

Federal Court



Cour fédérale

**Date: 20240301**

**Docket: IMM-4473-22**

**Citation: 2024 FC 352**

**Ottawa, Ontario, March 1, 2024**

**PRESENT: The Honourable Madam Justice Turley**

**BETWEEN:**

**ALIAN ALIAJ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS FOR JUDGMENT**

**I. Overview**

[1] The Applicant, a citizen of Albania, seeks judicial review of a decision by a Senior Immigration Officer [Officer] refusing his application for a Pre-Removal Risk Assessment [PRRA] pursuant to section 112 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] I am allowing the application because the Officer fundamentally misapprehended evidence concerning the level of democracy in Albania in assessing whether the Applicant had rebutted the presumption of state protection. Given this determination, it is not necessary to address the other issues raised by the Applicant.

## **II. Background**

[3] The Applicant fled Albania in May 2018. He made a refugee claim based on his fear of persecution by the Margjekaj clan.

[4] The Refugee Protection Division [RPD] refused the Applicant's refugee claim in April 2019 based on the availability of state protection in Albania. The RPD found that there was a functioning police and judicial system and that the government had mechanisms to investigate and prosecute police corruption. The Applicant sought leave and judicial review of the RPD's decision, but that was denied in September 2019.

[5] The Applicant submitted a PRRA application in July 2021. In support of his application, the Applicant filed new evidence that post-dated the RPD decision. This included evidence about an attack of his uncle by members of the Margjekaj clan in May 2021 and the declaration of a blood feud between the Margjekaj clan and the Aliaj family in June 2021.

[6] By decision dated March 28, 2022, the Officer rejected the Applicant's PRRA application, concluding that the Applicant had failed to rebut the presumption of state protection. In particular,

the Officer held that Albania is not a failed democracy and that the Applicant's evidence was insufficient to overcome the RPD's finding of adequate state protection in Albania.

### **III. Analysis**

[7] There is no dispute that the applicable standard of review is reasonableness. While it is not the role of a reviewing court to reweigh or reassess the evidence before a decision-maker, where there is a fundamental misapprehension of the evidence, "the reasonableness of a decision may be jeopardized": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 126 [*Vavilov*]. This is precisely what occurred in this case. The Officer misapprehended evidence related to Albania's level of democracy. For the reasons that follow, I find that this error undermines the reasonableness of the Officer's decision.

[8] The presumption is that a state is able to protect its citizens, particularly where that state is democratic: *Brzezinski v Canada (Citizenship and Immigration)*, 2023 FC 936 at paras 20-22 [*Brzezinski*]; *Lakatos v Canada (Citizenship and Immigration)*, 2018 FC 367 at para 19 [*Lakatos*]; *Sow v Canada (Citizenship and Immigration)*, 2011 FC 646 at paras 9-10 [*Sow*]. Applicants bear the onus of rebutting this presumption with clear and convincing evidence that the state is unwilling or unable to provide adequate protection: *Brzezinski* at para 24; *Lakatos* at para 20; *GS v Canada (Citizenship and Immigration)*, 2017 FC 599 at para 22.

[9] However, as recognized by Justice MacTavish (as she then was), "democracies exist along a spectrum": *Bozik v Canada (Citizenship and Immigration)*, 2017 FC 961 at para 28 [*Bozik*]. On that basis, this Court has consistently held that what is required of an applicant to rebut the

presumption of state protection varies with the nature and level of the democracy in a given country: *Brzezinski* at para 23; *Lakatos* at para 19; *Bozik* at paras 28-29; *Sow* at para 12. In other words, where a state sits on the “democratic spectrum” is relevant in assessing “what credible and reliable evidence will be sufficient to displace that presumption”: *Rodriguez Capitaine v Canada (Citizenship and Immigration)*, 2008 FC 98 at para 20.

[10] Relying on the Freedom House report “Albania: Nations in Transit 2020 Country Report,” the Applicant argued in his PRRA application that Albania is a failing democracy replete with corruption and organized crime. The Applicant specifically stated that:

In 2020, Albania’s national democratic governance and electoral process ratings declined. Albania is no longer a democracy and was given a rating of only “Partly Free.” Albania’s judicial framework and independence have a failing score of 3.25 (on a scale where one is worst and seven is best). The country received a rating of 2.75 for overall corruption, a staggering statistic.

Applicant’s PRRA Submissions dated July 29, 2021 at para 26.

[11] While the Officer acknowledged corruption, organized crime, and a declining democracy in Albania, the Officer found that the 2021 Freedom House report showed an improvement of 19% in Albania’s democracy score between 2020 and 2021. On this basis, the Officer concluded that Albania was not a failed democracy:

I accept that there are reports of corruption and organized crime and I recognize that democracy in Albania had deteriorated in recent years according to the Freedom House 2020 report submitted by the Applicant. However, the 2021 Freedom House report shows some improvement, with the overall score going from 47 to 66 out of 100 in one year. I find that Albania is still considered a democratic state and civilian authorities maintain effective control over authorities and security forces. As such, I do not find that Albania is a failed democracy and I do not find that the issue of state protection has been rebutted in this case.

[Emphasis added]

Pre-Removal Risk Assessment Notes to File dated March 26, 2022  
at p 6.

[12] The Officer, however, misapprehended the evidence by conflating scores in different Freedom House reports. Contrary to the Officer's finding, Albania's democracy score did not rise by 19%, from 47 to 66 out of 100, between 2020 and 2021. Rather, the score of 66 out of 100, relied on by the Officer, is Albania's 2021 freedom score as found in another Freedom House report: "Albania: Freedom in the World 2021 Country Report". Indeed, according to "Albania: Nations in Transit 2021 Country Report," Albania's democracy score decreased from 47 out of 100 in 2020 to 46 out of 100 in 2021.

[13] Further, as evidenced in "Albania: Nations in Transit 2020 Country Report," Albania's democracy score had also decreased between 2019 and 2020: from 48 to 47 out of 100. As a result, rather than a rising democracy score, there has been a steady decline of one percent each year between 2019 and 2021.

[14] While conceding that the Officer conflated these scores, the Respondent argues that the error is "superficial or peripheral to the merits" of the decision and, as such, is insufficient to render the decision unreasonable: Respondent's Further Memorandum of Argument at para 20. I do not accept this characterization.

[15] Contrary to the Respondent's assertion, the finding that Albania's democracy score had increased by 19% figured prominently in the Officer's state protection analysis. As demonstrated

in the passage reproduced at paragraph 11 above, the Officer relied on this increase in scores to counter the Applicant's argument that democracy in Albania had deteriorated in recent years. Based on the erroneous finding that there had been a marked improvement in Albania's democracy score, 19% between 2020 and 2021, the Officer found that Albania was not a failed democracy.

[16] The Respondent argues that regardless of the different scores, Albania "remained on the democratic spectrum, rather than being a failed state": Respondent's Further Memorandum of Argument at para 22. This argument misses the point. As already discussed, the assessment of a state's level of democracy, or where it sits on the democratic spectrum, is a relevant consideration in determining the sufficiency of an applicant's evidence concerning the state's ability and willingness to provide protection.

[17] Here, had the Officer properly determined that Albania's democracy score had actually further declined, rather than rising by 19%, the Officer may have accepted the Applicant's argument that Albania was a failing democracy. In turn, this may have lowered the Applicant's evidentiary burden such that the Officer could have ultimately determined that the Applicant's evidence was sufficient to rebut the presumption of state protection and overcome the RPD's findings.

[18] It is not for this Court, sitting in review, to speculate as to whether the Officer's decision would have been different had they not made this error. It is for the decision-maker at first instance to weigh and assess the evidence and to make a determination: *Vavilov* at para 125. For the purposes of this judicial review application and determining the reasonableness of the decision,

the relevant consideration is that this fundamental misapprehension of the evidence may have affected the Officer's state protection analysis.

[19] Based on the foregoing, the Officer's decision is set aside and the matter is remitted for redetermination so that a different officer can properly consider and assess the evidence.

[20] The parties did not raise a question for certification and none arises in this case.

**JUDGMENT in IMM-4473-22**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is allowed.
2. The Officer's decision dated March 28, 2022 is set aside and the matter is remitted for redetermination by another officer.
3. There is no question for certification.

\_\_\_\_\_  
"Anne M. Turley"

Judge



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

**DOCKET:** IMM-4473-22

**STYLE OF CAUSE:** ALIAN ALIAJ v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** HEARD BY VIDEOCONFERENCE

**DATE OF HEARING:** JANUARY 23, 2024

**JUDGMENT AND REASONS  
FOR JUDGMENT:** TURLEY J.

**DATED:** MARCH 1, 2024

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