

Federal Court



Cour fédérale

**Date: 20160815**

**Docket: IMM-5345-15**

**Citation: 2016 FC 932**

**Montréal, Quebec, August 15, 2016**

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

**BETWEEN:**

**FATJON MARQESHI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Nature of the Matter

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (RPD), dated November 4, 2015, in which the RPD found that the applicant is neither a Convention refugee under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], nor a person in need of protection under section 97 of the IRPA.

[2] For the reasons that follow, I conclude that the application should be dismissed.

## II. Facts

[3] The applicant, Fatjon Marqeshi, is a 29-year-old Muslim man and a citizen of Albania. He alleges that in September 2011, he began a relationship with a Catholic woman, Malvina Ndreu, whose family had arranged a marriage for her to another man. When Ms. Ndreu's brother caught the couple together in March 2012, he allegedly threatened to kill the applicant.

[4] The applicant claims that, in April 2012, he was dragged from his car and beaten by a group of masked men. One of the men made a call, and shortly thereafter two police officers arrived. The officers encouraged the attackers, and then took the applicant in their car to the outskirts of town, where they beat him again. The applicant claims that they threatened to jail or kill him if he did not leave the area. The applicant was hospitalized, and later learned from a friend of Ms. Ndreu, Eriksela, that one of the men involved in the attack was Ms. Ndreu's cousin.

[5] The applicant alleges that his family went to the local police to complain about the incident, but that they were unhelpful. The family then allegedly went to the police headquarters in Tirana, who again were unhelpful and even threatened them. The applicant, with his father and uncle, later saw a lawyer who suggested that complaining to the police was futile and dangerous. The lawyer directed the applicant to the Prosecutor's office. The applicant allegedly attended at the Prosecutor's office and spoke to a clerk, but did not hear anything back.

[6] In June 2012, the applicant alleges that, while he was staying at his sister's home, the police broke into his family's home. One of the officers was Ms. Ndreu's brother. The police alleged that the applicant had kidnapped Ms. Ndreu, though she was in fact hiding from the family in a women's shelter. The police allegedly beat the applicant's cousin, and took him into custody overnight.

[7] The applicant moved to another town, and in the meantime his cousin allegedly stabbed another one of Ms. Ndreu's brothers. The police raided the cousin's home and that of the applicant's family, searching for the two men. Ms. Ndreu's family subsequently declared a blood feud against the applicant's family, vowing to kill for revenge.

[8] In August 2012, the applicant fled to Greece, and then traveled to Canada in October 2012.

### III. RPD Decision

[9] The RPD found that the applicant was neither a Convention refugee nor a person in need of protection.

#### A. *Credibility*

[10] The RPD first considered the applicant's testimony in relation to his Personal Information Form (PIF), finding that there were sufficient inconsistencies to undermine the applicant's credibility. For example, the applicant testified that he thought that one of the officers who beat

him in April 2012, was Ms. Ndreu's brother, and he later learned that one of the masked men was her cousin. In his PIF however, the applicant stated that Ms. Ndreu's cousin was one of the policemen. It was accordingly unclear whether the cousin was a masked man or one of the policemen. Moreover, the fact that one of the policemen present at this incident was Ms. Ndreu's brother was omitted from the PIF (the brother's alleged involvement was at the incident in June 2012). When asked to explain this inconsistency, the applicant stated that he may have forgotten.

[11] The applicant's testimony also differed from his PIF with respect to his and his family's attempts to complain to the police and to the Prosecutor. In his testimony, the applicant stated that the police in Tirana said they would follow up with the family, but they never did, and that speaking to the local police and the Tirana police were the only attempts made to get assistance from the authorities. When asked if the Tirana police offered to follow up with the family, or rather threatened them, as the applicant had stated in his PIF, he said that they had done both. When asked why he omitted the visit to the Prosecutor in his testimony, the applicant said that he had planned to speak about this but was not asked.

[12] The RPD found neither of these explanations to be credible. The applicant argued that these inconsistencies arose because he is unsophisticated with a low level of education, but the RPD did not accept that someone with a high school diploma and a decade of work experience could confuse such significant events. This is especially true in that the only effort to obtain state protection at which the applicant was personally present that is mentioned in his PIF was the visit to the Prosecutor. The RPD was unwilling to accept that the applicant would better recall incidents at which he was not present.

B. *State Protection*

[13] The RPD subsequently considered whether the applicant could have obtained state protection in Albania. The RPD cited jurisprudence establishing that a state is presumed capable of protecting its citizens unless there is a complete breakdown of the state apparatus. The burden was on the applicant to demonstrate that there was reliable evidence that the state was unable to protect him or that it was objectively reasonable to not seek state protection given his circumstances. While the applicant argued that he was unable to obtain state protection since it was the police whom he feared, the RPD found that state protection in Albania, including state agencies who investigate police misconduct, is adequate.

[14] The RPD was not satisfied that the applicant had taken all reasonable steps to obtain state protection. In particular, the RPD noted that the country has gone through many positive reforms on fighting corruption in recent years. Sources such as the US Department of State Report and *OSAC 2014 Crime and Safety Report* have found that Albania is making concerted efforts to investigate and punish abuse by officials, and in particular to improve state protection against blood feuds. While corruption and immunity remain problems in Albania, the RPD was not satisfied that the evidence on the limitations of state protection were sufficient to overcome the applicant's obligation to seek it. The RPD concluded that while protection in Albania is not overly robust, the evidence did not provide clear and convincing proof that the state would be unable to protect the applicant.

IV. Issues

[15] The issues in this case are:

- A. Whether the RPD's negative credibility findings were erroneous; and
- B. Whether the RPD's finding that the applicant could have availed himself of state protection was erroneous.

V. Standard of Review

[16] The two issues that this Court must dispose of relate to findings of fact (credibility) and to findings of mixed fact and law (state protection). They are reviewable on a standard of reasonableness: with regard to the issue of credibility, see *Carranza v Canada (Citizenship and Immigration)*, 2010 FC 914 at para 16; with respect to the issue of state protection, see *Ndoja v Canada (Citizenship and Immigration)*, 2013 FC 163 at para 14.

[17] Under the reasonableness standard, a reviewing court must show deference and cannot substitute its own view of a preferable outcome (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59). The Court must therefore limit its review to "the existence of justification, transparency and intelligibility within the decision-making process" and "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

VI. Analysis

A. *Credibility*

[18] I am not persuaded that any of the RPD's credibility findings were unreasonable.

[19] I accept the applicant's assertion that the RPD did not make a general finding that the applicant lacked credibility. Rather, the RPD makes specific negative credibility findings. I address each of the errors asserted by the applicant as regards credibility below.

[20] The applicant asserts that the RPD erred in stating that the applicant's testimony was that Ms. Ndreu's friend Eriksela told him that one of the policemen involved in the April 2012 incident was her cousin, whereas the PIF indicated that Ms. Ndreu was the source of this information. In fact, the applicant's testimony as to the source of this information was consistent with his PIF. The RPD did indeed err on this point. However, in my view this finding was not determinative. The RPD was less concerned with the inconsistency concerning the source of the information than the inconsistency in the applicant's testimony as to whether it was Ms. Ndreu's cousin who was involved in the April 2012 incident or her bother. Here, the RPD did not err. I agree with the RPD that the applicant's testimony made it unclear whether the cousin was a masked man or one of the policemen. A negative credibility finding on this point was open to the RPD.

[21] The applicant argues that the RPD demonstrated some confusion between the April 2012 incident and the June 2012 incident when, in discussion of the April 2012 incident, it referred to

“the two beatings” taking place so close together, but did not address the June 2012 incident until later in its decision. I see no confusion. The applicant’s allegation was clear that he was beaten twice during the April 2012 incident, once by the masked men and later by the policemen. In my view, these are the two beatings that are referred to by the RPD.

[22] The applicant also asserts that the RPD erred in drawing a conclusion of negative credibility with regard to the applicant’s failure to mention his alleged complaint to the Prosecutor. The applicant argues that he did not mention the visit to the Prosecutor because he understood the RPD’s questions to concern approaches to the police. Having read the record, I am satisfied that the RPD’s questions were not so limited and that the RPD was entitled to draw a negative conclusion from the applicant’s failure to mention the complaint to the Prosecutor.

[23] The applicant also challenges the RPD’s finding of an inconsistency between the PIF, which states that the police in Tirana threatened to arrest the applicant’s father and uncle, and the applicant’s testimony, which stated that the police in Tirana indicated that they would contact the applicant’s relatives by phone (though they never did). The applicant acknowledges that he made an error here, and may have confused the reaction of the Tirana police with that of the Prosecutor’s office. The applicant argues that this was a genuine mistake and not an indication that he was lying. That may be, but there was clearly an inconsistency in the applicant’s story here and, in my view, it was not unreasonable for the RPD to draw a negative conclusion therefrom.



B. *State Protection*

[24] Since some of the applicant's allegations were not tainted by any finding of negative credibility, it is necessary to address the issue of state protection.

[25] The applicant argues that the RPD erred in considering the adequacy of state protection in Albania. Specifically, the applicant argues that the RPD failed to recognize that state protection must be adequate at the operational level, and that the state's efforts at protection are relevant only insofar as they have an effect.

[26] I am satisfied that the RPD properly applied the requirement of adequacy in state protection. The applicant's insistence on focusing on the term "operational level" does not persuade me otherwise. The RPD correctly observed that "a refugee claimant is expected to approach authorities for assistance unless he or she offers clear and convincing proof of the state's inability to provide protection", and that "[w]ithout compelling reasons for a claimant's failure to pursue state protection, a refugee claim will not succeed." The RPD also observed that "[w]here it is alleged that state protection is inadequate, a claimant must demonstrate that there is reliable evidence that the state is unable to protect him or her or that it was objectively reasonable not to seek state protection in the circumstances."

[27] The applicant notes several references in the RPD's decision to efforts at state protection rather than results. However, these references do not amount to error unless the RPD lost sight of the requirement for adequate protection at an operational level. In my view, the RPD did not lose

sight of the test to be applied. In addition to its references to the state's efforts at protection, it also notes results. I note the following observations by the RPD:

- A. The US Department of State Report referring to officers refusing bribes more often after camera systems were installed in police cars;
- B. The *OSAC 2014 Crime & Safety Report* finding improvements in Albania's law enforcement and security infrastructure;
- C. The UK Home Office Report finding that police and criminal justice system representatives provide protection to families affected by blood feuds;
- D. The United Nations Human Rights Council's observations of various advances made in terms of blood feuds; and
- E. The Council of Europe's Commissioner for Human Rights statement that positive results were yielded from constitutional amendments limiting immunity for members of the judiciary.

[28] Moreover, paragraphs 34 to 36 of the RPD's decision (near the end of the discussion of state protection) are dedicated exclusively to the issues of the results of Albania's state protection efforts.

[29] The applicant argues that the RPD approached the evidence with a particular mindset in favour of finding that state protection in Albania is adequate. However, it is not my role to re-weigh the evidence, and I am not persuaded that the RPD's assessment of the evidence was unreasonable.

[30] In my view, the applicant failed to provide clear and convincing proof of Albania's inability to provide protection.

VII. Conclusion

[31] This application will be dismissed. The parties are agreed that there is no serious question of general importance to be certified.

**JUDGMENT**

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

1. The present application is dismissed.
2. No serious question of general importance is certified.

“George R. Locke”

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Judge

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

**DOCKET:** IMM-5345-15

**STYLE OF CAUSE:** FATJON MARQESHI v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

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