

Federal Court



Cour fédérale

Date: 20160825

Docket: IMM-459-16

Citation: 2016 FC 963

Ottawa, Ontario, August 25, 2016

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

PETER COLI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Coli is a citizen of Albania. He arrived in Canada in March 2012, and claimed protection on the basis of an ongoing blood feud between his family and another family in Albania.

[2] The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB] refused Mr. Coli's claim in January 2016. The RPD found that there was no nexus between the risks identified by Mr. Coli and the identified grounds set out in section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The RPD concluded, on a balance of probabilities, that the blood feud Mr. Coli alleged was a fabrication in all respects. In reaching this conclusion the RPD recognized that a differently constituted RPD panel had, in a decision rendered in January 2013, considered similar allegations based on similar documentary evidence put forward by Mr. Coli's brother. The RPD rejected Mr. Coli's claim.

[3] Mr. Coli now asks that the Court set aside the decision of the RPD and return the matter for re-determination by a differently constituted panel. He argues that the findings were unreasonable. Mr. Coli submits the RPD erred in relying on the National Documentation Package [NDP] to conclude certain statements and documentation supporting the claim were fraudulent. He further argues that the refusal of his claim, when his brother's claim had been successful, also renders the decision unreasonable. The sole issue I need to address is whether the RPD's findings are reasonable.

[4] The reasonableness standard of review applies to the RPD's determinations on nexus and credibility (*Jia v Canada (Minister of Citizenship and Immigration)*, 2014 FC 422 at paras 15-16).

[5] I am not persuaded by Mr. Coli's submissions and dismiss his application for the reasons that follow.

II. RPD Decision

[6] The RPD set out Mr. Coli's allegations and identified credibility as the determinative issue. While the RPD acknowledges that the risks alleged by Mr. Coli are linked to family membership, the RPD concluded that the alleged dispute concerns property and related reciprocal attacks and that there is no nexus between the risks alleged and the grounds set out at section 96 of the IRPA. On this basis, the RPD assessed Mr. Coli's claim under subsection 97(1) of the IRPA. Mr. Coli does not challenge this conclusion.

[7] The RPD recognizes that there is a presumption of truth when considering the sworn allegations of a claimant but notes serious credibility issues concerning central elements of Mr. Coli's narrative. The RPD notes that the inconsistencies and contradictions were so great as to undermine Mr. Coli's credibility. The credibility concerns in turn resulted in the RPD concluding that Mr. Coli's blood feud narrative was a fabrication in all respects. The RPD rejects the claim on the basis of insufficient credible evidence.

[8] In rejecting the claim the RPD specifically addresses the success of Mr. Coli's brother's claim before a different panel [Previous Panel]. The RPD notes that in the hearing of the brother's claim the Previous Panel accepted, on a balance of probabilities, the existence of the alleged blood feud and supporting documentation that was similar or identical to the documentation adduced by Mr. Coli. However, the RPD concluded that it was not bound by the Previous Panel's conclusions.

[9] The RPD concluded that it had “considerable grounds to find to the contrary, given the claimant’s lack of consistency and thus credibility in regard to the two central aspects of his claim”. The RPD also relied on recent evidence in the NDP relating to the widespread availability of false documents in relation to blood feuds in Albania and inconsistencies between Mr. Coli’s narrative and the content of supporting documents to impugn the supporting documentation.

III. Analysis

A. *Were the RPD’s findings and ultimate determination reasonable?*

[10] Mr. Coli does not dispute the credibility findings based on the inconsistencies in his narrative. Rather he argues those credibility findings should not have been determinative of his claim in light of the documentary evidence before the RPD, evidence the RPD unreasonably concluded was not credible.

[11] Mr. Coli relies on the decision of Justice Henry Brown in *Tenzin Losel et al v Canada (Minister of Citizenship and Immigration)*, IMM-7989-14 [*Losel*] to argue that the RPD was required to consider and weigh the findings of the Previous Panel before it could reasonably conclude that documentation relied on by Mr. Coli was not credible. He further submits that the RPD erred in concluding that the statement of a priest who attempted to protect Mr. Coli and reconcile the two families involved in the blood feud was fraudulent. In addition, relying on the decision of Justice Donald Rennie in *Kabongo v Canada (Minister of Citizenship and Immigration)*, 2012 FC 313 [*Kobongo*], Mr. Coli submits that it was unreasonable to dismiss a

certificate from the police corroborating his claim of a blood feud on the basis of supposedly widespread availability of fraudulent documents. I am not persuaded.

[12] Mr. Coli acknowledges that the RPD was not bound by the findings of the previous panel. (*Uygur v Canada (Minister of Citizenship and Immigration)*, 2013 FC 752 [*Uygur*]). As noted by Justice Catherine Kane in *Uygur* at paragraph 28: "...it is settled law that refugee claims are to be considered on their own merits. The fact that one applicant is granted refugee status based on a similar experience is not binding on the Board as the Board must assess each claim individually, and previous decisions, even regarding family members, may have been wrongly decided."

[13] It is this well-settled principle that the RPD recognized and applied in this case. The *Losel* decision that Mr. Coli relies upon recognizes this at page 6 where Justice Brown states: "Separate risk assessments under s. 96 and s. 97 are obviously required as a general rule because risk is personal to the claimant and includes both objective and subjective considerations which may differ between claimants."

[14] In *Losel* the issue was the claimant's nationality, an issue that had been previously determined in relation to the claimant's sibling in a prior hearing. In this regard Justice Brown states at pages 6 and 7: "However, when it comes to determining the nationality of two apparently identically-situated siblings to whom the same law and facts apply, it is not reasonable for the RPD to reach opposite outcomes ... In my view, an RPD must follow the decision made by a previous panel concerning the nationality of an identically-situated sibling

unless the second RPD differentiates the two in clear and compelling reasons, which it did not do". This is not the case here. In this case the RPD was conducting an assessment of risk based on Mr. Coli's narrative, a narrative that was to be considered on its own merits.

[15] Furthermore, in considering the claim on its merits the RPD did not ignore the previous panel's conclusions in his brother's case. However, unlike in the brother's case the RPD found Mr. Coli's evidence was simply not credible due to significant inconsistencies in his testimony including in relation to incidents he alleged he personally experienced. In addition the RPD had before it, and relied upon, documentation in the NDP that had been generated after the brother's claim had been determined. This evidence described investigations by various sources into issues of falsified blood feud documents in Albania. While some of the investigations reported in this document preceded the brother's claim, other investigations and reports post-dated the brother's claim. It was reasonably open to the RPD to rely on the updated information as a factor in concluding Mr. Coli's claim was a fabrication.

[16] Similarly, it was reasonably open to the RPD to discount church and police documents certifying the existence of a blood feud and indicating that the church had been involved in attempts to mediate the feud on the basis that the information was not consistent with Mr. Coli's testimony in material respects. Unlike *Kabongo*, where the RPD gave no weight to supporting documents without considering the corroborative nature of those documents after finding the claimant was not credible, here the RPD did consider Mr. Coli's supporting documents. However, the RPD determined the inconsistencies between Mr. Coli's testimony and the supporting documents coupled with the NDP evidence relating to the wide spread availability of

fraudulent documentation impugned these documents. This conclusion was reasonably available to the RDP.

IV. Conclusion

[17] The RPD decision falls within the range of possible, acceptable outcomes defensible in respect of the facts and law (*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, 2008 SCC 9 at para 47). I agree with the RPD's conclusions that in this case there were "considerable grounds" to depart from the previous panel's determination.

[18] Neither party has proposed a question for certification and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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