

Federal Court



Cour fédérale

**Date: 20120413**

**Docket: IMM-2736-11**

**Citation: 2012 FC 430**

**Toronto, Ontario, April 13, 2012**

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

**BETWEEN:**

**ERMAL DADO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The present Application concerns a young Albanian citizen who claims protection from risk of serious harm should he be required to return to Albania. The Applicant arrived in Canada in November of 2008 and claimed refugee status based on his fear of another young man who, after threatening and attempting to extort money from him, was investigated by the police, charged, released on bail, and remanded for trial.

[2] The contentious issue in the present Application is whether the Applicant's claim before the Refugee Protection Division (RPD) was understood by Counsel and the RPD Member to be based

in a blood feud about which there exists a live controversy about the availability of state protection. On the record, including the Applicant's own statements and the arguments advanced before the RPD, there is no mention of a blood feud. Indeed, there is no mention of a blood feud in the decision under review. However, there are two pieces of evidence that support the contention that all concerned understood that the Applicant's claim is based on a blood feud.

[3] First, in the course of oral argument, Counsel for the Applicant requested an opportunity to prove what is not apparent on the face of the record. Counsel for the Applicant was provided with this opportunity and, as a result, provided the following affidavit evidence from Mr. David P. Yerzy the Counsel who represented the Applicant before the RPD:

I have represented many Albanian clients. No less than 20 blood feud cases. The Refugee Board is well aware that Blood Feuds are a real and serious issue in Albania. Any member on the team would be aware of the phenomenon.

I have appeared before Mr. Cliff Berry with respect to Blood Feud cases many times. I am well aware that he has been a member of the team for a very long time and has extensive experience with Albanian cases.

I believe he is well aware of the phenomenon of Blood Feuds. I do not feel it necessary to explain the phenomenon to him. Indeed it was my experience and it was reported to me by other counsel that Mr. Cliff Berry would refuse Albanian Blood Feud cases on the grounds that there was state protection available to victims of Blood Feuds.

I also had the experience where he found that victims of domestic violence in Albania could get state protection.

I remember very well this case of Ermal Dado. I did represent him in his refugee claim and Mr. Cliff Berry was the Member who heard this case. Having known Mr. Cliff Berry's knowledge and understanding of Albania blood feud cases, my main focus was in protecting the claimant's credibility and in establishing that due to corruption state protection was not available in this case.

I state that as well this Member established the issue in my mind by focusing on the police investigation. Given that he was interested in the investigation and what I knew of his thoughts on state protection, I followed his lead and addressed those issues only.

I referred to this as a s.97 case because it had already been established in the Albanian context that conflicts including blood feuds are not dealt with under s.96 of IRPA. I had no s.96 grounds upon which to reply.

Counsel for the Respondent was provided with the opportunity to examine on Mr. Yerzy's affidavit but chose not to do so.

[4] And, second, two attestation letters appear on the Tribunal Record. An attestation letter is a document that confirms whether a blood feud has occurred (see: Applicant's Book of Authorities, Tab 1, p.5). The first attestation reads:

This is to attest that Mr. Ermal Jorgo Dado, born on 08.04.1987, is a resident of area "Hajro Cakerri", Rr. Sulejman Delvina, Vlore.

We also certify that on 03.10.08, this citizen was involved in a conflict for banal reason with Mr. Klajdi Spaho who is also of the same age. The letter used firm arm shooting at him, and for this reason the police intervened and detained Klajdi Spahaj and his friend Klaudio Kulaj. The police have initiated the penal case against them for the charge of Threat and Illegal possession of Fire arms.

We as local government have advised Dado family to keep their son away until a final resolution of this case, in order to avoid any incident that would be of concern for Dado family as well as for the community where they live.

This attestation is issued upon their request.

(Certified Tribunal Record, p. 113)

The second attestation reads:

This is to attest that Mr. Ermal Jorgo Dado, born on 08.04.1987, is a resident of "Hajro Cakerri", Rruga "Sulejman Delvina" Vlore.

On 03.10.2008 for banal reasons this citizen was involved in a conflict with Klajdo Spahaj, of the same age and the latter used fire arm shooting at Ermal.

The police was called right away and they detained Klajdi Sahaj and his friend Klaudio Kulaj.

Our Mission has verified the information and interfered by sending the missionaries of reconciliation, but the case is in the hands of justice and law.

Our Mission has a concrete plan of work to reconcile these young men and their respective families.

We already administer the records of the penal case no. 1189 initiated on 06.10.2008 by the Prosecutor's office of Vlore against the defendants.

In order to resolve this conflict we will continue to work with the justice department and all other factors that will help to reconcile the parties.

Mr. Ermal Dado was forced to leave Albania because his life was threatened and was not safe at all.

(Certified Tribunal Record, p.115)

[5] Given the evidence which exists on the Tribunal Record that the prospective risk that the Applicant faces should he return to Albania is based in a blood feud, the importance of a proper determination of the Applicant's claim for protection, and the likelihood that a miscarriage of justice will occur if the blood feud controversy just recounted is not clarified, I find that the decision under review was made in reviewable error for failure of the RPD to clearly and explicitly identify the nature of the claim.

[6] In my opinion, in the interests of justice, and given the unique facts of the present case, the fairest result of the present Application is to have the Applicant's claim redetermined by the RPD member who rendered the decision presently under review.

**ORDER**

**THIS COURT ORDERS that:**

1. The decision under review is set aside and the matter is referred back to Refugee Protection Division member Mr. Cliff Berry for redetermination;
2. There is no question to certify.

“Douglas R. Campbell”

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Judge

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

**DOCKET:** IMM-2736-11

**STYLE OF CAUSE:** ERMAL DADO v  
THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** April 11, 2012

**REASONS FOR ORDER  
AND ORDER BY:** CAMPBELL J.

**DATED:** April 13, 2012

**APPEARANCES:**

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FOR THE RESPONDENT

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