

Federal Court



Cour fédérale

Date: 20191202

Docket: IMM-2644-19

Citation: 2019 FC 1538

Ottawa, Ontario, December 2, 2019

PRESENT: Madam Justice McDonald

BETWEEN:

ERSID BUSHATI

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Ersid Bushati, is a citizen of Albania who claimed refugee status based on imputed political belief. His refugee claim was rejected by the Refugee Protection Division (RPD). He seeks judicial review of the decision of the Refugee Appeal Division (RAD) denying his appeal.

[2] For the reasons that follow, this judicial review is dismissed. The RAD's finding that Mr. Bushati has an internal flight alternative (IFA) within Albania is reasonable.

Background

[3] Mr. Bushati's imputed political beliefs claim arises from the political activities of his brother, Elis. In May 2015, Elis was a driver for a mayoral candidate for the Democratic Party in the town of Bushat, Albania. Elis began receiving threatening phone calls, and in June 2015, his café was vandalized. Elis stopped working for the Party; however, his candidate won the election. Following the candidate's victory, Elis was threatened at gunpoint and struck by a car. His daughter was also threatened. In September 2015, Elis Bushati and his family came to Canada and made a successful refugee claim.

[4] The Applicant, Ersid, says that he started to receive threats after his brother left Albania. In December 2015, he received a call asking about his brother's whereabouts. The caller told Ersid that if he did not tell him, he would be killed. He received a similar call two weeks later. Again, the caller threatened to kill him if he did not reveal his brother's location. In early January 2016, a man approached Ersid at a coffee shop, asked him about his brother and punched him. The next day, Ersid tried to flee to Italy, but was sent back to Albania. The day after he went to Kosovo, arranged for a fraudulent passport, and travelled to Barcelona before making his way to Canada in January 2016.

[5] In June 2017, Ersid's father was attacked. The windshield of his car was smashed while he was driving, and he was told that both Ersid and his brother would be killed if they returned.

[6] All of these incidents and threats occurred in Bushat, Albania.

RAD Decision

[7] The RAD found that Mr. Bushati was neither a refugee nor a person in need of protection, as it found that he had an IFA in Gjrokaster, Albania. The RAD agreed with the RPD's finding that there was "insufficient evidence to establish that the agents of persecution would be motivated to expend time, energy and resources" tracking the Applicant down and that this finding was not based on speculation (Refugee Appeal Division's Reasons and Decision at para 24 [RAD RD]).

[8] The RAD referred to the National Documentation Package (NDP) stating "in general, a person fearing state and non-state actors is likely to be able to internally relocate to another area of [sic] Albanian" (RAD RD at para 25).

Issues

[9] Mr. Bushati raises two issues with the RAD decision:

1. Did the RAD unreasonably rely upon a plausibility finding made by the RPD?
2. Did the RAD misinterpret the NDP?

Standard of Review

[10] Questions of internal flight alternatives are questions of mixed fact and law and are reviewed on the reasonableness standard (*Singh v Canada (Citizenship and Immigration)*, 2017 FC 719 at para 9).

[11] A reasonable decision demonstrates “justification, transparency, and intelligibility in the decision making process” and the decision falls within the range of reasonable outcomes (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47) [*Dunsmuir*].

Analysis

Did the RAD unreasonably rely upon a plausibility finding made by the RPD?

[12] Mr. Bushati argues that the RAD made an improper plausibility finding regarding the motivations of his agents of persecution. In particular, he takes issue with the RAD’s finding that there was “insufficient evidence to establish that the agents of persecution would be motivated to expend time, energy and resources” tracking him down.

[13] Mr. Bushati argues that there is not enough information to determine that his agents of persecution would not try to find him in another part of the country. He submits that plausibility findings must only be made “in the clearest of cases,” and the RAD did not have sufficient evidence to support such a finding. Mr. Bushati relies upon a number of cases in support of his position, including: *Sanchez v Canada (Citizenship and Immigration)*, 2018 FC 665 [*Sanchez*], *Leung v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 774 [*Leung*],

Venegas Beltran v Canada (Citizenship and Immigration), 2011 FC 1475 [*Beltran*], and *Valtchev v Canada (Citizenship and Immigration)*, 2001 FTC 776 [*Valtchev*].

[14] I agree with Mr. Bushati's position that these cases stand for the principle that plausibility findings should only be made in the clearest of cases (*Valtchev* at para 7).

[15] However, I note that conclusion of the RAD (and the RPD) was based on the particular evidence of Mr. Bushati's circumstances. The RAD notes that the agents of persecution interest in Mr. Bushati was tied to the local election. The RAD noted that Albania is governed by local government units that are self-contained (RAD at para 29). The RAD also noted that all of the incidents involving Mr. Bushati and his family occurred locally, in Bushat. In *Sanchez*, the Court noted (at para 5) that the agents of persecution had "national reach". There is no such evidence of national reach of the agents of persecution in Mr. Bushati's case.

[16] Accordingly, the RAD's finding regarding the motivations of the agents of persecution is reasonable. The RAD noted that the agents' interests were specific to the local government in Bushat. As well, there was no evidence that the agents of persecution had national reach or would be able to track Mr. Bushati in another part of Albania. Finally, the RAD specifies that it is relying on the NDP information provided by Mr. Bushati in drawing its conclusion that the threat was localized and limited in nature (RAD RD at paras 26, 30, and 31).

[17] As a result, the RAD's finding on this issue is not based upon an unreasonable plausibility finding, but rather it is based upon the circumstances and the evidence. The RAD's finding on this issue is therefore reasonable.

Did the RAD misinterpret the NDP?

[18] Mr. Bushati argues that the RAD misstated the NDP information when it stated: "in general, a person fearing state and non-state actors is likely to be able to internally relocate to another area of [*sic*] Albanian". Mr. Bushati notes that the NDP document actually says a person can generally relocate internally if they are in fear of non-state actors or rogue state actors. He argues that he fears state actors in the form of criminal groups hired by the political party in power. These, he argues, are agents of the state.

[19] Although, it appears that the RAD misstated this information from the NDP, in my view, nothing turns on the misinterpretation of the information. Although Mr. Bushati is correct that actors taking direction from the state are neither 'rogue' nor 'non-state' actors because they are doing what the state tells them to, the challenge he faces is that the evidence does not support his risk on a national basis in Albania. There was no evidence that the local actors have the national influence necessary to reach him in Gjrokaster. The RAD found that his agents of persecution do not have sufficient interest in him to track him to another part of Albania. In different circumstances, the error could have rendered the decision unreasonable, but due to the finding of the local nature of his agents of persecution, this does not render the RAD decision unreasonable.

[20] Overall, the decision of the RAD is reasonable and there are no grounds for this Court to intervene.

[21] This judicial review is dismissed. There is no question for certification.

JUDGMENT in IMM-2644-19

THIS COURT'S JUDGMENT is that the judicial review is dismissed. There is no question for certification.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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