Federal Court  Cour fédérale

Date: 20111212

Docket: IMM-2870-11

Citation: 2011 FC 1451

Ottawa, Ontario, December 12, 2011

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

VEHBI LICI
FITNETE LICI
STELA MAIO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated April 8, 2011. The Board determined that the Applicants were not Convention refugees or persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

[2] For the following reasons, this application is dismissed.

I. Facts

[3] The Principal Applicant, Vehbi Lici, and his wife, Fitnete Lici, and their daughter, Stela Maio, are citizens of Albania. They came to Canada in early 2008 after their asylum claim on political grounds was denied in the United States of America (USA).

[4] The Principal Applicant claimed that as a member of the Democratic Party (DP) he was mistreated by police officers under the former Albanian socialist regime. After attending a funeral for a DP member in April 1991, he was taken to jail and beaten. In February 1998, police raided his home and threatened family members. He was jailed again in September 1999 and kicked and threatened at a police station following a protest in April 2000.

[5] His elder daughter, Ridvana, also joined the DP. She attended a funeral for a DP leader and was jailed for three days and raped in October 1998.

[6] As a result of this treatment, the Principal Applicant and his wife left Albania on May 31, 2000. They made their way to the USA to be with their son and daughter, who had already left Albania.

[7] The Principal Applicant's daughter stated at the refugee hearing that she married an American citizen in March 2003 and is applying to be sponsored by him. She intends to return to the USA and become a permanent resident.

II. Decision Under Review

[8] The Board considered the change of circumstances in Albania. While the Principal Applicant feared communists from the former regime, the DP was now in power. There was no persuasive evidence that he would be targeted as a supporter of the DP with a low political profile.

[9] The Board proceeded to consider the application of the compelling reasons exception as this may prove relevant in cases where the reasons for seeking refugee protection have ceased to exist. Counsel asked for this to be considered since the Applicants had "suffered terribly." However, the Board found that the compelling reasons exception did not apply to the Applicants. While they had suffered from persecution, their evidence, though sad, did not establish that such treatment was appalling or atrocious.

[10] Finally, the Applicants had not provided clear and convincing evidence to rebut the presumption of state protection. Albania is a parliamentary democracy and the DP is currently in power. The Board acknowledged that state protection was not perfect in the country. However, there was no evidence that individual members of any political party would not be able to access protection from the authorities should they need it.

III. Issue

[11] This application raises the following issue:

(a) Did the Board err in its compelling reasons analysis under subsection 108(4) of the IRPA?

IV. Standard of Review

[12] The appropriate standard of review for the content of a compelling reasons analysis is reasonableness (see *Decka v Canada (Minister of Citizenship and Immigration)*, 2005 FC 822, [2005] FCJ no 1029 at para 5; *Luc v Canada (Minister of Citizenship and Immigration)*, 2010 FC 826, 2010 CarswellNat 2880 at para 22).

[13] Reasonableness is "concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process" as well as "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

V. Analysis

[14] Subsection 108(1)(e) of the IRPA provides that a refugee claim must be rejected where the reasons for having sought protection have ceased to exist. Under subsection 108(4), however, some refugee claimants may benefit from the following exception:

Exception	Exception
(4) Paragraph (1)(e) does not apply to a person who establishes that there are compelling reasons arising out of previous persecution, torture, treatment or punishment for refusing to avail themselves of the protection of the country which they left, or outside of which they remained, due to such previous persecution, torture, treatment or punishment.	(4) L'alinéa (1)e) ne s'applique pas si le demandeur prouve qu'il y a des raisons impérieuses, tenant à des persécutions, à la torture ou à des traitements ou peines antérieurs, de refuser de se réclamer de la protection du pays qu'il a quitté ou hors duquel il est demeuré.

[15] In *Canada (Minister of Employment and Immigration) v Obstoj*, [1992] 2 FC 739, [1992] FCJ no 422 at 747-748 (FCA), it was emphasized that "[t]he exceptional circumstances envisaged by subsection [108(4)] must surely apply to only a tiny minority of present day claimants."

[16] Before the Board can even consider whether there are sufficient compelling reasons to grant refugee status the claimants must establish that, at some point in time, they would have met the definition of a Convention refugee or person in need of protection. There must also be a determination that they no longer meet these definitions because of a change of circumstances

(see *Brovina v Canada (Minister of Citizenship and Immigration)*, 2004 FC 635, [2004] FCJ no 771; *Nadjat v Canada (Minister of Citizenship and Immigration)*, 2006 FC 302, [2006] FCJ no 478).

[17] Once the Board finds that these conditions are met, it must assess whether past persecution experienced was "atrocious and appalling" (*Obstoj*, above; *Shpati v Canada (Minister of Citizenship and Immigration)*, 2007 FC 237, 2007 CarswellNat 550 at paras 9, 13).

[18] The Board followed this approach in its analysis by acknowledging changed circumstances in Albania and recognizing that the Applicant had suffered from persecution in the past. It, nonetheless, found their evidence did not establish that such persecution was atrocious or appalling.

[19] The Applicants argue that this finding was unreasonable, given the treatment experienced. They point to evidence that Lici was beaten and tortured by police on more than one occasion and that his elder daughter Ridvana was raped in October 1998. According to the Applicants, this evidence does not justify the finding that the treatment was not atrocious or appalling.

[20] The Respondent contends that the Board considered the Applicants' allegations but still found that the circumstances, though sad, did not prevent them from returning to Albania today. This amounts to a disagreement as to the weighing of evidence. The Respondent also suggests that the finding that there were insufficient compelling reasons to justify granting refugee status was

supported by the Board's other conclusion that the Principal Applicant had a low political profile and state protection was available in Albania.

[21] I find that I must side with the position of the Respondent. Bearing in mind that compelling reasons were only to apply in exceptional circumstances (see *Obstoj*, above), the Board was entitled to weigh the evidence regarding the Applicants' past persecution and determine that they did not reach the threshold of "atrocious and appalling." The Principal Applicant alleged four incidents involving mistreatment by the police and had a low political profile. His elder daughter was raped, but she was not a party to this refugee claim.

[22] It was reasonable for the Board to conclude that the Applicants could not benefit from the compelling reasons exception in subsection 108(4). The Board considered past persecution suffered but found that it did not reach the required threshold.

VI. Conclusion

[23] Accordingly, this application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

" D. G. Near "

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	**IMM-2870-11**
STYLE OF CAUSE:	**VEHBI LICI ET AL. v. MCI**
PLACE OF HEARING:	**TORONTO**
DATE OF HEARING:	**NOVEMBER 16, 2011**
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