Federal Court  Cour fédérale

Date: 20120208

Docket: IMM-4399-11

Citation: 2012 FC 177

Ottawa, Ontario, February 8, 2012

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

ZAMIR SHKABARI, ANTIANA SHKABARI, RAY SHKABARI AND ERGI SHKABARI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) for judicial review of a decision of the Immigration and Refugee Board, Refugee Protection Division (the Board), dated June 9, 2011, wherein the applicants were determined to be neither Convention refugees within the meaning of section 96 of the Act nor persons in need of protection as defined in subsection 97(1) of the Act.

[2] This conclusion was based on the Board's finding that the applicants' fear arising from a blood feud did not establish a nexus with the Convention refugee definition. In addition, the Board found that the applicants failed to provide both credible evidence to support central allegations of their claim and clear and convincing evidence of the state's inability to protect its citizens.

[3] The applicants request that the Board's decision be set aside and the matter be referred back for a new hearing.

Background

[4] The principal applicant is Zamir Shkabari. The other applicants are related to the principal applicant as follows: Antiana Shkabari, his wife; Ray Shkabari, his minor son and Ergi Shkabari, his minor son.

[5] All the applicants are citizens of Albania, except Ray Shkabari, who was born in and is a citizen of the United States.

[6] The principal applicant and his wife married in November 1998. After their marriage, they discovered that they were distant cousins (fifth generation). The principal applicant's parents accepted the marriage. However, Fiqri Mati, Antianas' father, insisted that the marriage brought shame and dishonour to his family as it was contrary to Kanun law (customary Albanian law) which prohibited marriage between cousins in the same blood line. The marriage also ran against Fiqri Mati's patriarchal prerogative to choose his daughter's spouse.

[7] The principal applicant's father contacted elders (people versed in Kanun law), representatives of the blood reconciliation group and people from the local government for help in settling the conflict. However, Fiqri Mati refused to meet with them. He disowned his daughter and declared a blood feud against her and the principal applicant.

[8] A week after the couple's marriage, the principal applicant returned to work at his family's small bar. Although this ran against the self-confinement measures generally taken by individuals in blood feuds, his employment at the bar was his only means to provide for his family.

[9] Towards the end of November 1998, on the principal applicant's second day back to work after his wedding, two relatives of Fiqri Mati came to the bar and refused to pay for their purchases. When the principal applicant confronted them, they accosted him and hit him in the face. The men also threatened him, stating that they would make him pay for what he owed them. After this attack, the principal applicant's father consulted with elders and offered to pay Fiqri Mati a sum of money in compensation. Fiqri Mati refused these advances. The principal applicant then entered into self-confinement.

[10] In March 1999, the principal applicant accompanied his mother to visit his aunt. When they were out, a police car without licence plates stopped in front of them and two men, believed to be cousins of Antiana, attempted to abduct the principal applicant. When his mother came to his assistance, the attackers let him go in fear of being dishonoured for touching a woman. Under Kanun law, avengers cannot strike a man who is in the company of a woman.

[11] Later the same month, the principal applicant's father asked the blood reconciliation group representatives again to attempt to speak with Fiqri Mati. Again, Fiqri Mati refused their advances. The principal applicant and his wife therefore went into hiding with his godmother in the city of Tirana in March 1999. However, they continued to live in fear and faced financial difficulties there. Therefore, in April 2000, shortly before Antiana gave birth to their first son, the couple returned to the principal applicant's family home in the city of Shkoder.

[12] In September 2000, when the principal applicant had gone to the pharmacy to pick up medication for his sick son, he was confronted by two masked men. They hit him and he lost consciousness. He woke later in the hospital. The principal applicant believed the two masked men were relatives of his wife.

[13] The applicants did not report any of these three assaults to the police.

[14] Thereafter, the principal applicant's father decided that the couple and their child had to flee Albania. He sold the family bar to raise the necessary funds. The principal applicant retained a smuggler who agreed to help the family flee to the United States.

[15] The applicants fled to the United States in October 2000. There they filed refugee claims based on political reasons. Their claims were ultimately denied in 2008. In fear of their lives, the applicants moved to Canada on November 23, 2008 where they filed refugee claims.

[16] The hearing of the applicants' claims was held on March 21, 2011.

Board's Decision

[17] The Board issued its decision on June 9, 2011. In its decision, the Board determined that the applicants were not Convention refugees or persons in need of protection.

[18] The Board first noted that the applicants' identities were established based on the evidence of their passports and birth certificates.

[19] The Board then referred to a number of cases in finding that the applicants' fear associated with a blood feud did not establish a nexus with the Convention refugee definition because victims of criminality, including vendettas, do not meet the necessary nexus.

[20] The Board also found that the applicants did not provide credible evidence to support central allegations of their claim. The Board noted the principal applicant's testimony that he had not gone into self-confinement after the feud was declared even though this was what male family members generally did when a blood feud was declared against them. This was exacerbated by the Board's finding that his parents could have operated the bar instead of the principal applicant putting himself at risk in so doing. Further, the Board noted that there was no evidence that the two men who had accosted him at the bar did any physical harm to him after the altercation. As such, the Board found that the principal applicant's actions after the declaration of the blood feud were inconsistent with his testimony on the risks he faced.

[21] Turning to the question of state protection, the Board found that the applicants did not provide clear and convincing evidence of the state's inability to protect its citizens. The Board highlighted the principal applicant's failure to report the attacks in November 1998, March 1999 and September 2000 to the police.

[22] The Board noted conflicting country documentation on the adequacy of state protection in Albania for victims of blood feuds. However, the Board granted significant weight to the May 2008 Issue Paper-Albania Blood Feuds report, which traced the conviction of members of an Albanian family who had travelled to the United Kingdom to carry out a blood feud. The Board found that this example provided a clear manifestation of a functioning crimes court, that blood feud killers were not let off or given light sentences, that an effective legislation and procedural framework existed and that there was both the capacity and will to effectively implement that framework. As such, the Board found insufficient evidence to indicate that the state would not be reasonably forthcoming with serious efforts to protect the principal applicant, if needed.

[23] The Board also noted that Albania is a functioning parliamentary democracy with a constitutionally recognized independent judiciary. Nothing in the evidence before it suggested that Albania was in a state of complete breakdown. The Board found that the principal applicant had failed to establish that it was objectively reasonable for him not to seek protection from the authorities. It was not sufficient for the principal applicant not to seek protection solely because he did not believe it was available.

[24] Given its credibility finding and its finding that the applicants had not rebutted the presumption of state protection, the Board found that the applicants would not face a risk to life or a risk to cruel and unusual treatment or punishment should they return to Albania. No evidence was adduced on a risk of torture. For these reasons, the Board rejected the applicants' claims.

Issues

[25] The applicants submit the following points at issue:

1. Did the Board err in finding that no nexus existed to a Convention ground in the applicants' claims?
2. Did the Board err in finding that state protection is available to the applicants?
3. Did the Board fail to consider important evidence in the applicant's claims?

[26] I would phrase the issues as follows:

1. What is the appropriate standard of review?
2. Did the Board err in finding no nexus to a Convention ground?
3. Did the Board err in determining that state protection was available to the applicants in Albania?
4. Did the Board err in its determination on credibility?

Applicants' Written Submissions

[27] The applicants submit that the Board erred in finding a lack of nexus between their claims and a Convention ground. In particular, the Board erred by not considering the unique nature of the applicants' claims; namely, that they were based on a blood feud arising out of the prohibition of their marriage under Albanian customary law as opposed to out of vengeance for a violation of honour. By analyzing the applicants' claims based on a revenge based feud, the Board erred by misconstruing the central element of the applicants' claims.

[28] The applicants submit that they face a risk of persecution as a result of their membership in the particular social group of persons whose marriage is prohibited under Albanian customary law. The right to marry freely is provided for under several international human rights instruments. This underlying reason for their blood feud lacks the reciprocal acts of violence that has previously led Courts to characterize acts committed in the context of blood feuds as vengeance.

[29] In support, the applicants refer to the two-step process articulated in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, [1993] SCJ No 74 for determining whether persecution is by reason of membership in a particular social group. The first step assesses whether an issue of human rights or discrimination is engaged. The applicants submit that this first step is satisfied in this case because the right to freely choose one's partner and to form a family are fundamental human rights articulated in international instruments. The second step requires determining whether the persecution is caused by membership in the particular social group in issue. The applicants submit that they are being targeted due to their marriage and formation of a family contrary to Kanun law.

It is therefore their membership in the particular social group of married couples that is the cause of their persecution.

[30] The applicants submit that they presented facts and made submissions that explicitly distinguish their case from that of the more common Albanian revenge killing type blood feud. However, the Board failed to consider these and simply applied the reasoning regularly applied to blood feuds without considering the applicants' distinguishing circumstances.

[31] The applicants submit in their further memorandum that the Board also erred by failing to consider in its reasons relevant post-hearing evidence on issues that the Board stated represented the crux of the applicants' claims. These issues pertained to the well-foundedness of the applicants' fear of persecution in Albania and the principal applicant's overall credibility.

[32] Finally, the applicants submit that the Board erred in finding that state protection is available to them in Albania. The applicants submit that the Board selectively considered only two country documents while not considering other documents included both in the applicants' submissions and in the National Documentation Package on Albania. The Board also failed to address the specific arguments on this issue raised in the applicants' submissions. For example, the Board ignored the applicants' evidence on their unsuccessful efforts to obtain assistance through a peace and reconciliation commission set up to resolve blood feuds in Albania. The applicants submit that in a number of cases before this Court, evidence on the existence and involvement of peace and conciliation commissions has been deemed crucial to the proper determination of those cases.

Respondent's Written Submissions

[33] The respondent submits that the Board correctly found that blood feuds do not have a nexus to the Convention definition. It is established jurisprudence that those involved in blood feuds are not considered members of a particular social group.

[34] The respondent submits that the applicants' argument that the nature of their claim, namely, a blood feud arising from the opposition of their marriage under Albanian customary law as opposed to out of vengeance for a violation of honour, is without merit. Both reasons pertain to revenge killing, which do not qualify as a particular social group for Convention purposes.

[35] Further, the respondent submits that the Board did not fail to consider the post-hearing submissions or the evidence on the issue of nexus. It is notable that the Board in fact requested documentation on the prohibition of marriage of distant cousins under Kanun law. Having explicitly stated that it considered the submissions on this point, the Board found that a family involved in blood feuds does not give rise to a claim under section 96 of the Act. The Board did not err in rendering this finding.

[36] The respondent also submits that the Board reasonably concluded that the applicants did not provide credible evidence to support the central allegations of their claim. The respondent highlights that male members of a family are at risk when a blood feud is declared against the family. However, in this case, the blood feud was directed at the principal applicant and his wife. In addition, as noted by the Board, the principal applicant's actions in returning to work after the blood

feud was declared were not consistent with the risk he allegedly feared. Further, as the applicants do not challenge the Board's credibility findings, these must be true. These alone are sufficient to reject the applicants' claims.

[37] The respondent submits that the applicants also did not provide clear and convincing evidence of the state's inability to protect its citizens. By not taking all reasonable steps to seek protection in Albania, as evidenced by their failure to visit the police, the applicants failed to rebut the presumption of state protection.

[38] Finally, the respondent submits that the Board was not selective in reviewing the evidence but rather acknowledged contradictory evidence. The respondent submits that the applicants' arguments pertain primarily to the Board's weighing of the evidence. This Court should not intervene unless there are gross errors or perverse findings of fact. The respondent submits that the applicants have not highlighted any cogent evidence that demonstrates that the Board erred in rendering its decision on state protection.

[39] In summary, the respondent submits that the Board weighed the evidence reasonably and came to a reasonable conclusion.

Analysis and Decision

[40] **Issue 1**

What is the appropriate standard of review?

Where previous jurisprudence has determined the standard of review applicable to a particular issue before the court, the reviewing court may adopt that standard (see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paragraph 57).

[41] It is established law that findings of nexus to a Convention ground under section 96 of the Act are questions of mixed fact and law that are reviewable on a standard of reasonableness (see *Ariyathurai v Canada (Minister of Citizenship and Immigration)*, 2009 FC 716 at paragraph 6; *VLN v Canada (Minister of Citizenship and Immigration)*, 2011 FC 768, [2011] FCJ No 968 at paragraph 15; and *Hamaisa v Canada (Minister of Citizenship and Immigration)*, 2009 FC 997, [2009] FCJ No 1300 (QL) at paragraph 27).

[42] It is also established jurisprudence that credibility findings, described as the "heartland of the Board's jurisdiction", are essentially pure findings of fact that are reviewable on a reasonableness standard (see *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] SCJ No 12 at paragraph 46; *AD v Canada (Minister of Citizenship and Immigration)*, 2011 FC 584, [2011] FCJ No 786 at paragraph 23; and *RKL v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116, [2003] FCJ No 162 at paragraph 7).

[43] Finally, assessments of findings on state protection and the interpretation of evidence raise questions of mixed fact and law that are also reviewable on a reasonableness standard (see *Hughey v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171, [2007] FCJ No 584 at paragraph 38; *Gaymes v Canada (Minister of Citizenship and Immigration)*, 2010 FC 801 at paragraph 9; and *SSJ v Canada (Minister of Citizenship and Immigration)*, 2010 FC 546, [2010] FCJ No 650 at paragraph 16).

[44] In reviewing the Board's decision on a standard of reasonableness, the Court should not intervene unless the Board came to a conclusion that is not transparent, justifiable and intelligible and within the range of acceptable outcomes based on the evidence before it (see *Dunsmuir* above, at paragraph 47; and *Khosa* above, at paragraph 59). As the Supreme Court held in *Khosa* above, "it is not up to a reviewing court to substitute its own view of a preferable outcome, nor is it the function of the reviewing court to reweigh the evidence" (at paragraph 59).

[45] **Issue 2**

Did the Board err in finding no nexus to a Convention ground?

The first requirement to qualify as a Convention refugee under section 96 of the Act is the establishment of a nexus with one of the five Convention refugee grounds. In this case, the applicants submit that their membership in a particular social group establishes the required nexus with a Convention ground. The applicants define this social group as comprising individuals prohibited from marrying freely under Albanian customary law (the Kanun).

[46] The Board found that the applicants' fear arose from a blood feud. As such, they were victims of criminality, which the Board held did not establish a nexus with the Convention refugee definition. In support, the Board referred to the case of *Zefi v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 636, [2003] FCJ No 812.

[47] In *Zefi* above, the applicants were also Albanian citizens who had sought refugee protection on the basis of the risk they faced as a result of a blood feud between two families. The Zefi family were pressuring the principal applicant to avenge her husband's death. Concurrently, if her husband's death was not avenged, the members of the Frani family had the right under the Kanun to kill another member of the Zefi family. As in this case, the applicants filed refugee claims on the basis of membership in a particular social group. However, in *Zefi* above, the particular social group was broadly defined as a family or clan involved in a blood feud.

[48] Mr. Justice François Lemieux explained that the first step in the analysis of whether a refugee claimant could be classified within a particular social group is the determination of whether an issue exists that concerns basic human rights (see *Zefi* above, at paragraph 36). Secondly, membership in that particular social group must be the cause of the well-founded fear of persecution (see *Zefi* above, at paragraph 39). At paragraph 41, the Court concluded that:

> Revenge killing in a blood feud has nothing to do with the defence of human rights -- quite to the contrary, such killings constitute a violation of human rights. Families engaged in them do not form a particular social group for Convention purposes. Recognition of a social group on this basis would have the anomalous result of according status to criminal activity, status because of what someone does rather than what someone is (see *Ward*, paragraph 69).

[49] On this basis, the Board in *Zefi* above, denied the applicants' Convention refugee claims.

[50] The applicants in this case criticize the Board's finding on the basis that the nature of their claim differs from that in *Zefi* above and other cases on blood feuds in Albania. Contrary to those cases, the blood feud in this case arose directly out of the prohibition of their marriage under Albanian customary law as opposed to out of vengeance for a violation of honour caused by a prior act. This difference is relevant because it pertains to human rights.

[51] The importance of human rights was described in *Ward* above. The Supreme Court first recognized that "any association bound by some common thread" is not necessarily included in the scope of "particular social group" (see *Ward* above, at paragraph 61). Rather, the meaning of this term "should take into account the general underlying themes of the defence of human rights and anti-discrimination that form the basis for the international refugee protection initiative" (see *Ward* above, at paragraph 70).

[52] The applicants in this case highlight provisions in international human rights instruments in support of their claim that the right to marry freely is a basic human right:

> *The Universal Declaration of Human Rights*
>
> Article 16:
>
> (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

> *International Covenant on Economic, Social and Cultural Rights*
>
> Article 10:
> The States Parties to the present Covenant recognize that:
>
> 1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

[53] This reference to international instruments is relevant as the Supreme Court has recognized the importance of international sources in determining the meaning of "particular social group" (see *Ward* above, at paragraph 55).

[54] I do not agree with the respondent that this case pertains to revenge killings as in other blood feud cases. The facts in this case are not based purely on criminality, revenge or personal vendetta (see *Zefi* above, at paragraph 40). Rather, the persecution arises from a refusal to abide to customary Albanian law that limits the internationally recognized right to marry freely. As such, I find that the applicants fall within the scope of the "particular social group" category described by the Supreme Court as "groups defined by an innate or unchangeable characteristic", and to a lesser extent also the category of "groups whose members voluntarily associate for reasons so fundamental to their human dignity that they should not be forced to forsake the association" (see *Ward* above, at paragraph 70). Further, unlike the applicant in *Ward* above, whose fear arose due to his actions, the fear of persecution faced by the applicants in this case arose specifically due to their association in a social group of individuals that marry contrary to the Karun (see *Ward* above, at paragraph 79).

[55] Recognizing the deference owed to decision makers on this issue, I nevertheless find that the Board's decision was unreasonable. Based on the evidence before it, the finding that a nexus with a Convention ground was not established was not a conclusion that fell within the range of acceptable outcomes.

[56] **Issue 3**

Did the Board err in determining that state protection was available to the applicants in Albania?

The Board found that the applicants had failed to establish that it was not objectively reasonable for them to seek protection from the authorities. It highlighted the fact that the applicants had not reported any of the three attacks to the police. The Board then cited various country conditions documents and acknowledged that the evidence was conflicting on the adequacy of state protection for blood feud victims. However, relying on an incident reported in a 2008 document, the Board found that the Albanian state had the capacity and will to effectively implement the legislative and procedural framework.

[57] The problem with the Board's analysis is that it fails to consider the applicants' repeated attempts to seek help from a peace and reconciliation commission that was set up to resolve blood feuds in Albania. This is particularly important in light of the established law that the availability of state protection must be assessed on a case-by-case basis (see *Mendoza v Canada (Minister of Citizenship and Immigration)*, 2010 FC 119, [2010] FCJ No 132 at paragraph 33). This failure is exacerbated by recent documentary evidence that speaks to the lack of protection that the Albanian state and police provide to families involved in blood feuds. According to this documentation, "the

Albanian police often do not get involved in blood-feud disputes until a crime has taken place". The example highlighted by the Board supports this position, namely, that the police did not become involved until after the crime was committed. Collectively, this raises serious concerns about the state protection available to the applicants in Albania prior to any harm being caused to them.

[58] Therefore, again recognizing the deference owed to the Board on this issue, I nevertheless find that it came to a conclusion that was not transparent, justifiable and intelligible based on the evidence before it.

[59] **Issue 4**

Did the Board err in its determination on credibility?

It is well established that credibility findings demand a high level of judicial deference and should only be overturned in the clearest of cases (see *Khan v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1330, [2011] FCJ No 1633 at paragraph 30). The Court will generally not substitute its opinion unless it finds that the decision was based on erroneous findings of fact made in either a perverse or capricious manner or without regard for the material before it (see *Bobic v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1488, [2004] FCJ No 1869 at paragraph 3). Findings must also be supported by reasons written in "clear and unmistakable terms" (see *Hilo v Canada (Minister of Citizenship and Immigration)* (FCA), 15 Imm LR (2d) 199, [1991] FCJ No 228). In reviewing a board's decision, isolated sections should not be scrutinized; rather, the Court must consider whether the decision as a whole supports a board's negative credibility finding (see *Caicedo v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1092, [2010] FCJ No 1365 at paragraph 30). Although the applicants did not appear to address the issue of credibility in

their written submissions, applicants' counsel did deal with the matter in his reply comments which were in response to the respondent's oral and written submissions on credibility.

[60] In its decision, the Board relied on the following points in finding that the applicants did not provide credible evidence to support central allegations of their claims:

1. After the blood feud was declared, the principal applicant returned to work rather than remaining in self-confinement;

2. The principal applicant's reason for returning to work (to provide for his family) was nonsensical given his parents were available to attend at the bar; and

3. The two men who accosted the principal applicant at work did not physically harm him on the way to or from the bar after the altercation.

[61] These findings ignore other relevant aspects of the applicants' submissions. For example, the principal applicant testified that although he returned to work after the couple's marriage, he was accosted only two days later at the bar. He had initially believed that his wife's family would not harm them once they were married, but this incident led him to reconsider the threat and thereafter enter self-confinement. The principal applicant also testified that when the incident occurred, customers who knew him came to assist him:

> Everybody was involved to see what is going on and possibly help me and these were the people that actually sent me home right away. Because they could see that I was not safe.

[62] After this testimony, there was a break in the hearing. On return, this incident was not discussed further with the principal applicant. As such, the Board's reliance on the lack of post-

incident harm, events on which it did not question the principal applicant at the hearing, is a questionable basis for its credibility finding.

[63] Therefore, although this Court must show significant deference to the Board's credibility findings, I do not find that there was sufficient basis in this case on which the Board could reasonably question the applicants' credibility. The hearing transcript highlights the communication difficulties at the hearing; difficulties that were exacerbated by the fact that the interpreter and the applicants spoke different dialects and the interpreter required instructions halfway through the hearing.

[64] In summary, I find that the Board's decision on the issues of nexus to a Convention ground, state protection and credibility were not reasonable. The Board's conclusions on all these issues were not justifiable, intelligible or within the range of acceptable outcomes based on the evidence before it. I would therefore allow this judicial review application, set aside the decision of the Board and refer the matter to a differently constituted panel of the Board for redetermination.

[65] The applicants only wished to submit a proposed serious question of general importance if I had interpreted the decision in *Zefi* above in a way different than I have. The respondent did not wish to submit a proposed question of general importance and did not believe a question should be certified for the applicants.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed, the decision of the Board is set aside and the matter is referred to a different panel of the Board for redetermination.

2. No serious question of general importance is certified.

"John A. O'Keefe"
Judge

ANNEX

Relevant Statutory Provisions

Immigration and Refugee Protection Act, SC 2001, c 27

72. (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is commenced by making an application for leave to the Court.	72. (1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est subordonné au dépôt d'une demande d'autorisation.
96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.
97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally	97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :
(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Federal Court  Cour fédérale

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4399-11
STYLE OF CAUSE:	ZAMIR SHKABARI, ANTIANA SHKABARI, RAY SHKABARI and ERGI SHKABARI - and - THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	January 18, 2012
REASONS FOR JUDGMENT AND JUDGMENT OF:	O'KEEFE J.
DATED:	February 8, 2012

APPEARANCES:

Michael Brodzky	FOR THE APPLICANTS
Norah Dorcine	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Michael Brodzky Toronto, Ontario	FOR THE APPLICANTS
Myles J. Kirvan Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT