

Federal Court



Cour fédérale

Date: 20140919

Docket: IMM-4007-13

Citation: 2014 FC 905

Ottawa, Ontario, September 19, 2014

PRESENT: The Honourable Mr. Justice Mandamin

BETWEEN:

GENTJAN GJETA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant, Mr. Gentjan Gjeta, applies for judicial review of the May 29, 2013 decision of a Member of the Refugee Protection Division of the Immigration and Refugee Board (the RPD). The RPD refused the Applicant's claims for refugee protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA) after

determining that the Applicant is neither a Convention refugee nor a person in need of protection.

[2] The RPD concluded that the Applicant's fear, which allegedly arose from an inter-familial blood feud in northern Albania, did not establish a nexus with the Convention refugee definition. The RPD found that the blood feud did not exist, and that any risk to the Applicant was one shared in general by Albanian citizens.

[3] In addition, the RPD found that the Applicant's failure to claim refugee protection in either Greece or the United States diminished his credibility.

[4] For reasons that follow, I am of the view that the RPD decision is unreasonable. I grant the application, and remit the matter to the RPD for re-determination before a differently constituted panel.

II. **Background**

[5] The Applicant is from Tarazh in rural, northern Albania. He was baptized Catholic in early 1995, and attended church regularly until early 2011 when issues catalyzed his claim.

[6] The Applicant is the youngest member of the Gjeta Clan, which includes his father, mother, and four siblings. The Applicant's one sister, Elsa, resides in Tarazh with their parents and Vladimir, the eldest sibling. The Applicant's second eldest sibling, Kastriot, resides in Nea Peramos, Greece. Edmond, the middle sibling, resides in Mississauga, Ontario. Prior to the

Applicant's claim, an intra-familial feud caused Edmond to flee to Canada where marriage to a Canadian woman enabled him to legally immigrate and start a family in Ontario.

[7] The Applicant's account of the events leading up to his claim began in June 2009 when Ms. Bardhe Vokri, the Gjeta Clan's neighbour, introduced the Applicant to her visiting niece, Najada Gjetani. Ms. Gjetani resides with her family in the north-western Albanian town of Mamurras. The Gjetani Clan is Muslim.

[8] A close relationship between the Applicant and Ms. Gjetani developed during subsequent visits at Ms. Vokri's residence in Tarazh. This occurred without the knowledge of Ms. Gjetani's father, Magit Gjetani, the head of the Gjetani Clan.

[9] Mr. Gjetani arranged for his daughter to marry Jetmir Ndoja, a Muslim from Reshan in northern Albania. However, the arranged marriage was postponed due to Mr. Ndoja's incarceration in September 2010.

[10] In mid-February 2011, a member of the Ndoja Clan saw Ms. Gjetani and the Applicant together in Tarazh. On February 22, 2011, three members of the Gjetani Clan confronted and assaulted the Applicant. This physical attack ended following civilian intervention. The medical document confirms that the Applicant was brought to the hospital where he was treated for facial bleeding, chest haematoma, eye bruising, dizziness and vomiting. The Applicant was discharged from the hospital on February 24, 2011.

[11] The Gjetani Clan prevented Ms. Gjetani from leaving the family home in Mamurras. Her head was shaved to indicate the shame that she had brought upon her family. The Gjetani Clan issued a public declaration against the Applicant in accordance with the tradition of the *Kanun of Lekë Dukagjini* (the *Kanun*). Specifically, the Gjetani Clan declared they would kill the Applicant for the humiliation and insult caused by consorting with Ms. Gjetani.

[12] The Applicant contacted the police to request help. A police officer responded and, upon being apprised of the incident, told the Applicant that he deserved death because he was trying to steal another man's property. The Applicant perceives that the officer's refusal to help was based on his adherence to the *Kanun*.

[13] The Applicant, having received information about Ms. Gjetani's situation, went to see her mother to whom he professed his love for Najada. On April 11, 2011, the Applicant was intercepted by two members of the Gjetani Clan who stabbed him with a knife and told him that he was a Christian who deserved death. The Applicant blocked the knife with his hand, and civilian intervention ended the attack.

[14] The Applicant was sent to the hospital where he received medical treatment for "a pierced through wound to the left palm and hematoma to the face."

[15] The Applicant, again, contacted the police. Two officers responded. After being told what had occurred, the officer taking notes stopped drafting and told the Applicant that he was a fool who did not understand anything. The police officer tore up his notes and left with his partner.

[16] Upon his release from hospital, the Applicant, finding that his family was refusing to support him and in fear of assassination, fled to the city of Burrel where he confined himself in the home of his cousin's maternal relatives.

[17] In August 2011, Applicant learned that the Gjetani Clan had bribed locals for information on his whereabouts. His cousin's maternal uncle made arrangements with a Greek smuggler and the Applicant drove seven hours to the Greece border to meet the smuggler as instructed.

[18] The smuggler took the Applicant into Greece, then from Greece to New York, Boston, and Niagara before finally delivering him to Toronto where the Applicant issued a Convention refugee claim.

III. Decision Under Review

[19] The RPD found that the determinative issues in the Applicant's claim were nexus to the Convention refugee definition and credibility.

[20] The RPD concluded that the Applicant is not a Convention refugee because he failed to express any political opinion in either his oral or written evidence.

[21] The RPD found that, on the balance, the alleged 'blood feud' does not exist.

[22] The RPD's diminished credibility findings by were based on the following:

- A. the documentary evidence and the lack of outside verification demonstrated there was no 'blood feud' under the *Kanun*;
- B. a seven hour car trip to the Greece border was unreasonable when the borders of Kosovo, Macedonia, and Montenegro were all closer;
- C. the failure to claim refugee status at first opportunity impugned the Applicant's credibility because there is a relatively large Albanian population in Greece, which includes the Applicant's sibling in Nea Peramos; and,
- D. it would have also been reasonable for the Applicant to claim Convention refugee status in the United States.

[23] The RPD reasoned that, because the Applicant had not provided credible or trustworthy evidence to establish that he would be persecuted or face serious harm if returned to Albania, any risk faced by the Applicant was generalized to all citizens in his country of origin.

IV. Legislation

[24] Subsection 97(1) of the IRPA states:

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,

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

would subject them personally

...

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(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,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

[Emphasis added]

elle avait sa résidence habituelle, exposée :

...

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(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,

(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,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

[25] Section 7 of the *Refugee Protection Division Rules*, SOR/2002-228 provides:

7. The claimant must provide acceptable documents establishing identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they were not provided and what steps were taken to obtain them.

7. Le demandeur d'asile transmet à la Section des documents acceptables pour établir son identité et les autres éléments de sa demande. S'il ne peut le faire, il en donne la raison et indique quelles mesures il a prises pour s'en procurer.

[Emphasis added]

V. Issues

[26] The determinative issue in this case is the reliance by the RPD on its finding that the Applicant is not the target of a 'blood feud'.

VI. Standard of Review

[27] In the case at bar, the applicable standard of review is reasonableness (see *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 52-54, 58). This standard includes the RPD's assessment of facts and the resulting credibility disposition (see *Wang v Canada (Minister of Citizenship & Immigration)*, 2011 FC 969 at para 22).

VII. Analysis

[28] The Applicant's disagreement with the RPD's decision relates to the negative credibility findings based solely on the subject of a 'blood feud'. The Applicant submits that he did not

claim protection on that basis, and that the RPD erred in using that finding to vitiate his credibility without proper consideration of the attestation letters and country evidence.

[29] In reply, the Respondent argues that the transcript of the RPD hearing expressly shows that the Applicant did claim that he is the target of a 'blood feud', and that it was reasonable for the RPD to conclude that the allegation of a blood feud was the basis for his claim.

A. *Blood Feud vis-à-vis Revenge Killing or Violation of Honour*

[30] In my view, the RPB misapprehended the nature of the Applicant's complaint. The RPD was unreasonable in finding that the Applicant claimed that he was the target of a 'blood feud'. The Applicant did not use 'blood feud' before the RPD chose to use and apply that term to the elements of his claim. The Applicant's written and oral representations remain consistent before the RPD and this Court that the Gjetani Clan issued and acted upon a public declaration that they would kill him for insulting their honour under the *Kanun*.

[31] It is trite law that the Applicant's sworn testimony is presumed to be true, unless there is valid reason to doubt its truthfulness. Further, the more relevant the evidence, the more weight is placed on it. As a result, this Court may draw an adverse inference when important evidence is not clearly stated and analyzed in a decision-maker's reasons. The significance of omitted evidence is determined by assessing its relevance to the evidence on which the decision is based (see *Ozdemir v Canada (Minister of Citizenship & Immigration)*, 2001 FCA 331 at para 9).

[32] This principle is prevalent when particulars within a parcel of evidence are used to support a finding, but evidence pointing to the opposite conclusion is withheld. That said, the task of this Court is not to re-weigh evidence. The impugned evidence must clearly interrelate with the personal situation of the applicant (see *Cepeda-Guiterrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 (TD) at para 17).

[33] The RPD, at paragraph 6 of its decision, correctly identified the nature of the Applicant's claim:

The claimant identified the relations of his girlfriend as the agent of harm in Albania. He alleges that, in their eyes, he offended their family honour by wooing his Muslim girlfriend, already promised in marriage to another Muslim ...

[Emphasis added]

[34] However, I note that in the transcript, the RPD introduced the term 'feud' into the dialogue in the following exchange:

MEMBER: [...] if I am to understand your testimony, you ... you are telling me that you are the subject of a feud declared under the kanoon (ph), is that right?

CLAIMANT: Yes.

[Emphasis added]

I find no reference to either 'feud' or 'blood feud' in the Applicant's affidavit to the RPD.

[35] That dialogue, which occurred towards the end of the RPD hearing, was the first instance in which 'feud' was used by the parties or the RPD. Further, although this term was not

accompanied with the adjective 'blood', the RPD immediately thereafter applied 'blood feud' to the evidence.

[36] In the result, the RPD, at paragraphs 10 and 11 of its decision, stated:

[10] The claimant alleges that he is a subject of a blood feud proclaimed under the kanun, because of his relationship with a Muslim girlfriend promised in marriage to another man. According to the documentary evidence disclosed:

Fischer indicated that blood feuds end either through reconciliation or by "wiping out" the male line of a family.

[11] According to the claimant's testimony, and his disclosures, the family of his girlfriend expressed no interest in mediation in reconciliation. At the same time, there is no apparent threat to the male line of the claimant's family. His father and brother continue to live undisturbed and another brother was killed earlier this year in a motor vehicle accident. This suggests a freedom of movement for members of the male line of the claimant's family which is inconsistent with the kanun he alleges is grounding the blood feud. He explains that only he is targeted, but that is not consistent with the objective information available to the panel. The credibility of the claimant is diminished.

[Emphasis added]

[37] By way of contrast, the Applicant stated in his affidavit to the RPD at paragraph 13:

[M]y sister and Bardhe contacted a women's organization and the local government for help. Both groups made multiple efforts to reconcile me with Nejada's family and since their honour was at stake, to restore their honour they had to kill me.

[Emphasis added]

[38] I find that the RPD initiated use of the term 'blood feud' and imputed a definitional meaning to deem the Applicant's evidence not credible, unreliable and inconsistent with

independent evidence. In doing so, the RPD disregarded evidence that corroborates the Applicant's claims in respect of the harm publicly declared and acted upon by the Gjetani Clan, and their unwillingness, to date, to negotiate termination of the declaration.

[39] In respect of the RPD's imputed meaning of 'blood feud', the report titled *UN General Assembly, Mission to Albania, Human Rights Council*, dated March 14, 2011 (the UN Report), which distinguishes 'blood feud' from 'revenge killings'. The UN Report states that confusion has resulted from the fact that different actors tend to use different meanings of 'blood feud' and 'blood feud killings'. Although local practices may differ, the narrowest understanding of 'blood feud' is the pre-meditated killing of a member of a murder victim's family. In broader interpretation, 'blood feud' includes a 'revenge killing' without a familial dimension. The UN Report states that a more questionable approach is to apply the term 'blood feud' to cases in which specific actions, including threats and physical violence, is present, but an initial killing has yet to occur.

[40] I find helpful the very document used by the RPD to define 'blood feud' in rejection of the Applicant's claim. Similar to the UN Report, the IRB Paper states that feuds are disproportionately observed in northern Albania, but occur everywhere in Albania including Tirana. Contrary to the RPD's application and use of 'blood feud', the IRB Paper distinguishes 'classical blood feud' from 'modern blood feud'. The IRB Paper states that the *Kanun* has been used to justify acts of revenge beyond the traditional blood feud. Of significance, the document distinguishes 'blood feuds' from 'violations of honour', stating that 'honour' in Albania is very broad and covers matters that non-Albanians might not evaluate as serious.

[41] Variance in Albanian ‘blood feud’ terminology was observed by Russell J in *Andoni v Minister of Citizenship and Immigration*, 2012 FC 516 [Andoni] at paragraphs 23 to 25. In that case, the Court reviewed the RPD’s consideration of an independent report on feuds in Albania. Russell J found, at paragraph 93, that because the report stated that the traditional practice was based on “culturally understood rules” which differed from “region to region over time”, the negative credibility finding against the applicant based on the RPD’s interpretation that a “formal declaration” was required to start a blood feud was both unreasonable and procedurally unfair.

[42] The RPD misapprehended the evidence by applying the ‘classic blood feud’ definition to the Applicant’s claim. I find it was unreasonable for the RPD to have failed to consider whether other evidenced forms of conflict under the *Kanun* system, specifically those more consistent with the Applicant’s circumstance, authenticated the Applicant’s claim that he was the subject of a *Kanun* based declaration of pre-meditated harm premised on the Gjetani Clan’s claim of a loss of honour.

[43] In finding diminished credibility due to a lack of authentication about the ‘blood feud’ declaration, the RPD failed to identify a relevant portion the *Response to Information Requests*, dated February 1, 2012, which states that non-governmental organizations issue attestation letters. This compliments the IRB Paper’s statement that there is little consistency in Albanian documentation, and that many varieties of documentation exist.

[44] Accordingly, I find that the RPD did not accord proper regard to evidence regarding the attestation statement provided by Shpresa Bici of the non-governmental organization

“Association for the Stable Development of Women of Mirdite” (the NGO), which confirms that the Ms. Vokri and Ms. Gjeta requested help from the NGO in early May 2011, and that Mr. Gjetani subsequently told the NGO not to interfere with the rule of *Kanun*.

[45] I find that the NGO letter significantly corroborates the Applicant’s claim that the second attack occurred on April 11, 2011. That date is logically congruent with the request for help from the NGO in May 2011. The Applicant’s claim is also consistent with the information and dates provided in both tendered medical reports. It was unreasonable for the RPD not to consider whether these external consistencies bolster the credibility and the reliability of the Applicant’s internal evidence and overall claim.

[46] I also find that the RPD failed to recognize the relevance of information in the IRB Paper, which indicates that reconciliation committees offer “little to no protection” to citizens involved in feuds. This accords with evidence from Reshen Mayor Ndue Gega, which confirms that Ms. Vokri and Ms. Gjeta requested help from a public representative in Tarazh. However, after several meetings with the Gjetani Clan at city hall, the official reported that despite collaboration with priests and the Muslim community, the Applicant’s life remains in danger. The RPD misapprehended and failed to consider evidence from country documentation and state officials that corroborates the Applicant’s claim.

[47] While the RPD found the Applicant not credible on the basis of his flight path to Canada, the RPD’s misapprehension of the Applicant’s claim as being based on a non-existent ‘blood feud’, in my view, unreasonably coloured the RPD’s credibility assessment.

[48] Further, a negative credibility determination, which may be determinative of a refugee claim under section 96 of the IRPA, is not necessarily determinative of a claim under section 97(1) of the IRPA. Thus, it is essential for the RPD to expressly analyze both claims as separate in its consideration of the matter (see *Bouaouni v MCI*, 2003 FC 1211 at paras 41-42).

[49] As a result, I find error in the RPD's negative finding under subsection 97(1) of the IRPA. The Applicant's ability to avail himself of state protection is at odds with evidence in the record that shows government inability and police unwillingness to protect the Applicant from the *Kanun* declaration.

[50] The RPD heard evidence of Ms. Gjeta's confirmation that the declaration remained active the day prior to the hearing. The RPD should have considered the specific ramifications of the Applicant's return to Albania given Ms. Gjeta, Ms. Vokkri, the NGO, the municipality, the church, and the village elder, to date, have all been unable to persuade the Gjetani Clan to withdraw their declaration to kill the Applicant.

[51] The declaration still looms over the Applicant. The RPD failed to consider whether the Applicant is able to avail himself of state protection

VIII. Conclusion

[52] For the reasons above, I find that the RPD erred by unreasonably misdirecting its attention to a claim based on the existence or non-existence of a 'blood feud', and by making

diminished credibility findings based on its misapprehension of the Applicant's claim without having regard to the evidence proffered in support of the Applicant's claim.

[53] I grant the application, and remit the matter to a differently constituted RPD panel for re-determination.

[54] The parties do not propose a serious question of general importance for certification and I do not certify any question.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The RPD decision is set aside, and the matter is remitted to the RPD for re-determination by a differently constituted panel.
2. No serious question of general importance is certified.

“Leonard S. Mandamin”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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