

Federal Court



Cour fédérale

**Date: 20150623**

**Docket: IMM-932-14**

**Citation: 2015 FC 778**

**Ottawa, Ontario, June 23, 2015**

**PRESENT: The Honourable Mr. Justice Annis**

**BETWEEN:**

**MALBORA NIKA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Introduction

[1] This is an application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA or the Act] of a decision by the Refugee Protection Division [the Board] that the applicant is not a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the Act.

[2] The applicant is seeking to have the Board's decision quashed and the matter remitted back for re-determination by a differently constituted panel.

[3] For the reasons that follow, the application is dismissed.

## II. Background

[4] The applicant, a citizen of Albania, is seeking refugee protection. Her allegations are that she fears her former boyfriend, Besjan Ahmetin, on the basis of being forced into prostitution by him and fearing harm if returned to Albania.

[5] The applicant states that she met Besjan in 2005, when she was 17 years old. She agreed to be his girlfriend in 2006, at which point he started to be very controlling. He told her and her mother that he wanted to marry the applicant and that he was working in the port in Shengjin.

[6] In January 2007, she went to a bar with Besjan and he left her alone with his friend who "looked at [her] in a strange way" and touched her hair and legs, which she did not like. When she told Besjan about the incident, he called her a liar.

[7] In June 2007, Besjan took the applicant to his house in Shkoder. She thought she was going to meet his parents, but instead the same friend from the January 2007 incident was at the house. The friend made sexual advances toward the applicant and she resisted and tried to get away, but Besjan hit her and held her down while his friend raped her. She was kept there for a

few more days and subjected to further abuse. Besjan told her that he had recorded the rape on video and would post it on the Internet and tell her mother if she told anyone about what had happened. Afterward, Besjan told the applicant that what he had done was necessary because he owed his friend money. He told her it would never happen again and took her back home. She was in shock and pretended that it never happened.

[8] In August 2007, Besjan forced the applicant to have sex with another of his friends. She was too drunk to defend herself and Besjan later blamed the incident on her drinking, saying it was her fault.

[9] This pattern was said to have repeated itself five more times between 2007 and 2008 – Besjan would take her out of town and then he would force her to have sex with others. The first time it happened, she alleges that she was drugged so that she could not resist. Another time, she refused to drink anything so that she would not be drugged, but they used force and threats against her. Besjan told her that this was necessary to pay off his gambling debts and so that they could have a better life together. She described her state-of-mind at this time in her Personal Information Form:

Again, I could not accept that he was just using me and I forgave him. He did it again to me. Again I had to accept what he was saying because how could I face my mother and society and admit that I had been with so many men. ...After that I was scared and confused.

[Emphasis added.]

[10] In 2008, the applicant moved to Shkoder with Besjan after he promised that the abuse would stop. He told her that he had gotten a job and that she would get training as a nanny. Her mother was against the idea, but the applicant convinced her to let her go. She was afraid that Besjan would hurt her mother if she said anything about the abuse.

[11] Eventually, the abuse and forced prostitution started again in Shkoder and it was happening more often than in the past. At first, Besjan would still apologize and give explanations to the applicant, but he soon stopped giving excuses and would beat her if she refused. She stopped refusing and complied, fearing that he would hurt her and her mother and put the June 2007 video on the Internet. Sometimes he took her to other cities (Tirana, Durres, and Vlore) and sometimes the men were in Shkoder.

[12] Besjan told her that some of the men she was forced to have sex with were police officers in Shkoder and at least one of them wore his police uniform. She learned that Besjan was not acting alone – sometimes there were other girls brought by other men to the same places and there were people that Besjan had to pay. Some of those other girls told her that they had tried to complain to the police but that the police were corrupt and would do nothing.

[13] The applicant wanted to run away but was scared that Besjan would catch her. She asked her aunt in Canada and her mother to help her get a visa, but never told them about what was happening other than that her relationship was “not so great.” Besjan told her that with her qualifications, she could apply as a live-in caregiver. She applied twice in 2010, but was refused.

Besjan also helped her apply twice for a student visa from the United States, but this was also unsuccessful.

[14] In January 2011, Besjan introduced the applicant to a client who was a rich older man from Macedonia. He would come to Tirana every month for three to four days and would only photograph her. She eventually told this client about her situation and he said that he would help her. The client paid to take the applicant to Italy for a month and Besjan stayed nearby. While they were in Italy, the client gave the applicant a Finnish passport and a ticket to Canada. He promised to tell Besjan that she had run away and that he did not know anything.

[15] She arrived in Canada on July 3, 2011 and then told her aunt and mother everything that happened with Besjan.

[16] Since that time, her mother has told the applicant that Besjan had come to her, with other men, looking for the applicant. Her mother told Besjan that she knew nothing and Besjan said he would punish the applicant for betraying him. He also threatened to hurt her mother if she helped the applicant. Besjan also questioned the applicant's friends about her whereabouts.

[17] The applicant's mother reported Besjan to the police, but the police said they could not do anything because she had no proof that anyone forced the applicant to do anything and that many girls agree to do such things. The police also dismissed the threats because "nothing bad had happened yet" and her mother had not been harmed. They told her mother that since the applicant is away from Besjan, the problem is resolved.

[18] The applicant is afraid that, if she returns to Albania, Besjan will beat, kill her or force her into prostitution again.

### III. Impugned Decision

[19] The RPD refused the applicant's claim on January 28, 2014, with the determinative issue being credibility. As will be discussed below, the RPD made a number of credibility findings against the applicant regarding many aspects of her narrative, including:

- When she had obtained her passport;
- The circumstances of her attempts to go to the United States, her motivations for doing so, and the college she planned to attend;
- An apparent misrepresentation regarding her work experience in a failed Canadian visa application;
- Whether Besjan even exists, based on the fact that the photographs she submitted "could be of any male, and not necessarily Besjan" and that there was some ambiguity about Besjan's age between the PIF narrative and her testimony;
- Inconsistencies between the PIF and her testimony regarding the alleged incidents between 2007-2008 and her difficulty in testifying regarding these incidents;

- There being no plausible reason for Besjan to help her get training as a nanny;
- Besjan's treatment of the applicant's mother after she left for Canada; and
- Inconsistencies about whether she approached police and whether police officers were her clients, the RPD noting that "if she was interviewed several times [at the point of entry], then [she] would have had a chance to clarify exactly what she meant;"

[20] The RPD also found that her failure to claim asylum while she was in Italy showed a lack of subjective fear and negatively affected her credibility, not accepting her explanation that Italian authorities consider the girls prostitutes as soon as they say they are Albanian.

#### IV. Standard of Review

[21] The standard of review for the RPD's determinations of credibility is reasonableness (*Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315, 42 ACWS (3d) 886 at para 4 (FCA); *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47-48, [2009] 1 SCR 190).

#### V. Analysis

[22] This is a matter of pure credibility, inasmuch as the applicant contests only the Board's factual conclusion that she was not credible.

[23] Despite one or two credibility findings which I agree could be considered to be picayune, overall I am satisfied that the evidence is sufficient to support the Board's conclusions on the applicant's credibility shortcomings.

[24] There were inconsistencies in her testimony regarding the beach party in August 2007 in the coastal town of Shengjin. She states that she "had to drink and they also drugged me" and that she had sex with a person that she could not remember because she was "completely passed out and drunk." However, she claimed Besjan blamed her for being too drunk and that she felt guilty, "like I had only myself to blame and that it was my fault for what happened." At a later point in her testimony she summarized this incident as "the one in Shengjin, when I was drunk and had sex with someone", which is consistent with her attributing fault to herself for the incident.

[25] Thereafter the applicant testified that no other incidents occurred until she moved to Shkoder to live with Besjan. She states that for the most part he was being very good to her because he wanted to convince her to move with him in Shkoder. She was also unable to state, even approximately, when she moved to Shkoder.

[26] Nevertheless, in her PIF statement, she states that Shengjin was the beginning and that similar events happened five more times between 2007 and 2008, which the Member questioned. She states the first time it happened they drugged something she was drinking. Besjan made excuses, she forgave him, but it happened again. She felt shame and felt that she could not face her mother or society in general since she had been with so many different men. Another time



she refused to drink anything, but they used “force and threats” against her and she felt scared and confused. This testimony is inconsistent with the testimony that nothing happened during this period and that Besjan was being nice to her to convince her to move in with him.

[27] When questioned by the Board Member as to the apparent inconsistency with her statement in the PIF that it happened five more times between 2007 and 2008, the applicant stated that the five times was about the first incident that she had talked about, apparently in reference to the rape incident when visiting Shkoder. This was not mentioned in her previous testimony or statement, the five more times being brought up only with respect to what happened after the Shengjin incident in the PIF.

[28] After the Board Member quite reasonably remarked that this answer did not make sense to her, the applicant stated:

After the story in Shengjin after what happened there I also had it happen five more times, but during this other five more times I was drugged and I do not remember the person and I don't remember the place or the situation. I don't remember much.

[29] When questioned again by the member about her statement in the PIF that one time she had refused to drink anything and that they used force and threats, the applicant stated that she could not remember during which time she had refused to drink, but that even if she refused they would not hear any of it and they forced her adding this time that “they even beat me to drink”.

[30] There were other inconsistencies between her testimony and her PIF statement regarding the following:

- The confusion on the age difference of Besjan, in her PIF statement referring to him being 10 years older and in her testimony being two years, when the impression appeared to be that she was influenced by an older person;
- Besjan threatening her mother that she would be in danger if she was helping the applicant not being found by him, when no mention of these threats to her mother were included in the mother's letter addressed to the Court, although the person subjected to the threats;
- the police not being willing to intervene because they were her clients, contrary to her statement to the border authorities that "they were behaving like they were my clients and not representatives of the government";
- the role of the aunt helping her to try and attend college in United States and in Canada, without introducing an affidavit from the aunt who lives in Toronto who could have verified these events, in addition to other statements made by the applicant to the aunt regarding Besjan's behaviour upon arrival in Canada.

[31] It is trite law that the Court owes considerable deference to the RPD Member, particularly in matters of credibility that are the domain of administrative tribunals, where in this matter the Member has the advantage of hearing and observing the applicant. Where evidence of credibility difficulties of the claimant on important issues arise, even acknowledging problems with the Member's assessments in other areas, the high threshold in administrative law are not

met that only permit the Court to interfere on the basis of findings made in a manner that was perverse, capricious or without regard to the material before the Tribunal.

As noted by Justice Gleason in *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at paragraph 43, “contradictions in the refugee claimant’s own evidence will usually afford the RPD a reasonable basis for finding the claimant to lack credibility, and, if this finding is reasonable, the rejection of the entire refugee claim will not be interfered with by the Court (citations omitted)”.

## VI. Conclusion

[32] In conclusion, there was sufficient evidence of a lack of credibility of the applicant to support the member’s decision. The application is dismissed. There are no questions requiring certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is dismissed and no questions are certified for appeal.

"Peter Annis"

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Judge

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

**DOCKET:** IMM-932-14

**STYLE OF CAUSE:** MALBORA NIK A v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

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