

Federal Court



Cour fédérale

Date: 20160229

Docket: IMM-1603-15

Citation: 2016 FC 255

Ottawa, Ontario, February 29, 2016

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**MARIJE VUSHAJ AND SAMANTHA
VUSHAJ, BY HER LITIGATION GUARDIAN,
MARIJE VUSHAJ**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is the judicial review of a Refugee Appeal Division [RAD] decision upholding a Refugee Protection Division [RPD] decision denying the refugee protection claim of Marije and Samantha Vushaj based on a negative credibility finding.

[2] This case is governed by the long-established principle that the more important the document, the greater the obligation on the decision-maker to articulate its consideration of the document (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425, 157 FTR 35 at para 17 (Fed TD)).

II. Background

[3] The Applicants are Albanian and the basis of their claim is that they were the victims of a blood feud. The existence of a blood feud is central to this claim.

[4] The Applicants' narrative about how the blood feud played out, what supposedly happened to them and their various travels inside and outside Albania, if true, would be interesting but not germane to the legal issue here. Therefore, a detailed recitation is unnecessary.

It is sufficient to say that the RPD did not believe this part of the narrative, nor did the RAD.

[5] Aside from the narrative, the Applicants submitted independent documentary evidence relating to attempts to abduct Samantha, who was a minor, and the existence of the blood feud.

These documents were letters from a teacher, Mark Tinaj and Peshko Toma and statements from the Village Elders and the Commune (the local government authority).

[6] The RAD agreed with the RPD that the teacher's letter should be given limited probative value for a number of reasons, including the prevalence of fraudulent documents from Albania, Marije's past use of fraudulent documents and internal inconsistencies in the letter.

[7] With respect to the documents from Mark Tinaj and Peshko Toma, the RAD had already noted the easy access to fraudulent documents and appears to have discounted the documents because Peshko Toma in particular was known to provide false attestations.

[8] With respect to the documents from the Village Elders and the Commune, which confirmed the blood feud and the kidnapping attempt on Samantha, the RPD gave these documents low probative value because of a lack of credible documents from credible sources – a general prevalence of fraud – combined with the credibility concerns regarding the Applicants' allegations.

The RAD simply agreed with the RPD that the documentation should be given low probative value.

[9] The issue in this judicial review is whether the RAD's documentary evidence conclusion was reasonable.

III. Analysis

[10] The assessment of evidence and credibility findings are reviewed on a standard of reasonableness (*Garcia Arias v Canada (Citizenship and Immigration)*, 2010 FC 1029, 195 ACWS (3d) 1106).

[11] Given the “multi holed” testimony of the Applicants – inconsistent and contradictory as it frequently was – it was open to the RPD and the RAD to find their personal narrative not credible. It was reasonable to find that they were not where they say they were and that the events described did not happen.

[12] It was also open to the RAD and the RPD to reject documentary evidence and open to the RAD to adopt the RPD’s conclusions. However, it must explain why it did so.

[13] What is at issue is “corroborating evidence”. Corroborating evidence is not the same as “credible evidence”. Corroboration of a lie does not make it a truth.

[14] In the present case, the RPD articulated why it specifically rejected some documentary evidence, such as the teacher’s letter. It was likewise open to the RAD, as it in effect did, to adopt the RPD’s reasons.

[15] However, in respect of the documents from the official sources, the Village Elders and the Commune, the RPD gave them low probative value because of the prevalence of fraudulent documents. Neither the RPD nor the RAD explained why these documents could reasonably be fraudulent. There were no concerns about the contents, the form or the source of the documents.

[16] The RAD was obliged to explain why these documents were rejected on something more substantial than a general concern for fraudulent documents. The Applicants’ lack of credibility

could be a factor if there was a connection between the Applicants' conduct and the obtaining of the documents – however, no such connection was articulated by the RAD.

[17] In the absence of a considered, articulated rationale for rejecting documents that on their face appear official, the RAD cannot dismiss as not credible that part of the Applicants' story related to the existence of a blood feud.

[18] It would be speculation to assume that had the RAD accepted the documents as probative, it would nonetheless have rejected the refugee claim because other aspects of the Applicants' claim were not credible.

[19] The RAD's decision is unreasonable.

IV. Conclusion

[20] For these reasons, this judicial review will be granted, the decision will be quashed and the matter remitted back to a different RAD panel. There is no question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted, the decision is quashed and the matter is to be remitted back to a different Refugee Appeal Division panel.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1603-15

STYLE OF CAUSE: MARIJE VUSHAJ AND SAMANTHA VUSHAJ, BY
HER LITIGATION GUARDIAN, MARIJE VUSHAJ v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 8, 2016

JUDGMENT AND REASONS: PHELAN J.

DATED: FEBRUARY 29, 2016

APPEARANCES:

D. Clifford Luyt FOR THE APPLICANTS

Monmi Goswami FOR THE RESPONDENT

SOLICITORS OF RECORD:

D. Clifford Luyt FOR THE APPLICANTS
Barrister and Solicitor
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of
Canada
Toronto, Ontario