

Federal Court



Cour fédérale

**Date: 20130416**

**Docket: IMM-6584-12**

**Citation: 2013 FC 376**

**Ottawa, Ontario, April 16, 2013**

**PRESENT: The Honourable Mr. Justice Simon Noël**

**BETWEEN:**

**EMERSON PJETRI  
LIZE VUCAJ**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision of the Refugee Protection Division [the RPD], dated June 8, 2012, where it determined that the Applicants are not Convention refugees or persons in need of protection.

**I. Facts**

[2] The Applicants, a mother and her son, are citizens of Albania. They claim protection under sections 96 and 97 of the IRPA.

[3] In May 1999, Mr. Pjetri met a woman named Mira Ujka and they moved in at the beginning of 2001. He asked her to be his wife in May 2001. Mira had kept their relationship secret from her family.

[4] The Ujka family sought revenge because Mira had been promised to another man and the family was dishonoured. They attacked Mr. Pjetri and a blood feud was declared. His mother's attempt to solve the dispute with the help of a priest was unsuccessful.

[5] In August 2001, Mr. Pjetri left Albania for the United States. In 2006, he was charged for assaulting his girlfriend. He came to the attention of the United States Immigration authorities and removal proceedings were started and he sought asylum. His attempt to stay in the United States failed and he entered Canada in February 2009.

[6] As for Ms. Vucaj, she married Kol Pjetri in 1975. They lived with Kol's extended family and he was abusive with her as well as her son throughout the course of their marriage. However, she remained at Kol's home and was used as a slave for the rest of the family. She tried to run away once but her parents sent her back to Kol's house because they considered that she belonged to him and his family.

[7] In 2009, Kol died and Ms. Vucaj stayed with her late husband's family who continued to mistreat her. In 2010, she was beaten badly and required medical treatment in hospital. Her relatives visited her and took her away from Kol's family. She remained in Albania for a short period of time and then left for Canada to join her son in February 2011.

## **II. Decision under review**

[8] The RPD took into consideration the Chairperson's Guidelines Women Refugee Claimants Fearing Gender-Related Persecution [the Guidelines]. At the initial hearing scheduled, counsel for the Applicants requested that they be declared vulnerable claimants and that a designated representative be appointed. He submitted that they showed difficulty in remembering, which led to difficulty in preparing for the hearing and that they both have psychological assessments indicating that they suffer from Post Traumatic Stress Disorder [PTSD], a major depressive disorder, severe for Mr. Pjetri and chronic for Ms. Vucaj. Moreover, Mr. Pjetri was examined in May 2011 for psychiatric assessment.

[9] The RPD denied the request for a designated representative as the Applicants both demonstrated that they knew and understood why they were at the hearing and the general purpose of it although they indicated that they met with counsel several times but could not remember specifics of the instructions they gave. The RPD, however, allowed Ms. Mary Metcalf to come help the Applicants and bring notes to the hearing to fill in gaps when needed.

[10] The RPD accepted unsolicited post-hearing psychological evidence regarding the psychological state of the Applicants. Both claims for protection were rejected on the basis of lack of credibility.

[11] First, Mr. Pjetri stated in his written narratives that the Ujka family wanted to kill him because of the dishonour he brought to their family as Mira was promised to another man and that when he was assaulted by her brother, he mentioned that his sister was Muslim. However, at the hearing he never mentioned Mira being Muslim or promised to another man. Mr. Pjetri's explanation that he forgot was not found satisfactory by the RPD as he was allowed to have help from someone during the hearing, the psychological assessment does not report effects on memory and the religious aspect was prominent when the male claimed protection in the United States. Moreover, in his narrative, he said that Mira's brother's name is Altin but at the hearing he said it was Sandor. The narrative about how Mira was taken away from him differs from the story he gave when he claimed protection in the United States. Finally, Mr. Pjetri stated in his Personal Information Form [PIF] that he is too, Muslim. The RPD determined that these inconsistencies cannot be found in a lack of memory as he recalled most of those facts when he claimed protection in the United States in 2008 and that there is no evidence of memory loss prior to 2012.

[12] Moreover, Mr. Pjetri claims that he was assaulted in the United States by a person who indicated having links to the Ujka family. However, the report is dated March 14, 2007 and mention is made of the fact that he indicated that he was engaged to the suspect's sister 3 years before the attack. This report, therefore, relates to a relationship in 2004 or 2003 and makes it impossible for it

to relate to Mira. In addition to this, Mr. Pjetri did not mention this fact when he claimed protection in the United States in 2008.

[13] Finally, the RPD noted that Mr. Pjetri did not claim refugee protection from 2001 to 2006 and that during that time, he was arrested for assaulting his girlfriend and for impaired driving, which are all activities that would expose him to a danger of being discovered as an illegal resident in the United States and there is no evidence of steps he took to regularize his status. The RPD, therefore, drew a negative inference as to his well-founded fear of persecution.

[14] Mr. Pjetri also alleges that he was attacked by the Ujka family in Canada but he never reported the assault to the police and there is no evidence that the attackers were from Albania.

[15] As for Ms. Vucaj, her answers to questions regarding her situation in Albania were evasive. She sustains that she was hospitalized after being hurt by her in-laws. However, she did not provide evidence of her stay in the hospital or a letter explaining that the hospital records are not accessible at this time because of computerization of the records, as she told the RPD. Ms. Vucaj claims that the police attended at the hospital and drafted a report but she does not submit any evidence related to this report.

[16] Moreover, she claims that she was hospitalized in late 2010 and after moved to her mother's relatives' village. However, in her PIF, she states that she moved to Gjon, her mother's village in February 2010, which makes her testimony inconsistent with her PIF. Her explanation that Gjon is a

village in the mountains, a place where she spent her whole life, was not found satisfactory by the RPD.

[17] Ms. Vucaj did not give a clear answer as to whether she would be safe living in Gjon but indicated that her husband's family did not bother her. However, this statement is inconsistent with her mother's letter in which she explains that her husband's family would come and ask to take her back.

[18] Moreover, Ms. Vucaj states that she ignores when her husband died because she was hiding with her mother's cousins. Therefore, the RPD concluded that she did not live with her late husband's family during the two years before claiming protection. Her statement that she divorced in 2004 is inconsistent with her PIF in which she indicated that it happened in 1990. She gave contradictory answers as to who initiated the divorce proceedings. Finally, the RPD pointed out that it seems unfathomable that her son would allow his mother to suffer during those years while he was living in the United States.

### **III. Applicants' submissions**

[19] Mr. Pjetri submits that the RPD's decision not to allow "more leeway" in a case where a claimant was not granted a designated representative is capricious. Moreover, the RPD erred in concluding that the psychological report doesn't speak of memory problems and that therefore, such problems do not affect him as anyone familiar with PTSD, such as a specialized tribunal, knows that one of its key symptoms is an unwillingness to remember.

[20] Ms. Vucaj submits that the RPD's adverse inference from her failure to attempt to get documents disregards her psychological situation and aversion to all things related to her trauma. Moreover, when making findings that her answers are evasive and that she does not give specific dates, the RPD should have considered that she has limited education and that she was treated as a slave during most of her life. Moreover, the RPD's determination that it is not credible that her son would let his mother live in difficult conditions while he was in the United States disregards whether he even knew of this situation and if he was in a financial situation to help her as no questions were asked to him.

[21] Mr. Pjetri submits that the RPD ignored important evidence that contradicts its findings. He argues that the RPD did not fully address the psychological report for what it said in his favour and its impact on the assessment of his testimony such as whether it can explain an omission or lack of detail.

[22] Ms. Vucaj submits that at no point the RPD considered her psychological report when making credibility findings regarding her claim. The RPD failed to consider that the report which states that she is illiterate and has limited education explains why she refers to specific events and not dates.

[23] Ms. Vucaj also argues that the RPD failed to apply the Guidelines.

[24] The Applicants both submit that the RPD erred in putting a higher onus on them than it would have for other claimants because of the protective presence of Ms. Metcalf.

[25] Mr. Pjetri submits that the RPD's conclusion that his behaviour is not compatible with that of a person who fears returning to Albania fails to consider whether his actions are that of someone who is psychologically instable. This amounts to failure to consider important evidence.

[26] Mr. Pjetri submits that before concluding that there was no evidence of memory loss prior to 2012, the RPD should have asked him questions. As a child, he was beaten and mistreated.

#### **IV. Respondent's submissions**

[27] The Respondent submits that the RPD made no error in denying the Applicants' request for a designated representative as they showed that they understood the purpose of the hearing.

Although the RPD referred to Ms. Metcalf as a "designated representative," it is clear that this person was not in fact designated. Given that this accommodation was provided at the hearing, it was open to the RPD to rely on unexplained contradictions and inconsistencies in the Applicants' credibility assessment. The friend's evidence was inconsistent and did not address the RPD's credibility concerns.

[28] The Respondent submits that the RPD rightly noted that the psychological assessment of Mr. Pjetri does not mention memory issues. As for Ms. Vucaj, her psychological report mentions cognitive limitations including memory but there is no description as to how these limitations manifest themselves.



[29] The Respondent further argues that the evidence from the Mayo Clinic the Applicants rely on was not before the RPD and therefore, it cannot be faulted for not having addressed it. Moreover, psychology falls outside the RPD's area of expertise and it is reasonable for it to assume that the Applicants are not suffering symptoms not listed in the reports. The onus was on the Applicants to submit evidence regarding their ability to recount their stories.

[30] The Respondent is of the view that the RPD is entitled to determine whether the Applicants' psychological diagnoses provide the better explanation for the inconsistencies and evasiveness in their evidence and it was sensitive to their circumstances. Mr. Pjetri's statements at the hearing regarding his conflict with the Ujka family contradict his PIF and are nonsensical. Similarly, Ms. Vucaj gave significantly contradictory answers regarding her divorce and related events, which are central to her claim, and it was reasonable for the RPD to make a negative credibility finding considering that she did not claim an inability to remember. The RPD did not have to specifically mention the psychological report, as it was not relied upon as an explanation for the contradictions in her evidence.

[31] The Respondent submits that Mr. Pjetri tries to explain his conduct in the United States as being the result of his psychological state but there is no evidence before the RPD that he had a psychological condition prior to 2012. He similarly attempts to explain his lack of concern for his mother by reference to his psychological state, without providing supporting evidence. Moreover, such explanation was not before the RPD. It is reasonable to find that Mr. Pjetri would have helped his mother when he was aware of the abuse she had suffered.

[32] The Respondent argues that although the Applicants assert that the RPD should have asked questions about their psychiatric history, they bear the onus of submitting evidence. Similarly, Ms. Vucaj explains her failure to obtain documents as incidental to her traumatized state despite the fact that such explanation was not provided at the hearing.

[33] The Respondent submits that the present case is different from *Atay v Canada (Minister of Citizenship and Immigration)*, 2008 FC 201, which is cited by the Applicants as in that case, the RPD failed to consider whether the psychological report had an impact on the credibility assessment and only used it to establish a subjective fear or objective risk.

[34] Finally, the Respondent submits that the RPD did consider and apply the Guidelines and it is to be noted that they do not excuse the Applicants from providing credible and reliable testimony. In the case at bar, the concerns regarding Ms. Vucaj's testimony did not arise from her unwillingness to testify or misapprehensions about her conduct but from the inconsistent accounts of her divorce and related events and her failure to document key aspects of her claim. The RPD reasonably found that the psychological report is not sufficient to overcome issues of credibility.

[35] The RPD was entitled to determine whether the psychological evidence provided the better explanation for the major deficiencies in their evidence and this Court should not reweigh the evidence.

## **V. Issues**

[36] The present application for judicial review raises the following issues:

1. Did the RPD err in its consideration of the psychological evidence?
2. Did the RPD adequately apply the Guidelines?

## **VI. Standard of review**

[37] The Board's credibility findings are reviewed on a standard of reasonableness and are therefore accorded a high level of deference (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 53, [2008] 1 SCR 190). Similarly, the RPD's consideration of the Guidelines should be reviewed on the standard of reasonableness (*Cornejo v Canada (Minister of Citizenship and Immigration)*, 2010 FC 261 at paras 16-18, 2010 CarswellNat 521; *Gonzalez Duran v Canada (Minister of Citizenship and Immigration)*, 2011 FC 855 at para 12, 2011 CarswellNat 2579).

## **VII. Analysis**

### *A. Did the RPD err in its consideration of the psychological evidence?*

[38] The RPD's credibility assessments in light of the psychological reports are reasonable for the following reasons.

[39] First, at the beginning of the hearing, the RPD ensured that the Applicants understood the nature of the proceedings and the reasons why they were at the hearing. It allowed Ms. Metcalf to be present at the hearing and to bring notes to help the Applicants when needed, which is an exceptional measure. The RPD was, therefore, alert and sensitive to the psychological situation of the Applicants prior to and throughout the hearing (*Karli v Canada (Minister of Citizenship and Immigration)*, 2005 FC 276 at paras 13-14, 137 ACWS (3d) 1007).

[40] Second, Mr. Pjetri mischaracterizes the RPD's statement relating to the credibility of his allegation regarding his fear of the Ujka family. It mentioned that in another situation, it might not draw a negative inference from the fact that a claimant may forget an element relevant to his claim but that in the present circumstances, the explanation provided that he simply forgot that Mira is Muslim should be rejected. Indeed, the religious aspect of his claim was fundamental to his refugee claim in the United States in 2008 and therefore, the decision of the RPD to reject his explanation is reasonable.

[41] The Applicants again mischaracterize the RPD's decision by arguing that it put a higher onus on them because they had the assistance of Ms. Metcalf at the hearing. The appointment of a person to help the Applicants was one among all the reasons why the RPD is not "allowing more leeway." In no way did it put a higher onus on the Applicants because they were assisted by Ms. Metcalf. The purpose of allowing her presence at the hearing was actually to overcome the difficulties faced by the Applicants when telling their stories.

[42] Mr. Pjetri submits that the RPD did not provide any explanation as to whether his psychological situation explains the omissions or lack of detail. This is what was done throughout the decision and specifically at the beginning when the RPD stated that it would usually allow for "more leeway" but that in the circumstances, the contradictions and omission are too obvious to be attributable only to PTSD (*Krishnasamy v Canada (Minister of Citizenship and Immigration)*, 2006 FC 451 at para 23, 2006 CarswellNat 969). Although the psychological report indicates that Mr. Pjetri suffers from PTSD, the RPD found that such consideration was not relevant to the inconsistencies noted by the RPD, which is a reasonable determination (*Paplekaj v Canada*

*(Minister of Citizenship and Immigration)*, 2012 FC 947 at paras 18-19, 221 ACWS (3d) 940).

Moreover, there was no evidence of memory loss in the case of Mr. Pjetri put before the RPD that could explain the lack of credibility of his story.

[43] As for Ms. Vucaj, the RPD did address the content of her psychological report. It specifically referred to it at the beginning of its decision and it was one of the considerations for allowing Ms. Metcalf's assistance at the hearing. The RPD's credibility findings were justified: her inability to provide dates was one of the components of the RPD's reasoning on credibility as a number of other important factors justified an adverse inference as to the credibility of her claim:

1. She did not provide evidence to show that she was hospitalized or documents to explain that it was impossible to retrieve her medical record in Albania.
2. She did not provide a copy of the report prepared by the police while she was at the hospital.
3. She gave contradictory answers with respect to the date she was hospitalized and the period during which she lived with her late husband's family.
4. She gave inconsistent evidence as to who requested the divorce.

[44] Although memory problems are listed as one of the symptoms of Ms. Vucaj's psychological condition, it was reasonable for the RPD to determine that it is not a sufficient explanation

considering the numerous inconsistencies in her testimony and her failure to provide supporting documents.

[45] Furthermore, a reading of the transcript shows that the RPD was alert and sensitive when dealing with both Applicants. The RPD was aware of the state of mind of each Applicant, relied when needed on Ms. Metcalf and was sensitive to the individuals when it questioned them. This sensitive approach allowed the RPD to make an in-depth assessment of the situation, consider the answers given by the Applicants and then make the necessary pertinent credibility findings.

*B. Did the RPD adequately apply the Guidelines?*

[46] My remarks contained in the preceding paragraph regarding the RPD's sensitivity to the Applicants' situation also apply to its consideration of the Guidelines.

[47] Moreover, at the beginning of its decision, the RPD indicated that it applied the Guidelines to assess Ms. Vucaj's claim and there is no basis to show that the Guidelines were misapplied. The RPD noted serious credibility concerns regarding her story and the consideration of the Guidelines in the context of a gender-related claim does not exempt Ms. Vucaj from providing credible and reliable evidence to support her claim.

[48] No questions for certification were proposed by the parties and none will be certified.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application for judicial is dismissed. No question is certified.

“Simon Noël”

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-6584-12

**STYLE OF CAUSE:** EMERSON PJETRI ET AL  
v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** April 4, 2013

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

**DATED:** April 16, 2013

**APPEARANCES:**

Jeffrey L. Goldman FOR THE APPLICANTS

Jane Stewart FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Jeffrey L. Goldman, lawyer FOR THE APPLICANTS  
Toronto Immigration Law Services  
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of Canada