

Federal Court



Cour fédérale

**Date: 20200310**

**Docket: IMM-4725-19**

**Citation: 2020 FC 359**

**Toronto, Ontario, March 10, 2020**

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

**BETWEEN:**

**EDMOND TOMA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Edmond Toma is a citizen of Albania. He seeks judicial review of a pre-removal risk assessment [PRRA] conducted by a Senior Immigration Officer [Officer] with Citizenship and Immigration Canada.

[2] For the reasons that follow, the Officer's decision was reasonable. The application for judicial review is dismissed.

## II. Background

[3] Mr. Toma was born in Perlat-Qendër in 1980. His brother Victor was a police officer in Albania. According to Mr. Toma, Victor was involved in a 1998 shooting incident that may have resulted in the death of a well-known member of the Dodaj family and Banda E Mirditës crime syndicate. After Victor fled to the United States of America, the Dodaj family declared a "blood feud" against the police officers who were involved in the incident and their families.

[4] Victor was granted refugee protection in the United States, but on the basis of his political opinion. The alleged blood feud with the Dodaj family did not form a part of his refugee claim.

[5] Mr. Toma says he lived in hiding in Albania, although in 2004 he travelled to Macedonia for a vacation. He returned to Albania without seeking refugee protection in Macedonia. In November 2010, he travelled to Canada via Germany with the help of a smuggler.

[6] At his point-of-entry interview on November 8, 2010, Mr. Toma was asked "who are you afraid of"? He did not mention the Dodaj family or the alleged blood feud.

[7] Mr. Toma did mention the blood feud in his refugee claim, which he submitted on November 18, 2010. The Refugee Protection Division [RPD] of the Immigration and Refugee Board rejected Mr. Toma's claim on January 29, 2013. The determinative issues were credibility and the adequacy of state protection in Albania.

### III. The RPD's Decision

[8] The RPD held that the alleged blood feud was purely a criminal matter, and there was therefore no nexus to the grounds for refugee protection enumerated in s 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The RPD also held that Mr. Toma was not a person in need of protection under s 97 of the IRPA. The RPD found that Mr. Toma lacked credibility, and did not believe his story. The RPD noted that he had not sought refugee protection in Macedonia or Germany, and had not indicated any fear of the Dodaj family in his point-of-entry interview. The RPD discounted the evidence of Gjin Marku, Chairman of the Committee of Nationwide Reconciliation [CNR]. At the time, Mr. Marku was suspected of forging blood feud documents to help establish refugee claims.

[9] The RPD also found that Mr. Toma had failed to provide clear and convincing evidence to rebut the presumption of state protection. The RPD held that its rejection of Mr. Toma's credibility and its finding that Albania could offer adequate state protection were each sufficient to deny his claim for protection.

[10] Mr. Toma applied for leave and judicial review of the RPD's decision. Leave was refused on February 3, 2014.

IV. Decision under Review

[11] Mr. Toma's request for a PRRA was supported by the following additional documents:

- (a) publications and articles that discussed blood feuds and asylum-seekers, including a report of the UK Home Office, Country Information and Guidance, "Albanian Blood Feuds", Version 2.0, 6 July 2016, confirming that charges against Mr. Marku had been dropped;
- (b) other RPD decisions that Mr. Toma considered analogous to his circumstances;
- (c) a psychological assessment of Mr. Toma conducted by Dr. Gerald Devins dated February 7, 2019;
- (d) his own affidavit;
- (e) the affidavit of Martin Perno, an Albanian police officer, providing information about the shooting incident and the Dodaj family's allegedly increasing power in Albania; and

- (f) the affidavit of Victor Toma, explaining that the blood feud did not begin until after he submitted his refugee claim in the United States, and he did not seek to amend his claim for tactical reasons.

[12] The Officer found that the additional documents submitted by Mr. Toma could not overcome the RPD's adverse credibility findings, or its determination that Mr. Toma had failed to rebut the presumption of adequate state protection.

#### V. Issue

[13] The sole issue raised by this application for judicial review is whether the Officer's decision was reasonable.

#### VI. Analysis

[14] A PRRA officer's decision is subject to review by this Court against the standard of reasonableness (*Talipoglu v Canada (Citizenship and Immigration)*, 2014 FC 172 at para 22; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 48). The Court will intervene only if "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100). These criteria are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls within the

range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[15] A number of Mr. Toma's arguments are framed in terms of procedural fairness. He alleges that the Officer improperly fettered his discretion by relying on jurisprudence that is no longer current, or ignored the evidence presented.

[16] In my view, these arguments are better directed towards the reasonableness of the decision. The Officer's reliance on *Escalona Perez v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1379 was not improper (see *Liyanage v Canada (Citizenship and Immigration)*, 2019 FC 194 at para 14). The Officer did not ignore the evidence — it is all itemized in the Officer's reasons — but merely reached conclusions that Mr. Toma disputes.

[17] The Officer found that the publications and articles submitted by Mr. Toma were insufficient to overcome the adverse findings of the RPD. Given the RPD had found that Mr. Toma had no subjective fear of the Dodaj family or the blood feud, this was a reasonable assessment. The Minister notes that Mr. Marku's evidence was not rehabilitated by the report of the UK Home Office, and he has been criticized for reasons that extend beyond the prosecution against him (see *Taho v Canada (Citizenship and Immigration)*, 2015 FC 718 at para 24).

[18] The Officer found the unrelated RPD decisions submitted by Mr. Toma to be persuasive, but held that they were not binding with respect to the case at hand, which had to be decided on its own specific merits. This was a reasonable observation (*Rasalingam v Canada (Citizenship*

*and Immigration*), 2017 FC 718 at para 18). An important consideration in this case was the RPD's repudiation of Mr. Toma's credibility.

[19] Mr. Toma complains that the Officer did not consider his argument that his failure to mention his fear of the Dodaj family or the blood feud during his point-of-entry interview could be explained by his psychological issues, as documented in Dr. Devins' report. This point was alluded to only briefly in his written submissions. The Officer did review the psychological report, but considered only whether Mr. Toma would have access to adequate mental health care in Albania.

[20] A psychological report cannot be considered a "cure-all" for deficiencies in the manner in which an applicant presents a refugee claim (*Mico v Canada (Citizenship and Immigration)*, 2011 FC 964 at para 34). In any event, the psychological assessment could not explain Mr. Toma's failure to seek refugee protection in Macedonia.

[21] The affidavit evidence that sought to confirm the existence of the blood feud, including Victor Toma's explanation for not mentioning it in his refugee claim in the United States, could not overcome the RPD's finding that Mr. Toma had no subjective fear for his safety in Albania. In the Officer's words: "The RPD panel did not believe the [applicant's] story and found on a balance of probabilities that he was not credible and that the 'finding is fatal to his claim'". Later in the decision, the Officer wrote: "None of the evidence provided overcomes the significant finding of the RPD that is, the applicant's 'failure to provide clear and convincing evidence rebutting the presumption of state protection'". Given the specific circumstances of Mr. Toma's

case, particularly his lack of subjective fear, this conclusion falls within the range of acceptable outcomes defensible in respect of the facts and law.

VII. Conclusion

[22] The application for judicial review is dismissed. Neither party proposed that a question be certified for appeal.



**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

"Simon Fothergill"

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Judge

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

**DOCKET:** IMM-4725-19

**STYLE OF CAUSE:** EDMOND TOMA v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 27, 2020

**JUDGMENT AND REASONS:** FOTHERGILL J.

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