

Federal Court



Cour fédérale

Date: 20150608

Docket: IMM-3838-14

Citation: 2015 FC 718

Toronto, Ontario, June 8, 2015

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

**RESMI TAHO
DRITA TAHO
MARSELINA TAHO**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is the judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (RPD) dated April 24, 2014, in which it concluded that the Applicants are not Convention refugees nor persons in need of protection pursuant to ss 96 and 97, respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA). This application is brought pursuant to s 72 of the IRPA.

Background

[2] The Applicants are citizens of Albania. They are Resmi Taho (Principal Applicant), his wife Drita and their daughter Marselina. The Applicants rely on the Personal Information Form (PIF) narrative of the Principal Applicant. The Principal Applicant claims that his father accidentally killed a member of the Deda family in 1980. In August 2011, the Deda family declared a blood feud which targets the Applicants and puts their lives at risk.

[3] The Applicants claim that the feud was reported to the police, who said they could not help and that the family should isolate themselves and seek reconciliation. Reconciliation efforts failed and on September 6, 2011, when the Principal Applicant was leaving his home to go to Greece, shots were fired at him. The police again said they could do nothing. The Principal Applicant left for Greece on September 18, 2011 and later heard that his whereabouts there were being questioned. He decided to flee to Canada, arriving in December 2011. The remaining Applicants arrived in Canada on December 27, 2011, and claimed refugee status on January 22, 2012.

Decision Under Review

[4] The RPD found that the determinative issues were credibility and state protection. Because it found that the Applicants fear a criminal threat directed against them in the context of a blood feud, there was no nexus between the risks identified by the Applicants and their race,

religion, nationality, political opinion or membership in a particular social group. Therefore, a s
96 analysis was not conducted.

[5] The RPD stated that except as it specifically noted below, it accepted the Applicants' testimony about the events they experienced in Albania as generally credible.

[6] The Applicants filed four attestation letters in support of their claims:

- Committee of Nationwide Reconciliation (CNR), from chairman Gjin Marku, dated August 19, 2013, attesting that the subject blood feud is genuine, the CNR had been handling the feud, attempts to mediate had failed, and the police and local government had been unable to intervene and stop the feud. The document states that the Albanian authorities do not have the ability and the competence to offer protection to the victims of blood feuds in Albania;
- Commune of Markat, from the chairman of the NINAT village council, Osman Halili, dated September 25, 2013, attesting that the council is aware of the blood feud and that the Applicants had sought police assistance but that the local police confirmed that they could not intervene in blood feuds and had recommended that the Applicants isolate themselves and seek assistance from associations that specialize in mediation, which efforts were not successful. The council was also aware of the attempted shooting of the Principal Applicant in September 2011;
- Commune of Markat, from the chairman of the commune Ismail Murtaj, dated September 25, 2013, stating the same and adding that the blood feud was "still on" and that all the male members of the Principal Applicant's family are in real danger; and
- City Hall Sarandë, from mayor Stefan Cipa, dated October 20, 2013, attesting that the City Hall of Sarandë was aware of the blood feud, that the mayor had consulted with the chief of police for Sarandë about the possibility of protecting the Applicants but that the police had declined to get involved, as it is not wise for them to do so. Further, that traditionally the recommendation in such cases is mediation, however, that such efforts had failed.

[7] The RPD gave little weight to these letters. It stated that several comments from a variety of sources in the Request for Information Request ALB104752.E, dated February 28, 2014 (RIR), indicated that there had been serious doubt cast on the professional integrity of Mr.

Marku and the CNR. The RPD doubted the legitimacy of the remaining attestations based on the RIR as well as the National Documentation Package (NDP), Albania, Item 2.4 Albania: Country of Origin Information report, United Kingdom, Home Office, March 30, 2012 (UK COI Report), the latter of which suggested that there are networks that provide documents and false papers to asylum seekers such as the Applicants. Further, the RIR suggested that the police may issue a letter indicating whether a family is isolated due to a blood feud, but the Applicants had not provided such a letter.

[8] The RPD reviewed the Principal Applicant's evidence as to the efforts made to seek state protection but concluded that there were several references in the country documents that indicated that there is a level of state protection available in the case of blood feuds, including the UK COI Report (NDP Item 2.4), and the European Commission, Commission Staff Working Document, Albania 2012 Programs Report, October 10, 2012 (EC Working Document) (NDP Item 2.2). The RPD found that the Applicants did not take all objectively reasonable steps to exhaust the courses of action reasonably available to them to obtain state protection. They had not gone back to the police when mediation failed, and, while the Principal Applicant called the police after the September 2011 attempted shooting, he did nothing more. Further, the letter from the mayor, which had indicated that the police chief had been consulted, was indicative only of a local failure of police and was at odds with the documentary evidence of ongoing efforts and progress made by the Albanian police to deal with blood feuds. The RPD found that the Applicants had not rebutted the presumption of state protection.

Issues

[9] The issues can be formulated as follows:

- i. Did the RPD err in its assessment of the s 96 claim?
- ii. Was the RPD's state protection assessment reasonable?

Standard of Review

[10] Findings of nexus to a Convention ground under s 96 are questions of mixed fact and law and are reviewable on the standard of reasonableness (*Shkabari v Canada (Minister of Citizenship and Immigration)*, 2012 FC 177 at para 41 [*Shkabari*]; *Ascencio Ventura v Canada (Citizenship and Immigration)*, 2011 FC 1107 at para 12).

[11] Credibility findings, frequently described as the "heartland of the Board's jurisdiction", are essentially pure findings of fact and also attract the reasonableness standard (*Shkabari* at para 42; *Yener v Canada (Citizenship and Immigration)*, 2015 FC 618 at para 15).

[12] Assessment of findings on state protection and the interpretation of evidence raise questions of mixed fact and law, again attracting the reasonableness standard (*Shkabari* at para 43; *Canada (Citizenship and Immigration) v Bari*, 2015 FC 656 at para 6).

[13] Reasonableness is concerned with the justification, transparency and intelligibility of the decision-making process and also with whether the decision falls within a range of possible acceptable outcomes defensible in respect of the facts and law (*Dunsmuir v New Brunswick*,

2008 SCC 9 at para 47 [*Dunsmuir*]). On that standard the reviewing Court will interfere with the decision only if it falls outside that range (*Dunsmuir* at paras 47-49; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 45-46, 59).

Analysis

Issue 1: Did the RPD err in its assessment of the s 96 claim?

[14] The Applicants submit that targets of blood feuds potentially could be considered members of a particular social group as described by s 96 of the IRPA. They distinguish case law to the contrary on the basis that the Principal Applicant is not a perpetrator but the innocent victim of the feud, and because the Principal Applicant's father accidentally caused the death of a co-worker and did not murder him (*Shkabari* at para 48; *Bojaj v Canada (Minister of Citizenship and Immigration)*, 194 FTR 315 [*Bojaj*]).

[15] In my view this argument cannot succeed. *Shkabari* is of little assistance to the Applicants. In that case this Court held that the facts were not based purely on criminality, revenge or personal vendetta. Instead, the persecution arose from a refusal to abide by customary Albanian law that limits the internationally recognized right to marry freely. As such, the applicants in that case fell within the scope of a particular social group category as described by the Supreme Court of Canada in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689.

[16] In *Bojaj* Justice Heneghan denied an application for judicial review by a 19 year old male from Albania who claimed a well-founded fear of persecution based on his fear of being killed in

a blood feud. She noted that the RPD in that case had reasonably concluded that the applicant's fear of persecution related to an act of criminality and not to one of the s 96 nexus grounds. The case addressed derivative claims of persecution where the applicant's grandfather had committed a murder and the applicant was an innocent victim of the resulting blood feud. It does not support the Applicants' contention that innocent victims of blood feuds are a particular social group. Nor does it address a circumstance where the death that sparked the feud was accidental.

[17] In *Hamaisa v Canada (Citizenship and Immigration)*, 2009 FC 997 this Court confirmed that victims of blood feuds are not members of a particular social group:

[14] The Federal Court has stated that revenge vendettas have no link to Convention grounds and blood feuds are not considered to be members of a particular social group under Canadian law. In *Zefi v. Canada (Minister of Citizenship & Immigration)*, 2003 FCT 636, [2003] F.C.J. No. 812 (Fed. T.D.) at paragraphs 40-41 Justice Lemieux wrote:

[40] It has been recognized by this Court and by the Federal Court of Appeal that criminality, revenge, personal vendetta, cannot be the foundation of a well-founded fear of persecution by reason of a Convention ground for the simple reason such a persecution is not related to one of Convention ground where the persecution must be because of a person's race, ethnicity, etc.

[41] Revenge killing in a blood feud has nothing to do with the defence of human rights — quite to the contrary, such killings constitute a violation of human rights. Families engaged in them do not form a particular social group for Convention purposes. Recognition of a social group on this basis would have the anomalous result of according status to criminal activity, status because of what someone does rather than what someone is (see *Ward*, paragraph 69).

[15] Based on the reasons of Justice Lemieux in *Zefi*, above, the Board's decision that the Applicants are not Convention refugees is reasonable.

[18] In summary, in my view, the fact that the Principal Applicant is a victim of a blood feud that was initiated because of an accidental, rather than intentional, death does not alter the conclusion that vendettas of this kind have no link to Convention grounds and that he and his family would not be considered to be members of a particular social group. In that regard, I would note that this Court has held repeatedly, in the context of an IRPA s 97(1)(b) analysis, that victims of vendettas or crimes by gangs are not persons in need of protection if the risk is generalized in the victim's country of origin (*Capa v Canada (Citizenship and Immigration)*, 2014 FC 648 at para 36; *Sanaj v Canada (Citizenship and Immigration)*, 2012 FC 744 at paras 7-10 [*Sanaj*]; *Zefi v Canada (Citizenship and Immigration)*, 2003 FCT 636 at paras 39-41; *Luna Rios v Canada (Citizenship and Immigration)*, 2012 FC 276 at paras 66-67). Thus, the fact that a claimant is a victim of violence is not sufficient to afford protection under s 97. Similarly, the mere fact that the Applicant is a victim, rather than a perpetrator of a crime, is not sufficient to distinguish the prior s 96 jurisprudence.

[19] I agree with the Respondent that, as the Applicants submitted no evidence to differentiate themselves from other alleged victims of blood feuds, no further s 96 analysis by the RPD was necessary (*Sanaj* at paras 7-10).

Issue 2: Was the RPD's state protection assessment reasonable?*Applicants' Position*

[20] The Applicants submit that because they had been found to be credible, the RPD's concerns as to the corroborating attestation letters are misplaced. Further, based on the RIR, the RPD cast doubt on the professional integrity of Mr. Gjin Marku of the CNR but failed to note that the same article stated that he had been cleared of the charges against him. The RPD's concerns about the failure to provide a police letter confirming the Applicants' involvement in a blood feud were moot, given its credibility findings. In any event, there was contradictory evidence as to the availability of such letters, and such a letter would not be proof of state protection. While the RPD found, based on two articles in the NDP, that the Albanian justice system was capable of providing state protection, there was significant evidence to the contrary in the RPD's own materials and those provided by the Applicants, yet these were not mentioned or analyzed. Finally, the RPD refers only to serious efforts to provide state protection and failed to conduct an inquiry as to its adequacy. All of these are reviewable errors.

Respondent's Position

[21] The Respondent submits that there is no evidence in support of the Applicants' contention that the police had been called twice and, given the documentary evidence indicating that the police can and do act to protect individuals in such cases, the RPD reasonably found that the minimal efforts that the Applicants had taken to access police protection were insufficient to rebut the presumption of state protection (*Razburgaj v Canada (Citizenship and Immigration)*),

2014 FC 151 at para 29 [*Razburgaj*]). The RPD could also reasonably consider as insufficient the Applicants' explanation that they did not follow up with the police because the police do not assist in blood feuds (*Krasniqi v Canada (Citizenship and Immigration)*, 2010 FC 350 at para 39 [*Krasniqi*]; *Celaj v Canada (Citizenship and Immigration)*, 2012 FC 807 at paras 27-30 [*Celaj*]). Further, this Court has held that state protection can be found in Albania (*Ndoja v Canada (Citizenship and Immigration)*, 2013 FC 163 at paras 21, 23). The RPD did consider the utilization of the mediation process but chose to give the CNR letter little weight, a choice that was open to it based on the record, which showed that serious doubt had been cast on the organization and Mr. Marku. Because the RPD questioned the credibility of the Applicants' evidence that they had sought police protection, it was reasonable for it to consider that no evidence had been provided to support that contention, especially as the documentary evidence that the RPD relied on indicated that the police would issue letters in cases of blood feuds. The Respondent submits that the Applicants merely question the weighing of the evidence.

Analysis

(a) *Credibility*

[22] In this case, the RPD dealt with credibility in the first part of its decision. It stated that where an applicant swears to the truth of certain allegations, this creates a presumption that those allegations are true unless there is reason to doubt their truthfulness (*Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (FCA)). It then found the Applicants' testimony about the events they experienced in Albania to be generally credible,

except as it specifically noted in its reasons below. What followed below were the RPD's concerns regarding the corroborating attestation letters.

[23] As to the letter from the CNR, the RPD stated that there were several comments from a variety of sources in the RIR that cast "serious doubt" on the professional integrity of Mr. Marku and the CNR. The RIR referenced an undercover investigation by the Balkan Insight that found some NGOs were routinely selling documents to Albanian asylum seekers in Europe, claiming that the holders were involved in a blood feud even if a real conflict did not exist. In December 2011 media sources reported that Mr. Marku and a member of another NGO had been charged with selling falsified certificates that claimed that people were the victims of blood feuds. The RIR goes on to say that the CNR claims that the accusation against Mr. Marku was a political set-up and that he was cleared of the charges in May 2012. A police certificate dated April 17, 2012, certifying that no penal proceedings were being issued against him was verified as genuine.

[24] However, the RIR also reports that an April 2013 fact finding mission to Albania about blood feuds by the Swedish Migration Board reported that the CNR was the organization most frequently mentioned by the sources that they consulted as being linked to accusations of corruption and the issuing of false attestation letters (CTR, p 279). The RIR also notes that in a 2012 decision by the UK Immigration and Asylum Chamber of the Upper Tribunal the judges stated: "We consider that the organisation [CNR] and Mr. Marku are wholly unreliable and that no weight can be placed on the attestation letters they produce" (CTR, p 279).

[25] Given this, in my view, the RPD's finding that there are several comments from a variety of sources in the RIR that cast a serious doubt as the professional integrity of Mr. Marku and the CNR was grounded in the documentary evidence and was reasonable. Further, the Applicants' submission that the RPD quoted in part from the RIR without acknowledging that Mr. Marku had been cleared is in error. The RPD did not quote any source. Therefore, it did not commit a reviewable error in failing to acknowledge contrary information as contained in the whole of the quote.

[26] As to the remaining attestation letters, the RPD referenced the UK COI Report, quoting an RIR of February 2012, which states that:

Various sources report that some NGOs have issued false documents about blood feuds (Albania 2 Dec. 2011; AFCD 16 Dec. 2011; Belgium 29 Nov. 2011, 4-8; Balkan Insight 5 Dec. 2011; *ibid.* 27 Oct. 2011; Kohajone.com n.d). In response to an increase in blood-feud related asylum claims in Belgium in September and October of 2011, the head of Belgium's Asylum and Migration Department reportedly claimed that behind the individual asylum seekers "is an entire organisation, networks and provide documents and fake papers in exchange for huge amounts of money" (qtd. in AFP 18 Oct. 2011)...

[27] The RPD then noted that the Applicants had provided no documentary evidence in support of their claim that the police had told them to remain in hiding. The RPD stated that it found this to be suspicious because the RIR included a reference that stated that "[n]ormally State Police may issue a letter indicating whether a family is isolated due to a blood feud" and that two sources in the RIR referred to such letters: the Head of Sector of the Albanian State Police and an academic employed at the American University, who also said that the police do

not give out such letters. The RPD stated that it gave more weight to the evidence as to the issuance of the letters by the State Police, given that the greater number of sources refer to it.

[28] In fact, the RIR states:

- the Director of the Albanian Foundation for Conflict Resolution and Reconciliation of Disputes (AFAR) indicated that he is not aware of any agency responsible for issuing official attestation letters verifying that a person is in a blood feud;
- A Balkan Insight journalist said that there is no government authority issuing attestation letters about blood feuds;
- The Swedish fact finding mission stated that no authorized governmental or non-governmental organizations certify existing blood feuds in Albania;
- The Head of Sector of the Directorate Against Serious Crime of the Albanian State Police stated that “[n]ormally State Police may issue a letter indicating whether a family is isolated due to a blood feud” but provided no further details; and
- The professor stated that the Ministry of Interior issued documents verifying whether a family was involved in a blood feud under the previous government, but he was not sure whether the practice continued after the 2013 elections and the concomitant change in government (Feb 3, 2014). He said the issuance of the letters “likely involved the state police” but noted that “few letters” were issued by the state authorities.

[29] Having reviewed the documentary evidence contained in the record before me, it is clear that falsification of attestation letters is a known problem. However, in the context of its assessment of the Applicants’ credibility, the RPD accepted their testimony about the events that they experienced in Albania, except as specifically noted in its following analysis. What followed pertained primarily to the legitimacy of the attestation letters. The only aspect of the Applicants’ evidence that was addressed was that the police had told them to remain in hiding. Based on its interpretation of the RIR, the RPD appears to have formed the view that the Applicants could have provided a police letter confirming that they were isolated because of the blood feud.

[30] There are two difficulties with this. First, given the lack of clarity of that evidence, it is questionable whether it supports the RPD's apparent view that such a letter would have been provided by the police. It is also unclear that the weight of the documentary evidence supports that finding based on the RIR and the other documentary evidence. Second, the RPD did not clearly reject on the grounds of credibility the Applicants' evidence that they had sought police protection (*Peter v Canada (Citizenship and Immigration)*, 2015 FC 619 at para 7; *Hilo v Canada (Minister of Employment and Immigration)*, 15 Imm LR (2d) 199 at 201) or that it was not forthcoming. It was entitled to accord little weight to the attestation letters, given the documentary evidence that suggests a prevalence of documentation falsely verifying the existence of blood feud claims. However, the attestation letters were corroborative documentary evidence only as the RPD did not reject the Applicants' testimony that they had sought police protection and had been told to isolate themselves. All of this becomes significant in the context of the following state protection analysis.

(b) *State Protection*

[31] The Principal Applicant's testimony was that in August 2011, when he was first approached about the blood feud, his wife's parents told the Applicants to stay inside. The next day they reported the threat to the police, who came to his home. The police were the Public Order Police of Sarandë. They told him that there was nothing they could do, as nothing had happened, and that the best thing to do would be to stay inside and go to the reconciliation people (CTR, p 566-68). The Principal Applicant testified that the District of Sarandë is small, with only one police agency. When asked if he had a document from the police, he testified that

the police took no notes and, as nothing had happened, they could not issue any sort of document. When asked if after the reconciliation efforts failed he then returned to the police for help, he answered that his wife's parents did and were again told that the police could not help in cases of blood feuds, which could endanger the police if they were to become involved. The police again said the best thing to do was to stay isolated, or leave. He did not ask for a document from the police "because I didn't find it reasonable since they couldn't help" (CTR, p 570). In the PIF narrative the Principal Applicant stated that after the attempted shooting police were again called but again said they could do nothing (CTR, p 163).

[32] The RPD stated that there are several references in the country documents that indicate that there is "a level of" state protection available in the case of blood feuds. It referred to two articles. The first, found in the UK COI Report, sheds little direct light on the availability of state protection, as it concerns resort to blood feuds. Specifically, it notes that:

The blood feud phenomenon re-emerged at the end of the communist era and increased significantly with the 1997 breakdown in law and order. The absence of effective official responses to criminality encouraged the citizenry to revert to traditional mechanisms to obtain justice. Suggestions that the criminal justice system is still so inefficient and corrupt as to necessitate continuing resort to blood feuds to achieve justice appear, however, misplaced. While the justice system does suffer from serious weaknesses and considerable corruption, there is no evidence that a perceived law and order vacuum explains a continuing attachment to the practice of blood feuds.

[33] The RPD also refers to the EC Working Document, which states that in June 2012 the Albanian State Police launched a database of persons directly involved in blood feuds and that "[t]his could help to address the lack of reliability in this area". Again, it is unclear how this

pertains to the adequacy of state protection, as it seems to suggest a lack of information that would define the parameters of the problem.

[34] Similarly, the RPD refers to a RIR source that indicated a decrease in the number of blood feuds but, viewed in whole, also raises the question of whether they are adequately addressed:

The number of blood feud killings has decreased, due notably to better policing. Specific criminalisation of blood feuds and blood feud killings, the creation of specialised police units and the establishment of a high-level Coordination Committee *have been important steps in this field*. However, the incidence of these killings continues to result in the families concerned being self-isolated due to fear of reprisals.... *Collection of reliable data on blood feud killings is required in order to measure the extent of the problem and address it adequately...*

(CTR, p 380; emphasis added)

[35] From this, the RPD appears to have found implicitly that the decline in the number of blood feuds demonstrates adequate state protection. In my view, this was an unreasonable finding based on the sources referenced by the RPD and the documentary evidence in the record. Whether the decrease in blood feud killings can be equated to adequate state protection is unclear.

[36] The documentary evidence as to state protection in the record before me is limited. The UK COI Report does note the UN Special Rapporteur's report on state efforts. Specifically, that in spite of efforts made, the government has had a limited impact on both limiting the cases of blood feuds and changing the mentality of local communities. Some persons reported that they had approached the government for assistance to end their self-isolation through reconciliation

but the state did little in response. There was also concern that judges or prosecution could be bribed to reduce charges or lower sentences in murders related to blood feuds or to categorize them as ordinary crimes to obtain lower sentences (CTR, p 379; AR, pp 113-14). The documentary evidence is mostly concerned with the question of how many deaths due to blood feuds occur annually, the numbers varying depending upon the source. The RIR indicated that one source said that there was not yet a verifiable and reliable source of statistical data on blood feuds (CTR, p 282).

[37] The one document that does speak directly to state protection is the October 15, 2010, RIR, discussed above, which also states:

Sources report that the Albanian police often do not get involved in blood-feud disputes until a crime has taken place.... The Senior Research Fellow stated that families in isolation because of blood feuds “usually report that they receive no support from the Albanian authorities” ... The CNR Chairman similarly stated that the Albanian police and the Albanian state do not provide any protection to families involved in blood feuds ... The Senior Research Fellow stated that individual police officers are often reluctant to get involved in blood feuds because of the potential danger to themselves and their families ... Two sources report that police officers risk being drawn into feuds or murdered...”

(AR p 114)

[38] Based on this, the RPD concluded that when shots were fired at the Principal Applicant the matter was “more likely” to be investigated as a crime by police. But the Applicants’ evidence was that the police were called after that incident but said that they could do nothing. The RPD stated that the Applicants did not provide compelling or persuasive evidence to explain their failure to pursue attempts at seeking state protection “from those authorities responsible for providing it”. Yet the Applicants’ evidence was that the police were contacted and did not assist,

and the RPD does not suggest what more the Applicants could or should have done. The RPD acknowledges that the Applicants were not asked whether they had turned to the ombudsman when dissatisfied with the police response but states that they were asked several questions about their efforts to seek state protection. Yet, the Applicants answered those questions and, as noted above, the RPD made no clear finding that the Applicants' evidence that the police did not respond on the three occasions that they were contacted, including after the attempted shooting, was not credible.

[39] In fact, the RPD dismisses the efforts the Applicants did make in turning to reconciliation organizations and state representatives, as recommended by the police, stating that these do not amount to a rebuttal of the presumption of state protection, as they "are not the state-run organisations responsible for protecting citizens from crime or other harm in violation of the law". However, that approach was rejected by this Court in *Shkabari*:

[57] The problem with the Board's analysis is that it fails to consider the applicants' repeated attempts to seek help from a peace and reconciliation commission that was set up to resolve blood feuds in Albania. This is particularly important in light of the established law that the availability of state protection must be assessed on a case-by-case basis (see *Perez Mendoza v. Canada (Minister of Citizenship & Immigration)*, 2010 FC 119, [2010] F.C.J. No. 132 (F.C.) at paragraph 33). This failure is exacerbated by recent documentary evidence that speaks to the lack of protection that the Albanian state and police provide to families involved in blood feuds. According to this documentation, "the Albanian police often do not get involved in blood-feud disputes until a crime has taken place". The example highlighted by the Board supports this position, namely, that the police did not become involved until after the crime was committed. Collectively, this raises serious concerns about the state protection available to the applicants in Albania prior to any harm being caused to them.

[58] Therefore, again recognizing the deference owed to the Board on this issue, I nevertheless find that it came to a conclusion

that was not transparent, justifiable and intelligible based on the evidence before it.

[40] In effect, while finding the Applicants' version of events to be generally credible, in considering whether the Applicants rebutted the presumption by state protection, the RPD deems the absence of corroborating documentation from the police determinative, even though the documentary evidence as to whether the police actually provide such letters is far from definitive. Further, the letter would have served only to establish the existence of and isolation as a result of a blood feud, the existence of which the RPD appears to have accepted, and would not speak to adequacy of state protection.

[41] As to the letter from the mayor, which states that he consulted with the chief of police for Sarandë as to the possibility of protecting the family and that the police had declined to intervene in the blood feud, the RPD said that this did not affect its finding that the Applicants had not rebutted the presumption of state protection because the letter did not amount to clear and convincing evidence of the state's inability to protect the Applicants:

The alleged reluctance of a member of the police force, albeit allegedly a police Chief, to get involved for this reason is clearly at odds with the mandate of the police and with the information which documents the ongoing efforts and progress made by the police in Albania to deal with blood feuds.

[42] The RPD chose to give more weight to the documentary evidence than to the letter, which it was entitled to do. However, the documentary evidence referenced by the RPD concerning the adequacy of state protection, as discussed above, is limited, and the RPD's analysis does not properly address the adequacy, as a decline in the number of blood feuds does

not establish the adequacy of state protection. Further, the RPD makes no mention of the RIR, which specifically addresses the reluctance of the police to become involved in blood feuds and which is consistent with the content of the mayor's letter and the Applicants' testimony.

[43] The Respondent refers to *Razbergaj*, where this Court found that a decision not to seek state protection is not clear and convincing evidence that state protection is unavailable. There, however, the applicants had not even attempted to seek protection, whereas in this case the RPD appears to accept that the police were contacted on three occasions. Similarly in *Krasniqi*, also relied on by the Respondent, the Court noted that the applicant there had never sought protection from the police. It was held to be legitimately open to the RPD to find, in that context, that the applicant had not exhausted all avenues offered by the state and to consider as insufficient the applicant's explanations that he did not go to the police because they do not assist in blood feuds (at para 39). And, unlike *Celaj*, this is not a situation in which the RPD did not believe the evidence as to events, including that police protection was sought. While the RPD stated that it found it suspicious that there was no police certification as to the existence of the blood feud, it made no clear credibility finding that it disbelieved the Applicants' testimony that they had sought police protection or that the police had refused to assist even after the attempting shooting.

[44] The availability of state protection must be assessed on a case by case basis (*Perez Mendoza v Canada (Citizenship and Immigration)*, 2010 FC 119 at para 33(3); *Murati v Canada (Citizenship and Immigration)*, 2010 FC 1324 at para 39). In this case, given the circumstances described above, the RPD's decision was unreasonable in concluding both that state protection

was available and that the Applicants had failed to take all reasonable steps to avail themselves of it and, therefore, that they have failed to rebut the presumption of state protection.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial is granted. The decision of the RPD is set aside and the matter is remitted for redetermination;
2. No question of general importance is proposed by the parties and none arises; and
3. There will be no order as to costs.

"Cecily Y. Strickland"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3838-14

STYLE OF CAUSE: RESMI TAHO, DRITA TAHO, MARSELINA TAHO v
THE MINISTER OF CITIZENSHIP AND
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