

Federal Court



Cour fédérale

**Date: 20161214**

**Docket: IMM-2594-16**

**Citation: 2016 FC 1371**

**Ottawa, Ontario, December 14, 2016**

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

**BETWEEN:**

**GJIN VUKAJ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Mr. Vukaj is a citizen of Albania. He sought protection alleging that he is at risk as the result of an ongoing blood feud between his family and a powerful and influential Albanian family.

[2] The Refugee Protection Division of the Immigration and Refugee Board of Canada [RPD] rejected the claim finding that Mr. Vukaj had failed to establish subjective fear and had not demonstrated that the alleged blood feud was continuing. The RPD decision was upheld by the Refugee Appeal Division [RAD]. The RAD decision was subsequently set aside by this Court on judicial review on the basis that the RAD had erred in identifying and applying the standard of review applicable to the RPD decision.

[3] On redetermination, the RAD again dismissed the appeal and confirmed the RPD decision. In considering the appeal, the RAD admitted two pieces of new documentary evidence and conducted an oral hearing. It concluded that the determinative issue was the credibility of the allegations of risk. Based on the evidence heard in the course of the oral hearing, the RAD did not believe that Mr. Vukaj's and his family members are currently victims of a blood feud. Mr. Vukaj argues that in reaching this conclusion, the RAD erred and requests that this Court quash the decision and return the matter for a second redetermination by a differently constituted panel.

[4] Mr. Vukaj argues that while the RAD correctly identified the standard of review to be applied in reviewing the RPD decision, it erred in applying that standard of review. He further argues that the RAD's credibility determinations are problematic, that it erred in refusing to admit documentary evidence and it failed to consider the successful refugee claims advanced by his brothers on the basis of the same alleged blood feud.

[5] I have considered the parties written and oral submissions and have reviewed the complete record. In doing so, I have been unable to identify the basis upon which the RAD

concluded that “it is unnecessary for me to undertake an exhaustive analysis of the RPD’s reasons for decision”. This issue is determinative and it constitutes the only matter that I need address. The application is granted for the reasons that follow.

## II. Standard of Review

[6] There is no disagreement between the parties, the applicable standard of review to be applied by this Court in reviewing the RAD decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Huruglica*, 2016 FCA 93 [*Huruglica*] at para 35).

[7] A reviewing court will show deference to an administrative decision-maker when that decision-maker is interpreting its home statute (*Canadian National Railway Co v Canada (Attorney General)*, 2014 SCC 40 at para 55). In the context of a judicial review, reasonableness is concerned with justification, transparency and intelligibility in the decision-making process and whether the decision is within a range of possible, acceptable outcomes defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

## III. Analysis

[8] The respondent argues that the RAD (1) identified the RPD’s key concerns and (2) reasonably determined that a hearing was appropriate in light of its decision to admit, as new evidence, a letter written by Mr Vukaj’s wife. The respondent further submits that it was reasonable for the RAD to conclude, as a result of the evidence provided by Mr. Vukaj and his wife in the course of the hearing, that there were insurmountable credibility difficulties that

caused the member not to believe Mr. Vukaj's allegation of an ongoing blood feud involving a powerful Albanian family. I am not persuaded by the respondent's arguments.

[9] In upholding the RPD decision, it is evident that the RAD relied on its credibility findings arising out of the viva-voce evidence provided by Mr. Vukaj and his wife. The applicant submits that this is the sole basis for the RAD decision and, relying on the decision of the Federal Court of Appeal in *Huruglica*, argues that this is contrary to the RAD's obligation to review the RPD decision to determine if there was a mistake in law, in fact, or in fact and law. In this respect, the applicant has not argued that the RAD was obligated to conduct a *de novo* hearing, as understood by the respondent, but rather that the RAD was obligated to consider and address the alleged RPD errors Mr. Vukaj identifies in his submissions.

[10] The respondent submits that the RAD decision indicates an awareness of the RPD concerns, and the basis of the RPD decision is evident in the RAD's factual overview. I also note that at the outset of its analysis, the RAD stated that it undertook "an independent review of the record" in addition to considering the admissible new evidence and testimony it heard.

[11] It is evident that the RAD engaged in a comprehensive comparison between the proposed new evidence and the evidence that was before the RPD. This may reasonably lead one to conclude, as the respondent's counsel argues, that this demonstrates a detailed understanding of the record. However, the fact remains that the reasons do not demonstrate an active consideration of the very issues Mr. Vukaj raised on appeal. These issues included an allegation that the RPD conflated subjective fear and credibility, that independent evidence before the RPD was not

assessed, and there were translation errors that may have impacted the RPD's understanding of some evidence and that, in turn, led to unreasonable negative credibility findings.

[12] While the RAD might well have considered each of the alleged errors identified by Mr. Vukaj in its review of the facts and in the course of addressing the new evidence, as argued by the respondent, this is not reflected in the decision or the record. Instead, the RAD concludes that in light of its negative credibility findings "it is unnecessary for me to undertake an exhaustive analysis of the RPD's reasons for decision".

[13] Not undertaking an exhaustive analysis of the RPD decision leaves open the question of whether or not the RAD did in fact consider the issues raised on appeal. The RAD's decision supports a variety of conclusions in this regard (1) no errors were made by the RPD or (2) that any errors that were made were insufficient to displace the RAD's negative credibility findings. However, one might also conclude that the RAD did not undertake any further analysis and relied on its credibility finding to the exclusion of all other evidence on the basis that the RAD's "own findings arising from [its] analysis of the appellant's credibility at that hearing confirm the RPD's decision to reject his refugee protection claim". In my view, this latter possibility is inconsistent with the RAD's role to carry out "its own analysis of the record to determine whether, as submitted by the appellant, the RPD erred" (*Huruglica* at para 103). Not addressing the issues raised on appeal undermines the transparency, and in turn, the reasonableness of the decision.

[14] I am mindful of the fact that “[r]easons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis” (*Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16). However, where reasons fail to clearly demonstrate a decision-maker’s logic chain where various analytical paths may have been pursued and at least one of those paths opens the door to a potentially different outcome, the reasonableness of the decision is called into question and the Court may intervene.

[15] In this case it is not evident that the RAD considered its credibility findings within the broader context of the alleged RPD errors. This undermines the justifiability, transparency and intelligibility of the RAD decision and renders it unreasonable.

#### IV. Conclusion

[16] The application is granted. The parties have not identified a question of general importance, and none arises.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is granted, the decision of the RAD is set aside and the matter is remitted for redetermination by a different member. No question is certified.

"Patrick Gleeson"

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Judge

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

**DOCKET:** IMM-2594-16

**STYLE OF CAUSE:** GJIN VUKAJ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** CALGARY, ALBERTA

**DATE OF HEARING:** DECEMBER 5, 2016

**JUDGMENT AND REASONS:** GLEESON J.

**DATED:** DECEMBER 14, 2016

**APPEARANCES:**

Bjorna Shkurti FOR THE APPLICANT

Stephen A. McLachlin FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Shkurti Law FOR THE APPLICANT  
Barristers and Solicitors  
Calgary, Alberta

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of  
Canada  
Calgary, Alberta