

Federal Court



Cour fédérale

**Date: 20230414**

**Docket: IMM-2710-18**

**Citation: 2023 FC 532**

**Toronto, Ontario, April 14, 2023**

**PRESENT: The Honourable Mr. Justice Henry S. Brown**

**BETWEEN:**

**LEONIDA GJURAJ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Nature of the matter

[1] This is an application for judicial review of a decision by the Refugee Protection Division [RPD], dated April 27, 2018 [Decision]. The RPD refused the Applicant's claim for refugee protection, finding that the Applicant had not established a serious risk of persecution or that, on a balance of probabilities, she would be personally subjected to a risk to her life, or a risk of cruel and unusual treatment or punishment or risk of torture should she return to Albania. The

RPD concluded that the Applicant was neither a *Convention* refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act [IRPA]*.

## II. Facts

[2] The Applicant is a citizen of Albania and no other country. She entered Canada on October 24, 2014. She claims she is at risk in Albania due to her ex-fiancé, his family and her own family for threatening both her and her husband after she broke off the engagement. Her narrative, as found in her amended Basis of Claim [BOC] form and affidavit, is as follows.

[3] The Applicant states that she was 17 years old in August of 2009 when her family, mainly her father, arranged a marriage with X. The engagement was forced by her traditional family. The X family was rich, well-connected and involved in criminal activities. Shortly after their engagement, Mr. X and his brother were imprisoned in Italy for drug trafficking and armed robbery.

[4] While Mr. X was in prison, the Applicant later met a relative, Y. Mr. Y came from Italy, where he had lived for a decade, to Albania on a visit in 2010. The Applicant and Mr. Y fell in love and began a relationship.

[5] The Applicant states that as a result of her relationship with Mr. Y, the cousin of her betrothed, her family threatened to kill her for bringing shame to their family. Her father and brothers threatened her in 2011. After his release from prison, Mr. X also threatened to kill Mr. Y.

[6] The Applicant led evidence suggesting this is a “blood feud”. Honour based crimes like vendettas or blood feuds are a serious issue in Albania.

[7] On December 24, 2012, the Applicant and Mr. Y were married in secret in Albania. Shortly thereafter, the Applicant went to Italy to live with her husband.

[8] In August of 2013, the Applicant and Mr. Y returned to Albania to have a small wedding reception and try to seek their family’s forgiveness. The Applicant’s family and the X family did not forgive the couple.

[9] Mr. X made threatening calls to Mr. Y and on one occasion in April of 2014, confronted Mr. Y in-person in Italy and threatened to kill him. Mr. Y brought an audio recording of this interaction to Italian police who refused to assist on the basis that it was a family dispute.

[10] After this interaction, Mr. Y attempted to stay indoors in his home and changed his phone number. Therefore, Mr. Y has not received any threatening visits or calls since. The Applicant never received threatening calls because she did not possess a cellular device.

[11] In May of 2014, the Applicant and her husband travelled to Albania to visit his family. The couple requested assistance from their village leaders to attempt to mediate the situation between the Applicant’s family and Mr. X’s family, but were unsuccessful. Both families sought to kill the Applicant. With the assistance of an agent, the couple fled to the United States shortly thereafter.

[12] On May 17, 2014, upon their arrival to the United States, the Applicant's husband was denied entry and returned to Albania by immigration officials. The Applicant was permitted to enter. She joined a family member in the US.

[13] In September of 2014, the Applicant's husband entered Canada and made a claim for protection. The Applicant entered Canada in October, 2014.

### III. Decision under review

[14] The Applicant's claim was originally joined to that of her husband, the Principal Claimant in their claim for protection before the RPD. The Applicant's husband had been living in Italy as a permanent resident for approximately 14 years. The RPD determined that an exclusion under Article 1E of the *United Nations Convention Relating to the Status of Refugees* applied with respect to the Applicant's husband, because he had been recognized as having the rights and obligations attached to Italian nationality. Therefore, the RPD determined that pursuant to section 98 of the *IRPA*, the Applicant's husband was not a *Convention* refugee or a person in need of protection.

[15] The RPD considered the Applicant's joined claim separately from that of her husband. Her husband's application in this Court, if any, is not before me.

[16] The Applicant's claim before the tribunal related to adequate state protection in Albania. The RPD concluded the Applicant had not rebutted the presumption of adequate state protection.

[17] State protection is no longer in issue, the Respondent having conceded it was unreasonable. But this hearing proceeded on the basis that one only needs to consider state protection if there is a finding of risk giving rise to the need to assess the adequacy of state protection at the operational level.

[18] After assessing the totality of the evidence, the RPD determined there was insufficient evidence of a blood feud or a forward-looking risk to the Applicant. This was based upon the insufficient evidence that Mr. X or the X family has threatened or searched for the Applicant or her husband in Albania. As well, the Applicant's husband's relatives were able to live openly in Albania. The RPD further determined that there was insufficient evidence of any further threats or interest by the Applicant's family since 2011 or Mr. X or his family since April of 2014.

[19] The RPD makes reference to the *Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender Related Persecution [Gender Guidelines]* with respect to its analysis of the adequacy of state protection available to women like the Applicant in Albania. The RPD noted that as indicated by *Leon Davila v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1475, the Panel must conduct a contextual analysis of the Applicant's particular circumstances. Though the RPD states that it considered this *Gender Guidelines* in making its determinations and considered the social, cultural, religious and economic context in which the Applicant found herself, the RPD's analysis of the Applicant's personal circumstances is as follows:

[22] ...While the allegations are gender based with respect to the jointed Claimant, in these particular circumstances, she shares no relationship of dependency, and no legal or financial connection with her family in Albania, [Mr. X] or [his] family.

#### IV. Issues

[20] The Applicants submits the issues are:

- 1) Whether the RPD failed to consider relevant evidence when finding that there is insufficient evidence of an ongoing risk or threat in Albania;
- 2) Whether the RPD erred by relying on evidence of protection against domestic violence instead of analyzing evidence of gender-based violence.

[21] The Respondent submits that there is no issue warranting this Court's intervention. The only issue the Respondent addresses in its short further memorandum of argument is with respect to the existence of a blood feud.

[22] In my view the only issue is whether the RPD's decision was reasonable.

#### V. Standard of Review

[23] The applicable standard of review is reasonableness. In *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, issued at the same time as the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 [*Vavilov*], the majority per Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

[31] A reasonable decision is “one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (*Vavilov*, at para. 85). Accordingly, when conducting reasonableness review “[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with ‘respectful attention’ and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion” (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to

understand “the basis on which a decision was made” (Vavilov, at para. 97, citing Newfoundland Nurses).

[32] A reviewing court should consider whether the decision as a whole is reasonable: “what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review” (Vavilov, at para. 90). The reviewing court must ask “whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (Vavilov, at para. 99, citing Dunsmuir, at paras. 47 and 74, and Catalyst Paper Corp. v. North Cowichan (District), 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).

[33] Under reasonableness review, “[t]he burden is on the party challenging the decision to show that it is unreasonable” (Vavilov, at para. 100). The challenging party must satisfy the court “that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable” (Vavilov, at para. 100).

[Emphasis added]

[24] Importantly in this case, *Vavilov* also requires the reviewing court to assess whether the decision subject to judicial review meaningfully grapples with the key issues:

[128] Reviewing courts cannot expect administrative decision makers to “respond to every argument or line of possible analysis” (Newfoundland Nurses, at para. 25), or to “make an explicit finding on each constituent element, however subordinate, leading to its final conclusion” (para 16). To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice. However, a decision maker’s failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning: Baker, at para. 39.

[Emphasis added]

VI. Analysis

A. *Reasonableness of Determinations Concerning Ongoing Threat to Applicant*

[25] The Applicant makes two arguments concerning the RPD's alleged failure to consider relevant evidence contrary to its findings.

[26] Firstly, the Applicant submits that the RPD failed to consider relevant evidence as to the ongoing threat and risk to the Applicant from the continuing conflict with both her family and the X family. In particular, the country condition evidence was that a threat is uttered only once and needs not be repeated. Therefore the Applicant asserts it is unreasonable for the RPD to require evidence of further or continuing threats.

[27] Respectfully, I accept the Applicant's assertion because it confirms the oral evidence of the Applicant's sister which was unequivocal on the point that the threat of death was a continuing one in this situation. While RPD held there was insufficient evidence of risk to the Applicant, it failed to grapple with this oral testimony, testimony in respect of which the RPD engaged with the sister, and likewise failed to grapple with the similar country condition evidence.

[28] In addition, the RPD in its central determination of risk concluded, "... there is insufficient evidence, on a balance of probabilities, of further threats or interest by the [Applicant's] family since 2011." With respect, this finding is not justified on the record. The evidence was uncontested that after being threatened, Mr. Y attempted to stay indoors in his



home and changed his phone number. Therefore, Mr. Y did not received any threatening visits or calls since for the simple reason he no longer had a cell phone.

[29] The evidence was that Applicant never received threatening calls either, wjocj was because she did not possess a cellular device at all. It was therefore unreasonable to fault the Applicant on this issue given their evidence such threats would have been very difficult to make except by phone given they were living in Italy.

[30] It seems also that the following statement by the RPD is unreasonable in not being justified:

[22] ...While the allegations are gender based with respect to the jointed Claimant, in these particular circumstances, she shares no relationship of dependency, and no legal or financial connection with her family in Albania, [Mr. X] or [his] family.

[31] The proposition there was no legal connection with her family in Albania is not justified on the fact because her family is there constituting a web of legal relationships. Further, there is no justification provided for the proposition that she needed to satisfy the RPD she had a financial relationship with her family. I appreciate these findings were made in the context of state protection but none the less they counted against her in the global assessment and are not sustainable.

B. *State Protection Analysis and Gender Guidelines*

[32] The parties agree the state protection analysis was unreasonable. The reason why was not disclosed. That said, in my view it was unreasonable because it failed to assess state protection *on an operational basis*.

[33] In addition, the Decision relies heavily on documentary evidence related to domestic violence. The required state protection analysis requires the RPD to consider the Applicant's particular circumstances, vis-à-vis women in Albania seeking state protection. The RPD failed to do this.

VII. Conclusion

[34] For the reasons set out above this application will be granted.

VIII. Certified Question

[35] Neither party proposed a question of general importance, and none arises.

**JUDGMENT in IMM-2710-18**

**THIS COURT'S JUDGMENT is that** this application for judicial review is granted, the matter is remitted for reconsideration by a differently constituted decision maker, no question of general importance is certified, and there is no order as to costs.

"Henry S. Brown"

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Judge

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

**DOCKET:** IMM-2710-18

**STYLE OF CAUSE:** LEONIDA GJURAJ v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

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**DATE OF HEARING:** APRIL 6, 2023

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**DATED:** APRIL 14, 2023

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