

Federal Court



Cour fédérale

Date: 20120214

Docket: IMM-2457-11

Citation: 2012 FC 211

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, February 14, 2012

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

SHPENDI SHAHINI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] Shpendi Shahini, a citizen of Albania, has lived a troubled life since his arrival in North America twelve years ago. In August 2000, with a false Slovenian passport, he went to Detroit, United States, with the intention of claiming refugee status on the ground that he was persecuted because of his political opinion. His cousin, Erjon Shahini, went there a few weeks before him. They both used false passports provided by an agent named Nikolin Marku, a fellow Albanian. Although Mr. Shahini and his cousin were supposed to give the false passports back to him once

they were on American soil, they decided to keep them. According to them, these documents were the best evidence of their dates of entry into the United States and would be of great use to them when they claimed asylum.

[2] In retaliation, Mr. Marku threatened them with death. On October 27, 2000, Erjon was murdered. According to the death certificate issued by the City of Detroit, Erjon was found dead inside a vehicle on Wesson Avenue after a shot was fired at 1:20 a.m., in Detroit, Michigan. It was a homicide.

[3] Fearing for his life, Mr. Shahini got rid of the false passport instead of giving it to Mr. Marku. Although he considered himself to be at risk, he remained in the United States, a place he felt was safer than Albania.

[4] Later he was refused refugee status in the United States. He appealed this decision but was unsuccessful. However, he continued to live in the country.

[5] In November 2007, one of the people involved in Erjon's murder, Artan Marku, had boasted in Albania that he had assisted in committing the murder. Then, Erjon's brother, Eli Shahini, killed him to get revenge. Consequently, a blood feud developed between the Shahini and Marku families that is not limited by national borders.

[6] Despite everything, Mr. Shahini believes himself to be relatively safe in Michigan, at least until two Albanians asked about him in April 2008, in a coffee shop frequented by Albanians. He then fled to Canada to file a refugee claim.

THE DECISION OF THE PRESIDING MEMBER OF THE RPD

[7] In his oral decision at the hearing, the presiding member of the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada, rejected Mr. Shahini's refugee claim for various reasons, all to the effect that he lacked credibility. He found that the fact that he claimed refugee status only in May 2001, when he arrived in the United States in August 2000, was a determinative point. He was also concerned with the reason that he got rid of his false passport.

[8] Mr. Shahini never made any statements to the American police about the threats he received. However, his cousin, who speaks English, made one for him and also obtained documents through access to information requests. The presiding member addressed the fact that Mr. Shahini did not file any documents from official American sources to clarify the circumstances surrounding the death of his cousin or any news clippings. The presiding member then referred to applicants who were able to provide this kind of evidence during a similar murder in 2003.

[9] Although Mr. Shahini filed several attestation letters from the Nationwide Reconciliation Committee of Albania, the presiding member expressed concerns as to their authenticity because of the possibility of purchasing these kinds of documents in Albania and the level of corruption in that country.

ISSUE

[10] In this case, there is only one issue. The question is whether the decision is reasonable. In my view, it is not and, therefore, I will allow the application for judicial review.

ANALYSIS

[11] In this case, no weight can be given to Mr. Shahini's delay in claiming refugee status in the United States. Although the presiding member does not believe his explanations that he had the right to file an asylum claim within one year of arriving in the United States and that he wanted to save money to hire a lawyer, the grounds of this asylum claim are completely different from those of his claim filed in Canada. When Mr. Shahini claimed asylum in the United States on the ground that he was subject to persecution because of his political opinion, he made no mention of the blood feud between the Shahini and Marku families, a blood feud that had not yet occurred.

[12] The presiding member is of the view that this crime should be solved and that it is not enough to produce an official report on the homicide, in which the murderers are not identified. How can we even be aware that a crime has actually been solved? As to the failure to produce news clippings, it is not a given that every murder in Detroit will appear in the headlines of every newspaper. Further, the City of Detroit is called "Murder City" for a good reason. The Nationwide

Reconciliation Committee sent various attestation letters about the conflict between the two families. The presiding member is not satisfied with the fact that some of them make no mention of Artan Marku's murder in 2007. In my view, this is immaterial; in fact, the information that the Committee has is only hearsay. What is fundamental is that the Committee did try to persuade the Marku family to end the blood feud and that it refused.

[13] There is no need to describe the history of blood feuds in Albania. These blood feuds are ancient, barbaric and are based on an unfortunate notion of honour and revenge. If the information found in the attestation letters are true, then it is clear that Mr. Shahini will be at risk should he return to Albania.

[14] The presiding member nevertheless found that these attestation letters were not authentic since it is possible to purchase them in Albania. However, there is evidence in the record that proves otherwise, given the security features these letters contain. The presiding member referred to the response to information request ALB103570.E found in the National Documentation Package on Albania, dated October 29, 2010. This document states the following about attestation letters:

Several sources indicate that it may be possible to purchase attestation letters about involvement in blood feuds in Albania (Research Associate 15 Sept. 2010; Professor 15 Sept. 2010; Honorary Research Fellow 22 Sept. 2010). The Honorary Research Fellow at Roehampton University stated that "endemic corruption" persists in Albania, making it impossible to rule out the possibility that such letters could be purchased (ibid.). The Professor at IPFW similarly noted that "almost anything can be bought or sold" in Albania, particularly documentation (15 Sept. 2010). He recalled hearing that the CNR has complained about the existence of false attestation letters (Professor 15 Sept. 2010). However, the Chairman of the CNR stated that it is "impossible" to buy an attestation letter from his organization because each is

signed by the Chairman and identified by a unique code and protocol number (CNR 13 Sept. 2010).

[Emphasis added]

[15] It is overly simplistic, and even superficial, to assume that the attestation letters are not authentic. Given that there is information in the National Documentation Package on Albania that appears to completely contradict his finding, the presiding member should have explained why he did not give probative value to these letters (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 157 FTR 35, [1998] FCA No 1425 (QL)). He could have also assuaged his doubts by submitting the letters for scientific analysis.

ORDER

FOR THE FOREGOING REASONS,

THE COURT ORDERS that

1. The application for judicial review of the decision by a member of the RPD of the IRB dated March 21, 2011, that the applicant is not a “Convention refugee” or a “person in need of protection” under sections 96 and 97 of the Act, is allowed.
2. The decision of March 21, 2011, is set aside and the matter referred back for redetermination before another RPD member.
3. There is no serious question of general importance to certify.

“Sean Harrington”

Judge

Certified true translation
Catherine Jones, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2457-11

STYLE OF CAUSE: SHAHINI v MCI

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: February 2, 2012

**REASONS FOR ORDER
AND ORDER:** HARRINGTON J.

DATED: February 14, 2012

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