

Federal Court



Cour fédérale

Date: 20120625

Docket: IMM-7832-11

Citation: 2012 FC 807

Toronto, Ontario, June 25, 2012

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**GJERGJ CELAJ
ALMA CELAJ
JOHN CELAJ
PETER CELAJ**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants are a family of four. Gjergj Celaj and his wife Alma Celaj are citizens of Albania. Their children, John and Peter, are citizens of the United States by birth. Their claims for protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 were rejected by the Immigration and Refugee Board.

Background

[2] The adult applicants left Albania and entered the United States in 2002. The following year they made asylum applications claiming that they feared persecution in Albania because the principal applicant was formerly a police officer and they feared harm at the hands of criminals whom he had arrested but were subsequently released. They also claimed to fear the Socialist Party, as the principal applicant had worked for the rival Democratic Party. In 2004, their claims were denied and they were unsuccessful in appeals to the Board of Immigration Appeals and the United States Court of Appeals, Third Circuit by January of 2007. Both of the adult applicants' sons were born while they were in the US.

[3] The applicants entered Canada in January 2008 and filed refugee claims on a different basis. They alleged that in October of 2006, the principal applicant's brother, Pjeter Celaj, shot and killed a neighbour, Prec Melaj, in self-defence because of a long-standing land dispute. The Melaj family immediately declared a blood feud against the Celaj family thus forcing male members of the Celaj family into self-confinement. The Celaj family's attempts to reconcile the blood feud and to seek police protection were unsuccessful.

[4] The Board held that the sons' claims must fail as there was no evidence that they would be persecuted in the US. With respect to the parents' claims the Board found that the determinative issues were credibility and, in the alternative, state protection. The Board found that the principal applicant was not credible and, alternatively, that there was state protection available in Albania. Those two findings give rise to the two issues raised by the applicants who seek to set aside the Board's decision.

Credibility

[5] The applicants submit that none of the five reasons the Board identified for finding that the principal applicant lacked credibility justifies the conclusion reached, either individually or cumulatively.

Failure to Tell American Authorities About the Alleged Blood Feud

[6] The applicants remained illegally in the US after the court dismissed their appeal. The principal applicant testified that in early 2007 immigration enforcement officials surrounded his home looking for him, although he was not present at the time. Despite this, the principal applicant did not seek to bring his blood feud fears to the attention of the US authorities. He explained that the US authorities do not take blood feuds into consideration, but the Board rejected this explanation. The Board cited evidence indicating that the Chair of the Committee of Nationwide Reconciliation, Mr. Gjin Marku, told the European Parliament that the US has indeed provided asylum to those threatened by blood feuds. The Board noted that although it had other serious credibility concerns with the evidence of Mr. Marku, it saw no reason for Mr. Marku to mislead European legislators on this particular point. The Board found that the principal applicant's failure to tell US authorities about his blood feud fears, even as they sought to deport him, belies his claim to be afraid for his life in Albania.

[7] The applicants submit that there are multiple problems with this finding. First, they point out that they made their asylum claim in the US in 2002, four years before the blood feud was declared and therefore could not have included it in their claim in the US. I note, however, that there is

nothing in the Board's reasons that suggests that the Board was unaware of that fact or was perversely indicating that they ought to have raised as a ground of asylum an event that had not yet occurred.

[8] Second, it is submitted that the Board did not address what application or claim it expected the applicants to make, based on the blood feud, in order to prevent their removal from the US. They say that this was necessary if the Board wanted to draw an adverse inference with respect to credibility on this basis. I disagree. The Board was making a very simple observation. When a person is about to be removed to a country where his life is at risk, one reasonably expects, regardless of any possible processes that may be available, that the deportee will tell the removing authorities that they are removing him to a place of danger. A failure to do so may reasonably warrant an inference that the deportee has no fear.

[9] Third, it is submitted that even if Mr. Marku is correct in asserting that US authorities had granted protection to potential blood feud victims, the legal basis for doing so remains unexplained because the US does not have an expanded concept of "person in need of protection" as in Canada. The issue is not, as the applicants suggest, whether the US could grant protection but rather whether the principal applicant could be expected to seek protection. The Board was not suggesting that the principal applicant could bring an application for protection in the US, rather it was making the quite straight forward observation that people do not typically remain silent when they are about to be placed in a situation where their life is at risk.

[10] For the same reasons, I reject the final submission that there is no basis upon which the Board could conclude that the principal applicant's failure to mention the blood feud to US immigration authorities in 2007 speaks negatively to the genuineness of his fear upon return to Albania, because his US lawyer had advised him that US immigration authorities did not consider blood feuds to be grounds for asylum.

Incident in 1999 Not Included in PIF

[11] The principal applicant testified that in 1999 his brother attempted to build a house on the land claimed by the Melaj family. They threatened to kill the brother and he did not build the house at that location. However, the Board noted that the principal applicant could not explain why this important incident is not described in his PIF, other than to say that he wrote about things that were more problematic. The Board found that this was not a reasonable explanation as these are key elements of the story and from this drew a negative credibility inference.

[12] The applicants' claim is rooted in an alleged blood feud, the events leading up to the blood feud declaration and most particularly the shooting committed by the principal applicant's brother in 2006 which directly precipitated the declaration. These seem to be the key events and these were the focus of the applicant's PIF. Nonetheless, the principal applicant did mention other, arguably peripheral events in his PIF related to the land dispute and blood feud, including an allegation that the cause of the shooting had its origins in a land dispute that started in the early 1990s when the government distributed lands confiscated by the communists, that former owners refused to obey the law and claimed ownership to the land, and that "this was the case with the lands where our family back home has built the house on."

[13] The applicants felt that these events were significant enough to mention in the PIF. The incident where the principal applicant's brother's life was threatened if he built on the disputed land, in my assessment, is more directly related and significant than these peripheral events which were mentioned. For that reason, I am unable to conclude that the Board's assessment that it was a key event is unreasonable; a negative inference on credibility was warranted given the failure to mention it.

Inconsistent Evidence on Disputed Land

[14] The principal applicant drew a sketch of the property involved for the Board, described the disputed land, and also provided a land certification document from Albania. However, the Board found that his evidence was inconsistent with the certification document with respect to the location of streets and/or families that bordered his family's property. According to the official document, the family's property is bounded in the north by the Gjeka family. However, according to the applicant's testimony and sketch, the north side of the property is bounded by a street with the Melaj family on the other side of the street. The applicant could not explain why the Melaj family's name does not appear on the official document, although he guessed that different names were used in older registration methods. He insisted that the Melaj family and the Gjeka family are the same.

[15] The Board was not persuaded by the principal applicant's explanation that the Melaj family was listed under its former name from the old registry. The Board noted that the land certification document, which was dated September 12, 2008, refers to Mr. Fran Zef Celaj, the principal

applicant's father's current name, as the owner of the disputed property. He too had a former family name which presumably would have appeared if the names were taken from the old registry.

[16] The Board's conclusion was reasonable and the issue goes to the root of the applicants' allegations. Specifically, based on the record, the Board was entitled to draw an adverse credibility inference from the fact that the principal applicant's evidence as to the names and location of neighbours bordering the disputed property was not consistent with the land certification document.

Vague and Inconsistent Evidence about Police Interaction

[17] In his PIF, the principal applicant claims that immediately after the early October 2006 murder, his family asked the police for protection but the police showed no interest. He further alleges that in late December of that year, police forces were again asked to provide protection but no protection was offered.

[18] At his hearing, the principal applicant testified that his brother called the local police on the day of the murder to ask for protection. The applicant gave vague testimony about his family "perhaps" asking at other times for protection. When pressed, he testified that his sister went to the local police station a few days after the incident. He does not know when or if police were next contacted, nor does he know whether anyone from his family went to higher police officials or to the authorities. The Board found that not only was the applicant's oral testimony vague on the matter of police protection but it was not consistent with the information in his PIF narrative.

[19] The Board found that the applicants' documents did not assist in this respect. For example, a letter from the police makes no mention of approaches by the family or requests for assistance. While the principal applicant explained that the police do not want to acknowledge the existence of a blood feud, the Board stated that this does not explain the omission, particularly since the letter refers to self-confinement, which is an important element of blood feuds. The Board referred to numerous other letters submitted by the applicants that addressed the issue of blood feuds in some way but noted that none of them made reference to the family's alleged efforts to obtain state protection. As such, the Board found that the applicants' family did not approach the police for protection and the applicants' vague and inconsistent evidence on this issue further damages their credibility.

[20] The applicants submit that the Board failed to recognize that the principal applicant himself was not in Albania during these events and therefore could not be expected to have detailed knowledge of when or how many times the police were contacted for help. Contrary to the Board's reasons, the principal applicant did not say that his family had "perhaps" asked the police for help again; he was certain they had, but did not know the details of how often or when the police were contacted. Further, with respect to the Board supporting its conclusion on this issue by referring to the fact that the applicant's documents did not corroborate that such approaches had been made, the applicants submit that the Board erroneously focused on what the documents did not say, rather than what they did say which, it is submitted, is a reviewable error: *Mahmud v Canada (Minister of Citizenship and Immigration)*, (1999) 167 FTR 309. The purpose of the documents was primarily to corroborate the existence of the blood feud and the dangers faced by the Celaj family as a result—not to show interaction with the police.

[21] My review of the transcript of the hearing confirms that the principal applicant's evidence with respect to the efforts of his family to seek police protection was vague at times. There were minor inconsistencies in his evidence and PIF; however, these alone would have been unlikely to raise any credibility concerns. I agree with the applicants that the oral testimony was clear that the family in Albania did seek police assistance.

[22] However, the Board also looked at a letter from a lawyer retained by the applicants to assist them in obtaining documents and noted that it makes no reference to any attempts to seek protection. The Board notes that "the claimant could not explain this omission." In my view, this was both appropriate and telling. This is correspondence from someone whom the applicants had retained to assist them. They are presumed to know that the applicants would have to establish that state protection was not available. As no other document spoke to any efforts to seek protection and as the applicants were not in the country at the time, it is reasonable to expect, as the Board did, that reference to such efforts would be found in the lawyer's letter, if in fact any efforts were made. The Board's finding that on the balance of probabilities the applicants' family in Albania did not approach the police for protection is reasonable based on the evidence before it. If that finding stands, then the principal applicant's evidence to the contrary does indeed go to credibility.

Further Document Difficulties

[23] At the initial sitting of his hearing, the principal applicant was asked why he had not provided documents, such as police or prosecutor reports and death certificates. At the next sitting,

almost a year later, the principal applicant was able to provide such documents but these documents only raised further credibility issues.

[24] A death certificate allegedly for the murdered Prec Melaj does not show a cause of death although the Board cited documentary evidence that indicates that a cause is almost always shown on such documents. The letter from a district prosecutor references the death but the principal applicant could not explain why there was no reference to the alleged blood feud. When asked why a letter from the Committee of Nationwide Reconciliation states that the conflict between the families began in 1999 when, according to the principal applicant, it began in the early 1990s, he only explained that the situation escalated in 1999 when his brother attempted to build a house on the disputed land. The Board found this explanation unsatisfactory.

[25] I agree with the respondent that the Board was entitled to consider the conflicting documentary evidence provided and to draw an adverse inference based on it. In particular, the Board appropriately noted that a death certificate allegedly for the man shot by the principal applicant's brother does not show a cause of death even though documentary evidence from the Research Directorate indicates that "the primary cause of death was recorded in almost all cases."

Conclusion on Credibility Findings

[26] While there were minor issues with the Board's findings, they are not sufficient cumulatively to overturn its conclusion that the principal applicant lacked credibility.

State Protection

[27] In the alternative, the Board found that the applicants' claim should be rejected on the basis of their failure to rebut the presumption of state protection.

[28] The applicants submit that the Board erred in its refusal to believe their evidence that his family sought police protection. However, as observed above, I find that the Board's decision in this respect was reasonable.

[29] They also submitted that the Board erred in its finding that documentary evidence citing Mr. Marku and the Committee of Nationwide Reconciliation (CNR) was not credible and in its reliance on a supposed change of opinion by one of the experts cited in the documentary evidence.

However, I note that ultimately the Board concluded that the objective evidence regarding state protection in Albania is mixed. More specifically, the Board acknowledged that:

[T]here is much evidence to suggest that those fearing blood feuds face serious problems, and that the protection provided by the state is far from perfect. However, there is also reliable evidence to indicate that the state has taken important steps to provide protection, and that those steps are having concrete positive results.

[30] Finally, the applicants submit that the Board erred in failing to acknowledge evidence which contradicted its conclusions. In particular, they point to a paragraph of a document relied on by the Board, the "Alston Report" of 2010, which states at paragraph 26:

Finally, the Government could play a stronger role in outreach, especially in facilitating efforts to achieve family reconciliation, which thus far has been almost completely left to families themselves and civil society. A number of interlocutors informed me that they had approached the Government for assistance to end their self-isolation through reconciliation, but the State did little in response.

However, I note that the Alston Report also states that “blood feud killings will soon be largely a thing of the past.” Neither was specifically referenced by the Board; however, as has often been said, the Board is entitled to weigh the evidence before it and it is not required to refer to every piece of evidence.

[31] I find that the Board’s decision was within “a range of possible, acceptable outcomes which are defensible in respect of the facts and the law” as a reasonable decision was described in *Dunsmuir v New Brunswick*, 2008 SCC 9. Neither party proposed a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed, and no question is certified.

"Russel W. Zinn"

Judge

Federal Court



Cour fédérale

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-7832-11

STYLE OF CAUSE: GJERGJ CELAJ ET AL v. THE MINISTER OF
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PLACE OF HEARING: Toronto, Ontario

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

DATED: June 25, 2012

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