Federal Court  Cour fédérale

**Date: 20141006**

**Docket: IMM-7829-13**

**Citation: 2014 FC 938**

**Ottawa, Ontario, October 6, 2014**

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

**BETWEEN:**

**ERVIN PEPAJ**
**MANDALENA PEPAJ**

**Applicants**

**and**

**MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## JUDGMENT AND REASONS

## I. Overview

[1] The applicants seek judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the Board), dated October 15, 2013, which found that they were neither Convention refugees nor persons in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). For the reasons that follow the application is dismissed.

## II. Facts

[2] The applicants, mother and son, are citizens of Albania. The principal applicant, Ervin Pepaj, is 26 years of age, and his mother, Mandalena Pepaj, is 47 years old. They resided in Albania until 2001, when they went to the United States and claimed political asylum. Their claims were rejected and the applicants were deported back to Albania in July, 2009.

[3] Before the Board, the applicant testified that he would be at risk in Albania because of a blood feud. He claims that in October, 2009, he entered into a relationship with a woman named Stela Vukaj. In May of 2010, Stela's four brothers approached the applicant on the street and told him to stop seeing Stela. When the applicant refused the brothers beat him. Consequently, the applicant spent four days in hospital. While there, a police officer visited but left shortly thereafter saying "that [the applicant's] situation has the making of a blood feud and he didn't want to get caught in the middle".

[4] After release from the hospital, the applicant continued to see Stela. The threats from Stela's family did not stop, so on June 6, 2010, a month after the threats, he fled Albania. He first travelled to Montenegro, then to Germany, then to the Dominican Republic. From the Dominican Republic the applicant returned again to Germany, and from there he travelled to Spain. On July 18, 2010, he entered Canada and claimed protection pursuant to sections 96 and 97 of the *IRPA*. From the Dominican Republic and on, he used a fraudulent passport to travel.

[5] Mandalena testified that she was also the recipient of threats by Stela's family, and so in December of 2010 she fled Albania. She travelled first to Montenegro, then to France. On

December 24, 2010, she travelled from France to Canada and claimed protection pursuant to sections 96 and 97 of the *IRPA*. Mandalena travelled using a fraudulent passport from France to Canada.

## III. Decision Under Review

[6] The Board found the determinative issue was credibility and, in the alternative, state protection. The Board concluded that the applicants were not credible. This finding was based, in part, on the applicants' failure to claim protection at the first opportunity. The applicant travelled through four safe countries, and had five opportunities to claim protection. His mother travelled through two countries. The Board found this behaviour indicated a lack of genuine subjective fear.

[7] The Board considered the applicants' reliance on fraudulent documents while travelling, and a lack of state documentation verifying the feud. The applicants did submit documentary evidence from a local priest however, this document contained a factual error and as such the Board determined that it was fraudulent. Further, the Board found that the documentary evidence from non-governmental organizations, including the Committee of Nationwide Reconciliation led by Gjin Marku, was fraudulent, and had been bought by the applicants.

[8] Although the Board also cited state protection as a reason for denying the applicants' claim, no analysis or reasons were provided.

[9] The applicants argue the Board's adverse credibility assessment was unreasonable. The applicants' submit that they had a reasonable explanation for failing to claim refugee status in other countries before applying in Canada. They testified that they wanted to get as far away as possible from Albania, and that they knew that Canada would provide protection. They also contend, in argument, that delay in making a claim cannot, in and of itself, be the basis for doubting the applicant's credibility: *Gyawali v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1122 at para 16.

[10] The applicants submit that the Board should not have drawn a negative credibility inference based on the fact that no documents were submitted to support the claim: *Henriquez Pinedo v Canada (Citizenship and Immigration)*, 2009 FC 1118 at para 13. Further, the Board should not have found that the applicants' use of fraudulent passports eroded their credibility.

[11] Finally, the applicants' argue that even if they were able to produce objective evidence from the state verifying the blood feud, the Board would not have accepted the documentation. They contend that the Board required objective documentary evidence from the state, yet also acknowledged that widespread corruption exists in the Albanian government which undermined the very documentation demanded. Further, they argue that the documents from the Committee of Nationwide Reconciliation, a non-governmental organization, should have been assessed on the facts contained in them, and not dismissed because they were not from a recognized source.

[12] Finally, the applicants submit that because evidence related to state protection was advanced at the hearing, the Board's lack of analysis regarding state protection was

unreasonable. A claimant may not be entirely credible, yet still face a risk to his or her life, with regards to country conditions and other objective criteria which can be verified independently of the claimant's subjective fear: *Alegria Monroy v Canada (Minister of Citizenship and Immigration)*, 2006 FC 588 at paras 29-31.

## IV. Analysis

[13] The Board's assessment of the applicants' credibility is an issue of fact. Accordingly, the standard of review is reasonableness: *Dunsmuir v New Brunswick*, 2008 SCC 9. In questions of credibility significant deference is owed to boards and tribunals as they are well placed to assess the credibility of refugee claimants. The determination of credibility is the "heartland of the Board's jurisdiction": *Toma v Canada (Citizenship and Immigration)*, 2014 FC 121 at paras 9-10.

### A. *The Board's Adverse Credibility Finding was Reasonable*

[14] Significant deference is owed to credibility findings made by boards as they are well placed to assess the credibility of refugee claimants: *Toma*, para 9. The Board reasonably concluded that the applicants were not credible. The Board did not believe the applicants' story, and identified several issues which, in its view, supported an adverse credibility finding. These issues included failure to claim elsewhere, reliance on fraudulent documentation, inconsistencies in their evidence and lack of government confirmation of the feud.

[15] The Board was entitled to impugn the applicants' credibility based on the applicants' delay in claiming refugee status, and their failure to claim at the first opportunity: *Toma*, para 18;

*Mahari v Canada (Citizenship and Immigration)*, 2012 FC 999 at para 27. The applicants submit they have a reasonable explanation for the delay and failure to claim; however, the only explanation provided was that the applicants "wanted" to come to Canada for its "very good refugee protection". This is not an explanation that justifies the applicants' failure to claim in the numerous safe countries they travelled through. It was therefore reasonable for the Board to conclude that the applicants' behaviour was inconsistent with the fears alleged.

[16] The explanation offered had to be considered in the context of the evidence before the Board as a whole. That evidence, which was not disputed, was that the applicants had been in the United States for eight years and returned to Albania in July 2009. The threats giving rise to the claim took place in May of 2010 and the applicants left in June of that same year without, in their own evidence, having sought any assistance from local authorities. In this context, the explanation offered for failing to claim, given multiple opportunities to do so, was reasonably discounted by the Board.

[17] These circumstances are far removed from those considered in *Pathmanathan v Canada (Citizenship and Immigration)*, 2013 FC 353, a case relied on by the applicant. There, the explanation for a failure to avail was assessed by the Board on an incorrect understanding of the underlying facts.

[18] The Board noted that both applicants relied on fraudulent passports on the final legs of their journey. Unlawful entrants into Canada are eligible to have their refugee claims determined: *Surujpal v Canada (Minister of Employment & Immigration)*, [1985] FCJ No 326

(case not cited by either party). However, I believe it was reasonable for the Board to question the applicants' genuine subjective fear given that, prior to entering Canada, both applicants travelled using their own, non-fraudulent passport and did not avail themselves of the opportunity to claim protection, in the case of the son, in four countries.

[19] The applicants' credibility was further undermined by their failure to provide state documentation proving the alleged blood feud and by their reliance on documents from unreliable and potentially fraudulent sources. The applicants had been in Canada for three years and were unable to provide any reliable documents confirming the alleged blood feud. It was reasonable for the Board to draw a negative inference from the applicants' failure to corroborate elements of their story.

[20] The Board also found that the attestation letters produced by the applicants were fraudulent and had been purchased by the applicants. As the Board based this finding on objective evidence, including the Response to Information Request, the adverse credibility finding was open to it.

[21] In sum, the Board's adverse credibility finding has a solid evidentiary foundation.

**B.** ***It was Reasonable for the Board to not Provide a State Protection Analysis***

[22] The applicants' second argument that the Board must provide a state protection analysis following an adverse credibility finding fails in light of the decision of the Federal Court of

Appeal in *Canada (Citizenship and Immigration) v Sellan*, 2008 FCA 381, where the Court stated at paragraph 3:

> [W]here the Board makes a general finding that the claimant lacks credibility, that determination is sufficient to dispose of the claim unless there is independent and credible documentary evidence in the record capable of supporting a positive disposition of the claim. The claimant bears the onus of demonstrating there was such evidence.

[23] The applicants argue that the Board only focused on Mr. Gjin Marku's documentary evidence and failed to reference documentary evidence from other sources and in particular, the commentary of the UN Special Reporter Philip Alston, on extra-judicial killings.

[24] A report such as this does not, in my view, constitute independent and credible documentary evidence as contemplated by *Sellan*. Generalised descriptions of country conditions provide useful and important context to the assessment of claims, but they cannot, by their very nature, stand as a surrogate for proof of particular facts in respect of an individual claimant.

## JUDGMENT

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

There is no question for certification.

"Donald J. Rennie"

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-7829-13 |
| **STYLE OF CAUSE:** | ERVIN PEPAJ, MANDALENA PEPAJ v MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | OTTAWA, ONTARIO |
| **DATE OF HEARING:** | SEPTEMBER 3, 2014 |
| **JUDGMENT AND REASONS:** | RENNIE J. |
| **DATED:** | OCTOBER 6, 2014 |

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