Federal Court  Cour fédérale

Date: 20121220

Docket: IMM-5058-12

Citation: 2012 FC 1531

Ottawa, Ontario, December 20, 2012

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

NAIM CEKAJ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant seeks judicial review of a decision of a Senior Immigration Officer (the Officer) dated April 16, 2012 refusing his application for a Pre-Removal Risk Assessment (PRRA). For the reasons that follow the application is granted.

Facts

[2] The applicant arrived in Canada on January 1, 2008 with his wife and two daughters. He claimed refugee protection but the Refugee Protection Division (RPD) denied his application on August 12, 2010. The applicant stated that he would be at risk in Albania because of a blood feud. He claimed that his father accused the patriarch of the Shabaj family of corruption. In response, members of the Shabaj family shot at him and his brother. His brother was injured and hospitalized.

[3] The RPD decided that the applicant lacked credibility due to inconsistencies in his testimony. This Court dismissed his application for leave and judicial review.

[4] The applicant applied for a PRRA. The Officer issued a negative decision on April 16, 2012. The applicant was directed to report for removal from Canada on June 4, 2012. A stay of removal was granted on May 30, 2012.

Decision Under Review

[5] The PRRA Officer decided that the applicant's fear was not linked to a Convention ground and that his application failed under section 96 of the *Immigration and Refugee Protection Act, SC 2001, c 27 (IRPA)*. The Officer proceeded to review the application under section 97 of the *IRPA*.

[6] The Officer explained that a PRRA is not an appeal of a negative refugee decision but rather an assessment of any new facts or evidence. The applicant provided various documents that pre-dated the refugee decision, including newspaper articles, Central Election Commission documents

and medical reports. The Officer decided that this evidence could not be considered because it could have been presented at the refugee hearing.

[7] The Officer determined that three documents that met the criteria of being new evidence and could be considered. He described a letter from the Committee of Nationwide Reconciliation (the CNR), which confirmed its attempts to mediate the feud. The Officer noted that the CNR did not state that the applicant's family had also sought assistance from other non-governmental organizations and religious bodies.

[8] Next, the Officer considered a statement from an elder involved in the attempted mediations. The elder stated that the applicant's family had sought assistance from authorities. The Officer considered this letter to be vague and gave it little weight. The Officer also gave little weight to a letter from the applicant's brother which explained that the family was in hiding. The Officer considered it to be vague and discounted it as it came from an interested party.

[9] The applicant had also provided country condition evidence which the Officer considered unhelpful in establishing that the applicant faced a personalized risk of harm.

[10] The Officer concluded that the determinative issue was the availability of adequate state protection in Albania. The Officer referred to evidence that blood feud killings had decreased and that a special police unit and criminal court had been established to respond to the issue of blood feuds.

[11] The Officer emphasized that the applicant must seek protection in Albania, if protection might reasonably be forthcoming. The Officer concluded that state protection was adequate and therefore dismissed the application.

Issue

[12] The Officer's conclusion on state protection is reviewed on the standard of reasonableness: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190.

Analysis

[13] Blood feuds arise from violations of honour and are based on tribal tradition and customary law. They have resurfaced in Albania, particularly in the north, in the last twenty years as the country transitioned from communism to democracy.

[14] The determinative issue for this application is the availability of state protection. Democratic countries are presumed to be capable of providing protection for their citizens: *Canada (Attorney General) v Ward*, [1993] 2 SCR 689. However, as this Court set out in *Sow v Canada (Minister of Citizenship and Immigration)*, 2011 FC 646, a decision maker must look beyond the mere existence of free and fair elections and also consider the strength of the country's institutions, particularly the independence of judiciary, the professionalism of the police force and the existence of an independent defence bar, to name but a few indicia of a democratic state. These are far more relevant to the issue of state protection than the existence of a democratically elected government.

[15] The applicant has not himself sought protection in Albania. Therefore, the question is whether state protection would reasonably be expected to be forthcoming having regard to the applicant's particular circumstances.

[16] The applicant provided evidence that his family sought the assistance of the CNR and various community elders. The CNR is the leading non-governmental organization working to resolve blood feuds in Albania. It has the support of the Albanian and work with other conflict resolution groups. Despite its expertise the CNR has not been successful in mediating a resolution of this blood feud.

[17] The Officer failed to give any meaningful consideration to this critical evidence; rather the Officer noted that the applicant's family did not seek help from Catholic peace ambassadors, priests and the Albanian Human Rights group. The Officer did not explain why these organizations or individuals might have success, where the CNR and three elders have not. The Officer appears to have ignored evidence that the CNR already works closely with Catholic officials.

[18] In my view, the Officer's treatment of the evidence cannot be characterized as justified, transparent or intelligible. The Officer displayed a pattern of rejecting evidence for reasons that do not withstand scrutiny. It appears that the Officer employed standardized phrases, such as considering the evidence vague, without actually engaging with the content of the evidence in question.

[19] Consider, for example, the notarized letter from a community elder, which the Officer dismissed as vague. The elder provided details regarding the beginning of the feud and the family's request for assistance from the CNR. The elder explained that he, along with two other elders, made several attempts at reconciliation. The elder also mentioned, without detail, that the family sought assistance from state authorities. However, lack of detail on this one issue does not justify rejecting the letter entirely. The letter could have probative value in demonstrating that the applicant faces a risk and that many attempts at reconciliation have failed.

[20] There is also an undated letter from the applicant's brother. Again, the Officer considered it to be vague. The letter does lack details about the specific nature of any threats and so it is not useful for that purpose. Regardless, the Officer should have considered whether the letter had probative value to demonstrate that the applicant's family was in hiding. The letter contains numerous details on that issue. Additionally the Officer's dismissal of the letter because the applicant's brother is interested in the outcome of the application is not, on its own, a basis to reject evidence. By their very nature all claims for protection require the evidence of those most closely affected.

[21] Finally, the Officer asserted that the applicant's country condition evidence did not assist his claim because it did not demonstrate that the applicant faces a personalized risk. Country condition evidence is not tendered to demonstrate the personalized nature of a claim. Rather, it is relevant to the question of whether the applicant could reasonably expect state protection.

[22] To provide a few examples, the United States Department of State report, dated April 8, 2011 explains that, "[p]olice corruption and impunity persisted" in Albania. This report also notes that, "Police officers did not enforce the law equally and an individual's political or criminal connections often influenced enforcement of law." The latter conclusion is repeated in the United Kingdom Border Agency report dated January 2012. The documentary evidence also notes that widespread corruption, political pressure and intimidation prevent the judiciary from functioning independently.

[23] The Officer placed substantial weight on the fact that the applicant's father had received help from the police to control the crowd at a political rally. This example has only minimal relevance. Crowd control at a political rally is markedly different from managing a blood feud.

[24] There is also evidence that, while it is illegal to maintain a blood feud, there is no law to protect intended victims. The applicant and his family may have to wait until a crime is committed against them before the police have any authority to act. This evidence was relevant and squarely challenged the Officer's instance that the applicant and his family had "various avenues to seek state protection".

[25] Counsel for the Attorney General correctly drew attention to the UK Home Office Operational Guidance Note of January 2012 which contained a more positive conclusion as to the current ability of Albania to offer protection to victims of blood feuds:

> In general, the Albanian Government is able and willing to offer effective protection for its citizens who are the victims of a blood feud; however, there may be individual cases where the level of protection offered is, in practice, insufficient. The level of protection

> should be assessed on a case by case basis taking into account what the claimant did to seek protection and what response was received.
>
> UK Operational Guidance Note on Albania, Tribunal Record at 122 (Page 8 Respondent's further Memorandum of Argument)

[26] Reference was also made to the Report of Philip Alston, UN Special Rapporteur that the statistics with respect to blood feuds were inflated, and that the true extent of the problem was more likely closer to the statistics of the Albania government. UNHCR Refworld – Albania – Statistics on Blood Feuds – October 2010.

[27] This evidence, while compelling, does not save the decision in light of the errors noted. As the UK Operational Guidance Note indicates, there may be individual cases where the protection is insufficient. In this context, the error in rejecting the evidence with respect to the applicant's particular situation takes on greater significance.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted. The matter is referred back to Citizenship and Immigration Canada for reconsideration before a different Pre-Removal Risk Assessment officer. There is no question for certification.

"Donald J. Rennie"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Yehuda Levinson	FOR THE APPLICANT
Daniel Engel	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Levinson & Associates Toronto, Ontario	FOR THE APPLICANT
William F. Pentney, Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT