Federal Court  Cour fédérale

Date: 20181130

Docket: IMM-1052-18

Citation: 2018 FC 1206

Ottawa, Ontario, November 30, 2018

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

MILAZIM HAFUZI

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 filed pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [IRPA] against a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada [Board], dated February 13, 2018. The RAD upheld the decision of the Refugee Protection Division [RPD] determining that the Applicant was neither a Convention Refugee nor a person in need of

protection within the meaning of sections 96 and 97 of the IRPA, pursuant to section 111 of the IRPA.

II. Background

[2] The Applicant, aged 39, is a citizen of Albania from the village of Farke e Vogel in Tirana County. He is married and has two children. The Applicant is at risk of persecution because his family is involved in a blood feud with the Qep family over a land dispute since 1991.The Applicant alleges that his father contacted village elders in an attempt to resolve the ongoing dispute through mediation. The Applicant's father also offered financial compensation (which the Qep family accepted) in order to avoid land dispute.

[3] The situation was clearly not resolved as the Qep family continued to threaten the safety of members of the Hafuzi family, extorting them for additional funds. In 1994, the Applicant departed from Albania at age 15 to escape the family threats and lived in Greece until 2014. In the spring of 2014, the Applicant returned to Albania, after his father agreed to pay additional funds to the Qep family to further his attempts at reconciliation with village elders, on condition that the family ceases its pursuit at obtaining the Hafuzi family's property.

[4] On July 20, 2014, however, the Applicant alleges that four brothers from the Qep family entered the Hafuzi residence and attacked the Applicant's father. The police was called because shots were allegedly fired by the Applicant's uncle wounding one member of the Qep family.

[5] Following the July 2014 incident, the Applicant was forced to leave his family, as well as his wife and two children in Albania to seek protection in Canada in February 2015. The Applicant's refugee claim was first heard by the RPD on May 7, 2015. The RPD had rejected the claim due to credibility issues. The RAD allowed an appeal of that decision on November 15, 2015, and that matter was brought before a differently constituted panel of the RPD on May 5, 2016.

The Applicant further alleges that his father was assaulted a second time by members of the Qep family in November 2015. The Applicant's father was sent to hospital and questioned by the Albanian police following the report of the incident by the hospital staff.

[6] On May 17, 2016, the RPD rejected the Applicant's claim. The Panel accepted that the Applicant's family is involved in a blood feud, however, found that the Applicant did not exhaust all reasonable efforts to obtain state protection, such as filing a complaint to the ombudsman, the Service for Internal Affairs and Complaints, or the special unit for preventing and combating blood feuds.

[7] Following the RPD's rejection, there was a shooting at the Applicant's family residence in September 2017. The Applicant's wife reported the incident to the police and following the investigation there was suspicion from police that the incident was initiated by the Qep family.

[8] The Applicant appealed the RPD's decision solely on the issue of state protection. In support of his appeal, the Applicant asked for an oral hearing and submitted new documents as

evidence to refute "the RPD's finding that adequate state protection is available from the police and the Prosecutor's Office".

1. Affidavit of the Appellant, sworn on July 4, 2016;
2. Letter from the Albanian State Police, dated June 17, 2016;
3. Letter from the Prosecutor's Office of Tirana, dated June 17, 2016; and
4. Undated letter from the Appellant's father;
5. Undated Letter from the Appellant's father;
6. Letter from the Police Directorate of Tirana (Commissariat No. 1), dated November 10, 2017.

III. The RAD Decision

[9] On February 13, 2018, the RAD confirmed the RPD's decision and dismissed the appeal, finding that the Applicant failed to rebut the presumption of state protection based on the most recent documentation of Albania's responses to blood feuds.

[10] Pursuant to subsection 110(4) of the IRPA, the RAD found that the affidavit sworn by the Applicant on July 4, 2016, and the letter from the Albanian State Police dated June 17, 2016, were inadmissible. The remaining new documents were admitted as new evidence.

A. *Affidavit of the Applicant, sworn on July 4, 2016*

[11] The RAD considered the Applicant's affidavit and found that the Applicant submitted evidence that was already "reasonably available" before the RPD. The Applicant omitted to present submissions in support of his affidavit to demonstrate how the new evidence met the

requirements of subsection 110(4) of the IRPA. By failing to do so, the RAD concluded that the affidavit was inadmissible as new evidence.

B. *Letter from the Albanian State Police dated June 17, 2016*

[12] The RAD noted that the RPD had previously questioned the Applicant about communications with the Albanian police and counsel for the Applicant therefore had the opportunity to provide such evidence and present the panel with submissions on the matter. The RAD determined that the Applicant failed to demonstrate that the content of the letter was "unavailable to him before the RPD's decision, or that it was unreasonable to expect him to have presented this evidence to the RPD". The letter from the Albanian State Police was therefore denied as new evidence.

C. *Request for an oral hearing*

[13] After considering all the new evidence, the RAD concluded that the request for an oral hearing was denied because it did "not find that the new evidence would justify allowing or rejecting the refugee claim when weighed against the objective evidence in the most recent NDP [National Documentation Package]."

[14] Following the September 2017 incident, the Applicant's wife contacted the Albanian police. The police arrested the Applicant's uncle on the premises. The RAD found that this evidence demonstrated that state protection in Albania was operationally effective. The RAD further noted that it is not clear from the evidence why the police did not arrest a member of the

Qep family, or why the investigation was suspended. Consequently, the RAD confirmed the RPD's finding that "the police are presumed to have investigated both sides of the conflict and made decisions accordingly". Contrary to the Applicant's submissions, the RAD concluded that the police officer's failure to arrest a member of the Qep family is insufficient to rebut the presumption of state protection.

[15] The RAD next considered the new evidence from the police Chief of Commissariat No. 1 in Tirana which reads, part:

> The police are limited in action when it comes to blood feuds, because of the sensitivity of these conflicts, except to probe the occurrence and ascertain the perpetrator. Unfortunately, it is impossible to secure the protection of all citizens who are involved in these conflicts. The phenomenon of blood feuds has become the main motive for murders in Albania after the collapse the communist regime and requires broad engagement of all state and social structures in order to eradicate this disorder that has deeply caught Albania.

[16] The RAD found that "local failures to provide effective policing do not amount to a lack of state protection unless they are part of a pattern of the state's inability or refusal to provide protection". Therefore, the RAD was of the view that this letter could not be relied upon to find that state protection is unavailable in Albania.

[17] In reviewing the country conditions evidence on Albania's response to blood feuds, the RAD confirmed the RPD's assessment of the evidence on record. It also found that the Applicant's references to the country conditions were outdated. Based on the most recent NDP about blood feuds, the RAD concluded that Albania is providing adequate state protection in blood feud cases.

[18] The reports also show that Albania has included "harsher penalties for individuals who commit crimes related to blood feuds" in their *Criminal Code* since 2013 and that the Albanian police now know how to intervene in blood feuds (through means of identification, monitoring, prevention prosecution and arrest). The RAD found that the objective documentary evidence confirms that the police are providing adequate protection by "visiting confined families" or "prosecuting and arresting perpetrators".

[19] Finally, while the RAD did not dispute the Applicant's position, supported by case law, that "a claimant need not exhaust all avenues of state protection", it still found that the Applicant did not exhaust all reasonable steps to obtain protection from police stations, or the Prosecutor's Office, before seeking refugee protection in Canada. The RAD was of the view that the Applicant could have filed his blood feud complaint at other police stations.

> For the Tirana Directorate, there are at least 6-7 Commissariats. The Appellant only sought protection from the local police station in Tirana at Commissariat No.1. If the Appellant's family was unhappy with the response of Commissariat No. 1, they had other police stations that they could have accessed in the vicinity, including the General Directorate.

IV. Issues

[20] In his written submissions, the Applicant raises a number of issues:

1. Did the RAD err by not admitting evidence provided by the Applicant in support of his appeal?
2. Did the RAD Member err in her analysis of the Police's response to the blood feud?
3. Did the RAD Member err in her analysis of new evidence demonstrating that the police cannot offer operationally effective protection?

4. Did the RAD Member err by failing to assess the objective evidence in conjunction with the Applicant's personal circumstances?

5. Did the RAD Member err in requiring the Applicant to seek assistance from other police stations?

[21] After carefully reviewing both parties' submissions, the Court finds that the present matter raises two issues which can be summarized as follows:

1. Did the RAD err by not admitting evidence provided by the Applicant in support of his appeal?

2. Was the RAD's decision on state protection reasonable?

[22] Both parties agree on the applicable standard of review. The Court is also of the view that the RAD's assessment of state protection and determinations regarding the admissibility of new evidence raise questions of mixed fact and law that are to be reviewed under the standard of reasonableness (See, *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at para 74 [*Singh FCA*]; *Hinzman v Canada (Citizenship and Immigration)*, 2007 FCA 171 at para 38; *Canada (Citizenship and Immigration) v Ali*, 2016 FC 709 at para 29 [*Ali*]; *Csoka v Canada (Citizenship and Immigration)*, 2016 FC 1220 at para 9 [*Csoka*]).

V. Relevant Provisions

[23] Section 96 of the IRPA states:

Convention refugee	**Définition de réfugié**
96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race,	**96** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée

religion, nationality, membership in a particular social group or political opinion,	du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	**a)** soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	**b)** soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

[24] Subsection 97(1) of the IRPA states:

Person in need of protection	**Personne à protéger**
97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally	**97 (1)** A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :
(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	**a)** soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	**b)** soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,	**(i)** elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays, (ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,	**(ii)** elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	**(iii)** la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	**(iv)** la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

[25] Subsection 110(4) of the IRPA states:

Evidence that may be presented	**Éléments de preuve admissibles**
(4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the	(4) Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment

rejection. du rejet.

VI. Analysis

[26] As a preliminary issue, the style of cause is amended to reflect the Respondent as the Minister of Citizenship and Immigration.

[27] For the following reasons, the application for judicial review is dismissed.

A. *Did the RAD err by not admitting evidence provided by the Applicant in support of his appeal?*

[28] The Court finds that the RAD's assessment of the admission of new evidence is reasonable.

[29] The Applicant submits that the RAD erred in determining that it had no discretion to admit new evidence (*Singh FCA* at para 64). As noted by the Respondent in his submissions, the Court finds that the RAD clearly mentioned in its decision that "ss. 110(4) must be interpreted strictly, and the RAD has no discretion to admit new evidence unless it falls under one of the three statutory categories" [Emphasis added by the Court]. The Federal Court of Appeal determined that when it comes to admitting new evidence, there are explicit conditions set out in subsection 110(4) of the IRPA that have to be met and that "leave no room for discretion on the part of the RAD" (*Singh FCA* at paras 34-35).

[30] The RAD found that two documents out of six did not meet the statutory criteria. Firstly, the RAD found that the Applicant's Affidavit was reasonably available at the time of the RPD rejection; therefore, it was inadmissible as new evidence. Secondly, the RAD reviewed the Letter from the Albanian State Police dated June 17, 2016, and considered the very poor explanation provided by the Applicant. It was the RAD's view that the Applicant failed to justify that "the information in the letter was unavailable to him before the RPD's rejection, or that it was unreasonable to expect him to have presented this evidence to the RPD". Consequently, the RAD refused to admit the letter as new evidence. It is not the role of the Court to make a determination on the lack of arguments presented by the Applicant regarding the availability of the new evidence.

[31] The Court agrees with the Respondent's position. "The role of the Court is not to re-weigh the evidence or re-determine whether the new evidence should have been accepted, but to determine whether the RAD's findings are reasonable" (*Ali* at para 48).

B. *Was the RAD's decision on state protection reasonable?*

[32] As determined by the RAD, the onus is on the Applicant to rebut the presumption of adequate state protection with clear and convincing evidence that satisfies the trier of fact, on a balance of probabilities (*MCI v Flores Carrillo*, 2008 FCA 94 at para 30).

[33] The Court notes that the RAD carefully reviewed the RPD's findings on state protection. The RAD also carefully reviewed the applicable country condition evidence on Albania's response to blood feuds.

[34] The Court does not accept the Applicant's submission that the RAD erred by failing to assess the objective evidence in conjunction with his personal circumstances. The Court finds that the Applicant had never approached authorities for protection personally. For instance, the second incident during November 2015 was reported by the hospital staff and the third incident during September 2017 was reported by the Applicant's wife.

[35] The Court finds that neither the RAD nor the RPD were selective in their assessment of documentary evidence. The RAD was well aware of the limitation of state protection in Albania and reasonably recognized some of the shortcomings in the statement below:

> As I previously stated, state protection is not perfect in Albania, and there are some shortcomings, but I find on a balance of probabilities, that state protection is adequate. There is a functioning democracy, a legal and institutional framework to address blood feuds, and a police force that has proven to adequately respond to complaints of blood feuds by prosecuting and making arrests. [Emphasis added by the Court].

[36] "The weighing of evidence is at the heart of the RAD's expertise" (*Csoka* at para 12). The RAD, a specialized and knowledgeable tribunal, made an appropriate assessment of the objective evidence. The RAD evaluated the evidence before it, in its entirety and in depth.

[37] The Court concludes that "the RAD made an independent assessment of the evidence, as shown in the reasons, and that the finding on the availability of state protection was reasonable given the documentary evidence in the record" (*Kroj v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1071 at para 43). The RAD's assessment on state protection is reasonable. The Applicant can clearly understand in the reasons what the RAD relied upon to render its decision.

[38] For these reasons, the Court concludes that the RAD's decision is reasonable as it 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).

VII. Conclusion

[39] The Application for judicial review is dismissed. No question of general importance will be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed. There is no question of general of importance for certification. The style of cause is amended to reflect the Respondent as the Minister of Citizenship and Immigration.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Bjorn Harsanyi	FOR THE APPLICANT
Galina Bining	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Bjorn Harsanyi Barristers and Solicitors Stewart Sharma Harsanyi	FOR THE APPLICANT
Attorney General of Canada Calgary, Alberta	FOR THE RESPONDENT