

Federal Court



Cour fédérale

Date: 20100514

Docket: IMM-4020-09

Citation: 2010 FC 533

Ottawa, Ontario, May 14, 2010

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**DRITAN PRIFTI
ELONA PRIFTI
FRANCESKO PRIFTI
JASON PRIFTI**

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] The Applicants seek judicial review of a decision by a Pre-Removal Risk Assessment (PRRA) Officer's decision which held that they had not rebutted the credibility findings by the Immigration and Refugee Board (Board) and that state protection was available to them. The Applicants feared persecution due to a blood feud in Albania.

II. BACKGROUND

[2] The Applicants are a husband, wife and two children. The adults are citizens of Albania whereas the children are citizens of the U.S. The adults do not have status in the U.S. and the PRRA was based upon an assumed return to Albania.

[3] Elona Prifti had been promised in marriage by her parents to Judmir Ndreu. However, Elona married Dritan in a civil marriage in 2000.

[4] The jilted prospective groom, Ndreu, was extremely upset and threatened Elona's family promising to kill them unless they sent her to marry him. The Applicants claim that in 2000 Albania was not a stable country and police protection was not available.

[5] In April 2001, Elona was at home alone when Ndreu broke into the house and raped her. This was reported to the police who then arrested Ndreu. Shortly thereafter Ndreu was released and no charges were laid.

[6] Elona claimed that although she had evidence from a local hospital concerning her rape, she did not give the evidence to the police because she did not trust them.

[7] It was the Applicants' contention that Elona was raped to make her less desirable to Dritan. The Ndreu family is from northern Albania where the vendetta code of the "Code of Lek Dukagjini" is followed.

[8] Dritan and later Elona went to the U.S. where their children were born. In 2006, not being eligible for permanent resident status, the family came to Canada.

[9] The Applicants applied for refugee status. The Board did not find the Applicants credible and rejected the contention that Elona's rape and refusal to marry Ndreu resulted in a blood feud. The Board also rejected Elona's claim that the police would take no action. As an alternative, the Board concluded that even if the Applicants were credible, there was state protection in Albania. Leave for judicial review was denied.

[10] In the PRRA application the Applicants submitted additional evidence including a letter from the National Committee of Reconciliation (Committee), an NGO established to deal with blood feuds. The Applicants had contacted the Committee to see if it could settle the blood feud with Ndreu's family. The Committee's letter outlined the Applicant's story, that Elona's family and the Committee had approached the Ndreu family without success.

[11] The Committee's letter goes on to state that the Applicants and their families are in danger in Albania and outlined the acute problem with blood feuds in that country.

[12] The PRRA Officer held that there was no nexus to a Convention ground and made other comments directed at s. 96 of the *Immigration and Refugee Protection Act*. The Officer then, having accepted that the Applicants were in fact the subject of a blood feud contrary to the Board's finding,

went on to hold that the presumption of state protection had not been rebutted. The Officer rejected the Committee's letter holding that there was no explanation of why it had not been submitted earlier.

[13] Justice Shore issued a stay of deportation. The learned Justice had concerns about the PRRA decision; however, his comments must be taken in the light of the test for an injunction.

III. ANALYSIS

[14] It is agreed that the standard of review for a PRRA decision generally is reasonableness. However, failure to conduct a proper analysis is an error of law subject to the correctness standard of review.

[15] While not put to the Court directly, there is a glaring inconsistency in the PRRA decision. The Officer rejected the Committee's letter, held that the Applicants had not rebutted the Board's credibility finding and yet the Officer accepted that the Applicants were subject to a blood feud.

[16] On that ground alone, the decision does not meet the "range of possible acceptable outcomes" described in *Dunsmuir v. New Brunswick*, 2008 SCC 9.

[17] The analysis of state protection is seriously flawed. In assessing risk, the decision maker must outline the risk against which the presumption of state protection is assessed. Having erred in or been inconsistent about risk, the state protection analysis is flawed.

[18] The Officer's rejection of the Committee's letter as "new evidence" ignores the ratio in *Raza v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 385. The letter was relevant because it was "capable of proving or disproving a fact that is relevant to the claim of protection". The letter was new evidence in that it was "capable of ... contradicting a finding of fact by the RPD (including a credibility finding)". Therefore, the rejection of the letter was an error of law. There was no analysis of the "new evidence" criteria.

[19] There are other errors in the decision, the above two being the most egregious.

IV. CONCLUSION

[20] Therefore, this judicial review will be granted, the PRRA decision quashed and the matter remitted for a new determination before a different officer.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is granted, the PRRA decision is quashed and the matter is to be remitted for a new determination before a different officer.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4020-09

STYLE OF CAUSE: DRITAN PRIFTI
ELONA PRIFTI
FRANCESKO PRIFTI
JASON PRIFTI

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: March 18, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** Phelan J.

DATED: May 14, 2010

APPEARANCES:

Mr. John Rokakis FOR THE APPLICANT

Ms. Adrienne Rice FOR THE RESPONDENT

SOLICITORS OF RECORD:

MR. JOHN ROKAKIS FOR THE APPLICANT
Barrister & Solicitor
Windsor, Ontario

MR. MYLES J. KIRVAN FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario