Federal Court  Cour fédérale

Date: 20140304

Docket: IMM-5102-13

Citation: 2014 FC 209

Ottawa, Ontario, March 4, 2014

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

ALEKS THERQAJ
SILVANA THERQAJ

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The jurisprudence, as per *Zeng v Canada (Minister of Citizenship and Immigration)*, 2010 FCA 118, [2011] 4 FCR 3, clearly states that, as per prima facie evidence of permanent resident status, the onus is on an applicant to establish whether, or not, that status was lost.

[2] This is an application for judicial review of the decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB], wherein it was determined that the Applicants' were not Convention refugees nor persons in need of protection as per sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [*IRPA*].

[3] In the view of the Court, the RPD did not err in denying the Applicants' application.

[4] The principal Applicant fled Albania in 1997 due to a blood feud which was initiated in 1985. In 2010, he received a permanent "Greek Permit Stay" subsequent to receiving a work permit. It is significant to note that the Applicants did travel to Albania on occasion on travel documents that were not Greek after having claimed potential peril in Albania. It is also noted, as per the evidence, that the associate Applicant's status in Greece is associated to that of her husband, the principal Applicant; and, the status of the principal Applicant was not in doubt by the RPD as per the evidence.

[5] The disagreement of the Applicants is with the assessment of the evidence; that does not constitute a case for judicial review. (Specific reference is made to para 12 and 13 of *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708.)

[6] The Applicants are Albanian citizens with residence in Greece. They have a right of return to Greece. The principal Applicant had obtained a permanent residence permit, one he had learned was, in fact, permanent in nature.

[7] The jurisprudence, as per *Zeng*, above, clearly states that, as per prima facie evidence of permanent resident status, the onus is on an applicant to establish whether, or not, that status was lost.

[8] The permanent residence document of the principal Applicant constitutes proof of his status in Greece. The Applicant associated with the principal Applicant has renewable status on the basis of family reunification grounds with that of the principal Applicant. She testified before the RPD that her permit enabled her to be educated, obtain medical services, as well as other services, available to the Greeks. She could also move throughout the country.

[9] Both Applicants, as determined by the RPD, are excluded from the definition of "Convention Refugee" or "persons in need of protection" due to Article 1E of the Convention. Article 1E of the United Nations *Convention Relating to the Status of Refugees* states: "This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country [claimed by the Applicants]."

[10] The RPD did consider the evidence before it as presented at the time of the hearing; and, concluded that the Applicants were in a different position than most immigrants in that respect; they both have legal status in Greece. They had neither been refused services, nor were they mistreated by any entities of the State; and, they had become long-established in Greece.

[11] Therefore, due to all of the above, State protection had not been rebutted by the Applicants. No failure could be demonstrated by the Applicants as to their access to State protection.

[12] The disagreement as to weight given to the evidence by the RPD is not a cause for review. The decision of the RPD was reasonable on the basis of fact and law.

[13] Therefore, the Applicants' application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS that the Applicants' application for judicial review be dismissed with no question of general importance for certification.

"Michel M.J. Shore"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5102-13
STYLE OF CAUSE:	ALEKS THERQAJ, SILVANA THERQAJ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

JUDICIAL REVIEW HEARING HELD VIA TELECONFERENCE ON MARCH 3, 2014 FROM OTTAWA, ONTARIO AND EDMONTON, ALBERTA

DATE OF HEARING: MARCH 3, 2014

REASONS FOR JUDGMENT AND JUDGMENT: SHORE J.

DATED: MARCH 4, 2014

ORAL AND WRITTEN REPRESENTATIONS BY:

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