

Federal Court



Cour fédérale

**Date: 20160921**

**Docket: IMM-4836-15**

**Citation: 2016 FC 1071**

**Ottawa, Ontario, September 21, 2016**

**PRESENT: The Honourable Madam Justice Elliott**

**BETWEEN:**

**NDUE KROJ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review, under s. 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 [IRPA]. The Applicant seeks to set aside a decision of the Refugee Appeal Division of the Immigration and Refugee Board [RAD] dated October 8, 2015 [Decision]. The RAD confirmed the decision of the Refugee Protection Division [RPD] that determined the Applicant was neither a convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the IRPA.

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

I. **BACKGROUND FACTS**

[3] The Applicant is a citizen of Albania, born January 16, 1987. On September 1, 1999, his cousin killed two individuals. The family of the victims, the Arifi, then initiated a blood feud with the family of the Applicant. The Applicant states his family received numerous threats, including the writing of the word 'death' on the front door of the Applicant's home, as well as numerous letters and telephone calls.

[4] On March 7, 2001, the Applicant's cousin was murdered. The Arifi family denied any involvement in the death and the police never discovered the perpetrators.

[5] The Applicant's family decided to relocate. After a month they discovered that a number of their livestock had been killed. Threats persisted over the years and the family moved again on July 14, 2013. On July 25, 2014, someone detonated three explosives at the family's original residence destroying the entire house and damaging neighbouring properties.

[6] From 2005-2009, the Applicant worked in Albania as a brick layer and then he worked as a construction worker during 2010-2014. He also worked in Italy as a fruit harvester and construction worker for two to three month periods at a time from 2009-2014, travelling back and forth between Italy and Albania.

[7] Most of the elder cousins and uncles of the Applicant left Albania seeking refuge in the United States and Europe. Using a false Italian passport, the Applicant left Albania on December 2, 2014. He remained in France for two weeks and arrived in Canada on December 18, 2014. He

made a refugee claim at the port of entry. Now, as the oldest male of the family, aside from his father, the Applicant says he fears he will be killed if he returns to Albania.

## II. THE RPD DECISION

### A. *No Nexus to a Convention Ground Established*

[8] The RPD hearing was held February 23, 2015. The decision was released on March 6, 2015. The RPD determined the Applicant's fears of the Arifi family related to being a victim of crime and of a vendetta by the Arifi family. There was no link found between the Applicant's fear of persecution and one of the Convention grounds. The RPD therefore found that the Applicant was not a Convention refugee. His claim failed under section 96 of the *IRPA*.

### B. *State Protection was the Determinative Issue*

[9] The RPD also found that state protection was a determinative issue. It noted Albania is a functioning democracy. The RPD found the evidence regarding whether state protection in Albania was operationally effective was mixed and an individualized and contextualized analysis of each claim was required.

[10] Overall, the RPD found the Applicant had not provided sufficient credible and reliable evidence to rebut the presumption of state protection in his particular circumstances. The RPD reviewed a number of country condition documents and found there was evidence that "there is state protection at the operational level for victims of crime, including blood feuds." It also determined the Applicant had not made sufficient efforts to seek help from police. It noted the Applicant testified he had never personally called the police or reported to the police but his mother had done so on his behalf.

[11] The Applicant submitted an attestation from the mayor and a police officer in support of his claim. The RPD noted the documents showed the police had often been by the side of the family offering protection. The Applicant testified that other than the 2001 murder of his cousin no members of his family had been physically harmed despite the numerous threats. The RPD noted that failure to arrest someone for the 2001 murder and an inability to reconcile the two families did not lead to a conclusion that there is no adequate state protection.

[12] With respect to a successful 2005 refugee claim on similar grounds by the Applicant's cousin in the United States, the RPD noted there had been several tangible improvements in state protection in Albania in the ensuing period of time.

C. *Viable Internal Flight Alternative*

[13] The RPD also found the Applicant had an Internal Flight Alternative [IFA] in Tirana, Albania and that the several re-availments he made from Italy to his family home Albania undermined his allegation that his life was seriously at risk in Albania. The RPD doubted the severity of the threats from the Arifi family given the various re-availments over many years, his failure to claim asylum in either Italy or France and his ability to work in Albania. The Applicant testified that if he received any threats from the Arifi family and he was in Tirani he would report them to the police there.

III. **THE RAD DECISION**

[14] The Applicant raised three grounds of appeal before the RAD alleging that the RPD:

- i. failed to articulate credibility findings in clear and unambiguous terms
- ii. failed to conduct a proper analysis on the availability of state protection
- iii. erred in the determination of an IFA

[15] The RAD accepted as new evidence two documents:

- i. an Attestation dated March 30, 2015 signed by police for the commune of Pult, reporting that the Applicant's mother had reported that she had been threatened and assaulted by two unknown masked persons. The report noted that the police have been unable to identify the perpetrators so far.
- ii. a letter dated March 29, 2015 from the Applicant's mother alleging that on March 28, 2015 she was assaulted and threatened by armed masked men who asked as to the whereabouts of the men of her family and threatened to kill her husband and sons.

A. *Standard of Review of the RPD Decision*

[16] The RAD reviewed the most recent jurisprudence as of October 2015 on the standard of review they were to apply. Relying on *Huruglica v Canada (Citizenship and Immigration)*, 2014 FC 799 [*Huruglica FC*], the RAD came to the conclusion that it would conduct its own "independent assessment of all the evidence to determine whether the appellant is a Convention refugee or person in need of protection, while giving certain deference where the RPD enjoys a particular advantage." The RAD also determined that the standard of correctness would be used for any error of law found in the RPD decision.

B. *Credibility Findings*

[17] The RAD reviewed the RPD reasons and found the credibility concerns expressed were not determinative of the claim. State protection was the determinative issue. The RAD noted there were no credibility issues "as to the historical basis of the alleged blood feud". The lack of sufficient credible evidence to rebut the presumption of state protection came from the Applicant's testimony with respect to failing to claim asylum in Italy and France as well as his several re-availments to Albania. The RAD noted that the Applicant's employment in Albania led the RPD to find his allegation that he was in hiding for over 10 years to be an embellishment of his claim.

[18] The RAD stated that in any event credibility was not dispositive of the claim; state protection was the determinative issue.

C. *State Protection Analysis*

[19] The Applicant submitted to the RAD that the state protection analysis by the RPD was “wholly inadequate” given the official letter from the police that their efforts have failed to find the perpetrators and they were unable to reconcile the families in the blood feud. He also took issue with the documentary sources relied upon by the RPD and stated there was no analysis on the availability of state protection for victims of blood feuds. He said there was no individualized assessment of state protection and no consideration of the dimensions of blood feuds including “rules, guidelines and cultural considerations”.

[20] The RAD noted there were several references to blood feuds in the country condition documents relied upon by the RPD, and in the reasons there were specific references to blood feuds. The Applicant had objected to the RPD considering country condition documents unrelated to blood feuds. In that respect, the RAD determined the RPD “certainly committed no error in analysing the greater context of state protection in Albania with references to such factors as corruption, judicial reform and organized crime”.

[21] The RAD noted the RPD had accepted there was a blood feud and that extensive documentation on blood feuds had been filed with the RPD. The RAD found the RPD reasons did consider the context of a blood feud and the review of state protection referred to various country documents discussing Albania’s response to blood feuds.

[22] With respect to the letter filed at the RPD from the mayor and a police officer, the RAD reviewed it and came to the conclusion that the letter was a summary statement prepared at the request of the family and did not provide details so it was not known what steps were taken by the police.

[23] The RAD noted an individualized assessment of state protection included considering what efforts were made by a refugee claimant. The Applicant personally had never approached authorities for protection. He relied upon his mother's actions.

[24] The new evidence presented to the RAD was considered. It showed the police attended at the mother's house and noticed she seemed frightened and terrorized. The RAD found that evidence showed the police were willing to provide protection, but as there was no witnesses and the attackers were masked the police could not identify the perpetrators. The RAD concluded there was not much more the police could have done, and it did not equate to a lack of state protection.

D. *Internal Flight Alternative (IFA)*

[25] In reviewing this ground of appeal the RAD noted the determinative issue was state protection and, given the finding that the Applicant had failed to rebut the presumption of state protection, there was no need to address the third ground of appeal.

E. *Conclusion by the RAD*

[26] The RAD concluded by confirming they conducted their own independent assessment of all the evidence. They found the RPD had not made any error in law, fact or mixed law and fact. The RAD concurred with the ultimate determination that the Applicant is neither a Convention

refugee nor a person in need of protection. They confirmed the state protection determination made by the RPD and rejected the appeal.

#### IV. **ISSUES AND STANDARD OF REVIEW**

##### A. *Issues*

[27] In criticizing the RAD decision, the Applicant raises virtually the same issues as he did before the RAD about the RPD. He claims: (1) the RAD erroneously accepted the RPD credibility finding and failed to come to a definitive conclusion about his credibility; (2) the RAD made unreasonable findings on state protection; and (3) the RAD ignored relevant evidence that conflicted with the evidence selected to support the decision.

##### B. *Standard of Review*

[28] Since the hearing of this matter, the Court of Appeal confirmed that RAD decisions are reviewed on the reasonableness standard: *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35 [*Huruglica FCA*]. That is the standard I will apply.

[29] Reviews of RAD decisions by this Court involve reviewing decisions made by a highly specialized tribunal. As such, deference in the form of “a respectful attention to the reasons offered or which could be offered in support of a decision” is owed to decisions by the RAD. A decision is reasonable when there is “justification, transparency and intelligibility within the decision-making process” and the actual decision “falls within a range of possible, acceptable outcomes that are defensible both on the facts and law”: *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 48 and 47 respectively [*Dunsmuir*].



[30] The Court of Appeal also held in *Huruglica FCA*, at paragraph 103, that the standard of review to be applied by the RAD to decisions of the RPD is correctness when there is no issue of credibility of oral evidence. As stated below, I am satisfied this is the standard that was applied here by the RAD.

## V. ANALYSIS

### A. *Standard of Review*

[31] The process employed by the RAD, although it pre-dates *Huruglica FCA* by more than six months, is in keeping with the direction given by the Court of Appeal. Throughout the decision, the RAD showed it re-examined the record, including the reasons given by the RPD, and determined at each instance whether the RPD had erred.

[32] The legislation, as confirmed by *Huruglica FCA*, states that the RAD shall, after considering the appeal either: (a) confirm the RPD determination; (b) set it aside and substitute the determination the RAD believes ought to have been made; or (c) refer the matter back to the RPD for redetermination while giving any directions the RAD considers appropriate: *IRPA*, s. 111.

[33] By confirming the RPD findings, the RAD complied with the legislative requirement. It does not mean they failed to conduct the appeal properly.

### B. *Credibility*

[34] Counsel for the Applicant submitted that the RPD member failed to articulate her credibility findings in clear and unambiguous terms, did not conduct an independent analysis, as there is no reference to the transcript of the RPD hearing nor to the similarly situated cousin who

received refugee status in the United States in 2005. He argues that these unstated credibility assessments on the Applicant's subjective fear of persecution tainted the objective evaluation of adequate state protection. He also says the RAD simply analyzed the RPD assessment on each piece of evidence instead of conducting an independent assessment.

[35] I do not read the Decision that narrowly. For one thing, the information the Applicant claims was not considered is set out in the RPD decision. Failure to mention the evidence does not mean it was not considered. The RAD focussed on the fact that state protection, not credibility, was the determinative issue. As such, the panel only addressed the salient evidence.

[36] Relying on *Mendoza v Canada (Citizenship and Immigration)*, 2015 FC 251 [*Mendoza*], the Applicant says that negative credibility claims must be made in clear and unmistakable terms and it is an error not to specify what evidence the decision-maker does and does not find credible. In *Mendoza*, Mr. Justice Zinn found there were statements that the applicant there was not credible but there was no reference to any particular evidence that was rejected on the basis of the credibility finding. The Court then could not tell what impact the credibility findings had on the state protection finding. That is not the case here.

[37] Contrary to the allegations of the Applicant, I find both the RPD and the RAD made clear credibility findings. They each accepted the murders occurred in 1999 and 2001. They each accepted the fact of the blood feud. They each accepted the police letters were credible that the police offered protection but made no arrests. They each clearly state why they find that does not show an inability to provide state protection. Few credibility findings are made because the facts, such as the trips by the Applicant back and forth between Italy and Albania for work, are straightforward and not in dispute. I acknowledge that the Applicant objects to the interpretation

of the facts and the conclusions drawn from them by both tribunals. That, however, does not mean the decision-maker failed to articulate the credibility findings. It simply means the Applicant disagrees with the outcome.

[38] The Applicant also relies on *Farkas v Canada (Citizenship and Immigration)*, 2014 FC 210 [*Farkas*], for the proposition that a failure to articulate credibility findings is an error when the RPD does not make a finding on subjective fear before analyzing state protection, which is a component of whether a claimant's fear is reasonable. *Farkas* in turn relies on the decision of *Cobian Flores v Canada (Citizenship and Immigration)*, 2010 FC 503 [*Flores*], which held that the RPD should make a determination of subjective fear of persecution before questioning whether state protection is available.

[39] I find this case to be distinguishable from both *Farkas* and *Flores*. *Flores* does not stand for the proposition that a determination on state protection without a conclusion on subjective fear is always unreasonable. Rather, there was a factual vacuum that precluded the RPD from assessing the adequacy of state protection from the particular threats the applicant was fleeing. The Court noted, at paragraph 32, that a low-level drug dealer and a powerful drug cartel present different threats in analysing state protection.

[40] In *Farkas*, the issue was that the RPD implicitly found the applicant non-credible by rejecting his subjective fear of persecution, but then relied on his testimony in finding that state protection was adequate. The RPD's decision was overturned because the same evidence cannot reasonably be true for one purpose but false for another.

[41] In this case, the RPD and RAD found that the Applicant's frequent travel between Italy and Albania, and his failure to make refugee claims in Italy or France, was evidence that the Applicant did not consider the state protection in Albania to be inadequate. They found that this evidence undercut the Applicant's claim that Albanian state protection was objectively inadequate. This chain of analysis was reasonably open to both decision-makers. The fact that the RAD and RPD did not also rely on the Applicant's travel history to reject his claim on the basis that he had no subjective fear of persecution does not make their state protection findings unreasonable. If a piece of evidence can cause a refugee claim to fail for two reasons, a decision-maker does not err by relying solely on one of them.

C. *State Protection Analysis*

[42] The Applicant raised a concern that the RPD had not considered the nature of blood feud when looking at state protection. The RAD found the RPD accepted as credible that there was a blood feud. They noted the country condition documents reviewed by the RPD referred to blood feuds and that an individualized and contextualized analysis of the Applicant's claim was required to determine state protection.

[43] The RAD reviewed the state protection findings made by the RPD. It analyzed the appropriateness of those findings and reviewed the applicable country condition documents that had been relied upon. The RAD noted that state protection does not have to be perfect. It found that the documents, including a European Commission report from 2014, stated authorities were reducing crime arising from blood feuds. The Applicant's disagreement with the conclusions drawn appears to be a difference in opinion on the relative weight to be assigned to the evidence in the documents. I am satisfied the RAD made an independent assessment of the evidence, as

shown in the reasons, and that the finding on the availability of state protection was reasonable given the documentary evidence in the record.

[44] The RAD dealt with the Applicant's evidence before the RPD from the police and the mayor as well as the new evidence provided to the RAD. They found that the evidence from the police in both instances confirmed that the authorities were taking the blood feud seriously and were willing to provide protection. This is consistent with the statement in the letters and was a conclusion that was reasonably open to the RAD to draw.

[45] As part of the individualized analysis, the RAD looked at the Applicant's several re-availments and his work in Albania, some of which was outdoors. The RAD also considered the context of the Applicant's actions in not claiming asylum over many years in Italy or in France for the two weeks he was there before he came to Canada. It was reasonable for the RAD to find those facts undermined the Applicant's alleged fear of serious risk to his life if he is returned to Albania.

[46] I find that the state protection analysis by the RAD is not confusing and does not prevent the Applicant from understanding why the RAD came to the conclusions it did. The RAD found evidence provided by the Applicant supported the availability of state protection. It reasonably concluded the Applicant's prior actions show he did not have a fear of harm if he were to be returned to Albania and that the Arifi family was not so powerful that the police would not be able to assist him.

[47] The Applicant offered little evidence to rebut the presumption of state protection and what was offered was found to support, not rebut the presumption. That view of the evidence

was reasonably available to the RAD. Although the reasons might have contained more detail, they are sufficient to enable the Applicant to understand why the RAD arrived at the conclusions it did and what evidence it relied upon in coming to those conclusions. In that respect, the *Dunsmuir* criteria have been met.

D. *Internal Flight Alternative*

[48] The RAD determined that as state protection was a determinative factor where the RPD had made no errors in its analysis, it was not necessary to examine the RPD finding that there was a viable internal flight alternative.

VI. **CONCLUSION**

[49] The RAD conducted its own independent review and made their own determinations of whether the RPD had erred or not. In each instance, as it is required to do, it found no error.

[50] The decision-making process was transparent and intelligible. It was justified by the evidence before the RAD. The RAD agreed that the Applicant failed to rebut the presumption of state protection. I am unable to find anything unreasonable in the reasons provided or in the outcome. The Applicant knows why the findings were made and which evidence was considered in arriving at those findings. The decision falls within the range of possible, acceptable outcomes. It is defensible on the facts and law.

[51] The Applicant would like me to look at the evidence and come to a different conclusion than the RAD and the RPD but that is not my role or function.

[52] The application is dismissed. Neither party posed a serious question of general importance for certification and none arises on these facts.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The application is dismissed.
2. There is no serious question of general importance for certification.

"E. Susan Elliott"

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Judge

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

**DOCKET:** IMM-4836-15

**STYLE OF CAUSE:** NDUE KROJ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** CALGARY, ALBERTA

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**DATED:** SEPTEMBER 21, 2016

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