

Federal Court



Cour fédérale

Date: 20101222

Docket: IMM-6271-09

Citation: 2010 FC 1316

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, December 22, 2010

The Honourable Mr. Justice Beaudry

BETWEEN:

**XHEVDET YMERI, JULJANA YMERI,
BESMIR YMERI, BIRSEN YMERI**

Applicants

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of *the Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the IRPA), of a decision of the Immigration and Refugee Board (the panel), dated November 6, 2009, determining that Xhevdet YMERI (the principal applicant), his spouse, Juljana YMERI, their son, Besmir YMERI, and their daughter,

Birsen YMERI, are neither Convention refugees under section 96 nor persons in need of protection under subsection 97(1) of the IRPA.

[2] The application for judicial review shall be allowed for the following reasons.

[3] The applicants are all citizens of Albania. The principal applicant's spouse and children base their claims on that of the principal applicant.

[4] On January 12, 1998, the Xhabafti family killed the principal applicant's cousin, Floryan Ymeri. In December 1998, the principal applicant's cousins decided to take their revenge on the Xhabafti family by killing Mustafa Xhabafti. Fearing a blood feud with the Xhabafti family, the applicants decided to leave Albania. They went to Greece on December 25, 1998, and had passports made for the whole family. They returned to Albania in March 1999 and left again in May 1999 with the intention of claiming refugee protection in Canada.

[5] Upon arrival in the United States, they were arrested and applied for refugee status; their application was denied on October 10, 2004.

[6] While the applicants were abroad, in 2003, Artan Xhabafti was killed by the last cousin remaining in Albania, Ylli Ymeri, who has been in hiding since.

[7] The principal applicant was removed from the United States to Albania on November 18, 2005.

[8] When he arrived in Tirana, fearing for his life, the principal applicant went to live with his mother. On March 23, 2006, three masked individuals broke into her home and severely assaulted the principal applicant. As a result, he was hospitalized until March 30, 2006. A forensic examination was performed at both the hospital and the police station.

[9] With the assistance of his brother-in-law and some friends, the principal applicant, bearing a visa, arrived in Canada on June 7, 2006. He asked for political asylum on August 17 of the same year. The other applicants followed suit in 2007, but on different dates.

[10] In analyzing the applicants' claims, the panel noted that the determinative issues were the following: no connection with the Convention, credibility, state protection and internal flight alternative.

[11] Insofar as the issue involves the panel's assessment of the evidence, the applicable standard of review is reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 47).

[12] In the case under review, the applicants do not take issue with the panel's finding that they are not Convention refugees under section 96 of the IRPA. Rather they are challenging the panel's reasons on the issues of credibility, state protection and internal flight alternative.

[13] With regard to their credibility, they submit that their daughter had to intervene a number of times during the hearing to correct translation errors made by the interpreter. They argue that the panel focussed on minor contradictions in the description of the individuals who beat up the principal applicant on March 23, 2006. They rely on *Sheikh v. Canada (Minister of Citizenship and Immigration)* (2000), 190 FTR 225 (F.C.), at paragraphs 23-24, to point out that any inconsistencies found must be significant and central to the claim in order for refugee protection to be refused.

[14] The applicants submit that the panel made a material error when it decided not to attach any weight to Exhibit P-9 (Statement, Police Station No. 3, Tirana, September 13, 2006). They add that the panel must give reasons for a decision not to consider evidence trustworthy (*Yabe v. Canada (Minister of Employment and Immigration)* (F.C.A.), [1993] F.C.J. No. 270 (QL), at para. 2).

[15] Lastly, the applicants submit that the panel rejected Exhibit P-5 (Statement of the Committee of Nationwide Reconciliation) without valid reason (*Simba v. Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 14777 (F.C.), at paras. 29 and 30).

[16] The respondent argues that the questions raised by the panel concerning the principal applicant's credibility are reasonable. The Court disagrees.

[17] The first element concerns the revelation by the Xhabafti family of who was responsible for Floryan Ymeri's death. Having read the transcript, the Court notes that there was some confusion about this at one point but that it is impossible to infer a lack of credibility from it.

[18] The second question is whether the individuals who beat up the principal applicant in March 2006 were masked or not. The Court finds this question to be secondary and that it should not have undermined the applicant's credibility, especially when independent evidence confirms his hospital stay and injuries.

[19] The third element is related to the fact that the principal applicant allegedly did not mention in his written narrative that the police could not intervene because this was a case of a blood feud. The Court cannot accept that the lack of a written statement to that effect can affect the principal applicant's credibility given the particular context of the case.

[20] The panel also committed a reviewable error by disregarding Exhibit P-9. The document from the Ministry of Public Order, the police directorate of the Tirana area, corroborates the principal applicant's story of his attack on March 23, 2006, in every respect.

[21] The same is true of Exhibit P-5 (Republic of Albania, Committee of Nationwide Reconciliation, September 15, 2006), which mentions the five murders, two in the principal applicant's family and three in the Xhabafti family. The same document also describes the two families' efforts to reconcile with the help of mediators, to no avail however.

[22] The errors described above warrant that the matter be referred for redetermination.

[23] No question was proposed for certification, and none arises from this case.

JUDGMENT

THIS COURT ORDERS that the application for judicial review be allowed. The matter is referred back to a differently constituted panel for redetermination. No question is certified.

“Michel Beaudry”

Judge

Certified true translation
Johanna Kratz

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-6271-09

CITATION: XHEVDET YMERI, JULJANA YMERI,
BESMIR YMERI, BIRSEN YMERI
and MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: December 16, 2010

**REASONS FOR JUDGMENT
BY:** Beaudry J.

DATED: December 22, 2010

APPEARANCES:

Noël Saint-Pierre FOR THE APPLICANTS

Gretchen Timmins FOR THE RESPONDENT

SOLICITORS OF RECORD:

Saint-Pierre Grenier Avocats Inc. FOR THE APPLICANTS
Montréal, Quebec

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada
Montréal, Quebec