

Federal Court



Cour fédérale

**Date: 20180207**

**Docket: IMM-1136-17**

**Citation: 2018 FC 140**

**Ottawa, Ontario, February 7, 2018**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**FLORENS DERXHIA  
SUELA DERXHIA  
ANUAR DERXHIA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicant family seeks to set aside a decision of the Refugee Appeal Division [RAD] denying their claim for refugee protection. The RAD found the applicants were not credible, and thus confirmed the Refugee Protection Division's [RPD] finding that they were not Convention refugees or persons in need of protection as defined by sections 96 and 97 of the *Immigration and Refugee Protection Act* SC 2001, c 27.

[2] The applicants are Florens Derxhia [Florens], his spouse Suela Derxhia, and their minor son Anuar Derxhia. They are citizens of Albania. Florens claims that if he returns to Albania he and his family will be killed by organized criminal groups because of his work with a private agency combatting drug and human trafficking, terrorism, and corruption in Albania.

[3] Florens states that in May 2013, he starting working for a private agency, the Central Bureau of Investigation (CBI), which collaborates with other international entities to fight corruption, terrorism, and drugs and human trafficking in Albania. Specifically he states he worked for the investigative branch of the agency called Stop Crime. The applicant claims that he lived near the village of Lazarat, which is considered the drug capital of Albania and is controlled by organized criminal groups. He claims that because of his connection in Lazarat and Europe he was able to provide information to CBI/Stop Crime regarding drug trafficking in these areas.

[4] Florens claims that in June 2013, he provided information to CBI/Stop Crime regarding certain criminals, who were subsequently arrested by the Albanian State Police [the ASP].

[5] In February 2014, rumours started to spread in Lazarat that Florens was employed by CBI/Stop Crime. In June 2014, Florens started to receive threatening text messages and phone call from unidentified individuals. A threatening note was left at his home, and in October 2014, his house was broken into. He reported the incident to the police who expressed concern for his safety. Florens decided that he and his family had to leave Albania.

[6] The RAD considered the admissibility of three printouts from the official website of the Albanian government as new evidence. The documents were submitted to show that the ASP fell under the authority of the Ministry of Internal Affairs. The RAD found that while these documents were available at the time of the RPD hearing, the applicants only became aware of the issue of whether the ASP fell under the authority of the Ministry of Internal Affairs upon receiving the RPD's decision, and thus could not reasonably have been expected to enter these documents into evidence at the hearing. The RAD also found the documents were credible and relevant, and thus accepted them as new evidence under subsection 110(4) of the Act.

[7] The RAD considered the applicant family's request for an oral hearing. It found that they did not meet the limited circumstances set out in subsection 110(6) of the Act, and thus did not convene a hearing.

[8] The RAD found the applicants had the burden of establishing two determinative facts: (1) that CBI/Stop Crime had an intelligence sharing relationship with the ASP regarding ongoing drug trafficking investigations, and (2) that Florens was an informant for CBI/Stop Crime. The RAD found these two facts underpinned the family's entire narrative.

[9] The RPD found Florens' testimony that he negotiated drug deals in Lazarat to provide intelligence to CBI was implausible because Lazarat was controlled by a single criminal group. The RAD agreed with the applicant family that this finding was erroneously made without regard to the evidence.

[10] The RAD noted that the RPD made additional adverse credibility findings which the applicant family did not challenge. The RAD, citing to *Jele v Canada (Minister of Citizenship and Immigration)*, 2017 FC 24 at para 28, stated that unchallenged credibility findings must be presumed to be true.

[11] The first unchallenged finding related to Florens' identity card. The RAD found the RPD erred by expecting security features to be present on a privately issued document, but agreed with the RPD that it was not believable that a covert informant would carry an identification card that identified him as an "informator", nor was it believable that such a card would be accepted by border police.

[12] The second unchallenged finding was the RPD's assessment of a document from CBI/Stop Crime stating that Florens provided information on June 29, 2013, which led to the arrest of five individuals. The RPD found that this document was contradicted by a news report submitted by the Minister that stated that those same individuals were arrested in April 2013. The applicant family provided no response to the submission of the Minister, and the RPD concluded this contradiction seriously impugned Florens' credibility as well as the credibility of documentation coming from CBI/Stop Crime. The RAD agreed with the RPD's reasoning and conclusion.

[13] The third unchallenged finding was the RPD's finding that Florens' merit card and two training certificates were fraudulently obtained for immigration purposes. The RPD relied on an Albanian news report stating that an individual was arrested and prosecuted for peddling

fraudulent CBI documents for immigration purposes, and its finding that other documents submitted by Florens were unreliable. The RAD found no reason to interfere with the RPD's conclusion.

[14] The RAD concluded these three findings significantly undermined Florens' claim that he was an informant and severely damaged his credibility.

[15] The RAD next considered the CBI "authorization" document dated November 11, 2014. It found, contrary to both the RPD reasons and the applicant family's submissions, that there was no oral evidence regarding the purpose of this document. Further, it found that the poor English inscription on the document made its purpose unintelligible. The RAD also noted that document was dated November 11, 2014, two days after Florens arrived in Canada. For these reasons, the RAD thus gave the document no weight.

[16] The RAD next considered two documents signed by Fatmir Sena, Executive Director of the "Agency Stop Crime". The first stated that "Agency Stop Crime is supported by the State Police". The second stated that Florens "has been a member of the Agency 2 years 6 months and has contributed to the eradications of drugs in Lazarat." The RAD agreed with the RPD's finding that these documents were general, unspecific and vague. The RAD noted that Stop Crime being "supported" by state police falls short of confirming that it was tasked by the ASP to provide intelligence or evidence for criminal prosecutions. Similarly, the RAD found that being a "member" of Stop Crime and contributing to the eradication of drugs fell short of establishing that Florens was an informant.

[17] The RAD concluded that the RPD's unchallenged adverse credibility findings were sufficient to rebut the presumption of truth regarding Florens' testimony, and that the applicant family failed to prove on a balance of probabilities the determinative fact that he was an informant for CBI or Stop Crime.

[18] The RAD also turned its attention to whether the CBI/Stop Crime has an information sharing arrangement with the ASP.

[19] The RAD noted that the applicant family disputed the RPD's treatment of a number of corroborating documents they submitted.

[20] It first considered Judicial Order no. 837. It found that the order, read as a whole, unambiguously identified the purpose of Stop Crime as researching and disseminating research to various stakeholders. The RAD concluded that it thus did not support the claim that Stop Crime is involved in active drug trafficking investigations or covert intelligence gathering operations with the ASP.

[21] It next considered the verification letter from the Albanian Ministry of Internal Affairs, General Director of the State Police. The RAD found the RPD erred in its analysis of the verification letter, but concluded that, at most, the letter shows the ASP works with Stop Crime on activities recognized in the judicial order. Because the judicial order is limited to recognizing the educational and research activities of Stop Crime, the verification letter was found not to

confirm the applicant family's submission that Stop Crime was providing the ASP with intelligence for on-going drug trafficking investigations.

[22] The RAD next considered the letter from the Albanian Ministry of Internal Affairs, Service Related to Internal Matters and Complaints. It found that the RPD also erred in its analysis of this letter; however, the RAD concluded that it had little probative value in corroborating the central facts of the claim. It found the letter did not confirm that there was a relationship between CBI/Stop Crime and the ASP between May 2013 and November 2014, because it stated that as of May 2015 the Ministry was responding to a request from Stop Crime for collaboration and that it was open to working with private institution in accordance with law number 70/2014. The RAD found that it had no evidence of what is contained in that law, and thus concluded the RPD was correct to give the letter little or no weight.

[23] The RAD then considered the memorandum from the IRB's Research Directorate, which contained information that contradicted the applicant family's allegations. The memorandum includes a statement from the ASP Director of International Cooperation and Coordination that there are no working relationships with the ASP regarding public order and safety, and that by law the ASP is the only organization charged with issues of organized and series crimes, trafficking, terrorism, public order and safety. The RAD found the RPD was correct to give more weight to the IRB Memorandum than the applicant family's claims that Stop Crime collaborated with the ASP.

[24] The RAD also found the RPD's rejection of letters from the police, friends, and family was correct. The RAD noted that the RPD had previously found that the applicant family had submitted fraudulent documents, and so concluded that Florens would be willing to submit other false documents to establish his claim. The RAD agreed with this reasoning, and further agreed with the RPD's finding that nothing in these documents helped established Florens' principal claim that he worked as an informant and that CBI/Stop Crime collaborated with the ASP on ongoing investigations.

[25] The RAD concluded that while there were some errors in the RPD's analysis of the documentary evidence and its implausibility findings, its remaining uncontested negative credibility findings rebutted the presumption of truthfulness. The RAD found the documents submitted did not sufficiently corroborate Florens' assertions, and were contradicted by the clear statement from a senior official in the ASP that there is no relationship with CBI or Stop Crime regarding public order and safety. It thus confirmed the RPD's determination that the applicants were not Convention refugees or persons in need of protection.

[26] In this application, the applicant family raise two issues: (1) whether the RAD erred by failing to conduct its own independent assessment of the evidence and in presuming that unchallenged credibility findings of the RPD were true, and (2) whether the RAD breached natural justice by advancing new credibility findings and arguments without affording the applicant family an opportunity to respond.



[27] For the following reasons, I find no errors were made by the RAD sufficient to set aside its decision.

[28] I agree with the applicant family that the RAD erred in finding that unchallenged RPD credibility findings are to be presumed true by the RAD. Although the RAD may owe deference to the RPD on issues relating to credibility, the Federal Court of Appeal in *Canada (Minister of Citizenship and Immigration) v Huruglica*, 2016 FCA 93, found at paragraph 70 that the RAD has to assess in each instance whether the RPD truly benefited from an advantageous position in making these credibility determinations. Furthermore, paragraph 111(2)(a) of the Act requires the RAD to assess whether the RPD was “wrong in law, in fact or in mixed fact and law.” A presumption that unchallenged credibility findings are true would interfere with this statutory obligation. While it may be unwise for an appellant to leave credibility determinations by the RPD unchallenged, this does not relieve the RAD of its role in determining the correctness of the RPD’s decision in all relevant matters.

[29] However, I agree with the Minister that despite stating that it presumed the RPD’s unchallenged credibility findings to be true, the RAD nonetheless engaged in a reasonable analysis of the these findings. The RAD specifically identified instances where it disagreed with the RDPs unchallenged findings, and explained the instances where it agreed with the RPD. For example, regarding the Identification card, the RAD found that the RPD erred by expecting the same security features on government issued identification to be present on an identification card issued by private investigation agencies, but it agreed that it was unbelievable a covert informant would carry a card that declared him as an “informator”. For the other unchallenged findings it

was reasonable for the RAD to lay out the RPD's findings and, when it agreed with the RPD's analysis, to state that.

[30] The applicant family submits that the RAD raised new issues regarding three pieces of evidence, and thus violated their right to natural justice.

[31] They say that the first new issue raised by the RAD related to the CBI authorization document which it found to be unintelligible, and therefore gave it no weight. Moreover, they submit that the RAD drew a negative credibility inference that the document post-dates the time period Florens was allegedly working as an informant.

[32] The applicant family also submits the RAD also made new adverse credibility findings in its analysis of both the Judicial Order and the letters from the Ministry of Internal Affairs that went beyond the RPD's findings.

[33] They submit that their right to procedural fairness was violated by the RAD making additional credibility findings without giving them an opportunity to make submissions.

[34] There was no breach of natural justice.

[35] First, the RAD was clear about why it did not convoke an oral hearing. It found that the new evidence did not address the central issues in the case, and so did not meet the requirements of subsection 110(6).

[36] Second, the RAD did not breach natural justice by making new credibility findings. In its analysis of each of the documents, as outlined below, the RAD outlined why it granted the document little weight; it did not make credibility findings.

[37] Authorization Document: The RAD found the poor English translation rendered it unintelligible and further noted it post-dated the time Florens alleged he worked as informant. The RAD did not draw a negative credibility finding, but rather found it was of no probative value. The RAD's statement regarding the post-dating of the document was not a negative credibility inference, but rather a reasonable finding that as the document is dated after the family arrived in Canada it lends little support to Florens' statements that he used it to facilitate travel for his work for CBI/Stop Crime.

[38] Judicial Order: The RAD found that the RPD made veiled credibility findings regarding this document. The RAD then interpreted the document, finding that, read as a whole, it states that CBI/Stop Crime is primarily involved in educational and research activities. This was not a credibility finding, but rather a finding that the document did not assist in proving the central facts of the applicant family's claim.

[39] Letter from Albanian Ministry of Internal Affairs: The RAD found the RPD erred in attaching importance to the fact the letter was from the Ministry of Internal Affairs as opposed to the Ministry of the Interior without giving the applicant family an opportunity to clarify this evidence. The RAD accepted the new evidence that these terms are translated interchangeably. The RAD then conducted an independent review of the document, and found that, at most, it

recognized the educational and research activities of Stop Crime, and thus did not support the core of the claim that Stop Crime provided the ASP with intelligence involving ongoing drug trafficking investigations. Again, this was a weight determination, not a credibility determination.

[40] IRB memorandum: The RAD made no credibility findings regarding the IRB memorandum. Rather, in response to the applicant family's submissions that it directly contradicted the Letter from the Ministry of Internal Affairs, the RAD found that IRB memorandum and the letter used the word "collaboration" in different contexts. The RAD concluded the two documents did not contradict one another.

[41] Far from being raising new issues, all of the RADs findings were directed at the two issues that were central to the RPD's rejection of the claim. As it was statutorily required to do, the RAD conducted an independent analysis of the evidence.

[42] Accordingly, I find there was no breach of procedural fairness, and further find that the decision of the RAD was properly conducted in accordance with the jurisprudence from the Federal Court of Appeal, and is reasonable.

[43] No question for certification was proposed.

**JUDGMENT in IMM-1136-17**

**THIS COURT'S JUDGMENT IS that** the application is dismissed, and there is no question to be certified.

"Russel W. Zinn"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1136-17

**STYLE OF CAUSE:** FLORENS DERXHIA ET AL v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** CALGARY, ALBERTA

**DATE OF HEARING:** JANUARY 11, 2018

**JUDGMENT AND REASONS:** ZINN J.

**DATED:** FEBRUARY 7, 2018

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