



Date: 20120614

Docket: IMM-7724-11

Citation: 2012 FC 744

Ottawa, Ontario, June 14, 2012

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

**NINI SANAJ, VIOLETA SANAJ
AND VITO SANAJ**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] The Applicants – Nini Sanaj (the Principal Applicant), his wife Violeta Sanaj, and their son Vito Sanaj – are citizens of Albania. The Applicants claim that they fear persecution on the grounds of a blood feud in Albania declared against them. The alleged blood feud was declared in 1998 due to murders committed by the father of the Principal Applicant more than 50 years

earlier. The family fled to the United States in the early 2000s where they unsuccessfully applied for asylum on the grounds of political opinion. They arrived in Canada in 2009.

[2] In a decision dated October 6, 2011, a panel of the Refugee Protection Division of the Immigration and Refugee Board (Board) concluded that the Applicants were neither Convention refugees pursuant to s. 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] nor persons in need of protection pursuant to s. 97 of *IRPA*. The Board dismissed the s. 96 claim on the basis that a blood feud has no nexus to a Convention ground and rejected the s. 97 claim on the basis that the Board did not find the Applicants' story of a blood feud to be credible.

[3] The Applicants seek judicial review of the decision.

II. Issues

[4] The application raises the following issues:

1. Did the Board err by failing to consider the specific facts of the Applicants' claim to determine whether there was a nexus to a Convention ground under s. 96 of *IRPA*?
2. Did the Board make unreasonable credibility findings: (a) by failing to consider objective evidence of the existence of the blood feud; or (b) by making unreasonable plausibility findings?

III. Analysis

A. Standard of review

[5] The first issue of whether the Board erred in failing to assess the specific facts of the Applicants' claims under s. 96 of *IRPA* is reviewable on a standard of correctness; either the Board was required to carry out a s. 96 analysis or it was not.

[6] The parties agree that a standard of reasonableness applies to the Board's credibility determination. In the recent decision of the Supreme Court in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, the Supreme Court directs that a reviewing court should read a tribunal's reasons within the context of the entire record that was before the decision-maker. Moreover, the decision will stand unless it does not fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190).

B. Nexus to a Convention ground

[7] To claim protection under s. 96 of *IRPA*, a claimant must establish that he has a nexus to a Convention ground.

[8] The Board rejected the Applicants' claims under s. 96 of *IRPA* on the basis that their claim had no nexus to a Convention ground, relying on the decisions in *Zefi v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 636, [2003] FCJ No 812 (QL) [*Zefi*] and *Bojaj v Canada (Minister of Citizenship and Immigration)* (2000), 194 FTR 315 (TD), 9 Imm LR (3d) 299 [*Bojaj*] for the proposition that "victims of blood feuds cannot generally establish a nexus to the Convention refugee definition".

[9] The Applicants submit that the Board's use of the word "generally" intimates that there are circumstances where the existence of a blood feud can fall within a Convention ground. Accordingly, the Applicants argue that the Board failed to discharge its duty to assess the applicability of s. 96 on the particular facts of their claims to determine whether their situation was one of the exceptions.

[10] Had the Applicants put forward any evidence that went beyond the existence of a blood feud between two families, I might agree with the Applicants. However, a review of the record, including the Applicants' Personal Information Forms (PIFs) demonstrates that the alleged fears arose exclusively due to the operation of a blood feud. While the Board did not engage in a detailed analysis of the facts or the law, on these facts, its analysis was sufficient; it is also supported by the decisions it cited – *Zefi* and *Bojaj*, above.

C. *Ignoring relevant evidence*

[11] In support of their claim, the Applicants put forward several pieces of “documentary” or “objective” evidence. These documents fall into two categories – (a) three documents from third parties; and (b) medical reports related to two incidents. The Applicants argue that all of this evidence was ignored, giving rise to a reviewable error.

[12] A decision maker is considered to have analyzed all of the evidence before it. However, the more important the evidence that is not explicitly mentioned and analyzed, the more willing a court may be to conclude that the Board failed to have regard to that evidence (*Cepeda-Gutierrez et al v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 at para 17 (TD), [1998] FCJ No 1425 (QL)).

[13] With respect to the first category of evidence, the Certified Tribunal Record contains the following three documents:

- a “certificate” from the ‘ Foundation For Reconciliation and Conflict Resolution’ stating that the Principal Applicant is in a blood feud conflict with two families and that his life has been threatened;
- a “certificate” from the Mission of International Pacification Nene Tereza stating that the Principal Applicant’s life is in danger in Albania because he has been injured with a knife twice as a result of his pro-democracy activities and because

of a blood feud with two families, which the Mission has not been able to resolve;
and

- a signed statement from the Principal Applicant's brother stating that their family is in a blood feud with two families and describing the origins of the dispute, attempts at reconciliation, and the threat to the Principal Applicant and his son.

[14] The first two documents are from organizations referred to in the hearing as "Peace Missionaries". In its decision, the Board does deal with this evidence (see paragraphs 14-15). The two documents contain very little in the way of independently-verified information. During the oral hearing, the Principal Applicant conceded that he did not know whether the Peace Missionaries had investigated the accuracy or veracity of the alleged killings by his father. Nor did the Peace Missionaries receive any written statements from the other families in the blood feud. In other words, the reliability of the Peace Missionaries' documents was seriously questioned by the Board.

[15] The brother's statement was obviously produced for purposes of the hearing. It was self-serving and, given the many problems with the credibility of the Applicants' account of the blood feud, it was not an error for the Board to fail to make any explicit reference to this evidence.

[16] The second category of evidence – the medical records – relate to a number of hospitalizations:

- a report dated March 2, 2011, from the Regional Hospital of Shkoder City, Surgery Department, which appears to state that the Principal Applicant was hospitalized from December 28, 1998 to January 8, 1999 with a “Gastric Perforation”;
- an “Attestation of Hospitalization”, apparently from a Greek hospital dated March 30, 2011, which describes the Principal Applicant’s treatment from May 18, 1999 to June 25, 1999 for a variety of what appear to be gastric and abdominal conditions;
- the signed statement of Nick Karas stating that the Principal Applicant was hospitalized for pancreatic cancer in the spring of 1999 and that the author arranged for the Principal Applicant to be treated in Greece;
- a hospital attestation indicating that the Applicant was hospitalized in Shkoder in 2000; and
- a document entitled “Accompanying Epicrisis” stating that the Principal Applicant was diagnosed with a “Cutting wound”, treated with “Opening of the

abdomen and treatment of the wound”, and hospitalized from December 2, 1995 to December 12, 1995.

[17] None of the medical documents contained in the record is capable of independently supporting the Applicants’ claim, as they do not indicate that the Principal Applicant’s injuries necessarily resulted from a blood feud. Curiously, a review of the documents related to the Applicants’ failed claim in the United States reveals that these same injuries were used to support their claim based on grounds of political opinion. At best, these documents could have provided corroborating evidence for the Principal Applicant’s claim that he was assaulted as a result of the blood feud in either October 2000 or December 1998, had the Board found his testimony credible. In the circumstances of this case, the medical documents are simply insufficient to establish the Applicants’ otherwise disbelieved claims.

[18] In sum, I am satisfied that the documents provided by the Applicants were considered by the Board. There is no reviewable error.

D. *Credibility findings*

[19] The Applicants submit that the Board erred in a number of its findings based on implausibility or minor inconsistencies.

[20] The first problem with this argument is that the Applicants are attempting to divide the decision into discrete segments without considering the decision as a whole. In examining the

story of a claimant, it may be that one or more findings on a minor point may not justify an overall determination of lack of credibility. However, viewed as a whole, a number of apparently minor issues may well place the entire context of the claim into question.

[21] In this case, the key fact underlying the alleged blood feud was the killing, over 50 years ago, of members of the other families by the Principal Applicant's father. If that part of the Applicants' story is not believable, the basis for the blood feud does not exist. Quite properly, the Board carefully questioned the Applicants and reviewed the evidence about the underlying alleged murders. Documentary evidence contained in the record shows that the consequences of a true blood feud are catastrophic for both sides. Both families will endure the loss of fathers and sons and will be subject to harsh rules governing such disputes. Accordingly, it was not unreasonable for the Board to question the existence of a blood feud when the Applicants could not establish with satisfactory evidence that there actually had been murders 50 years earlier by the Principal Applicant's father. As stated by the Board:

It boils down to the [K] and [L] families accusing the claimant's father of killing their kins and declaring blood feud without even proving that the claimant's father actually did it.

[22] Coupled with this foundational weakness in the Applicants' story were a number of other problems with the testimony of the Applicants. As I have already noted, individually, those findings and remarks would likely not sustain a dismissal of a claim. However, in this case, these less significant findings were cumulatively sufficient to support the Board's overall decision.

IV. Conclusion

[23] In brief, I am not persuaded that the Board erred by failing to conduct a more detailed examination under s. 96 of *IRPA*. More importantly, with respect to the s. 97 analysis, I am satisfied that this decision falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[24] Neither party proposes a question for certification. None will be certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. the application for judicial review is dismissed; and
2. no question of general importance is certified.

“Judith A. Snider”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7724-11

STYLE OF CAUSE: NINI SANAJ and others v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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AND JUDGMENT:** SNIDER J.

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