant answered that he needed medical attention but none of the hospitals would give him an assault report, and he could not go to any other institution because they would not defend Kurdish people.

[32] What the record does indicate is that the Applicant was obsessed with getting a report that his injuries were due to an assault. His aim and concern was to obtain evidence that he was assaulted during his arrest and detention.

[33] I agree with the Applicant that his response is very little on which to base an adverse credibility finding.

Conclusion

[34] For these reasons, the RAD's finding that the Applicant had not established that he was arrested and detained in February 2016, is unreasonable and must be set aside.

[35] No question was proposed for certification.

JUDGMENT in IMM-4363-25

THIS COURT'S JUDGMENT is that this application is granted, the Applicant's appeal is to be determined by a difference member of the Refugee Appeal Division, and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4363-25

STYLE OF CAUSE: NIYAZI AKAR v THE MINISTER OF CITIZENSHIP
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