Federal Court  Cour fédérale

Date: 20120215

Dockets: IMM-1726-10
IMM-2002-10

Citation: 2012 FC 215

Toronto, Ontario, February 15, 2012

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

Docket: IMM-1726-10

LUC GJOKAJ

Applicant

and

MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

Docket: IMM-2002-10

LUC GJOKAJ

Applicant

and

MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 26 (the Act) of a negative decision of Pre-Removal Risk Assessment Officer (Officer), dated February 10, 2010 (IMM-1726-10). The applicant also seeks judicial review of the decision dated April 12, 2010, of an Enforcement Officer (Enforcement Officer) (IMM-2002-10), not to defer the applicant's removal pending the outcome of the applicant's judicial review in IMM-1726-10. These matters were heard the same day in Toronto.

[2] For the reasons that follow, the applications shall be dismissed.

Background

[3] The applicant is a citizen of Albania. He fears, if returned, he would be at risk due to a family blood feud.

[4] He alleges that his cousin, Rrok Gjokaj, killed a man named Ndue Rakaj (Ndue) in 2001. As a result, the Rakaj family vowed to kill all the males in Gjokaj family. The applicant states that he was forced to live in hiding for seven years. During this time, multiple reconciliation committees tried to resolve the blood feud, to no avail.

[5] The applicant entered Canada using false documentation in October 2008; an exclusion order was issued against him, making him ineligible to file a refugee claim. He later filed a Pre-Removal Risk Assessment (PRRA) application. The applicant asserts that five of his cousins also fled Albania to Canada due to the blood feud, and all of them made refugee claims that were

accepted by the Refugee Protection Division of the Immigration and Refugee Board (Board). The Personal Information Form (PIF) for three of the applicant's cousins, and proof of the positive determinations of their claims, were included in the applicant's PRRA submissions.

Officer's Decision

[6] The Officer accepted the existence of a blood feud, but found insufficient evidence that the applicant himself would face more than a mere possibility of persecution. She noted that the applicant's cousins had been deemed Convention refugees, but found that these positive decisions in and of themselves were insufficient to grant the applicant protection. The Officer stated that, without written reasons for those positive decisions, it was impossible to know what evidence was considered by the Board in reaching its decision.

[7] The Officer noted the factors to be considered in assessing an allegation of risk due to a blood feud, including:

a. If the feud conforms to the classic principles of blood feuds;

b. The history of the feud, including number of people killed;

c. The past and likely future attitude of authorities to the feud;

d. The degree of commitment of the opposing family to continuing the feud;

e. The time elapsed since the last killing;

f. The person's position within the family as a potential target;

g. The prospect of eliminating the feud, including through a reconciliation organization.

[8] She found that the applicant had not provided details as to what happened to his cousin Rrok (the catalyst for the feud) and his family, or several other family members who would be targets in the feud and no evidence regarding any attempted attacks since the feud began in 2001.

[9] The Officer noted that the applicant provided one letter from a reconciliation organization called The Peace Missionaries Union of Albania (PMUA), but she accorded the letter little weight because it had few details regarding what had transpired in the past nine years. She wrote that there was little evidence of the functionality of the PMUA since its leader had been murdered, and it did not have an established office or a telephone number.

[10] The Officer also noted that the PMUA was only created in 2005, and there was no evidence of efforts for reconciliation between 2001 and 2005. She drew a negative inference from the fact that only one letter was provided, when supposedly multiple reconciliation organizations were involved.

[11] She further found that the applicant had not presented evidence of the police response to the feud and that it would be reasonable to expect some evidence of this kind, since Ndue was murdered, and one of the applicant's cousins alleged that his brother was murdered in his PIF.

[12] Finally, the Officer reviewed the documentary evidence, which stated that murders from blood feuds had reduced significantly in recent years in Albania.

Request to Defer Removal

[13] The applicant was served with a direction to report on April 7, 2010.He submitted a request to defer his removal on the grounds that he faced risk if returned to Albania and also that he had a pending application for leave and judicial review of his negative PRRA's decision.

[14] In the letter of refusal, the Enforcement Officer noted that Canada Border Services Agency (CBSA) has an obligation under section 48 of the Act to carry out removal orders as soon as reasonably practicable. The letter stated that he did not consider deferral to be appropriate in this case.

[15] The Enforcement Officer also noted that an application for leave and judicial review of a PRRA decision is not itself an impediment to removal. The Enforcement Officer quoted from Operational Enforcement Manual ENF 10, sections 11.1 and 11.2, that there are no statutory or regulatory stays of removal for litigating against a negative PRRA or a negative H&C decision.

[16] The applicant subsequently sought a stay of removal from this Court pending the outcome of the judicial review of his PRRA decision and the refusal to defer removal. On April 14, 2010, Justice Hughes granted a stay of removal**.** Justice Hughes noted the decision in *Shpati v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 367, which addressed similar issues to this application, and therefore concluded that there was a serious issue to be tried.

[17] These applications were subsequently adjourned upon request of the applicant, pending the outcome of the appeal in *Shpati*.

Issues

[18] The applications before the Court raise the following issues:

a. Was the Officer's decision reasonable in regards to the applicant's PRRA application?

b. Did the Enforcement Officer err in refusing to defer removal pending the outcome of the applicant's judicial review of the PRRA's decision?

Standard of Review

[19] The applicant does not make submissions regarding the standard of review.

[20] The respondent submits that the Officer's decision is to be reviewed on a standard of reasonableness, and the Officer is owed deference in the weight given to the evidence before her (*Cabral De Medeiros v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 386 at paragraph 15). The Court agrees, and thus the Officer's decision will be upheld as long as it satisfies the requirements of justification, transparency and intelligibility, and falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at paragraph 47).

Analysis

Was the Officer's decision reasonable in regards to the applicant's PRRA application?

Applicant's Arguments

[21] The applicant submits that it was erroneous for the Officer to recognize the existence of a blood feud, but go on to conclude that the positive determinations of the applicant's cousins' refugee claims were insufficient to find that the applicant needed protection. Since the Officer

accepted that there was a blood feud, the applicant argues that the positive decisions in his cousins' claims should have been enough to find he too needs protection.

[22] The applicant relies on the Court's decision in *Maimba v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 226, to submit that the objective risk of harm must still be assessed based on the documentary evidence, even if it is found that a claimant lacks credibility.

[23] The applicant argues that the concerns raised by the Officer regarding the degree of commitment of the Rakaj family to the blood feud, the time elapsed since the last killing, and Rrok's circumstances, were all irrelevant in light of the positive determination for the applicant's cousins. The applicant also underscores that she erroneously implied that the cousins' claims may have been based on their affiliations with the Democratic Party – the applicant notes that their claims clearly state their fear was based on membership in a social group and not political opinion.

[24] The applicant submits that the Officer erred by making findings that had no support in the evidence: *Abarajithan v. Canada (Minister of Employment and Immigration)*, [1992] FCJ 54 (QL) (CA). He argues it was an error to focus on the time elapsed since the last murder, since the documentary evidence shows that male family members will retreat into self-confinement during a blood feud, and thus it may continue despite a lack of incidents. The applicant also takes issue with the Officer's emphasis on his position within his family, as there was no evidence he would be at greater risk if he had a close relationship with Rrok, and the applicant had indicated that he would be one of the few male members left in the country, making him a target.

[25] The applicant further underscores that the Officer was overly microscopic in its assessment of the PMUA letter, according little weight to it because it contained insufficient details. He also impugns her finding that there was insufficient evidence of his relation to Rrok or that the police would not be able to assist him. The applicant asserts there was evidence before the Officer regarding both these issues. The applicant also argues she confused Albania's willingness to address the blood feud problem with its ability to protect.

[26] The applicant says that the Officer's reasons are inadequate, and it is not possible to discern the basis for her negative decision.

Respondent's Arguments

[27] The respondent submits that the Officer identified and applied the appropriate factors to consider when assessing a claim of risk arising from a blood feud. Based on those factors, the Officer concluded that there was insufficient evidence that the applicant faced more than a mere possibility of persecution. This finding was reasonably open to her and the decision should be upheld.

[28] The respondent notes that each refugee claim must be decided on its own merits, and therefore a positive determination in another claim, even of a relative, is not determinative (*Bakary v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1111; *Mantilla Cortes v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 254; *Noha v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 683). Because there were no written reasons for those decisions, and

because the facts of the cousins' claims were different from the applicant's claim, the respondent submits it was reasonable for the Officer to assess the applicant's claim on its own merits.

[29] The respondent adds that the Officer properly considered the evidence of the Rakaj family's continued interest in the applicant's family, the evidence of attempts at reconciliation, and the documentary evidence of police response to blood feuds. Thus, the respondent argues, the Officer's decision was based on review of the relevant evidence, and her inferences based on that evidence were reasonably open to her.

[30] The respondent further submits that the Officer's reasons set out her findings of fact and the principal evidence upon which those findings were made, and therefore they are sufficient to understand the basis for her decision (*Townsend v. Canada (Minister of Citizenship and Immigration)*, 2004 FCT 371.

Analysis

[31] After a careful review of the evidence in this file and the written and oral representations by the parties, the Court finds that the Officer's decision cannot be qualified as unreasonable. The Officer's conclusions are acceptable outcomes which are defensible in respect of the facts and the law *Dunsmuir* para 47.

[32] The mere fact that the applicant's relatives were granted refugee protection does not in itself mandate a positive decision in his PRRA application. Each case must be assessed on its own merits (*Noha v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 683) para 102). Since the

applicant did not provide any written reasons for the decisions, it was reasonably open to the Officer not to treat those decisions as determinative, because it is impossible to know the basis for those positive determinations.

[33] The facts in the cousins' claims were different from the applicant's claims, and contrary to the applicant's assertion, his cousins' PIF narratives show that they did allege fear based on political opinion in addition to the fear due to the blood feud. Thus, it was wholly reasonable for the Officer not to make a positive decision solely based on these other determinations, but rather to asses the applicant's claim on its own merits.

[34] Because most of the applicant's other arguments stem from his argument about his cousins' claims, they too cannot be accepted. The applicant has asserted that the factors considered by the Officer – the time elapsed since the last killing; the absence of information about the status of other family members or the Rakaj family's continued interest in the feud – are irrelevant, because the Officer accepted the existence of a blood feud and the cousins were accepted as refugees because of the same feud.

[35] However, according to the UNHCR document relied on by the Officer in her analysis, the mere presence of a blood feud in a family is insufficient to find that an individual in that family requires protection; rather, it will depend on a number of factors. The Officer considered those factors, and when they were applied to the applicant's circumstances, most of them supported the conclusion that the applicant did not face more than a mere possibility of persecution. Thus, the

Court cannot find that the Officer considered irrelevant factors or made unreasonable inferences based on the evidence.

[36] The rest of the applicant's arguments relate to the weight accorded to the evidence, and thus do not constitute valid grounds for setting the decision aside. It was reasonably open to the Officer to attribute little weight to the PMUA letter, given the evidence that this organization's functionality was questionable. It was also open to her to consider the fact that the applicant alleged that several reconciliation organizations had gotten involved in the blood feud, but no evidence was submitted except for this single letter from PMUA.

[37] Therefore, the Court finds that the Officer's decision was reasonable, and furthermore her reasons adequately disclosed the basis for her conclusions.

Did the Enforcement Officer err in refusing to defer removal pending the outcome of the applicant's judicial review of the PRRA's decision?

[38] In IMM-2002-10, the applicant seeks to set aside the decision of the Enforcement Officer not to defer removal pending the outcome of his judicial review on his PRRA's negative decision (IMM-1726-10).

[39] The applicant's submission that an Enforcement Officer has a duty to defer removal pending an application for leave and judicial review of a negative PRRA decision has now been conclusively rejected by the Federal Court of Appeal in *Canada (Minister of Public Safety and Emergency*

Preparedness) v. Shpati, 2011 FCA 286, Justice Evans dismissed the argument that the mootness of an application for judicial review of a PRRA decision warrants deferral of removal:

> [34] … in order to attempt to reduce uncertainty in the law, it is appropriate for this Court to address the issue raised in the certified question: does the potential mootness of the pending PRRA litigation warrant deferral of removal?
>
> [35] In my view, the answer to this question is no. If it were otherwise, deferral would be virtually automatic whenever an individual facing removal had instituted judicial review proceedings in respect of a negative PRRA. This would be tantamount to implying a statutory stay in addition to those expressly prescribed by the IRPA, and would thus be contrary to the statutory scheme.

[40] The applicant suggests that the facts in the present case are not the same as in *Shpati* because the applicant in *Shpati* had the opportunity to be heard by a Board.

[41] The Court notes that in the case at bar, an exclusion order was issued against the applicant because when he came to Canada he used false documentation.

[42] The Court agrees with the respondent that para 51 and the answer to the certified question no 1 in *Shpati* confirm the reasonableness of the Enforcement Officer's decision not to defer removal pending the applicant' s an application for leave and judicial review of his PRRA negative decision.

[43] Therefore, the Court's intervention is not warranted.

[44] The parties did not propose a question for certification and none arise.

JUDGMENT

THIS COURT ORDERS that the applications in IMM-1726-10 and IMM-2002-10 be dismissed. No question is certified.

"Michel Beaudry"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-1726-10 & IMM-2002-10
STYLE OF CAUSE:	
DOCKET : IMM-1726-10	*LUC GJOKAJ v. MINISTER OF CITIZENSHIP AND IMMIGRATION*
DOCKET: IMM-2002-10	*LUC GJOKAJ v. MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS*
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