

Federal Court



Cour fédérale

**Date: 20140730**

**Docket: IMM-7074-13**

**Citation: 2014 FC 761**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Ottawa, Ontario, July 30, 2014**

**PRESENT: The Honourable Mr. Justice Locke**

**BETWEEN:**

**PELLUMB CELAJ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

I. Introduction

[1] This is an application for judicial review of a decision of the Refugee Protection Division (RPD), of the Immigration and Refugee Board of Canada, in which the RPD found that the applicant was neither a Convention refugee for the purposes of section 96 of the *Immigration*

*and Refugee Protection Act, SC 2001, c 27 (IRPA) nor a person in need of protection under subsection 97(1) of the IRPA.*

## II. Facts

[2] The applicant, an Albanian citizen born on April 1, 1975, claims to be the victim of a blood feud on the part of the Drekaj family, with whom his own family had several disputes regarding property boundaries.

[3] During the first dispute, in 1996, the applicant and his family reportedly received threats. A second dispute appears to have occurred in 1997. During that dispute, the applicant's father and uncle were purportedly injured. The town's council of elders was called upon to intervene, whereupon the Drekaj family made it understood that no reconciliation between the families would be possible unless the applicant's family agreed to cede a plot of their land, to which they consented.

[4] In 2001, the applicant fled Albania for the United States and filed an asylum claim, which was refused in 2004. The applicant remained in that country illegally, following the refusal of his claim, until 2009, at which time he was deported from the United States and forced to return to Albania.

[5] In the meantime, in 2008, the applicant's family reportedly received new threats from the Drekaj family, who were now claiming a larger plot of the land. The police allegedly refused to intervene.

[6] In 2009, a third dispute appears to have erupted when the Drekaj family built a barn that encroached on the applicant's family's property. During that dispute, Prele, the cousin of the applicant's father, shot a member of the member Drekaj family, who lost an arm as a result.

[7] Following this incident, the Drekaj family purportedly declared a blood feud against the applicant's family, forcing the applicant to remain housebound for his own protection. The applicant's family tried in vain to negotiate an end to the conflict and the police apparently declared that they could not intervene as long as the Drekaj family had not committed any crime.

[8] The applicant fled Albania in October 2011 and arrived in Canada on October 22, 2011. He claimed refugee protection two days later.

[9] The hearing before the RPD was held on August 20, 2013.

### III. Impugned decision

[10] The RPD declared itself satisfied with the applicant's identity, but nonetheless rejected his claim for refugee protection. The RPD found that the applicant's account lacked credibility and that he was unable to rebut the presumption that Albania was capable of protecting its citizens.

[11] First, the RPD rejected the refugee protection claim on the grounds that the applicant's narrative contained significant contradictions and omissions which undermined his credibility. For example, the applicant provided different dates in response to the question as to which date

he was ordered deported from the United States. In addition, his testimony and his personal information form differed with respect to the use of a false identity and false passports.

Furthermore, the applicant gave conflicting accounts as to whether the police had in fact attempted to arrest Prele, a cousin of the applicant's father, following the third dispute between the two families, for having shot a member of the Drekaj family; he also contradicted himself when questioned about the availability of an internal flight alternative in Albania. When confronted with all of these contradictions, the applicant was unable to provide any convincing explanations.

[12] Second, the RPD rejected the refugee protection claim because the applicant was unable to rebut the presumption of state protection. After reviewing the available documentary evidence, the RPD found that in Albania there was a form of state protection for persons who are involved in blood feuds. The applicant presented no clear and convincing evidence of the state's inability to protect its citizens, which he was required to do in order to rebut the presumption of state protection, given that Albania is a democratic country. Furthermore, according to his testimony, the applicant failed to take measures to seek protection from the Albanian state, which is fatal to his claim in this case.

IV. Issues

[13] The parties agree that the issues in this case are the following:

- A. Did the RPD err in concluding that the applicant was not credible?
- B. Did the RPD err in finding that the applicant could have availed himself of state protection in Albania?

V. Standard of review

[14] Given that the two issues this Court must dispose of relate to findings of fact (credibility) and to findings of mixed fact and law (state protection), they are reviewable on a standard of reasonableness (with regard to the issue of credibility, see *Aguebor v Canada (Minister of Employment and Immigration)* (FCA), [1993] FCJ No 732 (QL) at para 4, 160 NR 315, and *Carranza v Canada (Citizenship and Immigration)*, 2010 FC 914 at para 16, [2010] FCJ No 1119 (QL); with respect to the issue of state protection, see *Hinzman v Canada (Citizenship and Immigration)*, 2007 FCA 171 at para 38, [2007] FCJ No 584 (QL), and *Ndoja v Canada (Citizenship and Immigration)*, 2013 FC 163 at para 14, [2013] FCJ No 161 (QL) (*Ndoja*)).

[15] Under the reasonableness standard, a reviewing court must show deference and cannot substitute its own view of a preferable outcome or reweigh the evidence (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59, [2009] 1 SCR 339). The Court must therefore limit its review to "the existence of justification, transparency and intelligibility within the decision-making process" and "whether the decision falls within a range of possible,

acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190).

VI. Analysis

[16] I found a number of important weaknesses in the RPD's findings with regard to the applicant's credibility. Despite those weaknesses, the impugned decision in this case survives a review on a reasonableness standard, as it was reasonable for the decision-maker to conclude that the applicant had failed to rebut the presumption of state protection, an element which was fatal to his claim for refugee protection.

[17] In light of my foregoing conclusions, I will limit these reasons to the issue of state protection.

A. *Did the RPD err in finding that the applicant could have availed himself of state protection in Albania?*

(1) Applicant's arguments

[18] The applicant contends that the RPD based its decision regarding state protection on the May 2012 version of a document, when a more recent version from May 2013 was available at the hearing in August 2013. Thus, the RPD used an inaccurate document which contained a passage that indicated that the Albanian government was incapable of protecting its citizens in cases of blood feuds in the country's north. With respect to the inclusion of a new provision in the Albanian Criminal Code, the applicant noted that it is not enough for legislative measures to

be enacted, they must actually be enforced and be effective on an operational level, which is not the case. In addition, the RPD is said to have rejected evidence adduced by the applicant without valid reason.

[19] More generally, the applicant further argues that he had in fact rebutted the presumption of state protection, in particular thanks to the documents he adduced as evidence. He pointed out that each case must be reviewed on an individual basis and that a state protection analysis should not merely be limited to the fact that a state is democratic. In this case, the RPD ought to have verified the effectiveness of the state's structures and the reasons for which the applicant was unable to seek the protection of the Albanian authorities. Furthermore, the applicant had in fact exhausted all possible avenues available to him, given the circumstances, having not only turned to the police for help, but toward the village's council of elders as well.

(2) Respondent's arguments

[20] In the respondent's view, the RPD's decision with regard to state protection in Albania is reasonable because the applicant had not met his burden of proof. Indeed, given that there was no evidence of a complete breakdown of the state apparatus in Albania, the country was presumed to be capable of protecting its citizens. The onus was on the applicant to prove, by means of clear and convincing evidence, that this was not the case and that he had taken all reasonable measures to seek his country's protection. In this case, the police service purportedly refused to intervene on one single occasion, which is generally not enough to rebut the presumption of state protection. The RPD did in fact acknowledge that blood feuds posed a real problem, but

according to the documentary evidence, the country's authorities were making genuine efforts to correct the situation.

[21] The respondent also addresses the applicant's claims. First, the RPD used the correct version of the disputed document, as it was the version that was in Albania's National Documentation Package, and the updated version to which the applicant refers had simply not been included. The applicant, who had been sent the package prior to the hearing, could have, if he wished, filed the new version with the RPD in time. Lastly, the respondent points out that the RPD is presumed to have considered all of the evidence before it and that state protection need only be adequate, not perfect.

(3) Determination

[22] The RPD did not err in finding that the applicant had failed to rebut the presumption that Albania was capable of protecting its citizens and that finding therefore does not warrant this Court's intervention.

[23] At the outset, I would like to respond to one of the applicant's concerns, which is that the RPD relied on an outdated version of a document from the National Documentation Package on Albania; it allegedly cited a 2012 version of the document entitled *Operational Guidance Note* at Tab 2.4 of the package rather than the 2013 version. But, as the respondent noted, the version of the document used by the RPD was in fact the one which was in the National Documentation Package on Albania. Thus, it was perfectly reasonable for the RPD to have relied on the 2012 version of the document at Tab 2.4 of the National Documentation Package.



[24] Moreover, had the applicant wished to cite the 2013 version of this document, the appropriate time for him to have done so would have been before the RPD and not before this Court, whose analysis is restricted to the evidence that was before the decision-maker (*Sidhu v Canada (Citizenship and Immigration)*, 2008 FC 260 at para 22, [2008] FCJ No 405 (QL); see for example *Sandhar v Canada (Citizenship and Immigration)*, 2013 FC 662 at para 15, [2013] FCJ No 727 (QL)).

[25] It is settled law that a state is presumed to be capable of protecting its citizens, barring a complete breakdown of the state apparatus (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689, at page 709, [1993] SCJ No 74 (QL)). An applicant seeking to rebut this presumption must “adduce relevant, reliable and convincing evidence which satisfies the trier of fact on a balance of probabilities that the state protection is inadequate.” (*Canada (Citizenship and Immigration) v Flores Carrillo*, 2008 FCA 94 at para 30, [2008] 4 FCR 636). It has also been established that state protection need not be perfect, merely adequate (*Canada (Minister of Employment and Immigration) v Villafranca* (FCA), 150 NR 232, [1992] FCJ 1189 (QL)).

[26] In addition, the applicant submits that the RPD did not examine all of the evidence. But it is well-established that an administrative decision-maker is presumed to have considered all of the evidence that was before it and does not have to comment on every single piece of evidence (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 157 FTR 35, [1998] FCJ No 1425 (QL), at para 17). I note however that in this case, the administrative decision-maker, in this instance the RPD, nonetheless carried out an overall assessment of the evidence after which it acknowledged the problems posed by blood feuds in Albania yet still found that

the Albanian authorities were making genuine efforts to correct the problem and that, furthermore, those efforts were yielding results. Indeed, according to the evidence that was reviewed, the country's Criminal Code was amended to combat the phenomenon and the authorities had set up special units to that end, which had resulted in a reduction in the number of blood feuds in the country (see reasons for decision, at paras 19 and 20). Moreover, it was on the basis of this evidence that the RPD examined the applicant's claims.

[27] In the case at bar, the applicant made no effort to seek the protection of his state. In fact, the applicant's only request for assistance was made by his mother and aunt on his behalf. The applicant contends that the RPD should have examined the circumstances that forced him to remain confined to his house, but I am of the view that in light of the aforementioned overall assessment of the evidence and subsequent findings made by the RPD, it was perfectly reasonable to conclude that the applicant ought to have done more to obtain the protection of the Albanian government.

[28] In conclusion, the RPD preferred to assign greater weight to the objective evidence rather than that adduced by the applicant, as it was open to it to do, given that assessing the evidence is for the RPD and not the Court (*Mejia v Canada (Citizenship and Immigration)*, 2009 FC 354 at para 56, [2009] FCJ No 438 (QL)), and since the applicant was unable to establish, on a balance of probabilities, that the state protection provided by Albania was insufficient, it was reasonable for the RPD to find that the presumption of state protection remained valid in this case.

[29] Lastly, regardless of the RPD's negative finding with respect to the applicant's credibility, the finding with respect to the presumption of state protection, in and of itself, was enough to reject the applicant's refugee protection claim.

[30] The parties proposed no serious question of general importance for certification and none arises in this case.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. The application for judicial review is dismissed.
2. There is no serious question of general importance to certify.

George R. Locke  
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Judge

Certified true translation  
Sebastian Desbarats, Translator

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

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