Federal Court  Cour fédérale

Date: 20121015

Docket: IMM-558-12

Citation: 2012 FC 1198

Ottawa, Ontario, October 15, 2012

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

NIKOLLE VUKTILAJ
LIZE VUKTILAJ
LAURA VUKTILAJ

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicants seek judicial review of the negative Pre-Removal Risk Assessment (PRRA) rendered on their applications by an Immigration Officer ("the Officer") on December 2, 2011. The Officer found that the Applicants would not be subject to a risk of persecution, danger of torture, risk to life or risk of cruel and unusual treatment or punishment should they return to Albania.

[2] For the reasons that follow, the application for judicial review is dismissed.

I. Facts

[3] The Applicants – Mr. Nikolle Vuktilaj (the Principal Applicant), his wife, and their daughter – are citizens of Albania.

[4] They left Albania for the United States in 2000, where they submitted a claim for political asylum on the basis of their affiliations with the Democratic Party in Albania. Their claim was rejected by the American immigration authorities in 2004 because the political situation in Albania had changed. The Applicants subsequently exhausted the appeals at their disposal in the American system, and an official deportation order was issued against them in February 2008.

[5] On February 18, 2008, the Applicants entered Canada illegally by truck at the Windsor, Ontario border crossing and submitted an application for refugee protection the following day on the basis of their family's involvement in a blood feud with the Rexhaj family in Albania.

[6] The Applicants describe that the origin of the blood feud was a property dispute dating back to 1992. The Rexhaj family asserted that the land under the Applicants' home was theirs prior to communist rule in Albania, and began issuing threats against the Applicants. In 1997, the Applicants' house was burned to the ground. It was rebuilt with the help of the newly reopened Catholic Church, but, as previously mentioned, the Applicants left Albania in 2000.

[7] In February 2008, while preparing to return to Albania in accordance with their American deportation order, the Applicants learned that the Principal Applicant's brother was killed by a truck while riding his bicycle. Three days later, a member of the Rexhaj family was killed. The Rexhaj family accused a member of the Applicants' family of the murder, and declared a blood feud.

[8] The Applicants' claim for refugee protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA) was refused by the Refugee Protection Division of the Immigration and Refugee Board ("the Board") on January 28, 2011 on the bases of credibility concerns and adequate state protection. They submitted their PRRA applications on August 22, 2011.

II. Decision under Review

[9] The PRRA Officer found that the Applicants had submitted a number of items of new evidence, as described in subsection 113(a) of IRPA. The new evidence included a letter from the Principal Applicant's sister-in-law (the wife of his deceased brother) that described the sexual assault that she suffered at the hands of three men whom the Officer accepted as being tied to the Rexhaj family. The other items of new evidence included attestations and news articles describing the continued existence of blood feuds in Albania, as well as evidence that the Principal Applicant's wife is undergoing treatment for cancer in Canada.

[10] The Officer accepted that the new evidence confirmed that there is an ongoing blood feud between the Rexhaj and Vuktilaj families, and that this dispute has resulted in "members of both families being murdered as well as in damage to property."

[11] Despite the presence of this risk, the Officer was not satisfied that the Applicants had provided clear and convincing evidence to rebut the presumption of state protection. First, the Applicants had not shown that they had made reasonable attempts to access state protection in Albania. Second, the Applicants had not demonstrated that the authorities would be unable or unwilling to provide them with protection. While acknowledging some mixed information in the news articles and reports, the Officer found that the new evidence pointed to a number of efforts made by the Albanian government to address the issue of blood feuds.

[12] The Officer noted that, "[b]arring a complete breakdown of state apparatus, there is a presumption that a state is able to provide protection to its citizens." The Officer concluded that "state protection, while not perfect, is available for Albanian families who are involved in blood feuds and would, on a balance of probabilities, be available to the Applicants, were they to attempt to access it."

III. Issues

[13] The sole issue in this application is whether the Officer's assessment of state protection was reasonable.

IV. Standard of Review

[14] The Officer's consideration of state protection involves questions of mixed fact and law and is thus reviewable on the standard of reasonableness (see *Mendez v Canada (Minister of Citizenship and Immigration)*, 2008 FC 584, [2008] FCJ No 771 at paras 11-13; *CRPP v Canada (Minister of Citizenship and Immigration)*, 2012 FC 181, [2012] FCJ No 189 at para 25).

[15] Reasonableness is concerned with "the existence of justification, transparency and intelligibility in the decision-making process" and with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

[16] I note that it is not the role of this Court to substitute its view of the facts for that of the Officer (see *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425, 157 FTR 35 at para 14).

V. Analysis

[17] There cannot be said to be a failure of state protection where a state has not been given an opportunity to respond to a form of harm. As the Supreme Court of Canada has held, "only in situations in which state protection 'might reasonably have been forthcoming', will the claimant's failure to approach the state for protection defeat his claim" (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at para 49).

[18] The primary question in contention between the parties to this case is whether state protection might reasonably have been forthcoming to the Applicants. Indeed, the Applicants contend that the documentary evidence clearly and convincingly shows that state protection would not be reasonably forthcoming to them. They submit that the Officer erred in pointing to their failure to approach the police and ignored the documentary evidence.

[19] The Respondent underlines the proposition laid out in *Borges v Canada (Minister of Citizenship and Immigration)*, 2005 FC 491, [2005] FCJ No 621 that "[a]ll the documentary evidence regarding the deficiencies of [a particular] justice system that the Applicant produced (and the Board allegedly ignored) are not relevant in the absence of any attempt to seek state protection or in the absence of a credible and plausible explanation therefore" (see *Borges*, above, at para 10).

[20] Taking the decision as a whole, I am satisfied that the Officer's conclusions with respect to state protection are reasonable for three main reasons.

[21] First, the Officer had no satisfactory answer from the Applicants themselves as to why they failed to approach the Albanian authorities for protection. While they now contend in their submissions on judicial review that their answer was that "they didn't expect [the state] to protect them, and this position was backed up by ample evidence," there was little personalized evidence before the Officer to this effect. Specifically, the Applicants did not answer the question in their PRRA applications that asked them to describe what help they had sought from the state or, if they had not, to explain why they had not.

[22] While I note that the Applicants have been absent from Albania since 2000, and that approaching the authorities for protection in Albania during this time would have been difficult, the Applicants did not ever raise this point. In addition, as the Officer points out, there is no evidence specific to their case that explains why no one in their family sought protection from the authorities, or went to the police. While the Applicants noted in their PRRA application submissions that others who were similarly situated had been killed and that this demonstrated an inability of the Albanian state to protect families involved in blood feuds, the Officer noted that there were "few specifics" concerning those deaths, and that it was "not clear if the individuals who were killed had attempted to access protection from the Albanian authorities."

[23] The Applicants bear the burden of rebutting the presumption of state protection and the absence of explanations in their applications for protection does not constitute the requisite clear and convincing evidence to rebut the presumption.

[24] Second, the Applicants' argument with respect to the recent decision of Justice John O'Keefe in *Shkabari v Canada (Minister of Citizenship and Immigration)*, 2012 FC 177, [2012] FCJ No 186 is unconvincing. In *Shkabari*, the applicants' attempts to seek help from a peace and reconciliation commission set up to resolve blood feuds in Albania was found to be an important consideration that was missing from the Board's decision. The Applicants posit that this case is analogous to their own, and that the Officer's failure to consider their repeated attempts to seek mediation of their dispute when evaluating state protection constitutes a reviewable error.

[25] The Applicants' argument on this point has three primary shortfalls: first, the Applicants do not appear to have relied on this evidence as proof of their attempts to seek state protection. Instead, they relied on it primarily to counter the credibility concerns of the Board. Indeed, the Officer considered the affidavits from the Chairmen of the Committee of Nationwide Reconciliation and of the Elders' Council of Vermosh Village to be convincing evidence of the existence of a blood feud, thus overcoming the decision of the Board with respect to the credibility of the risk faced by the Applicants. Second, these organizations do not appear to be agencies of the state. Third, and finally, there is evidence in the record that points to the fact that both the Vuktilaj and Rexhaj families refused to mediate their dispute. I thus find the Officer's decision as to the Applicants' failure to approach the authorities for protection reasonable.

[26] Finally, the Applicants suggest that the Officer "ignored or chose to overlook the express statements in the evidence that most isolated families receive no support from the authorities and that police officers do not intervene before the isolated family suffers the murder of one of its members, apparently because the police themselves are afraid to become targets of the blood feud instigators" (Applicants' Memorandum of Fact and Law at para 16). This ignoring of the evidence, they submit, led the Officer to an unreasonable decision that state protection would have been reasonably forthcoming to the Applicants.

[27] I am not satisfied that the Officer ignored this evidence. The Officer weighed the newly submitted documentary evidence and, while recognizing that state protection is not perfect in Albania, found that there was insufficient evidence either to upset the finding of the Board or to rebut the presumption in favour of state protection. Where the Applicants argued that the police

only become involved when there has been a murder, for example, they failed to provide evidence that the police had not, and would not, become involved in this particular case after two deaths. The Officer's conclusion was reasonable.

VI. Conclusion

[28] The Officer considered the new evidence submitted by the Applicants to demonstrate that state protection would not be reasonably forthcoming to them in Albania, but was not satisfied that there was clear and convincing evidence to rebut the presumption of state protection on a balance of probabilities. I find that the Officer's conclusion is within the range of possible, acceptable outcomes that are defensible in respect of the facts and law and is thus reasonable.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

" D. G. Near "
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	**NIKOLLE VUKTILAJ ET AL v MCI**
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APPEARANCES:

D. Clifford Luyt	FOR THE APPLICANTS
Veronica Cham	FOR THE RESPONDENT

SOLICITORS OF RECORD:

D. Clifford Luyt Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANTS
Myles J. Kirvan Deputy Attorney General Canada Toronto, Ontario	FOR THE RESPONDENT