Federal Court		Cour fédérale

Date: 20100331

Docket: IMM-5015-09

Citation: 2010 FC 350

Ottawa, Ontario, March 31, 2010

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

ARDIAN KRASNIQI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), dated September 24, 2009, by the Refugee Protection Division of the Immigration and Refugee Board (the Board), wherein the Board determined the applicant is not a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the Act.

Factual Background

[2] On May 30, 1997, the applicant, a citizen of Albania, was in a café in his village of Dragobi with his cousin Jakup Ismaili. Mr. Hamdi Metaliaj and two or three others entered the café. Mr. Metaliaj asked Mr. Ismaili to step outside for a discussion. Shortly after, the applicant heard gunshots outside the café and he then saw Mr. Metaliaj on the ground.

[3] The applicant then spoke to the chief of the village who told him to stay home until the situation was cleared up. Mr. Hamdi Metaliaj's family (the Hamdi family) told the chief of the village they would look for Mr. Ismaili but they promised that nothing would happen until they contacted the village chief again.

[4] On July 20, 1997, the police charged Mr. Ismaili with murder and an arrest warrant was issued against him. The applicant never saw Mr. Ismaili again.

[5] The applicant had no difficulties for more than four years after the murder of Mr. Metaliaj. On June 1, 2002, the village chief told the applicant that the Hamdi family would seek its vengeance. The applicant asked for help from the Organization for Reconciliation regarding vendettas. The chief of the organization, Mr. Hoti, told the applicant that the Hamdi family refused all negotiations.

[6] On March 4, 2005, the applicant went to Macedonia with the help of a smuggler who was unable to obtain false documentation allowing the applicant to come to Canada. The smuggler arranged for the applicant to safely return to his home in the village in Albania the following day.

[7] At 6 o'clock in the morning of October 18, 2006, someone shot at the applicant while he was outside on his property. The applicant at that point decided to leave the country.

[8] The applicant left Albania for Italy on October 25, 2007. He then arrived by car in France where he stayed for two days before taking a flight to Canada on October 28, 2007. The applicant requested refugee protection the following day.

[9] The applicant fears persecution based on his membership in a particular social group. The applicant's refugee claim is based on an alleged fear of persecution because of a "blood feud" after his cousin shot and killed Mr. Metaliaj.

[10] The applicant's refugee hearing took place on September 1, 2009.

Impugned Decision

[11] The determinative issues before the Board were nexus, credibility, state protection and internal flight alternative. The Board dismissed the applicant's claim for asylum for three reasons. First, the Board found the applicant not credible. Secondly, the Board also concluded the applicant did not rebut the presumption that Albania would have been able to protect him had he sought state

protection. Thirdly, the Board found the applicant could avail himself of an internal flight alternative.

[12] In *Asghar v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 768, 278 F.T.R. 302, the Court noted that it is established that the fear of reprisals motivated by vengeance and being the victim of a criminal act are not equivalent to a persecution ground under section 96 of the Act (see also *Rawji v. Canada (Minister of Employment and Immigration)*, (1994), 87 F.T.R. 166, 51 A.C.W.S. (3d) 1143; *Klinko v. Canada (Minister of Citizenship and Immigration)*, [2000] 3 F.C. 327, 251 N"R. 388). In *Asghar* at paragraph 24, the Court concluded that "victims of criminal acts therefore do not belong to a particular social group." Thus, the applicant's argument on this ground was rejected by the Board.

[13] The Board noted numerous contradictions and inconsistencies in the applicant's testimony and evidence. For example:

a. At the beginning of the hearing, the applicant confirmed that everything in his Personal Information Form (PIF) was exact, true and complete. However, when asked how old his cousin was, he changed his answer, saying he did not know if he was 50 or 60 and that he had not seen him since 1997;
b. In his narrative, the applicant said that Mr. Metaliaj came into the café with two other people. But at the hearing the applicant modified his response and said that three people came in at the same time.

c. When asked whether the village chief, Mr. Izat Selimaj, had spoken to the police regarding Mr. Metaliaj's murder, the applicant's first response was "probably yes" and his second answer was "I don't know if he went to the police". When asked to explain the contradiction, the applicant's explanation was "Afterward I don't know if he spoke to the police".

d. Asked why the incident of March 4, 2005, when the applicant went to Macedonia with the intention of leaving for Canada, including his return to Albania, was omitted in his PIF. The applicant responded "I didn't mention it because I went back to Albania". The Board did not accept this explanation for the omission regarding such an important event.

e. When asked why he would return to Albania from Macedonia rather than going to another country and ask for refugee status, the applicant answered he was scared of staying in Europe. The applicant testified that he trusted the security of this smuggler person rather than the police because his wife's father knew him. However, his return to Albania, where the situation was even worse, arises serious doubts regarding the applicant's subjective fear in returning back to the same house in the same village where he had to stay within his house for over four years.

[14] The Board then found that even if the applicant was credible, there is state protection available to him. The applicant never asked for protection from the Albanian police. The Board notes documentary evidence such as the UK Home Office Border and Immigration Agency Operational Guidance Notes at section 3.6.9 concludes that the Albanian government in general is

able and willing to offer effective protection for its citizens who are the victims of a blood feud, with the exception of certain individual cases which may exist where the level of protection is insufficient in practice. The level of protection should be assessed on a case-by-case basis. In the case at bar, even if the applicant was credible, the Board found he only approached a non-governmental organization, the National Committee for Reconciliation. He had never asked for protection from the authorities, namely the police.

[15] The Board rejected the probative value of various documentary evidence, such as Exhibit P-5, the hospital report for Mehmet Rama, the applicant's father-in-law; Exhibit P-6, the letter from the village elder of Valbone, Izat Selimaj; Exhibit P-7, the letter from the president of the municipality of Margegaj, Rexhe Buberi; Exhibit P-8, the letter from the president of the National Committee for Reconciliation, Gjin Marku, which concludes that: "L'État albanais ne peut pas assurer la sécurité des familles impliquées dans des conflits de vendetta." The Board gave little probative value to this sweeping conclusion.

[16] The Board stated a claimant from a democratic country bears a heavy burden when attempting to show that they should not have been required to exhaust all of the recourses available to them domestically before claiming refugee status (*Hinzman v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171, 362 N.R. 1). In this case, the applicant's efforts were simply with the village chief and through a non-governmental organization, but he never approached the police authorities of the country.

[17] When the Board asked the applicant why he did not file a complaint with the police authorities in his country or ask one of his family members, a female family member, to file a complaint on his behalf, the applicant answered that the police do not guarantee protection to victims of blood feuds.

[18] The Board notes that the adequacy of state protection cannot rest on the applicant's subjective fear (*Martinez v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1050, 141 A.C.W.S. (3d) 116) and a claimant cannot rebut the presumption of state protection in a functioning democracy by asserting only a subjective reluctance to engage the state (*Judge v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1089, 133 A.C.W.S. (3d) 157; *Santiago v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 247, 165 A.C.W.S. (3d) 325). According to the Board, the applicant did not rebut the presumption of state protection.

[19] The issue of a possible internal flight alternative (IFA), which is an integral part of the "Convention refugee" definition (*Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706, 140 N.R. 138 (F.C.A.)), was brought up during the hearing. Even if the applicant was credible and even if there was no state protection, the cities of Shkoder in the north, Korce in the east and Vlore in the southwest were mentioned as possible IFAs.

[20] The murder of Mr. Metaliaj by the applicant's cousin at a local event happened over 12 years ago. The Board does not believe that the persecutors would have the will and the means to

seek out and find the applicant throughout Albania, a country of 3.6 million people. Even when he returned from Macedonia in early March 2005, the applicant did not consider or try an IFA.

[21] The Board found the applicant did not discharge himself of the onus to show that there is no IFA and, in the particular circumstances of this case, it would not be unreasonable for the applicant to live in one of the cities mentioned as IFAs. The applicant would not encounter great physical danger or undergo undue hardship in travelling there or staying there and it would not jeopardize his life or safety (*Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2000] 2 F.C. 164, 266 N.R. 380). The applicant has worked as a carpenter and he could work as a carpenter in another city in Albania.

Issues

[22] This application for judicial review raises the following issues:

i. Did the Board err in finding the Applicant was not credible?

ii. Did the Board err in finding that state protection was available to the Applicant?

iii. Did the Board err in finding that a reasonable IFA was available to the Applicant?

Standard of Review

[23] This Court will only intervene in questions of credibility and assessment of evidence if the Board based its decision on an erroneous finding of fact, made in a perverse or capricious manner or if it made its decision without regard to the material before it (*Aguebor v. Canada (Minister of Employment and Immigration)*, (1993), 160 N.R. 315, 42 A.C.W.S. (3d) 886 (F.C.A.)). Before

Dunsmuir v. New Brunswick, 2008 SCC 9, [2008] 1 S.C.R. 190, the applicable standard of review was patent unreasonableness. Since that decision, the standard is reasonableness.

[24] The appropriate standard of review for state protection issues is reasonableness (*Chaves v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 193, 137 A.C.W.S. (3d) 392 at par. 9-11; *Gorria v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 284, 310 F.T.R. 150 at paragraph 14 and *Chagoya c. Canada (Ministre de la Citoyenneté et de l'Immigration)*, 2008 CF 721, [2008] A.C.F. no 908 (QL) at paragraph 3).

[25] The appropriate standard of review for IFA issues was patent unreasonableness (*Khan v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 44, 136 A.C.W.S. (3d) 912 and *Chorny v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 999, 238 F.T.R. 289). Following *Dunsmuir*, the Court must continue to show deference when determining an IFA and this decision is reviewed according to the new standard of reasonableness. Consequently, the Court will intervene only if the decision does not fall within the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir* at paragraph 47).

Analysis

i. Did the Board err in finding the Applicant was not credible?

[26] The applicant argues the Board narrowly reviewed the documentary evidence of state measures against blood feuds in order to justify its negative conclusions in this case.

[27] With respect to nexus and section 96 of the Act, the applicant submits the Board erroneously compares this case to *Ashgar*, which involved criminal threats against a Pakistani citizen from criminals opposed to witness testimony from the father. However, the applicant submits that in Albania, blood feuds have been a systematic, endemic problem that is part of the culture which dates back centuries. The applicant submits he is a victim of a socially acceptable act and that victims of blood feuds in Albania have been accepted as refugees in Canada for years. The applicant argues the Board was incorrect in determining that a victim of a blood feud would not fall under section 96 of the Act.

[28] Concerning the applicant's confusion about the ages of some of his family members, the applicant submits that birthdays are not celebrated in Albania and he later realized that he wrongly estimated his aunt's age. The applicant submits his inability to do math should not result in a lack of credibility.

[29] The Court finds it was open to the Board to find that the contradictions and omissions undermined the applicant's credibility in the case at bar.

[30] The Board is in the best position to assess the explanations provided by the applicant concerning these perceived contradictions and implausibilities. It is not up to the Court to substitute its judgment of the findings of fact drawn by the Board concerning the applicant's credibility (*Singh v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 181, 146 A.C.W.S. (3d) 325 at

par. 36; *Mavi v. Canada (Minister of Citizenship and Immigration)*, (2001), 104 A.C.W.S. (3d) 925, [2001] F.C.J. No. 1 (QL)).

[31] In this case, the Board's findings were not unreasonable given the multiple discrepancies in the applicant's testimony and evidence. The applicant was unable to provide adequate answers to several questions from the Board, including his cousin's age, the number of people accompanying Mr. Metaliaj at the café and whether the village chief had spoken to the police about Mr. Metaliaj's murder. The Board's finding can be considered rational and acceptable with regard to the evidence submitted (*Dunsmuir*, above at paragraph 47).

[32] The Board noted several important contradictions in the evidence adduced by the applicant which seriously undermined his credibility. For example, the Board observed that the applicant's trip to Macedonia was not mentioned in his PIF and the Board drew a negative inference with respect to the applicant's credibility based on this important omission. The respondent submits that the Board could reasonably draw this conclusion based on the applicant's failure to disclose incidents which lie at the heart of his refugee claim and which go to his credibility in his previous declarations (*Ndlovu v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 851, 124 A.C.W.S. (3d) 347; *Oloye v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 969, 108 A.C.W.S. (3d) 133).

[33] The applicant returned to Albania from Macedonia as he was afraid to remain in Europe because of its close proximity to Albania. The applicant did not feel safe in Europe and

documentary evidence produced at the hearing clearly confirms that blood feuds are carried out in other countries in Europe. The applicant felt that the only place he would be safe would be in his home. As confirmed by the documentary evidence, the blood feud, rules that are generally respected by all Albanians, specify that people in their home cannot be attacked.

[34] According to the respondent, the applicant was unable to give a reasonable explanation for his failure to make a claim for asylum in Macedonia. I agree with the respondent. This Court has held that the failure to claim refugee protection in countries, which are signatories of the *1951 Convention* or the *1967 Protocol Relating to the Status of Refugees*, undermines a claimant's alleged subjective fear and his overall credibility (*Prayogo v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1508, 143 A.C.W.S. (3d) 1087 at par. 26; *Lopez v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1318, 136 A.C.W.S. (3d) 894 at par. 5).

2. Did the Board err in finding that state protection was available to the Applicant?

[35] The applicant sought help from the National Organization for Reconciliation who attempted to resolve the situation but the Hamdi family refused all negotiations. Furthermore, although the Albanian government has made changes to its laws in order to punish blood feud activity, blood feud activity continues, including many families imprisoned in their homes for fear of blood feud reprisals against them (*Prifti v. Canada*, 2009 FC 868, 83 Imm. L.R. (3d) 266 at par. 10).

[36] First and foremost, the respondent notes that the applicant admitted that he never sought protection from the police. The only organization he allegedly approached was a non-governmental

organization which fights against blood feuds. Yet, “the more democratic the state’s institutions, the more the claimant should have done to exhaust all the courses of action open to him or her” (*Kadenko v. Canada (Minister of Citizenship and Immigration*), (1996), 206 N.R. 272, 68 A.C.W.S. (3d) 334 (F.C.A.) at par. 5).

[37] The respondent submits the issue of availability of state protection is a question of fact within the jurisdiction and expertise of the Board and, as such, is to be accorded significant deference (*Perjaku*). The respondent submits that the applicant’s argument is a mere attempt to have the evidence reassessed and reweighed by this Court, but this is not the role of the Court.

[38] The Supreme Court of Canada has held that, absent a situation of complete breakdown of state apparatus, it is generally presumed that a stable is able to protect its citizens (*Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 at par. 51). The level of protection that the state must provide is not that of perfect protection, but that of adequate protection (*Canada (Minister of Employment and Immigration) v. Villafranca*, (1992), 150 N.R. 232, 37 A.C.W.S. (3d) 1259; *Zalzali*, [1991] 3 F.C. 605, 126 N.R. 126 (F.C.A.); *Milev v. Canada (Minister of Citizenship and Immigration)*, (1996), 64 A.C.W.S. (3d) 659, [1996] F.C.J. No. 907 (QL)). The applicant’s burden of proof is directly proportionate to the level of democracy in the state in question (*Kadenko*).

[39] In this case, it was legitimately open to the Board to find, given the present context, that the applicant had not exhausted all avenues offered by the state. Furthermore, the Board could

reasonably consider as insufficient the applicant's explanation in his testimony that he did not go to the police because they do not assist in blood feuds.

[40] In *Kadenko*, the Federal Court of Appeal noted that it cannot be automatically determined that a democratic state is unable to protect one of its nationals because certain local police officers refused to intervene. In this case, the applicant did not diligently seek his country's protection before coming to Canada. Consequently, the applicant did not provide clear and convincing evidence to rebut the presumption that Albania was able to protect him.

3. Did the Board err in finding that a reasonable IFA was available to the Applicant?

[41] The applicant argues not only is it impossible to live within Albania if you are subject to being killed pursuant to a blood feud, but it is even dangerous to live in another country in Europe, as revenge killings can be carried out even as far away as England.

[42] The applicant argues that although the police and the government are attempting to reduce and eliminate the extent of blood feuds, this is a very old tradition which is continuously being carried out in Albania, particularly in small communities such as the applicant's village up in the mountains.

[43] According to the applicant, the Board did not respect the principles of natural justice and it erred in failing to show any comprehension of the actual situation in Albania.

[44] The test to be applied in determining whether there is an IFA is two-pronged: Is there another part of the country where there would not be a danger to the applicant's life? If yes, would it be objectively unreasonable or unduly harsh to expect the applicant to move to another less hostile part of the country before seeking refugee status abroad (*Rasaratnam*; *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589, 163 N.R. 232 (F.C.A.)). The second prong of the IFA is an objective one: Is it objectively reasonable to expect the applicant to move to a different part of the country?

[45] The Board identified cities and towns where the applicant could have availed himself of an internal flight alternative. The applicant challenges this conclusion by simply referring to specific cases where a victim of persecution was unable to hide. The Court finds that the examples provided by the applicant to be insufficient.

[46] Indeed, in *Rasaratnam*, the Federal Court of Appeal held that two criteria applied in establishing an IFA: 1. there is no serious risk of the claimant being persecuted in the part of the country where there is an internal flight alternative; and 2. the situation in the part of the country identified as an IFA must be such that it is not unreasonable for the claimant to seek refuge there, given all of the circumstances.

[47] In *Thirunavukkarasu*, the Court found there was a very high threshold for the unreasonableness test, citing *Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164, 266 N.R. 380 (F.C.A.) at paragraph 15:

> "…It requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions. The absence of relatives in a safe place, whether taken alone or in conjunction with other factors, can only amount to such condition if it meets that threshold, that is to say if it establishes that, as a result, a claimant's life or safety would be jeopardized…"

[48] The Board's decision was based on the applicant's testimony as well as on the documentary evidence in the record. The Board considered the applicant's situation and the reasonable possibility that he could relocate to cities such as Shkoder, Korce and Vlore. The applicant did not meet his burden of demonstrating that the Board had made a reviewable error. The Board's decision is thus reasonable. The outcome falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and in law *(Dunsmuir*; *Khosa*). The application for judicial review is therefore dismissed.

[49] This application does not give rise to any serious question of general importance.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed. No question is certified.

"Richard Boivin"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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