

Federal Court



Cour fédérale

Date: 20120411

Docket: IMM-5869-11

Citation: 2012 FC 411

Ottawa, Ontario, April 11, 2012

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

RAIT DAKU

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant, Rait Daku, seeks judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated July 26, 2011. The Board found that he was neither a Convention refugee nor person in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

I. Facts

[2] The Applicant is a citizen of Albania. He sought refugee protection in Canada based on his family's blood feud with the Domi clan. He claimed his father killed Avzi Domi in a fight over disputed land and the family remains at risk.

II. Decision Under Review

[3] The Board was not satisfied that the Applicant's family was awarded a section of land in 1991 that led to the declaration of a blood feud. Considering a diagram from the Directorate of Administration and Land Protection in Albania, the Board noted "nothing on the document that shows or states where this land is located." There was also a discrepancy in the size of the plot assigned to the family. The Board stated it was "implausible that a document prepared by any agency in Albania awarding a section of land to the claimant's family would make such an error." The document was seen as being created to advance the refugee claim and the Board made a negative credibility inference in this regard.

[4] In addition, the Board was not satisfied that the family contacted police concerning the blood feud. The Applicant provided inconsistent evidence as to whether his wife or mother contacted the police in January 2008.

[5] A letter from the Chief Elder of the Village was given insufficient weight to offset the two major credibility concerns. There was no indication as to what investigation the author conducted

to verify the events. The letter could easily be created as the author was not a witness and there were no documents to show he is the village Chief Elder.

[6] Similarly, a letter from Gjin Marku, the Chair of the Committee of Nationwide Reconciliation, was given insufficient weight as it was “written by a person who has no first hand knowledge of the facts.”

[7] Considering a medical report from Kamza Medical Clinic, the Board noted that only the Applicant provided “the information concerning the case, and cause of the medical conditions.”

[8] The Board concluded:

Due to the fact the account of a land dispute was only supported by a document that is probably not genuine and the account of the family contacting the police was deemed not credible, I am satisfied the claimant is prepared to create evidence and swear to its truthfulness and hence, is not a credible witness.

Lacking sufficient credible evidence to the contrary, I am satisfied the claimant has failed to establish, on a balance of probabilities, that he is at risk of serious harm should he return to Albania today. Hence, the Refugee Protection Division rejects the claim pursuant to section 97(1) of the *Immigration and Refugee Protection Act*.

III. Issue

[9] The main issue before the Court is the reasonableness of the Board’s negative credibility findings.

IV. Standard of Review

[10] Questions of fact and credibility are reviewed according to the reasonableness standard (*Aguirre v Canada (Minister of Citizenship and Immigration)*, 2008 FC 571, [2008] FCJ no 732 at paras 13-14).

[11] Under this standard, the Court should only intervene where the decision fails to accord with the principles of justification, transparency and intelligibility and does not fall within the range of possible, acceptable outcomes (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2009] 1 SCR 190 at para 47).

V. Analysis

[12] The Applicant contests the credibility findings regarding the family's property and related document from the Directorate of Administration and Land Protection; the low weight attributed to the letter from Gjin Marku as being based on hearsay; and the microscopic analysis as to who contacted the police.

[13] While I consider most of the findings reasonable, I recognize the concern raised by the Applicant regarding the Board's treatment of the document from the Directorate of Administration and Land Protection.

[14] In considering this property document, the Board suggested there was an inconsistency regarding the size of the property as described in the Personal Information Form (PIF). The diagram indicated the plot is 850m², while the PIF indicated that was the size of the Domi plot and the Applicant's plot should have been 2900m². This observation led the Board to state:

I find it implausible that a document prepared by any agency in Albania awarding a section of land to the claimant's family would make such an error. As a result, lacking objective evidence to the contrary, I am satisfied this document was created to advance this refugee claim and make a negative credibility inference.

[15] The Applicant insists that the Board erred in making this finding without regard to an amendment to the PIF by way of a letter dated March 27, 2011. This amendment erased the reference to the size of the Domi family's land and clarified that the Applicant's family land was 850m². The Respondent also concedes that the issue of the size of the plot of land was addressed by the Applicant and is not a flaw in the certificate from the Albanian government.

[16] As a consequence, the Board's negative credibility finding that there was an error in this document and going as far as to suggest that it was created to advance his refugee claim is highly questionable.

[17] The Respondent implies that the Board made its finding based on the rudimentary nature of the certificate more generally, as there was no indication of the location of the plot or compass showing directions on the diagram.

[18] Admittedly, the document lacks some of these more specific details. In my view, however, it does not necessarily follow that the document was, as the Board concluded, "probably not

genuine.” It may have been open to the Board to afford the document less weight as a result of this lack of specificity, but that is not what occurred in this instance. Instead, the Board made a much broader finding as to the authenticity of that document. A reading of the relevant passage suggests that the erroneous issue associated with the size of the land also remained central to this negative credibility inference.

[19] The Applicant directs the Court’s attention to the finding in *Halili v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 999, [2002] FCJ no 1335 that it constitutes a reviewable error for the Board to reject an official document absent evidence tending to show its invalidity.

[20] Since the negative credibility finding as to the property document proved critical to the Board’s assessment of the Applicant’s claim in the sense that other evidence was insufficient to overcome it, I am prepared to accept the Applicant’s position that this constitutes a reviewable error.

VI. Conclusion

[21] The Board’s negative credibility finding based on the property document was unreasonable in the circumstances. Accordingly, this application for judicial review is allowed and the matter is remitted back to a newly constituted panel of the Board for re-consideration.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is allowed and the matter is remitted back to a newly constituted panel of the Board for re-consideration.

“ D. G. Near ”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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**REASONS FOR JUDGMENT
AND JUDGMENT BY:** NEAR J.

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