

Federal Court



Cour fédérale

**Date: 20150108**

**Docket: IMM-1353-13**

**Citation: 2015 FC 23**

**Ottawa, Ontario, January 8, 2015**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**SOKOL KAPLLAJ**

**Applicant**

**And**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Mr Sokol Kapllaj claimed refugee protection in Canada based on his fear of persecution arising from a blood feud in Albania. Both his brother and cousin were granted refugee status in Canada on the same grounds.

[2] A panel of the Immigration and Refugee Board rejected Mr Kapllaj's claim, finding his evidence lacking in credibility. The Board also concluded that Mr Kapllaj had failed to discharge his burden of showing that state protection is unavailable in Albania.

[3] Mr Kapllaj contends that the Board's adverse credibility findings were unwarranted. Further, he submits that the documentary evidence shows that state protection is unavailable in Albania for persons in his circumstances. He asks me to find that the Board's decision was unreasonable, and to order another panel of the Board to reconsider his claim.

[4] I agree with Mr Kapllaj that the Board's decision was unreasonable. Therefore, I will allow this application for judicial review.

[5] The sole issue is whether the Board's decision was unreasonable.

## II. The Basis of Mr Kapllaj's Claim

[6] The Board summarized the basis for Mr Kapllaj's claim. It noted that the origins of the blood feud involved a 2005 decision of his cousin, Valentin, a Catholic, to date a woman named Lili Cekaj, a Muslim. The Cekaj family subsequently carried out attacks on Valentin, and Valentin's family responded in kind.

[7] For Mr Kapllaj's part, he claimed to have been shot in the leg by a member of the Cekaj family in 2007, causing him to go into hiding until 2011. He thought it was safe to go out at that point, but he was shot again in the same leg. He went into hiding again for a while, then left for

Canada. Mr Kapllaj maintained that the Cekaj family is wealthy and influential, and have ties to the Albanian police. Therefore, state protection was unavailable to him.

### III. The Board's Decision

[8] The Board began by noting that it had serious credibility concerns relating to the documentary evidence filed by Mr Kapllaj. It asked for documents to be checked for their authenticity but, because the Board's term was coming to an end, it could not wait for an answer.

[9] The Board questioned the basis for the blood feud. In 2006, Valentin fled to Montenegro, where he married someone other than Lili, and he then proceeded to Canada, where he obtained refugee protection. In the Board's view, if Valentin had been intent on having a relationship with Lili, he would not have married someone else; he would have tried to have her join him in Canada. In fact, he had no contact with her after he left Albania. In the circumstances, the Board concluded that the evidence relating to a blood feud was not credible or trustworthy.

[10] The Board reviewed documentary evidence relating to attempts at reconciliation between the feuding families, but doubted the authenticity of that evidence given that it nowhere referred to the fact that the basis for the feud was over, given that Valentin had married someone else.

[11] The Board also doubted that Mr Kapllaj had been twice shot in the same area of the same leg. Accordingly, it gave no weight to medical records of his injuries.

[12] The Board noted that the police had attended at the hospital after the second shooting and reviewed a police report of the event. This evidence, according to the Board, showed that the police were responsive to Mr Kapllaj's situation. Further, there was no evidence to support Mr Kapllaj's claim that the Cekaj family had any influence over the police.

[13] On the subject of state protection, the Board referred to Albanian laws that punish crimes carried out as part of blood feuds. It also noted that Mr Kapllaj had failed to present clear and convincing evidence of a lack of state protection.

[14] In conclusion, the Board found that that Mr Kapllaj would not face a risk to his life if he returned to Albania.

#### IV. Was the Board's decision unreasonable?

[15] Mr Kapllaj argues that the Board's decision was unreasonable in a number of ways. First, the Board failed to understand that the blood feud did not cease simply because Valentin stopped pursuing Lili. Second, the Board failed to give Mr Kapllaj any opportunity to respond to its credibility concerns. Third, the Board did not provide a valid reason for refusing to consider Mr Kapllaj's medical evidence. Fourth, the Board overlooked evidence showing that the Cekaj family was influential. Fifth, the Board ignored evidence showing a lack of state protection in Albania.

[16] I agree with Mr Kapllaj that the Board's decision was unreasonable. I will address each of his arguments.

A. *Basis for the blood feud*

[17] The Board correctly identified the origin of the blood feud. However, it did not consider the fact that the feud escalated thereafter based on reciprocal attacks by the warring families. From that point on, the original basis for the feud became largely irrelevant. In any case, Valentin did not contact Lili because he had given her up; rather, he was unable to make any contact with her after the feud began. His subsequent marriage and travel to Canada was not evidence that the feud was over.

B. *Notice of credibility concerns*

[18] Mr Kapllaj was aware that the credibility of his evidence was in issue. The Board did not have an obligation to give more specific notice of its concerns before making adverse credibility findings.

C. *Medical evidence*

[19] The Board rejected this evidence based on the implausibility of Mr Kapllaj's being shot in the same place on the same leg twice. However, the medical reports describe the two wounds differently. Before rejecting their authenticity, the Board should have considered their actual contents.

D. *Family influence*

[20] There was evidence before the Board that the Cekaj family was indeed influential. The Board did not cite this evidence when it concluded that Mr Kapllaj had failed to present any evidence to support this aspect of his claim.

E. *State protection*

[21] Evidence before the Board showed that police are unable to protect persons who, like Mr Kapllaj, are targeted as part of a blood feud. Again, the Board should have considered this evidence before concluding that Mr Kapllaj had failed to rebut the presumption of state protection.

V. Conclusion and Disposition

[22] Looking at the evidence as a whole, I find that the Board's conclusion is not defensible based on the facts and the law. It was unreasonable. I must, therefore, allow this application for judicial review and order another panel of the Board to reconsider Mr Kapllaj's claim. Neither party proposed a question of general importance for me to certify, and none is stated.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is allowed.
2. The matter is referred back to the Board for a reconsideration before a different panel; and
3. No question of general importance is stated.

"James W. O'Reilly"

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Judge

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

**DOCKET:** IMM-1353-13

**STYLE OF CAUSE:** SOKOLKAPLLAJ v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 24, 2014

**JUDGMENT AND REASONS:** O'REILLY J.

**DATED:** JANUARY 8, 2015

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