

Federal Court



Cour fédérale

**Date: 20120601**

**Docket: IMM-7209-11**

**Citation: 2012 FC 677**

**Toronto, Ontario, June 1, 2012**

**PRESENT: The Honourable Madam Justice Tremblay-Lamer**

**BETWEEN:**

**ENERIK JAKAJ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] of a decision of the Refugee Protection Division of the Immigration and Refugee Board [the Board] dated July 26, 2011 in which the Board determined that the applicant is not a Convention refugee or person in need of protection.

## **BACKGROUND FACTS**

[2] The applicant is an Albanian citizen born on February 8, 1987. He claims refugee protection because of a blood feud against his family.

[3] After the fall of the communist regime, the Albanian government transferred a parcel of land to the applicant's grandfather. Prec Gjoni [Gjoni], who owns the land immediately to the north of that parcel, believed that the land was rightfully his. In 1999, Gjoni was arguing with the applicant's uncle, Mark Jakaj, and Mark struck Gjoni. Gjoni and his family then declared a blood feud. Mark remains in Albania in hiding, but his son Edmond, the applicant's cousin, made a successful refugee claim in Canada in 2005.

[4] The applicant's father moved to Italy in the 1990s. Although he was initially there without status, the applicant's father became an Italian permanent resident. The applicant, his mother, and his siblings joined his father in Italy in May of 2001. The applicant was 14 years old at the time. He began working in Italy when he was 16 years old.

[5] In 2008, the applicant's father learned that Gjoni knew where the family was in Italy and was threatening them, since Edmond was out of his reach in Canada. As the eldest son, the applicant was particularly at risk so the applicant's father made arrangements for the applicant to travel to Canada. The applicant arrived in Canada on July 20, 2008, travelling on a false Italian passport. He claimed refugee protection on his arrival.

[6] His refugee claim was heard on October 5, 2010 and June 28, 2011. The first hearing date was adjourned to address the question of the applicant's status in Italy, as the Minister of Public Safety and Emergency Preparedness had intervened to argue that the applicant was excluded from refugee protection. After it was determined that the applicant's status in Italy had lapsed, the Minister withdrew his submissions about exclusion.

### **THE DECISION UNDER REVIEW**

[7] The Board found that the applicant had failed to credibly establish the existence of the blood feud. It based this determination on inconsistencies in the applicant's evidence about how his father learned that Gjoni was looking for the applicant as well as the fact that the applicant's family continues to live in the same location in Italy and has not had any problems with Gjoni since the applicant's departure. The Board therefore determined that the applicant had fabricated the allegation that Gjoni found his family in Italy to further his refugee claim.

[8] The Board also noted the applicant's lack of knowledge about the land dispute, which it determined to be the cause of the blood feud. The Board further doubted the existence of the blood feud because of this lack of knowledge and the lack of evidence that Gjoni has formally disputed the land ownership.

[9] Finally, the Board acknowledged the letter from the Peace Missionaries that confirms the existence of the feud, but gave it little weight because it was based only on interviews with the two families. The Board found that there was no independent and reliable evidence to confirm the existence of the blood feud.

[10] The Board therefore found that the applicant was not a Convention refugee or person in need of protection.

### **STANDARD OF REVIEW**

[11] The Board's determination was essentially one of credibility and will therefore be reviewed on the reasonableness standard (see *Mejia v Canada (Minister of Citizenship and Immigration)*, 2009 FC 354, 2009 CarswellNat 898 at para 29). Therefore, the decision will only be disturbed if it falls outside of "the range of acceptable outcomes that are defensible in respect of the facts and the law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

### **IS THE DECISION REASONABLE?**

[12] The applicant submits that the decision is unreasonable because the Board failed to address all of the evidence before it. Specifically, he argues that the Board failed to consider an email sent by the Canadian Mission in Rome which corroborated the existence of the blood feud and which referenced the Albanian police being aware of the feud. He further argues that the Board placed too much emphasis on minor inconsistencies in his evidence, citing *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116, 228 FTR 43 and *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35, 83 ACWS (3d) 264. He also notes that the Board made no mention of the letter from his Village Dignitary or to the National Reconciliation Committee [NRC], which was contacted by the Canadian Mission in Rome.

[13] I agree. I find that the Board misconstrued the evidence that was before it to support the existence of the blood feud. The Board found that the letter from the Peace Missionaries was not

sufficient evidence to establish the existence of a blood feud, but it made no mention of the letter from the Village Dignitary, the letter from the Chairman of the village, the declaration from the applicant's father, or the letter from the All-Nation Association for the Integration of the Prisoners and Political Prosecuted Persons, all of which attested to the existence to the blood feud and the risk to the applicant. Nor did the Board mention the email from the Canadian Mission, which indicated that the NRC corroborated the existence of the feud. Although the staff at the Canadian Mission did not contact the Albanian police directly, the email does suggest that the police in the village are aware of the blood feud.

[14] At paragraph 16 of its decision, the Board stated that "The English version of the Peace Missionaries letter, attests [sic] to the existence of a blood feud, but other than interviewing both families, gives no other information as to why the author believes that a feud exists". The applicant argues that there was evidence in the record that Peace Missionaries and other reconciliation committees do more than merely interview families and that, in any event, the Board's experience with other refugee claimants alleging blood feuds is not sufficient to ground specialized knowledge. I note that a police report, which the Board suggested would have been more reliable evidence than the Peace Missionaries letter, would likely also be based on interviews with the families. In any event, given that the blood feud is essentially a private dispute between families, it is unclear what other evidence can be expected to attest to the existence of the blood feud.

[15] It was open to the Board to give little weight to the letters and declarations provided by the applicant, but it was required to explain its reasons for doing so; the same is true of the email from the Canadian Mission, which was put before the Board by the Minister of Public Safety and

Emergency Preparedness. Further, even if each of these documents is on its own insufficient to establish a risk to the applicant, the Officer was required to consider the cumulative effect of these various documents which all state that there is a blood feud against the applicant's family and that the applicant is therefore at risk in Albania.

[16] Based on these omissions, I find that the Board misconstrued the evidence and that its decision must therefore be set aside.

[17] I also accept the applicant's submission that the Board's credibility assessment is unreasonable because it was based on relatively minor inconsistencies. These inconsistencies arose with respect to two issues: how the applicant's family learned of the threat in Italy and the basis for the land dispute.

[18] However, the applicant's evidence about how the family learned of the threat was not actually contradictory. The applicant testified that his aunt told the family of the threat and later that they learned of the threats by word of mouth. His PIF states that they were threatened indirectly. These three accounts may differ slightly, but they are easily reconciled with one another. I note as well that the applicant testified at the second day of the hearing that his father was told of the threats by his sister, the applicant's aunt, and several others. Although the Board suggested that the PIF should have referenced the applicant's aunt if indeed she told the family about the threat, I am not prepared to accept this proposition. The applicant consistently stated that his father informed him of the threat, and these so-called inconsistencies relate to how his father learned of it. Given that the

applicant was recounting what his father told him about how he had learned of the threat, I do not find these slight variations to be a reasonable basis for a negative credibility finding.

[19] The other inconsistency concerned the details of the land dispute, which began in the 1990s when the applicant was a small child. Although the applicant's evidence was somewhat inconsistent about the land dispute, I find this inconsistency to be peripheral. This inconsistency, either on its own or in combination with the variations in the applicant's evidence about how the family learned of the threat, is not in my view sufficient to ground a negative credibility finding.

[20] The Board essentially required a police report in order to find that the blood feud existed. I am not satisfied that this was reasonable, given the young age at which the applicant fled Albania and the fact that his uncle who remains there is in hiding. I also note that the applicant testified that there is only one policeman in his village, a fact which is supported by the wording of the email. In these circumstances, and given the evidence corroborating the existence of the blood feud that the Board failed to address, I find the decision to be unreasonable.

[21] For these reasons, the application is allowed. The decision is set aside and the matter is remitted to a differently constituted panel of the Board.

**JUDGMENT**

**THIS COURT’S JUDGMENT is that** the application for judicial review is allowed. The decision is hereby set aside and the matter is remitted to a differently constituted panel of the Board.

“Danièle Tremblay-Lamer”

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Judge



**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-7209-11

**STYLE OF CAUSE:** ENERIK JAKAJ V THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Quebec

**DATE OF HEARING:** May 30, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT:** TREMBLAY-LAMER J.

**DATED:** June 1, 2012

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