

**Date: 20080226**

**Docket: IMM-1673-07**

**Citation: 2008 FC 249**

**Ottawa, Ontario, February 26, 2008**

**PRESENT: The Honourable Barry Strayer, Deputy Judge**

**BETWEEN:**

**EDUART GJOSHI  
FLORA GJOSHI  
MELISA GJOSHI**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**Introduction**

[1] This is an application for judicial review of a decision of the Immigration and Refugee Board of Canada (Refugee Protection Division) (Board) of March 29, 2007 determining that the Applicants are not convention refugees and are not persons in need of protection.

## **Facts**

[2] The male Applicant, Mr. Eduart Gjoshi, was born in 1978 in Albania. The other Applicants are his wife and minor daughter, all citizens of Albania. They claim to have a well-founded fear of persecution if they were to return to Albania, by reason of their family being involved in a blood feud.

[3] The Applicants say that Mr. Gjoshi's brother, Altin, founded a folksong group in 2004. The group apparently played for the public and the audience periodically threw money into a drum case. In September, 2005 Altin caught the guitar player, Luan Sula, taking money from the drum case and he fired Luan from the group. The next day Luan, together with two of his cousins, stopped Altin in the street and beat him requiring his hospitalization. After his release from hospital Altin and their cousin Ardin, by way of revenge, confronted Luan and badly injured him, requiring him to be hospitalized. Mr. Gjoshi says that a few days later, their family home was shot at. In October the Applicant obtained false passports for himself and his family and they left Albania. They first spent some weeks in Greece and then went to Italy. In neither country did they make a refugee claim. Upon arrival in Canada on March 27, 2006 they applied for refugee status. There is no dispute over these facts.

[4] However, when asked why his brother had not complained to the police about the attack on him by Luan and his two cousins, the Applicant said that the police would not help. However, he did in evidence say that when his brother beat Luan, Luan went to the authorities for assistance. In

the tribunal record there is a certificate from a police commissariat in Albania certifying that Altin and his cousin Ardin, who would have been the object of Luan's complaints, were called to report to the police station on September 26, 2005 and that they did not report.

[5] As evidence of the existence of a blood feud, the Applicant submitted a "certificate" from the "Association of Peace and Reconciliation Missionaries of Albania" which is said to be a non-government organization attempting to resolve blood feuds. The first certificate dated August 28, 2006 certified that the Applicant's family is in a conflict with the family of Luan Sula starting on September 11, 2005. It relates a story much like the Applicants'. It says however, that "as soon as our organization was notified we started working to resolve the problem" which would suggest that it had no direct information as to what had happened. The Board observed that "This letter was not produced until August 28, 2006, nine months after the claimant's *[sic]* came to Canada. Accordingly, the panel has attached no weight to this document". A further certificate from this same Association, dated January 16, 2007, stated that on August 26, 2006 two cousins of the Applicant were fired upon "by unidentified people". It went on to say that the Association believed that such incident took place as a result of the family feud referred to earlier. The Board made no reference to this certificate.

[6] There was considerable documentation in the form of country reports, most of them drawn from the IRB's own sources, and many of which were specifically relied upon in the Applicants' submissions. This documentation was largely to the effect that blood feuds do exist in Albania, that

they can be started by something as simple as a fight, and that the police are ineffective in stopping them. This documentation is not referred to in the Board's decision.

[7] The Applicants attack the decision on the basis that it is patently unreasonable because the Board ignored some relevant evidence but gave credence to other evidence. The Applicants' case is not strengthened by the diffused form of their attack. The Applicants also allege bias because the Board gave no weight to their evidence, a breach of fundamental justice by failing to mention the Applicants' submissions in its decision, a breach of fundamental justice in not warning the Applicants what they must prove, and a failure to consider evidence including current country conditions.

### Analysis

[8] The parties are in agreement that the standard of review with respect to fact finding in such a proceeding is patent unreasonability. I accept that such may be generally true but here the prime issue is whether the Applicants have submitted sufficient evidence to rebut the presumption of state protection and this is reviewable on a reasonableness standard: see *Muszynski v. Canada (Minister of Citizenship and Immigration)* 2005 FC 1075; and *Saeed v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1016. There is a presumption that a state is able to protect the claimant and he has the burden of rebutting that presumption: *Canada (Minister of Employment and Immigration) v. Villafranca* (1992), 18 IMM L.R. 2<sup>nd</sup> 130. I believe that all of the diverse attacks on the Board decision by the Applicants come down to whether it can be said that the Board's

conclusion on this point was unreasonable. The allegations of bias are really complaints about decisions on admissibility and weight, decisions which any tribunal must make. The complaint that the Applicants were not told what case they must meet is not a breach of fairness where the Applicants or their advisors must have known what they would have to do to overcome the presumption. The Board erred in saying it would give no weight to the certificate from the Association of 2006 concerning the existence of a blood feud. There is no evident logic for rejecting the document just because it was said to have been produced nine months after the claimants came to Canada (in point of fact the Applicants arrived in Canada only five months before the certificate was produced). However, even if it had been admitted it could not have made any difference to the outcome of the case as the certificate is intrinsically questionable. It is of course, hearsay, at perhaps second or third hand and does not indicate that the Association has actually investigated the situation, mentioning only that it was “notified” of the existence of the feud. See *Fontenelle v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 1796, para. 15. For similar reasons it is not fatal that the Board made no mention of the certificate of January 16, 2007 concerning the shooting of the male Applicant’s cousins.

[9] While no mention is made of the country reports describing general conditions in Albania, in the matter of blood feuds, the Board had before it specific evidence from the male Applicant himself that Luan had reported to the police the attack on him by the male Applicant’s brother, Altin, and his cousin Ardin. Combined with this was the police certificate of September 11, 2006 confirming that Altin and Ardin had been summoned to report to the police station on September

26, 2005 and they did not report. The Board drew from that the conclusion that the police in that area would take action if complaints were made to them.

[10] Combined with such evidence that the Applicants could have resorted to state protection was the fact that they had spent many weeks in Greece and Italy without making refugee claims there. It noted that the female Applicant's family resides in Italy. The Board concluded that they did not have a genuine fear for their lives through being ordered out of Greece or Italy to return to Albania as they might have been. Nor did the Board find the evidence sufficient to establish that the Applicants had been involved in a genuine blood feud, with a result that it apparently did not find the documentary evidence relevant.

[11] I am therefore satisfied that it is not possible to say that the decision of the Board was unreasonable.

### **Disposition**

[12] I will therefore dismiss the application for judicial review. Counsel had no questions to suggest for certification and none will be certified.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that**

1. The application for judicial review of the decision of the Immigration Refugee Board (Refugee Protection Division) of March 29, 2007 be dismissed.

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"B.L. Strayer"  
Deputy Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-1673-07

**STYLE OF CAUSE:** EDUART GJOSHI  
FLORA GJOSHI  
MELISA GJOSHI

Applicants

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**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** 31-JAN-2008

**REASONS FOR :** STRAYER, D.J.

**DATED:** February 26, 2008

**APPEARANCES:**

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