Federal Court  Cour fédérale

Date: 20190115

Docket: IMM-913-18

Citation: 2019 FC 52

Ottawa, Ontario, January 15, 2019

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

GENTJAN GJETA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Gentjan Gjeta, is a 35-year-old citizen of Albania who fears harm at the hands of the Gjetani clan due to his romantic interest in a Gjetani woman who was promised in an arranged marriage to another man.

[2] Mr. Gjeta arrived in Canada on September 8, 2011 and made a claim for refugee protection 10 days later. The Refugee Protection Division [RPD] of the Immigration and

Refugee Board rejected his claim for the first time in a decision dated May 7, 2013. This decision was set aside because the RPD had failed to consider whether the Applicant could avail himself of state protection, and the matter was remitted to the RPD for redetermination by a differently constituted panel (*Gjeta v Canada (Citizenship and Immigration)*, 2014 FC 905, 244 ACWS (3d) 412).

[3] Upon redetermination, the RPD again rejected Mr. Gjeta's claim for refugee protection in a decision dated December 20, 2017, on the basis that he had not rebutted the presumption of state protection with clear and convincing evidence. He has now applied under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [*IRPA*], for judicial review of the RPD's decision. He asks the Court to quash the decision and return the matter for redetermination by another member of the RPD.

I. Background

[4] In June 2009, the Applicant's neighbour, Ms. Bardhe Vokrri, introduced him to her visiting niece, Najada Gjetani. A close relationship developed between Mr. Gjeta and Ms. Gjetani even though her father had arranged for her to marry Jetmir Ndoja. Land and money were exchanged in preparation for the marriage, but the arranged marriage was postponed due to Mr. Ndoja's incarceration in September 2010.

[5] In mid-February 2011, a relative of Jetmir Ndoja saw Ms. Gjetani and the Applicant together and asked Ms. Gjetani's father for an explanation. Later that month, Ms. Gjetani's father and two brothers assaulted the Applicant. The Applicant called a relative to drive him to

the hospital. The hospital report stated the Applicant was bleeding from the mouth and nose, had a chest hematoma, abdominal injuries, his right eye was black and was dizzy and vomiting.

[6] While in the hospital the Applicant contacted the police to request help. Although a police officer responded, upon being apprised of the incident the officer told the Applicant he deserved death because he was trying to steal another man's property. The Applicant was discharged after a two-day hospital stay.

[7] On April 11, 2011, the Applicant was again intercepted by two members of the Gjetani clan. They stabbed him with a knife and told him that he was a Christian pig who deserved death. The Applicant blocked the knife with his hand, and civilian intervention ended the attack. The Applicant was sent to a hospital where he received medical treatment for the wound to his left palm and a face hematoma.

[8] The Applicant contacted the police. Two officers responded at the hospital. After being told what had occurred, the officer taking notes stopped doing so and told the Applicant he was a fool who did not understand anything. The police officer tore up his notes and left with the other officer.

[9] The Applicant left the hospital without doctor's approval and went into hiding.

[10] After the Applicant had left the hospital, the Gjetani clan declared they would kill him for the humiliation and insult caused by consorting with Ms. Gjetani, a Muslim woman. The

Applicant then learned that the Gjetani clan had bribed a bar owner for information on his whereabouts, prompting him to drive to the Greece border to meet a smuggler. The smuggler took the Applicant to Greece, then from Greece to Germany, Germany to New York, and then to Canada where he arrived on September 8, 2011.

[11] In its May 7, 2013 decision, the RPD found the Applicant was not credible, and because he was the only one in his family facing persecution there was no "blood feud". The RPD also found it was unreasonable for the Applicant not to have sought protection in Greece or the USA if he genuinely feared for his life.

II. The RPD's Decision

[12] After summarizing the Applicant's allegations and noting that in December 2016 his cousin was attacked by Gjetani family members, the RPD identified the determinative issue as being whether the Applicant had successfully rebutted the presumption of state protection. While the RPD accepted the Applicant's general allegations, including the 2016 attack on his cousin:

> [21] The problem with the claimant's testimony about his treatment by police in 2011, even when believable, is that it is significantly dated given the lengthy passage of time from the time of his departure to the hearing before me in 2017. …considerable operational changes have occurred in Albanian [*sic*] with respect to state protection in the intervening six years. I find that the claimant's personalized evidence about police protection is so dated in light of the new country condition evidence that I cannot assign his testimony more than a small evidentiary weight. I do not believe the claimant when he says that he cannot obtain police protection in Albanian [*sic*] in 2017.

[13] The RPD then proceeded to find that the Applicant had not provided clear and convincing evidence demonstrating that state protection was inadequate at the operational level and relevant to his circumstances in Albania on a forward-looking basis. After reviewing the Applicant's interactions with the police in 2011, the RPD again noted that the Applicant's testimony was "quite dated and stale and ultimately not representative of the current evidence with respect to police protection in Albania." In the RPD's view, the current documentary evidence indicated that Albanian police could and would provide the Applicant with adequate and effective state protection against any criminal offense committed against him as a result of the Gjetani clan's desire to kill him to cleanse the family dishonour he caused them.

[14] The RPD rejected the Applicant's submission that mere vengeance or revenge killings are not offered adequate state protection, unlike a more formal "blood feud". The RPD found that recent changes in Albanian criminal law were sufficiently broad to accommodate the Gjetani clan's threat to murder the Applicant. In the RPD's view, if the Applicant approached Albanian police today or in the future, his situation would be recognized as either a blood feud or a sufficiently serious revenge or vendetta situation meriting heightened police protection at an adequate level.

[15] After reviewing measures intended for victims of blood feuds implemented since the Applicant's departure from Albania in 2011, the RPD found the country condition evidence indicated that these operational measures, along with the criminalization of making threats to kill for blood feud or revenge, have been effective in Albania, leading to a reduction in the incidence of blood feud murders. The RPD further found that the criminal law was now sufficiently broad

in Albania to protect the Applicant and there was no reliable evidence to indicate he would be shut out from protection measures intended for victims of revenge or a blood feud.

[16] In response to the Applicant's argument that since many individuals resorted to isolation and confinement in the context of a blood feud there must be inadequate state protection, the RPD found this tendency to isolation could be based on a subjective reluctance. With respect to evidence suggesting that the police rarely respond to blood feuds because they are themselves afraid of being hurt, the RPD assigned this evidence no evidentiary weight because it was directly contradicted by more recent research conducted by the Office of the Commissioner General for Refugees and Stateless Persons in 2017. The RPD noted that the Director General of the Albanian state police had been interviewed as part of this research and found from his comments that the Albanian state police were aware of the nuances between a blood feud and a revenge killing, how one can turn into the other, and that the new criminal code provisions applied to the Applicant's vendetta situation.

[17] The RPD acknowledged that there was corruption in the Albanian police force, but there was insufficient personalized evidence to link this problem to the Applicant's circumstances. The RPD noted there was no documentary evidence supporting a finding that the Gjetani clan had corrupted state officials in the past; and although the Gjetani clan had bribed a bar owner to learn the Applicant's location after he went into hiding, this was unofficial bribery. For the RPD, this one case of bribery of a non-state actor did not support a finding that the Applicant would be unable to seek state protection.

[18] The RPD concluded its reasons by stating that the Applicant had failed to demonstrate with clear and convincing evidence the inadequacy of state protection at an operational level in his specific personal circumstances; and, thus, found that if he were to return to Albania and approach the police and state authorities he would receive the adequate protection he needs to live normally and not in isolation.

III. Analysis

[19] Although the parties have raised several discrete issues concerning the RPD's decision, these issues are, in my view, subsumed by an over-arching issue; that is, was it reasonable for the RPD to conclude that state protection was available to the Applicant in Albania?

A. *Standard of Review*

[20] The RPD's assessment of the evidentiary record with respect to state protection involves questions of mixed fact and law and, consequently, is subject to review against the standard of reasonableness (*Kina v Canada (Citizenship and Immigration)*, 2014 FC 284 at paras 24 and 25, [2014] FCJ No 304).

[21] The reasonableness standard tasks the Court with reviewing an administrative decision for "the existence of justification, transparency and intelligibility within the decision-making process" and determining "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190). Those criteria are met if "the reasons 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" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 SCR 708).

B. *Was it reasonable for the RPD to conclude that state protection was available to the Applicant in Albania?*

[22] In the Applicant's view, the RPD failed to consider the totality of the subjective and objective evidence, became immersed in its analysis of country conditions, and inappropriately dismissed his personal experiences. The Applicant claims the RPD failed to analyse whether state protection would be available to him specifically. The Applicant contends that, in view of cases such as *Hasa v Canada (Citizenship and Immigration)*, 2018 FC 270, 289 ACWS (3d) 795 [*Hasa*] and *Kulla v Canada (Citizenship and Immigration)*, 2017 FC 737, 282 ACWS (3d) 586 [*Kulla*], state protection for individuals like him is not available in Albania and it was therefore unreasonable for the RPD in this case not to find the same thing.

[23] The Respondent says the Applicant bore the onus to demonstrate that the RPD's findings were capricious or perverse or made without regard to the evidence. In the Respondent's view, it is not enough that another interpretation of the evidence may exist; rather, the Applicant must show that the RPD's interpretation was in no way open to it based on the evidentiary record.

[24] The test as to whether a state is unable to protect a national is well established (see: *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at paras 52 to 59, [1993] SCJ No 74). It is

bipartite: (1) a claimant must subjectively fear persecution; and (2) this fear must be well founded in an objective sense. A claimant must provide clear and convincing evidence of a state's inability to protect absent an admission by the state of its inability to protect its national. Except in situations of complete breakdown of the state apparatus, it is assumed that the state can protect its nationals.

[25] The main question in cases of state protection is whether the evidence before the decision-maker shows that state protection at an operational level will be available to a refugee claimant. In other words, "looking at the evidence as a whole, including the evidence relating to the state's capacity to protect its citizens, has the claimant shown that he or she likely faces a reasonable chance of persecution in the country of origin?" (*Moczo v Canada (Citizenship and Immigration)*, 2013 FC 734 at para 10, [2013] FCJ No 776). Put another way, does the evidence relating to a state's resources available to a refugee claimant indicate that the claimant would probably not encounter a reasonable chance of persecution if they returned to their country of origin?

[26] The Federal Court of Appeal determined in *The Minister of Citizenship and Immigration v Flores Carrillo*, 2008 FCA 94 at para 38, (2008) 4 FCR 636 (FCA):

> … A refugee who claims that the state protection is inadequate or non-existent bears the evidentiary burden of adducing evidence to that effect and the legal burden of persuading the trier of fact that his or her claim in this respect is founded. The standard of proof applicable is the balance of probabilities and there is no requirement of a higher degree of probability than what that standard usually requires. As for the quality of the evidence required to rebut the presumption of state protection, the presumption is rebutted by clear and convincing evidence that the state protection is inadequate or non-existent.

[27] In *Kadenko v Canada (Solicitor General)*, [1996] FCJ No 1376, 143 DLR (4th) 532, the Court of Appeal concluded that, where there has not been a complete breakdown of the governmental apparatus and where a state has political and judicial institutions capable of protecting its citizens, the refusal by certain police officers to take action does not suffice to establish that the state in question is unable or unwilling to protect its nationals.

[28] The level of democracy in a refugee claimant's country of origin may be such that the claimant must show that, absent exceptional circumstances, all possible protections were exhausted. For example, in *Hinzman v Canada (Citizenship and Immigration)*, 2007 FCA 171, 282 DLR (4^{th}) 413, the Federal Court of Appeal observed that:

> [57] *Kadenko* and *Satiacum* together teach that in the case of a developed democracy, the claimant is faced with the burden of proving that he exhausted all the possible protections available to him and will be exempted from his obligation to seek state protection only in the event of exceptional circumstances [citations omitted] … a claimant coming from a democratic country will have a heavy burden when attempting to show that he should not have been required to exhaust all of the recourses available to him domestically before claiming refugee status…. the United States is a democracy that has adopted a comprehensive scheme to ensure those who object to military service are dealt with fairly…. the appellants have adduced insufficient support to satisfy this high threshold….

[29] This case is unlike *Taho v Canada (Citizenship and Immigration)*, 2015 FC 718 at para 42, [2015] FCJ No 717 [*Taho*], where the RPD's decision was set aside because the documentary evidence referenced by it concerning the adequacy of state protection was limited, and its analysis did not properly address the adequacy as a decline in the number of blood feuds did not establish the adequacy of state protection.

[30] It is also unlike *Kapllaj v Canada (Citizenship and Immigration)*, 2015 FC 23 para 21, 249 ACWS (3d) 180, where the evidence before the RPD showed that, because the police were unable to protect persons targeted as part of a blood feud, it should have considered this evidence before concluding that Mr. Kapllaj had failed to rebut the presumption of state protection.

[31] In this case, the RPD extensively analysed the conflicting evidence as to the current level of state protection in Albania for individuals such as the Applicant and explained why it preferred the evidence it did. The RPD is entitled to prefer some documentary evidence over other such evidence and over testimony, even where a claimant's credibility is accepted, so long as a clear explanation is provided for doing so (*Csoke v Canada (Citizenship and Immigration)*, 2015 FC 1169 at para 17, 259 ACWS (3d) 540). The RPD referenced and relied upon the most recent evidence from a neutral party, notably a 2017 report by the Office of the Commissioner General for Refugees and Stateless Persons entitled "Blood Feuds in contemporary Albania. Characterisation, Prevalence and Response by the State." This was not unreasonable.

[32] The Applicant's reliance upon cases such as *Hasa* and *Kulla* for the proposition that state protection for individuals like him is unavailable in Albania is misplaced.

[33] *Hasa* is distinguishable from this case since it concerned the ability of an LGBTI individual in Albania to receive state protection. The RPD in *Hasa*, unlike the RPD here, did not look to the operational adequacy of efforts to provide state protection. The RPD in *Hasa* cited evidence speaking only to legal advances which *were* to be implemented; whereas, in this case the RPD highlighted the *actual* implementation of new laws. The conflicting evidence was not

addressed by the RPD in *Hasa*, while in this case the RPD clearly addressed the conflicting documentary evidence and chose what evidence it preferred and explained why.

[34] *Kulla* is also distinguishable. The pre-removal risk assessment officer in that case focused the state protection analysis on the efforts being made in Albania to provide state protection for individuals facing persecution arising out of a blood feud rather than the effectiveness of those efforts. The officer failed to address the conflicting evidence directly related to the adequacy of state protection; whereas, in this case the RPD clearly addressed the conflicting documentary evidence and chose what evidence it preferred and explained why.

[35] State protection and its availability must be assessed on a case by case basis (*Perez Mendoza v Canada (Citizenship and Immigration)*, 2010 FC 119 at para 33(3), 185 ACWS (3d) 447; *Murati v Canada (Citizenship and Immigration)*, 2010 FC 1324 at para 39, 384 FTR 1; and *Taho* at para 44). It was reasonable for the RPD in this case, based on the evidence before it, to find that there was no reliable evidence to indicate that the Applicant would be shut out from protection measures intended for victims of a revenge or blood feud which have been implemented since the time of his departure from Albania in 2011.

IV. Conclusion

[36] The RPD's reasons for rejecting the Applicant's claim for refugee protection are intelligible, transparent, and justifiable, and its decision falls within a range of possible, acceptable outcomes defensible in respect of the facts and law. The Applicant's application for judicial review is therefore dismissed.

[37] Neither party proposed a serious question of general importance to be certified under paragraph 74(d) of the *IRPA*; so, no such question is certified.

JUDGMENT in IMM-913-18

THIS COURT'S JUDGMENT is that: the application for judicial review is dismissed, and no serious question of general importance is certified.

"Keith M. Boswell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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