

Date: 20080327

Docket: IMM-1970-07

Citation: 2008 FC 388

Ottawa, Ontario, March 27, 2008

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

LEC KEQAJ

Applicant

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

- [1] [7] A tribunal may make adverse findings of credibility based on the implausibility of an applicant's story provided the inferences drawn can be reasonably said to exist. However, plausibility findings should be made only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant. A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu. [see L. Waldman, *Immigration Law and Practice* (Markham, ON: Butterworths, 1992) at 8.22]

(Valtchev v. Canada (Minister of Citizenship and Immigration), 2001 FCT 776, [2001] F.C.J. No.

1131 (QL).)

[2] In *Leung v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 774 (QL), this Court overturned the decision of the Refugee Determination Division of the Immigration and Refugee Board, denying the applicants' applications for status as Convention refugees, on the basis that their fear of persecution was not objectively well-founded. The Court stated:

[14] Both divisions of this Court have consistently held that the Board's decisions must be based on the totality of the evidence contained in the Record. This does not mean, however, that the Board must summarize all of the evidence, or that a decision will be quashed simply because the Board has failed to refer to some minor piece of documentary evidence in its reasons. Nevertheless, the Board is under a very clear duty to justify its credibility findings with specific and clear reference to the evidence.

[15] This duty becomes particularly important in cases such as this one where the Board has based its non-credibility finding on perceived "implausibilities" in the claimants' stories rather than on internal inconsistencies and contradictions in their narratives or their demeanour while testifying. Findings of implausibility are inherently subjective assessments which are largely dependant on the individual Board member's perceptions of what constitutes rational behaviour. The appropriateness of a particular finding can therefore only be assessed if the Board's decision clearly identifies all of the facts which form the basis for their conclusions.

[16] Given this clear obligation on the Board to base its decision on the totality of the evidence, combined with the duty to justify its credibility findings, it must be assumed that the Board's reasons contain a reasonably complete account of the facts which form the basis of their decision. The Board will therefore err when it fails to refer to relevant evidence which could potentially refute their conclusions of implausibility. My review of the Board's implausibility findings reveals that such an error has occurred here. I will deal with each implausibility finding.

[3] The Refugee Protection Division of the Immigration and Refugee Board (Board) noted that the Applicant provided a Certificate from the Kastrat Commune, dated November 1, 2006, a Certificate from the Aldermen of the Ivanaj Village, dated October 1, 2006, and a letter from the Nationwide Reconciliation Mission, "Mother Teresa", dated November 11, 2006. The Board stated

that it gave the following documents insufficient weight to offset the numerous credibility concerns.

These documents indicate:

- The Certificate from the Kastrat Commune, from the local Albanian government representative, certifies all of the salient details of the blood feud as recounted in the Applicant's Personal Information Form (PIF) and confirms that the blood feud is still in effect (Tribunal Record, p. 161).
- The Certificate from the Alderman the Applicant's family had contacted to broker peace between the families confirms the blood feud between the Lunaj family and the Keqaj family over land. The Alderman notes that he tried to resolve the conflict, was unsuccessful and that the blood feud still exists (Tribunal Record, p. 163).
- The third document, equally a certificate, recounts in detail the information provided in the PIF and confirms the ongoing nature of the blood feud.

[4] In the case at bar, the Board does not deny that the certificates constitute credible authoritative evidence. Each certificate corroborates the critical elements of the Applicant's refugee claim. The Board erred in failing to adequately refer to these relevant certificates, which refute their conclusions of implausibility. (Reference is made to the Mother Teresa Nationwide Reconciliation Mission Certificate, annexed to this judgment.)

II. Judicial Procedure

[5] This is an application, pursuant to paragraph 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), for judicial review of the decision of the Board, rendered

on April 17, 2007, wherein, it determined that the Applicant was not a Convention Refugee nor a person in need of protection, pursuant to s. 96 and ss. 97(1) of the IRPA.

III. Background

[6] The Applicant, Mr. Lec Keqaj, is a 31-year old citizen of the town of Ivanaj, district of Shkoder in Albania. On November 22, 2005, Mr. Keqaj entered Canada with a false Slovenian passport, after traveling through Montenegro, Croatia and Hungary. He claimed refugee protection upon arrival.

[7] Mr. Keqaj alleges a fear of persecution on the basis of his political opinion and his membership in a particular social group, namely, males belonging to the Keqaj family who are involved in a blood feud with the Lunaj family.

[8] Albania was once governed by a Communist regime. The Communist regime confiscated land owned by the Keqaj family and made it state land. In 1992, the Communist regime was defeated and the Democratic Party came to power. Mr. Keqaj's family made efforts to reclaim the confiscated land. In 1995, the Court granted the return of the land, located in the centre of the town, where the family proceeded to build a café.

[9] The Lunaj family previously owned the land adjacent to the property which was returned to the Keqaj family.

[10] From 1995 to 1999, due to the Lunaj family's virulent disagreement with the Court's ruling as to the division of the land, the Lunaj family threatened to kill Keqaj family members if the land was not given to them.

[11] In 1999, the Keqaj family, in order to avoid a blood feud, gave the Lunaj family one hectare portion of the land that had been returned to them.

[12] Mr. Keqaj alleges that, in December 2004, two members of the Lunaj family, Mr. Alex Lunaj and Mr. Marlen Lunaj, returned from abroad. Not happy that their family members had made peace with the Keqaj family, they resumed the dispute over the land, demanding that the Keqaj family turn over the profitable café or face dire consequences.

[13] Mr. Keqaj alleges that his family members contacted both the police and the village elder to try and resolve the problem. The elder, together with Mr. Keqaj's father and uncle went to the Lunaj family to try to negotiate a pledge of honor; however, the Lunaj family did not cooperate. As for the police, Mr. Keqaj alleges that they took no action, as is typical for potential blood feud situations. (Transcript of the Hearing, Tribunal Record, pp. 180-185).

[14] In January 2005, Mr. Keqaj's cousin, Mr. Arben Keqaj, who worked in the café, was attacked and beaten by two members of the Lunaj family; he required hospitalization for his injuries. In April 2005, after recovering, Mr. Arben Keqaj took revenge by similarly attacking and injuring a member of the Lunaj family.

[15] In May 2005, three members of the Lunaj family came to the café and ordered Mr. Keqaj to close the café and leave. Mr. Keqaj alleges that he was attacked with a knife which injured his hand. This attack resulted in the blood feud being officially declared by the Lunaj family.

[16] Following this dispute, Mr. Keqaj claims he isolated himself in his home; however, in July 2005, shots were fired at his family residence, forcing him and his family to find refuge elsewhere. Mr. Keqaj, therefore, left his native town of Ivanaj to stay with his maternal uncle, in Verrith, Albania, until he fled the country.

IV. Decision under Review

[17] The Board was not persuaded that Mr. Keqaj met the onus of establishing that he was in need of refugee protection, in Canada, based on his claim of a blood feud with another family, in Albania.

[18] With respect to Mr. Keqaj's fear of persecution, on the basis of an alleged blood feud between his family and the Lenaj family, the Board found that there was no persuasive evidence before it of a serious violation of any of Mr. Keqaj's basic human rights or of a serious possibility that he would face persecution in the future. Moreover, the Board found Mr. Keqaj failed to establish that, on a balance of probabilities, the core events of the blood feud, had, in fact, occurred in 2004 or 2005, after the elders had settled the blood feud, in 1995. The Board also found it unlikely that Mr. Keqaj is being sought in Albania.

[19] Moreover, the Board found that Mr. Keqaj was not credible due to the inconsistencies and implausibilities in his evidence.

[20] The Board did not find plausible that the elders of the Lunaj family would have accepted the land from the Keqaj family for settlement of a blood feud between the families and then reverse themselves by allowing individuals, who had returned to Albania from overseas, in May 2005, to set aside the agreement. (Reasons, p. 4.)

[21] The Board determined the issue of credibility on the basis of speculative plausibility findings that had not been raised at the hearing: Mr. Keqaj contends that the Board failed to ask why the two men, who returned from overseas, would have been capable of engaging the extended Lunaj family to resume their conflict and also why Mr. Keqaj would not have personally attended mediation or, for that matter, taken any measures by which to obtain assistance from the State.

[22] Moreover, Mr. Keqaj submits that, although, generally recounting the facts in evidence at the beginning of its Reasons, the Board made incorrect statements in respect of the evidence when making its negative credibility findings.

[23] The Board failed to analyze the evidence, corroborating the blood feud claim.

V. Relevant Legislation

[24] Section 96 and subsection 97(1) of the IRPA define the expression “refugee” and “person in need of protection”:

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n’a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n’a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s’il y a des

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care

motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

VI. Issues

- [25] (1) Did the Board err by making an adverse credibility determination by making findings of fact, unsupported by the evidence?
- (2) Did the Board breach principles of procedural fairness by failing to inform the Applicant of the case to be met and by giving inadequate Reasons?

VII. Standard of Review

[26] The proper standard of review with respect to questions of credibility is that of patent unreasonableness. “The Refugee Protection Division has a well-established expertise in the determination of questions of fact, including the evaluation of the credibility of refugee claimants.” (*Harusha v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 2004, [2007] F.C.J. No. 1438 (QL), para. 21); therefore, the Court may only set aside the Board’s finding if it demonstrates that such a finding was one of patent unreasonableness.

[27] With regard to questions of procedural fairness and natural justice, the Supreme Court of Canada clearly stated, in *Canadian Union of Public Employees (C.U.P.E.) v. Ontario (Minister of Labour)*, [2003] 1 S.C.R. 539, at paragraph 100: “It is for the courts, not the Minister, to provide the legal answer to procedural fairness questions. It is only the ultimate exercise of the Minister's discretionary s. 6(5) power of appointment itself that is subject to the "pragmatic and functional" analysis”; therefore, the pragmatic and functional analysis is not to be applied and the reviewing Court shall consider all questions, including questions in regard to the adequacy of reasons, on a

standard of correctness. (*Canada (Minister of Citizenship and Immigration) v. Charles*, 2007 FC 1146, [2007] F.C.J. No. 1493 (QL), para 24.)

VIII. Analysis

(1) Did the Board err by making an adverse credibility determination by making findings of fact not supported by the evidence?

Chronology of Events – Land Controversy and Blood Feud

[28] The Board did not find it plausible that the elder Patriarchal males in the Lunaj family would have accepted land from the Keqaj family, as settlement of a blood feud, and then allow individuals who had returned to Albania from overseas, in May 2005, to set aside the settlement that had ended the blood feud.

[29] Mr. Keqaj explained, during the hearing, as was noted in his evidence, that his family gave up a portion of land, in 1999, to avert a blood feud. Contrary to the Board's Reasons, there had been no blood feud, in 1995. (Applicant's Record, Applicant's Affidavit, para. 6, p. 13; Transcript of Hearing, Tribunal Record, p. 176; Reasons, p. 4.)

[30] Mr. Keqaj submits that there are no details in evidence as to what agreement had been reached by the Lunaj family. There is no evidence that the Lunaj family took the Keqaj family land, in good faith, or, that they intended to keep the promises made previously. Moreover, there is no evidence that the two men, who returned from overseas, were not elders of the family and, given that they were invited by the mediators to participate in negotiations, it is clear that the Lunaj family and the mediators considered them as elders. (Applicant's Affidavit, paras. 16-18, pp. 14-15.)

[31] The Board based these credibility concerns on speculation and factual errors, which could have been dispelled had he been questioned in this regard during the hearing.

[32] The Respondent contends that the Board is entitled to make adverse findings of credibility based on implausibility of the story and can base these findings on common sense and rationality. The Board, as the primary finder of fact, is entitled to reject evidence if it is not consistent with the probabilities of the case as a whole. (*Shahamati v. Canada (Minister of Employment and Immigration)* (F.C.A.), [1994] F.C.J. No. 415 (QL); *Chen v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 551 (QL).)

[33] Although the Board is entitled to make adverse findings of credibility, based on implausibilities of the narrative and can base its findings on common sense and rationality, it may not simply reject specific evidence when the issues raised are point specific to a particular context within a particular country. The Board has the obligation to become familiar with these circumstances in order to address any ambiguities that may arise and give opportunity to a claimant to respond.

[34] A careful review of the evidence reveals that the Board erred in not having had addressed/clarified its concern regarding the land transfer, in addition to not having analyzed the particular circumstances that had reignited the quarrel and led to the declaration of a blood feud by the Lunaj family, in May 2005.

[35] When asked about the conveyance of the Keqaj family land during the interview, Mr. Keqaj, stated:

REFUGEE PROTECTION OFFICER TO CLAIMANT:

Q. So, did your family give the Luni family some land in 1999?

A. Yes, in order to avoid the blood feud we had.

Q. So, what did your family give the Luni family in 1999?

A. A piece of land in order to avoid it.

...

Q. Why did the argument begin again for the land if they were satisfied in -- if the Luni family was satisfied in 1999?

A. Because two gentlemen from Luni extended family came from abroad.

Q. What did they do?

A. They were not satisfied with what we had conveyed to them and they threatened us.

...

Q. Well, apparently everyone was satisfied before in the Luni family, so how did this new fight begin?

A. Because we had built a coffee bar and they wanted to get that coffee bar from us which we had built in the middle of the village.

(Emphasis added.)

(Tribunal Record, Transcript of Reasons, pp. 176 and 178.)

[36] Furthermore, “[w]here the Board finds a lack of credibility based on inferences, including inferences concerning the plausibility of the evidence, there must be a basis in the evidence to support the inferences”. Where, “[t]here is no evidence on the record to support this finding or the inference drawn or to doubt the truthfulness of the Applicant's evidence. I can only conclude, in the result, that this plausibility finding is erroneous”. (*Roozbahani v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1524, [2005] F.C.J. No. 1867 (QL), para. 18.)

[37] Despite the detailed country conditions presented before the Board which explain Albania’s struggle with vengeance-related blood feuds and the particular dynamics of mediation of these quarrels, the Board made adverse credibility findings. The Board erred in determining that Mr. Keqaj’s narrative of the conflict was not plausible. The Reasons lacked detail and disregarded the specific circumstances pertinent to the country conditions prevalent in Albania.

Mediation of conflict

[38] The Board determined it was not plausible for the elder males in the Lunaj family to have accepted the land in good faith, in 1995, as settlement of a blood feud and then to have allowed individuals, not the elders of the family, to reopen a land controversy contrary to the “agreement” (the evidence before the Board indicates that the land was conveyed in 1999 and not in 1995 as stated in the its Reasons). (Reasons, p. 4.)

[39] The Board does not indicate why this is a credibility concern; had it been raised at the hearing, Mr. Keqaj, may have adduced in evidence in this regard.

[40] As stated in an affidavit by Mr. Keqaj, individuals involved in negotiations are selected by a mediator and, more specifically, two Lunaj family members were invited by the reconciliation committee to participate in the process by which to resolve the conflict between the two families. Furthermore, Mr. Keqaj notes that his interests were fully protected by his father and uncle who were parties to the mediation with the Lunaj family, all of which points to his not participating in the mediation process.

[41] In respect of the mediation process, the country reports specify:

... the following description of the steps taken by mediators to resolve a blood feud: first,

[t]he missionaries have meetings with the families and they listen to the claims of both pairs. After this they contact persons who have great influence on each family. Than together with the persons of great influence, they go to the families, and continuously try to convince them to solve the conflict by legal [means]. If the family, whose member has been killed, does not accept the reconciliation and they insist in taking revenge, than the missionaries recommend to the killer's family to leave its village or city and go another city or state. Because the moving off of the killer's family soothes the hatred of the damaged family. All these meetings and efforts are confidential and they are not published (24 Oct. 2004).

The Chairman also stated that reconciliation efforts never stop, and in some cases continue for years, despite the fact the offended family may have taken revenge in the meantime (Committee of Nationwide Reconciliation 24 Oct. 2004).

(Immigration and Refugee Board, Responses to Information Requests (RIRs) ALB43020.E 03, 03 November 2004, Albania: Means by which reconciliation groups begin working on a case...)

[42] Furthermore, the evidence before the Board indicated that, in 2003, a mere 0.44 percent of blood feud conflicts were resolved in mediation centers. (Tribunal Record, p. 102.)

[43] In denying Mr. Keqaj's claim, the Board also noted that his father and other relatives continue to reside in Albania. Mr. Keqaj did allege that his father was in hiding. The Board found that there was no evidence provided to indicate that Mr. Keqaj's father, or any other member of the family, had been harmed since he fled from Albania, in November 2005.

[44] During the hearing, Mr. Keqaj testified that his father was still living in hiding at the maternal uncle's home, in Verrith, Albania. He also noted that the reason for his father having remained in Albania was that the family did not have the financial resources to do otherwise. Mr. Keqaj also explained that no further attacks had been perpetrated or any attempts made to reconcile the conflict as all of his male family members were in hiding because of the blood feud. (Tribunal Record, Transcript of Hearing, pp. 191, 197 and 206.)

[45] Based on the evidence before the Board, it was patently unreasonable for it to determine that Mr. Keqaj was not credible on the basis that he could have gone to the elders in order to take part in the mediation of the conflict. Mr. Keqaj's father and uncle were considered as "the persons of great influence" and were the individuals designated as representatives of the family in the mediation of this blood feud.

[46] The Board made an erroneous negative credibility finding with regard to Mr. Keqaj's subjective evidence while disregarding the objective evidence, more particularly, the country conditions in regard to the mediation of blood feuds which corroborated his subjective evidence.

Well-founded fear of persecution

[47] The Board concluded that there was no persuasive evidence before it to determine that there had been a serious violation of any of Mr. Keqaj's basic human rights or that a serious possibility exists that he would face persecution in the future.

[48] The Board did not consider the available evidence that blood feuds begin with fights; nor did the Board recognize the evidence that, in context, land claims are important enough to substantiate a major cause of blood feuds.

[49] The documentary evidence before the Board in respect of blood feuds, clearly states that "societal killings and an atmosphere of fear in some areas due to traditional blood feuds" is a serious problem afflicting Albania. (U.S. Department of State, Albania: Country Reports on Human Rights Practices – 2005.)

[50] The evidence indicates:

... the "weakness of state institutions", the "law and order vacuum" and the "failure of the judicial system to operate appropriately" are among factors behind the prevalence of blood feuds in Albania.

... the only escape for those who are trapped in blood feuds is to leave the country although doing so cannot protect them from being "tracked down" somewhere else".

(RIRs ALB42821.E, 20 July 2004: Albania: Update to ALB33770.E of 4 April 2000 on blood feuds/vendettas and the level of protection available to victims through police, court and other avenues of recourse (April 2000-July 2004).)

[51] The evidence states:

Various reports indicated that blood feuds remain a significant problem in Albania (UK Apr. 2004, sec. 6.130; *Country Reports* 2003 25 Feb. 2004, sec. 5; MJAFT! 14 Apr. 2003; *UN Chronicle* 1 Dec. 2003) and particularly in the northern part of the country (UN 28 Aug. 2003; UK Apr. 2004, sec. 6. 132; *Country Reports* 2003 25 Feb. 2004, sec. 5; UN 28 Aug. 2003; DPA 12 July 2003). According to MJAFT! (Enough!) (Etaco 20 July 2004), a non-governmental organization that addresses the societal concerns of Albanians (MJAFT! N.d.), approximately 1,370 families and at least 7,000 individuals living in the northern country are "affected by vengeance killings," while the town of Shkoder is described as "one of the most problematic cities for blood feuds"...

Sources also indicated that thousands of children, mostly boys, remain locked inside their homes and miss schools for fear of being killed for revenge (UN Chronicle 1 Dec. 2003; *The Australian* 24 Dec. 2003; DPA 12 July 2003, WFP 28 Aug. 2003) while hundreds men are killed each year as a result of blood feuds in the country (ibid.).

(Emphasis added.)

(RIRs ALB42821.E , above.)

[52] Country Reports, in respect of Albania, on Human Rights Practices – 2005:

The country continued to experience high levels of violent crime. Many killings occurred as the result of individual or clan vigilante actions connected to traditional "blood feuds" or to criminal gang conflicts. According to the interior ministry, at least nine persons were killed during the year in blood feuds based on the medieval Code of Lek Dukagjini (the *kanun*), which was practiced particularly in the northern part of the country. Under the *kanun*, only adult males are acceptable targets in blood feuds; however, women and children often were killed or injured in attacks. According to the National Reconciliation Committee, approximately 738 families were effectively self-imprisoned during the year due to blood feuds. Fear of revenge

in a blood feud also led approximately 50 families to live under protection outside of the country and prevented approximately 200 children—75 of whom were considered to be in serious danger—from attending school. Disputes over land and trafficking in persons remained the main grounds for blood feuds.
[Emphasis Added]

(Albania: Country Reports on Human Rights Practices – 2005, above)

[53] The Board unequivocally failed to consider the evidence that was before it and erroneously determined that Mr. Keqaj did not have a well-founded fear of persecution by reason of any of the enumerated grounds. (Reasons, p. 5.)

State protection

[54] The country reports before the Board clearly indicate that persons targeted by blood feuds, in Albania, could not:

... safely relocate within the country... Although the HRDC admitted that the situation surrounding blood feuds had improved, it claimed that avengers would be able to find their target within Albania, especially in the north of the country (ibid.). Similarly, the Justice and Home Affairs Coordinator for the European Commission delegation in Albania and the Representative of the Tirana-based Committee of Nationwide Reconciliation (CNR) stated that Albania is small enough that avengers would be capable of finding their targets (EU 13 July 2006; CNR 18 June 2006).

The CNR Representative added that those targeted in blood feuds "are obliged to confine themselves [to their homes] or leave Albania," after which the threat against them supposedly decreases (ibid.).

(Emphasis added.)

(RIRs ALB 101479.E, 13 Sept 2006 : Albania: Possibility for those targeted in blood feuds to relocate within Albania; whether avengers can locate targeted individuals who have relocated in other areas of Albania (2005 - 2006).)

[55] As to state protection to persons targeted by blood feuds, the country documents, state:

... despite some improvements in Albania's overall level of governance, Albanian authorities were unable to protect victims of blood feuds ... also ... blood feuds continue, regardless of improvements, because the Albanian state remains somewhat ineffective ... Similarly, ... the "very fragile" Albanian state had failed to control the blood feud phenomenon ... In addition, ... the Albanian government has not taken any effective measures to combat blood feuds [and] may be reluctant to become involved in blood feud cases for fear of becoming targets themselves. (Emphasis added.)

(RIRs ALB101471.E 22 September 2006: Albania: Protection available to persons targeted in blood feuds from the government, police, judiciary and non-governmental organizations; effectiveness of protection measures (2005 - 2006).)

Police protection

[56] The country documents also address the availability of protection given by the police to targeted persons. Although the documents indicate that protection is available, those targeted are reluctant to avail themselves of this protection as they reportedly fear greater repercussions:

Although police officers have been known to assist in the reconciliation processes between feuding parties on occasion ... police intervention in such conflicts tends to aggravate the situation and can put a police officer's life at risk. ... [P]olice officers prefer to abstain from addressing blood feud cases out of fear of becoming targets themselves... In some cases, police reportedly advised targeted persons to temporarily leave an area... although further information on this approach or its effectiveness could not be found among the sources consulted by the Research Directorate.

(RIRs ALB101471.E, above.)

[57] Based on the foregoing, the Board erred in taking into account irrelevant evidence, misinterpreting evidence properly before it and in making erroneous findings of fact without regard to the evidence before it. Consequently, the Board's decision as to Mr. Keqaj's credibility, was patently unreasonable.

(2) Did the Board breach principles of procedural fairness by failing to inform the Applicant of the case to be met and in failing to give adequate reasons?

Failing to inform applicants of the case they had to meet

[58] Justice Sean Harrington of the Federal Court, in *Skripnikov v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 369, [2007] F.C.J. No. 528 (QL), determined that, by not sharing concerns, a panel failed to observe a principle of procedural fairness. This caused erroneous findings of fact arrived at in a perverse and/or capricious manner. Further, it was determined that natural justice demands that one be informed of the case one has to meet and be given an opportunity to meet it.

[59] Mr. Keqaj explained to the Board, during the hearing and in his narrative, the reasons why the blood feud had been initiated in 2005; he, further, explained why his presence was not required nor requested at the mediation of the conflict or why he was personally unable to seek the police's protection. Mr. Keqaj's explicit explanation is corroborated by the country reports.

[60] The Board did not raise these concerns at the hearing, ultimately, depriving Mr. Keqaj, of the ability to address and clarify these concerns. This resulted in the Board having made erroneous findings of fact.

[61] By not sharing its concerns, the Board breached its duty of procedural fairness.

Failure to provide proper reasons

[62] The Board noted that Mr. Keqaj provided a Certificate from the Kastrat Commune, dated November 1, 2006, a Certificate from the Aldermen of the Ivanaj Village, dated October 1, 2006 and a letter from the Nationwide Reconciliation Mission “Mother Teresa”, dated November 11, 2006. The Board stated that it gives the aforementioned documents little weight to offset the numerous credibility concerns. These documents, consist of the following:

- The Certificate from the Kastrat Commune, from the local Albanian government representative, certifies all of the salient details of the blood feud as recounted in the Applicant’s Personal Information Form (PIF) and confirms that the blood feud is still in effect (Tribunal Record, p. 161).
- The Certificate is from the Alderman whom the Applicant’s family had contacted to broker peace between the families. It confirms the blood feud between the Lunaj family and the Keqaj family over land. The Alderman notes that he tried to resolve the conflict, but was unsuccessful and that the blood feud still exists (Tribunal Record, p. 163).
- The third document, equally a certificate, recounts in detail the information provided in the PIF and confirms the ongoing nature of the blood feud.

[63] In *Leung*, above, this Court overturned the decision of the Refugee Determination Division of the Immigration and Refugee Board, denying the applicants’ applications for status as Convention refugees, on the basis that their fear of persecution was not objectively well-founded.

The Court stated:

[14] Both divisions of this Court have consistently held that the Board's decisions must be based on the totality of the evidence contained in the Record.

This does not mean, however, that the Board must summarize all of the evidence, or that a decision will be quashed simply because the Board has failed to refer to some minor piece of documentary evidence in its reasons. Nevertheless, the Board is under a very clear duty to justify its credibility findings with specific and clear reference to the evidence.

[15] This duty becomes particularly important in cases such as this one where the Board has based its non-credibility finding on perceived "implausibilities" in the claimants' stories rather than on internal inconsistencies and contradictions in their narratives or their demeanour while testifying. Findings of implausibility are inherently subjective assessments which are largely dependant on the individual Board member's perceptions of what constitutes rational behaviour. The appropriateness of a particular finding can therefore only be assessed if the Board's decision clearly identifies all of the facts which form the basis for their conclusions.

[16] Given this clear obligation on the Board to base its decision on the totality of the evidence, combined with the duty to justify its credibility findings, it must be assumed that the Board's reasons contain a reasonably complete account of the facts which form the basis of their decision. The Board will therefore err when it fails to refer to relevant evidence which could potentially refute their conclusions of implausibility. My review of the Board's implausibility findings reveals that such an error has occurred here. I will deal with each implausibility finding.

[64] In the case at bar, the Board does not deny that the certificates are authoritative credible evidence. Each certificate confirms the critical elements of Mr. Keqaj's refugee claim. The Board acted perversely and capriciously in failing to adequately refer to these relevant certificates, which refute their conclusions of implausibility.

[65] Justice John A. O'Keefe of the Federal Court, noted, in *Charles*, above:

[32] The duty to provide reasons contributes critically to the accomplishment of an agency's mandate. As articulated by the Supreme Court of Canada in *Baker v. Canada (Minister of Citizenship and Immigration)* (1999), 174 D.L.R. (4th) 193, reasons fulfill a number of purposes:

- they ensure that issues and reasoning are well articulated;

- they allow parties to see that the applicable issues have been carefully considered; and
- they are invaluable if a decision is to be appealed, questioned, or considered on judicial review.

[33] According to the judgment in *VIA Rail Canada Inc.* above at paragraph 21, the purposes for providing reasons are relevant to their adequacy: "adequate reasons are those that serve the functions for which the duty to provide them was imposed."

[34] In the case at bar, I am of the opinion that these purposes have not been served by the reasons provided. The reasons provided by the IAD have not ensured that the reasoning upon which the decision was made was well articulated. Furthermore, the inadequacy of the reasons provided deprives the applicant of a full assessment of the possible grounds of appeal or review. This is especially relevant given that the IAD's decision is subject to a deferential standard of review. The IAD did not provide adequate reasons for its conclusion.

[66] For all of the above reasons, this Court finds that the RPD has also breached the duty of procedural fairness by failing to provide adequate reasons for its decision.

VIX. Conclusion

[67] The decision of the Board was patently unreasonable. The Board based itself on speculation, as logic inherent to the examination of the evidence appears to demonstrate no credibility issue was discernable in regard to the testimony of Mr. Keqaj. Its conclusions were based on speculation rather than an institutional memory, and/or the subjective and objective evidence pertaining to the case. (*Attakora v. Canada (Minister of Employment and Immigration)* (1989), 99 N.R. 168, [1989] F.C.J. No. 444 (QL) (F.C.A.); *National Corn Growers Assn. v. Canada (Canadian Import Tribunal)* (1990), 74 D.L.R. (4th) 449 (S.C.C.).)

[68] For all of the above reasons, the application for judicial review is allowed and the matter is remitted for redetermination to the Convention Refugee Protection Division for a new hearing before a differently constituted panel.

JUDGMENT

THIS COURT ORDERS that the application for judicial review be allowed and the matter be remitted for redetermination to the Convention Refugee Protection Division for a new hearing before a differently constituted panel.

“Michel M.J. Shore”

Judge

ANNEXE "A"

NATIONWIDE RECONCILIATION MISSION

"MOTHER TERESA"

Bajze on: 01/11/2006

CERTIFICATE

Through certificate we certify that Mr. Lec Keqaj is a resident of Ivanaj village commune of Kastrat. The family of Mr. Lec Keqaj is in a blood feud with the Lunaj family, residing in Ivanaj village. The conflict has started since 1995 upon a property in the centre of the village. The Keqaj family was given the land located in the centre of the village and they build a café on it. To avoid the conflict the Keqaj family gave a piece of their land to the Lunaj family. In December 2004 the conflict started again. In January 2005 Arben Keqaj was attacked by members of the Lunaj family. In April 2005 Arben shot and injured Luan Lunaj. To avenge the attack on Luan three young men from the Lunaj family, Marjan, Gjovalin and Aleks went to the café where Lec Keqaj was, and ordered him to take out everything from the café, close it, and leave the premises. After Lec refused to leave Aleks attacked him with a knife and injures him on the right hand. Few days later the Lunaj family sent Mr. Vasel Marku from their neighborhood to declare a blood feud with the men of the Keqaj family. All the men of the family went in self-confinement. We, like the peace missionaries, were notified about the blood feud and sent our representatives to talk to the men of both families. The men from both families refuse to reconcile. The blood feud is still in effect. The state and the police are not able to protect people involved in a blood feud. In some occasions police officers have been harmed trying to stop the blood feuds.

We issue this certificate to be used where ever is needed.

For the Nationwide reconciliation Mission, "Mother Teresa"

Chairman

Gjin Mekshi

Seal, sig.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1970-07

STYLE OF CAUSE: LEC KEQAJ v.
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 12, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** SHORE J.

DATED: March 27, 2008

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