Federal Court Cour fédérale

Date: 20180423

Docket: IMM-4881-16

Citation: 2018 FC 435

Ottawa, Ontario, April 23, 2018

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

AUREL ZAZAJ
VASILIKA MICA
AGELOS ZAZAJ

Applicants

And

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants, Aurel Zazaj, his wife, Vasilika Mica, and their minor son, Agelos Zazaj, seek judicial review of the decision of Senior Immigration Officer A. Mazzotti [the Officer], who rejected their application for a pre-removal risk assessment [PRRA] under s 112 of the *Immigration and Refugee Protection Act*, SC 2001 c27 [*IRPA*].

[2] For the reasons that follow, this application is dismissed. The Officer's decision falls within the range of possible, acceptable outcomes based on the facts and law.

I. Background facts

[3] The Applicants are nationals of Albania. In early 2007, Ms. Mica's father chose a much older man, Orest Papa, to be her future husband. While they were engaged, Mr. Papa was physically and psychologically abusive to Ms. Mica. Although the families knew about the abuse they did not intervene and Ms. Mica did not go to the police.

[4] In early 2008, Ms. Mica met Mr. Zazaj, whom she started dating in secret. They were married on April 14, 2008, and decided to be very public about it in the hope that by doing so Mr. Papa would leave them alone. When Mr. Papa learned of the marriage he confronted them and physically assaulted the couple. He said they had shamed him and his family and the issue might become a blood feud.

[5] In July 2008, Mr. Papa kidnapped Ms. Mica. She was 3 months pregnant. He physically assaulted her and she had a miscarriage.

[6] The family of Mr. Zazaj contacted the village elders, local authorities, and a reconciliation agency to try to resolve the dispute between the families. All avenues were unsuccessful. Eventually, the Applicants fled to Canada. They immediately claimed refugee protection on arrival under s 97 of the *IRPA*, on the basis that their lives were in danger from Mr. Papa and his family because of a blood feud.

II. The RPD decision

[7] On February 24, 2015, the Refugee Protection Division [RPD] rejected the claim based on credibility and on the basis that even if the claims were true, there was adequate state protection in Albania.

[8] The RPD found that the claims put forward, including the Applicants' belief that by publicly marrying each other Mr. Papa would leave them alone, did not ring true. It was not logical that this breach of the community's traditional values (marrying one man while engaged to another) would resolve Ms. Mica's problems with Mr. Papa.

[9] The RPD also found that Ms. Mica had travelled back and forth between Greece and Albania in the period 2005 to 2011 and that it was not logical that she had made no attempt to seek refugee protection in Greece during that time. As a consequence, the RPD drew a negative inference regarding Ms. Mica's alleged subjective fear of Mr. Papa and his family.

[10] Regarding state protection, the RPD noted that Ms. Mica's evidence was that neither she nor her family had ever contacted the police. There was, however, a police report in the record that was inconsistent on this point and the RPD drew a negative inference from same. The RPD took issue with other aspects of the report as well, such as the fact that it was not on letterhead and certain portions of it appear implausible.

[11] These inconsistencies, omissions, and unlikely scenarios, taken collectively, led the panel to find that the evidence of the Applicants was not credible.

[12] The RPD next reviewed state protection, saying it was also determinative as the Applicants had failed to rebut the presumption that Albania was able to protect them.

[13] The RPD acknowledged that country condition documents show that state protection is “far from perfect” in Albania, but noted that the standard against which state protection is measured is one of “adequacy”. The evidence showed that there were few blood feud killings and that government officials and the police work with local religious leaders and mediators to ensure the security of families and children. The RPD determined that, based on the evidence, there was a functioning state protection mechanism.

[14] The RPD further noted that it was incumbent upon the Applicants to take all reasonable efforts to obtain state protection and Ms. Mica’s subjective belief that it would be a waste of time was not persuasive evidence explaining their failure to do so.

[15] As all three claims were based on the same fact situation, the state protection finding applied to each applicant.

[16] Although the Applicants applied for leave to judicially review the RPD decision, leave was denied on June 8, 2015.

[17] Leave was also denied on November 22, 2016, in an application for judicial review of an application the Applicants made for permanent residence status based on humanitarian and compassionate grounds.

III. The PRRA decision

[18] The Applicants applied for a PRRA on March 22, 2016. The decision under review by the PRRA officer is dated September 6, 2016 [Decision].

[19] In their submissions to the Officer, the Applicants alleged that they would be at risk of cruel and unusual treatment or punishment throughout Albania due to the blood feud with the Papas.

[20] The Decision begins by setting out the various risks identified by the Applicants before the RPD. Under the section “Assessment of Risk” the Officer then reproduced several paragraphs from the RPD decision either in full or in part.

[21] The Officer found that the risks submitted in support of the PRRA were substantially the same as had been asserted before the RPD. The Officer noted that a PRRA is an appeal of a negative refugee decision but is intended to be a new assessment based on new facts or evidence demonstrating a person is at risk as set out in s 97 of the *IRPA*.

A. *The new evidence*

[22] The applicants submitted three documents post-dating the RPD decision to the Officer, all dated August 5, 2015. All of the documents were translated from Albanian to English by an accredited translator.

[23] The three documents were said to provide updates with respect to the state of the Mica/Papa blood feud in Albania. One document was a certificate from the Police Commissar, Ministry of Internal Affairs, Police Directorate of the Saranda District. Another document was from Irodhis Dalipi, the head of the Commune of Livadhja. The third document was from Ms. Mica's father, Stavro Mica.

[24] The certificate from the Police Commissar set out that a relative of Mr. Papa, Niko Papa, had been killed in an altercation in a café on June 29, 2014, and that Stavro Mica was injured and taken to hospital in that same incident. The certificate said the motive for the fight was an open conflict between the Zazaj and Papa families because of the broken engagement between Ms. Mica and Mr. Papa. It went on to indicate that some people were charged with illegal possession of weapons in relation to the altercation, but that no arrests were made regarding the death or injury as it appeared that they were caused by ricocheting bullets. The certificate indicated that the investigation was ongoing.

[25] The certificate stated that:

> The family members of Zazaj and Mica have continuously requested the protection of the police because the blood feud between these families with Papa family continue to be an open case with the direct risk to their life.

[26] It concluded that:

> The police are limited in their actions when the case is related to the bloodfeud because these conflicts are so sensitive. Police only investigate and find the killer. Unfortunately it is impossible to provide protection for all citizens that are involved in the bloodfeud due to the widespread and many families are involved in this type of conflict. The bloodfeud phenomenon is the main cause

> of murders in Albania after the collapse of the communist regime and requires a broad range involvement of all public and government organizations aiming to eradicate this deep and dangerous chaos that Albanian society is caught.

[27] The certificate purports to be signed by Police Commissar Arjanit Arapi, under whose typewritten name there appears a seal and a written signature. The Officer noted that the certificate is dated after the RPD hearing but that a similar document was before that panel. The Officer also noted that the contents of the certificate referred to no incidents after June 29, 2014, nor did it indicate that any members of the Papa family were actively seeking the Applicants or had attempted to further harm members of the Zazaj or Mica families.

[28] The Officer determined that the certificate showed that the police received and registered the incident and indicated they were willing to investigate further. The Officer also noted that, although not determinative, the certificate was on plain white paper and did not have letterhead.

[29] Analysing next the letter from the Head of the Commune, the Officer found the contents referred to events that were essentially the same as those discussed before the RPD. Although it indicated there had been attempts by the Zazaj and Mica families to reconcile with the Papa family and that they had been unsuccessful, the Officer noted there was no detail provided about such attempts. The Officer also noted there was no mention of any events more recently than June 2014.

[30] Similarly, the letter from Ms. Mica’s father referred primarily to events which occurred prior to the date of the RPD hearing. Mr. Mica did not provide any evidence to corroborate his

statement that his family and the Zazaj family had continued attempts at reconciliation with the Papa family. The Officer expressed concern that there was no letter from the Village Elders or the Commune and Association of Blood Reconciliation to support this claim.

B. *The determinative issue - state protection*

[31] The Officer found that the determinative issue was state protection and noted that the evidentiary burden of proof was proportional to the level of democracy in Albania and rested on the Applicants. The Officer reviewed the documentary evidence about Albania and its democratic institutions noting, amongst other things, that civilian authorities generally maintained effective control over the police but that police did not always enforce the law equally.

[32] The Officer found that the level of democracy in Albania was sufficiently high to require that the Applicants demonstrate they had made meaningful efforts to utilize the available avenues of state protection and that those avenues were not or would not be forthcoming.

[33] Turning specifically to blood feuds, the Officer found that, according to the Country Report on Human Rights Practices for 2015 published by the United States Department of State, there were no reported cases in Albania in 2015 of minors or women being killed in blood feuds. Such statistics were, however, noted to vary widely with “deep discrepancies” in the information available.

[34] The Officer realized that, in assessing state protection, enacted legislation alone is not sufficient without considering whether it has been implemented. To this effect, the Officer noted that legislation in Albania had been accompanied by efforts to address police corruption and that jurisdiction over blood feud cases had been transferred from district courts to serious crime courts. Regardless, it was noted that the Albania Ombudsman had found that the efforts of the authorities to protect families or prevent blood feud killings were insufficient.

[35] Despite this finding, based on a review of all the documentary evidence, the Officer determined that the level of state protection available to the Applicants was adequate. The Officer acknowledged that individuals involved in blood feuds were reluctant to turn to the State for assistance and that people often chose to live in isolation as a result of such feuds. The Officer acknowledged that this was an imperfect situation, but balanced it against the evidence that the government was making a reasonable effort to protect people involved in blood feuds and was effectively implementing its laws. Avenues of recourse were available to the Applicants.

[36] The Officer found that the Applicants had not provided clear and convincing evidence that the protection available to them in Albania is inadequate. Noting that the alleged risk of harm or persecution had to be both personalized and forward looking, the Officer found that the Applicants had failed to provide sufficient evidence to demonstrate that they faced an additional, forward-looking personalized risk of harm in Albania that had not been previously assessed by the RPD.

[37] The conclusion drawn by the Officer was that there was less than a mere possibility that the Applicants would face persecution as described in s 96 of the *IRPA*, there were no substantial grounds to believe they would face a danger of torture, nor were there reasonable grounds to believe they would face a risk to life or cruel and unusual treatment or punishment as described in s 97 of the *IRPA*.

IV. Issue and Standard of Review

[38] The sole issue before the Court is whether the Decision, which involves findings of fact and mixed fact and law, is reasonable: *Haq v Canada (Citizenship and Immigration)*, 2016 FC 370 at para 15, [2016] FCJ No 339.

[39] A review of whether a PRRA application decision is reasonable includes giving deference to the Officer's assessment of the evidence: *Belaroui v Canada (Citizenship and Immigration)*, 2015 FC 863 at paras 9-10, [2015] FCJ No 845.

[40] A decision is reasonable if the decision-making process is justified, transparent, and intelligible, resulting in a determination that falls within the range of possible, acceptable outcomes which are defensible on the facts and law: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*].

[41] If the reasons, when read as a whole, "allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met": *Newfoundland and Labrador Nurses'*

Union v Newfoundland and Labrador (Treasury Board), 2011 SCC 62 at para 16, [2011] 3 SCR 708.

V. Analysis

[42] The Applicants maintain that the role of a PRRA Officer is not in dispute but allege that the Officer did not perform that role in this case. They say that the Officer suffered from "tunnel vision" and "confirmation bias" in that the Officer's attitude was to confirm the determination made by the RPD. They submit that this is shown by the Officer's recitation of a number of paragraphs from the RPD decision.

[43] The Respondent says it was entirely proper for the Officer to rely on the findings of the RPD as the Officer's role is to determine whether new evidence might have allowed the RPD to reach a different conclusion or speaks to the presence of a new risk. The Respondent submits that the mere fact that new documents post-date the RPD decision is not determinative if the substance of the evidence is similar to evidence that was already evaluated by the RPD: *Gebru v Canada (Citizenship and Immigration)*, 2016 FC 667 at para 8, [2016] FCJ No 625.

A. *The risk to the applicants if returned to Albania*

[44] While it is true that the evidence put forward in support of a PRRA application is not to be rejected solely on the basis that it addresses the same risk that was considered by the RPD, it is equally true that the Officer may properly reject the evidence if it cannot prove that the relevant facts, as of the date of the PRRA application, are materially different from the facts as found by the RPD: *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at para 17,

327 NR 344 [*Raza*], and *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at para 47, [2016] 4 FCR 230 [*Singh*].

[45] The Officer's conclusion was that the Applicants had not provided sufficient evidence to demonstrate that there was a personalized risk of harm in Albania that had not been previously assessed by the RPD. In my view, for the reasons that follow, this was a reasonable conclusion.

[46] The Officer reviewed the three new documents put forward by the Applicants but found that they all referred to the same event as the evidence before the RPD: the June 29, 2014, café altercation.

[47] Counsel for the Applicants suggested that the evidence which was before the RPD, particularly the police report, was not in the record and that it was not possible to know what the differences were between what the RPD considered and what was before the Officer.

[48] The Applicants also submit that a similarity between the police report before the RPD and the certificate placed before the Officer is not enough. The Officer must actually analyse the evidence.

[49] In my view, the Officer did do an independent analysis of the evidence and considered it reasonably. The Officer examined the wording in the RPD decision that outlined the contents of the police report before it and reasonably observed that the document was similar to the certificate presented in the PRRA application. The similarities were not abstract – they dealt

directly with the basis for the Applicants' claim. Both documents refer to the same incident and state that the Zazaj and Mica families sought continuous protection from the police. That statement, which contradicts the testimony given by Ms. Mica before the RPD, was not reconciled at the RPD nor before the Officer.

[50] The Officer also found that the certificate submitted with the PRRA application did not mention the occurrence of any further incidents nor did it indicate that the Papa family was actively seeking the Applicants. The Officer also noted that the police said they were willing to investigate the incident further but that no additional information about the investigation had been submitted.

[51] The Applicants then say that the fact that the three new documents, the certificate in particular, show that a blood feud is ongoing gives some credibility to the existence of such a feud.

[52] Accepting, without agreeing, that there may be "some credibility" provided by the three documents, the quality of that credibility has to be sufficient that it might have changed the conclusion reached by the RPD.

[53] In *Singh*, the Federal Court of Appeal indicated that the test for materiality of new evidence as set out in *Raza* should be adapted in the context of a PRRA to take into account the deference a PRRA Officer owes to the RPD under paragraph 113(a) of the *IRPA*. In considering that difference, the Court adjusted the fourth *Raza* requirement by saying that in a PRRA the new

evidence must "be of such significance that it would have allowed the RPD to reach a different conclusion": *Singh* at para 47.

[54] Was the new evidence of such significance that it might have changed the outcome before the RPD? The similarity between the two police documents is undeniable. The precipitating event of the café shootout is considered in both documents. A new risk is not demonstrated just by an old event being referred to in a more recent document.

[55] With respect to whether the evidence before the Officer might have caused the RPD to arrive at a different outcome, the RPD found that the alleged blood feud was not credibly supported by the evidence before it. The evidence before the Officer doesn't assuage these concerns. To paraphrase Mr. Justice de Montigny when he was a member of this court, for the RPD to accept that the evidence before the Officer shows that the Papa family continue to threaten the Applicants, the RPD would have had to conclude that the Applicants had already been threatened: *Ponniah v Canada (Citizenship and Immigration),* 2013 FC 386 at para 33, 431 FTR 71. That is not the case.

[56] In any event, the Officer's risk analysis was not the determinative issue. The Officer found that the determinative issue was state protection.

B. *State protection*

[57] State protection is the issue which, if reasonably determined by the Officer, leads to a denial of this application. The Applicants say that the Officer did not determine whether they

personally could be protected by the State. They say the Officer recited general information on blood feuds, selectively copied and pasted parts of the documentary evidence, and conducted analysis which they allege is vague.

[58] The Applicants rely on the decision of Madame Justice Strickland in *Taho v Canada (Citizenship and Immigration)*, 2015 FC 718, [2015] FCJ No 717, to show that the reasoning of the Officer, that state protection is available because the Albanian government is trying to address the issue of blood feuds, was wrong. They point out that efforts by a government are not enough.

[59] *Taho* involved judicial review of a first instance determination of an RPD finding that the applicants in that case, also Albanian citizens, were not persons in need of protection under s 97 of the *IRPA*. The RPD found those applicants to be credible and accepted that there was a blood feud.

[60] Neither of those findings were made by the RPD in this case. To the contrary, in an extensive review of the documentary evidence and the testimony of Ms. Mica, the RPD found that due to the “inconsistencies, omissions, and unlikely scenarios” with which it was presented, the evidence of the Applicants was not credible.

[61] Justice Strickland also found in *Taho* that the RPD had not rejected the applicants’ claim that they sought state protection. In the present case it is undisputed that the Applicants did not seek state protection.

[62] The Applicants say that *Taho* shows the kind of reasoning that is unacceptable when considering blood feuds. Specifically, they point to paragraph 35 in which Justice Strickland found that whether a decrease in blood feud killings can be equated to adequate state protection is unclear. That determination was made in a context where the documentary evidence before the RPD was limited and the RPD did not properly address conflicting evidence which would have supported those applicants' claim. It cannot be leveraged into a blanket statement that a decrease in blood feud killings either equates to or does not equate to adequate state protection. Justice Strickland specifically said that was unclear.

[63] In essence, the Applicants' state protection arguments are focused largely on the fact that they believe the Officer failed to conduct an individualized assessment of their situation. They allege that the Officer did not clearly explain why some of the evidence about the adequacy of the Albanian police apparatus was preferred over other evidence, including that of the Albanian Ombudsman, which stated that efforts to protect families were insufficient.

[64] Presented to the Officer in addition to the Applicant's three new documents were updated country condition documents from 2014 and 2015. The Officer noted that there were a number of contradictory conclusions about the prevalence of blood feuds and the state's ability to protect people from them, but noted that state protection was not required to be perfect. That is a reasonable statement.

[65] The Officer's assessment in this case — that there was adequate state protection — is within the range of possible, defensible outcomes on the facts and law. The Officer specifically

noted that, by Ms. Mica's own testimony, the Applicants never approached the police for protection. The Applicants submit that the certificate from the Police Commissar contradicts that finding. The Officer had previously dealt with the police documents; there was no need to explicitly review them again as part of an exercise to weigh the evidence on state protection. On the record as a whole it is clear that the Officer found that any weight attributable to the certificate was not sufficient to overcome the negative credibility findings of the RPD. Nor could it outweigh the Officer's assessment of the country condition evidence.

[66] In the penultimate paragraph of the Decision, the Officer makes it clear that the Applicants did not meet their onus to demonstrate they face a forward-looking risk in Albania and they did not provide sufficient documentary evidence to demonstrate that they face an additional, forward-looking personalized risk or harm in Albania that was not assessed in February 2015. Both conclusions are reasonable based on the evidence in the record.

VI. Conclusion

[67] The Officer reasonably applied the principles of *Raza* and *Singh* to the documents that were submitted by the Applicants. The same precipitating event was considered by the RPD. The Officer considered the evidence, the provisions of the *IRPA*, and the RPD decision. The overarching concern mentioned by the Officer was that there was no new risk. The other legitimate concern was that the Applicants had not made inquiries about the possibility of state protection or tried to avail themselves of it prior to seeking refugee protection.

[68] In my view, given the strong negative credibility findings made by the RPD and the scant new evidence submitted to the Officer, which although accepted by the Officer technically may not have even met the test for being "new", the outcome of the RPD decision would not have changed had that same evidence been before it.

[69] The Officer's task was not to reassess whether state protection was available to the Applicants. The Officer's task was to determine whether the new evidence would have changed the state protection finding of the RPD — which was that it was adequate. Given the contradictory evidence in the country condition reports it is not outside the range of possible, acceptable outcomes for the Officer to have found that this was not the case. That analysis is precisely within the area of expertise of the Officer.

[70] The *Dunsmuir* criteria have been met. The reasons show the Decision was made with regard to the material before the Officer. The Officer provided extensive analysis with which the Applicants disagree but, as is well known, it is not the job of this Court to re-weigh the evidence. Although the Applicants would have weighed the evidence differently, the Decision is justified, transparent, and intelligible as to why the Officer came to the conclusion that (1) there was less than a mere possibility that they would face persecution if they returned to Albania and (2) there were no substantial grounds to believe they face a danger of torture nor any reasonable grounds to believe they face a risk to life or cruel and unusual treatment or punishment as described in s 97 of the *IRPA*.

[71] For all the foregoing reasons, the Decision is reasonable.

[72] Neither party suggested there was a question for certification nor does one exist on these facts.

JUDGMENT IN IMM-4881-16

THIS COURT'S JUDGMENT is that the application is dismissed. There is no question for certification.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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