

Federal Court



Cour fédérale

Date: 20191107

Docket: IMM-1635-19

Citation: 2019 FC 1390

Ottawa, Ontario, November 7, 2019

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

ALEKSANDER PJETRACAJ

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Aleksander Pjetracaj [Mr. Pjetracaj] is a citizen of Albania. His family is involved in a blood feud in Albania that began in 1997. As a result of the blood feud, for which Mr. Pjetracaj is not at all responsible, he fled to Canada where he sought asylum. The Refugee Protection Division [RPD] rejected the asylum claim. The Refugee Appeal Division [RAD] dismissed Mr. Pjetracaj's appeal of the RPD decision on February 15, 2019. In confirming the decision of the

RPD, the RAD held that Mr. Pjetracaj would be able to access adequate state protection in Albania and, as a result, he was neither a Convention refugee nor a person in need of protection, as contemplated by sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. Mr. Pjetracaj now seeks judicial review of the RAD decision pursuant to s. 72 of the IRPA. For the reasons set out below, I dismiss the application for judicial review.

II. Factual Background

[2] By way of brief historical context, I would note that blood feuds once constituted part of the customary law of Albania. The blood feud custom dates back to the 1400s, when the customary law under the Kanun of Lek Dukagjin regulated both public and private law. During Albania's communist regime under Enver Hoxha, blood feuds were outlawed and harshly punished. Following the collapse of the communist regime in the early 1990s and the resulting law enforcement vacuum, blood feuds saw a revival in a most brutal form.

[3] The origins of the blood feud at issue in this case date back to 1997 when Mr. Pjetracaj's uncle began a relationship with a woman in Albania. Her family did not approve. When her family told her she was to marry another man, she refused and ran away with Mr. Pjetracaj's uncle. They were assisted in their escape by a friend of Mr. Pjetracaj's uncle, Leonard. Following the woman's escape from Albania, her family declared a blood feud with Mr. Pjetracaj's family. In 2002, Leonard was murdered by the woman's uncle, Paulin. Paulin was tried and convicted of murder by an Albanian court and was sentenced, according to the record, to "what appears to be 21 years". He was released in 2012, after having served 10 years of his sentence. The woman's family, including Paulin, have stated that they would continue to seek

revenge. Pursuant to custom, Mr. Pjetracaj was immune from attack until May 16, 2015 when he attained the age of 18.

[4] Approximately three (3) years after Paulin's release, Mr. Pjetracaj, when he was 18 years of age, was involved in an incident that led him to flee Albania. On May 29, 2015, at approximately 8:00 p.m. while walking home alone from a soccer tournament, after being dropped off by a friend, he turned and saw a lone male walking behind him at a distance of approximately 200-300 metres. When Mr. Pjetracaj turned a second time, he saw the person was only about 20-30 metres away from him, was obviously following him and was carrying a "big knife". He described the male as being about 50 years of age. Upon seeing the knife and realizing how close this person was to him, Mr. Pjetracaj began screaming and ran to his home which was about 150 metres away. Upon arriving at his residence, he told his father about the incident and contacted the police.

[5] The police arrived at Mr. Pjetracaj's residence within 10 minutes of the call. They questioned Mr. Pjetracaj, searched the outside perimeter of the house to determine whether the individual was still in the area and questioned neighbours. The police were unsuccessful in locating any suspects. Mr. Pjetracaj was unable to identify the person who followed him other than to describe his physical characteristics. The police asked Mr. Pjetracaj if there were any witnesses. He told them the name of his friend who had dropped him off before he started walking. The police sought out that friend and returned about 20 minutes later to say his friend had not seen anything. According to Mr. Pjetracaj, the police concluded their investigation by inviting him to contact them if he experienced any other issues. Mr. Pjetracaj believed the

suspect to be Paulin. To Mr. Pjetracaj's knowledge, the police made no enquiries of Paulin. Furthermore, Mr. Pjetracaj did not make any follow-up enquiries with the police about whether they had talked to Paulin.

III. Decision Under Review

[6] The RPD found Mr. Pjetracaj to be credible with respect to the risk he faced in Albania. Nonetheless, it rejected his claim for refugee protection, finding there was adequate state protection available in Albania.

[7] In his appeal before the RAD, Mr. Pjetracaj contended the RPD erred in its assessment of the availability of state protection in that it focused on the mere presence of measures adopted by Albanian authorities to deal with blood feuds as opposed to assessing the effectiveness of those measures. The RAD agreed with the RPD that Mr. Pjetracaj was credible, but that he had failed to rebut the presumption of the availability of state protection. While the RAD agreed with Mr. Pjetracaj that the test for state protection is whether the measures taken by a state to protect its citizens are adequate, it noted that state protection need not be perfect and the analysis must not be conducted in a vacuum.

[8] In this context, the RAD considered numerous articles relating to blood feuds in Albania. The evidence demonstrated that blood feuds continue to exist in Albania and are more prevalent in the northern part of the country, which is where Mr. Pjetracaj resided before coming to Canada. The RAD concluded the documentary evidence contained contradictions about the prevalence of blood feuds. While independent sources contended they remained prevalent,

official government statistics revealed a sharp decline in their prevalence. The RAD also found the evidence somewhat contradictory with respect to the effectiveness of state protection. While it concluded the government of Albania had taken significant steps to discourage blood feuds, the issue for the RAD was the effectiveness of those measures. Although somewhat successful, the results, according to the RAD, had not been consistent across the country.

[9] The RAD then considered the mixed objective evidence in the context of Mr. Pjetracaj's personal experience, that is, within the context of the events which relate to him and his family. The RAD found that the Albanian police were effective by responding promptly to Mr. Pjetracaj's call in 2015 and immediately undertaking investigative efforts, including a search of the perimeter around the house, speaking to a potential witness and returning to Mr. Pjetracaj's home to request he contact them if any other issues should arise. In addition to the effectiveness of the police response to Mr. Pjetracaj's call, the RAD favourably considered the effectiveness of Albanian police, prosecutorial and judicial authorities in the context of Paulin's arrest, conviction, and imprisonment for 10 years for Leonard's murder.

[10] Given all of the above, the RAD found that Mr. Pjetracaj failed to rebut the presumption of adequate state protection and upheld the RPD's decision.

IV. **Relevant Provisions**

[11] The relevant provisions of the IRPA are sections 96 and 97(1). They are set out in the Schedule attached to these reasons.

V. Issue on Judicial Review

[12] Because I am satisfied the RAD correctly stated the test for state protection, the only issue on this judicial review is whether the RAD's decision on the adequacy of state protection meets the test of reasonableness as set out in *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190. That standard must be considered in light of the Supreme Court's decision in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at para 55, 103 DLR (4th) 1 which holds that states are presumed to be capable of protecting their own nationals. While individuals are not required to risk their lives in seeking their state's protection, they are required to provide clear and convincing evidence of their state's inability to do so (*Hinzman v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171, 63 Imm LR (3d) 13, leave to appeal to SCC refused, 32112 (15 November 2007); *Rojas v Canada (Minister of Citizenship and Immigration)*, 2005 FC 772).

VI. Analysis

A. *Reasonableness of the RAD's State Protection Analysis and Conclusion*

[13] Mr. Pjetracaj contends the RAD made four reviewable errors in its state protection analysis, namely: (1) it equated state efforts with effectiveness; (2) it failed to explain why Albania's limited operational effectiveness in dealing with blood feuds was sufficient to establish adequate state protection; (3) it failed to explain why the favourable elements of the country documentation outweighed the negative elements; and (4) it failed to examine Albania's entire justice system by focusing instead on police conduct.

[14] As noted by the RAD, the evidentiary record presented somewhat contradictory information about the prevalence of blood feuds in Albania and the government's effectiveness in dealing with them. For example, with respect to the issue of prevalence of blood feuds, the RAD considered the following documents, among others:

- Balkan Insight's article, "Blood Feuds Still Blight Albanian Lives, Report Says" (April 3, 2013), which states that "the scale of the problem is hard to monitor as there are deep discrepancies in statistics on blood feuds and related killings"; while local media and non-governmental organizations say the rates are high, government statistics are low.
- Al Jazeera's article, "Sisters of the Blood Feud: Revenge Killings in Albania" (June 11, 2017), says that it is "hard to know just how many families [...] live in isolation due to blood feuds in Albania"; once again, local NGOs report high numbers whereas the Albanian government reports lower numbers.
- "Country Condition Brief: Albania (2017)," says that "some sources acknowledge progress has been made by the police [regarding blood feuds], while others still identify serious deficiencies."

[15] The RAD concluded that blood feuds continue to be problematic in Albania. It therefore reviewed Albania's efforts and effectiveness in addressing them. Contrary to Mr. Pjetracaj's contention that the RAD considered efforts alone, the RAD sought to determine the effectiveness of those measures. It explicitly stated "[...] [h]aving taken these measures, the panel must assess whether they have been effective [...]" and then proceeded to analyze the evidence.

[16] Because the RAD was unable to determine from the documentary evidence alone whether Albania could provide effective protection to Mr. Pjetracaj, it considered his particular circumstances. It found that the Albanian authorities' response to Leonard's murder was effective, as Paulin was arrested and incarcerated for 10 years. It then found that the police response to the 2015 incident was also effective, particularly given that Mr. Pjetracaj did not know the man who had approached him.

[17] With respect to Mr. Pjetracaj's quest for explanations as to why Albania's limited operational effectiveness in dealing with blood feuds was sufficient to establish adequate state protection, and why the favourable elements of the country documentation outweighed the negative elements, I would make the following observations. First, Mr. Pjetracaj bore the onus to rebut the presumption of adequate state protection. He failed in this regard. Second, the RAD is presumed to have considered and reviewed all of the evidence (*Quebrada Batero v Canada (Citizenship and Immigration)*, 2017 FC 988 at para 13 citing *Akram v Canada (Minister of Citizenship and Immigration)*, 2004 FC 629 at para 15, *D'Souza v Canada (Minister of Employment and Immigration)*, [1983] 1 FC 343 at para 8 (CA), *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 at para 1 (CA) [*Florea*]; see also *Sivapathasuntharam v Canada (Minister of Citizenship and Immigration)*, 2012 FC 486 at para 24 citing *Florea*). Third, the RAD was, in my view, entitled to accept some, none or all of the evidence (see *R v REM*, 2008 SCC 51 at para 65, [2008] 3 SCR 3; more generally, *R v W(D)*, [1991] 1 SCR 742, 63 CCC (3d) 397; *Zheng v Canada (Citizenship and Immigration)*, 2019 FC 731). Fourth, the weight assigned to any particular piece of the evidence falls within the domain of the administrative tribunal and not the courts (*Canada (Minister of Citizenship and*

Immigration) v Khosa, 2009 SCC 12 at para 61, [2009] SCJ No 12; *Canadian Tire Corporation, Limited v Koolatron Corporation*, 2016 FCA 2 at para 23, 480 NR 245; *Nekoie v Canada (Minister of Citizenship and Immigration)*, 2012 FC 363 at para 33, 407 FTR 63). Fifth, *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 15, [2011] 3 SCR 708 instructs reviewing courts that we are entitled to look to the record in assessing reasonableness of the decision (see also *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 53, [2011] 3 SCR 654). Decision-makers are not expected to refer to each piece of evidence which persuades them one way or another (*Jean-Baptiste v Canada (Citizenship and Immigration)*, 2018 FC 285 at para 20 citing *Kaur v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1379 at paras 31-34 and *Quebrada Batero v Canada (Citizenship and Immigration)*, 2017 FC 988 at para 13; *D'Souza v Canada (Minister of Employment and Immigration)*, [1983] 1 FC 343 at para 8).

[18] Finally, Mr. Pjetracaj takes umbrage with the RAD for having failed to examine the entire Albanian justice system. While the RAD did not specifically say it was doing so, I am of the view the RAD had that very issue in mind when it considered the judicial treatment of Paulin. On the issue of alleged judicial corruption, the RAD had before it an Al Jazeera report titled “Albania: The dark shadow of tradition and blood feuds” (2016) that opined that well-off murderers could bribe judges to reduce their sentences. However, that report was contrasted with Balkan Insight’s article “Albania Arrests Top Judge Suspected of Bribery” (2017) which demonstrates that bribery of judicial officers in Albania is being addressed by the government. Once again, the general country condition evidence before the RAD was mixed. It was therefore reasonable for the RAD to consider the context of Mr. Pjetracaj’s personal experience – the

events which relate to him and his family, including the treatment of Paulin – in assessing whether Albania’s justice system was functioning adequately. While Mr. Pjetracaj contends that Paulin should have been charged with a more serious crime and suggests some impropriety in the choice of infraction, such an assertion is merely speculative. The prosecutorial choice could well have been a result of the legitimate exercise of prosecutorial discretion given the evidence available. The fact Paulin was investigated, charged and convicted demonstrates a functioning judicial system.

VII. Conclusion

[19] The evidence was clearly contradictory on the two major issues – the prevalence of blood feuds in Albania and the adequacy of Albania’s efforts in combatting them. The RAD was tasked with weighing all of the evidence, including country condition documents. The RAD is the expert in the area, not the courts. The RAD’s decision meets the test of reasonableness. It is, in my view, justifiable, transparent and intelligible and falls within the range of possible, acceptable outcomes that are defensible on the law and the facts. For these reasons, I dismiss the application for judicial review.

[20] No question was proposed by either party for consideration by the Federal Court of Appeal and none appears on the record before me.

JUDGMENT in IMM-1635-19

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed without costs. No question is certified for consideration by the Federal Court of Appeal.

"B. Richard Bell"

Judge

SCHEDULE

Immigration and Refugee Protection Act, SC 2001, c 27

Loi sur l'immigration et la protection des réfugiés, L.C. 2001, ch. 27

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, religion, nationality, membership in a particular social group or political opinion,

96 A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée 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 themselves 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.

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 :

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| <p>(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or</p> | <p>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;</p> |
| <p>(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if</p> | <p>b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :</p> |
| <p>(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,</p> | <p>(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,</p> |
| <p>(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,</p> | <p>(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,</p> |
| <p>(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and</p> | <p>(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,</p> |
| <p>(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.</p> | <p>(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.</p> |

FEDERAL COURT
SOLICITORS OF RECORD

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