

Federal Court



Cour fédérale

Date: 20170111

Docket: IMM-2533-16

Citation: 2017 FC 36

Ottawa, Ontario, January 11, 2017

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

**RODOLF PLENISHTI
VERA PLENISHTI**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Rodolf and Vera Plenishti [the Applicants] have applied for judicial review of a Decision dated April 27, 2016 [the Decision] made by a Senior Immigration Officer [the Officer] in which the Officer rejected the Applicants' application for a Pre-Removal Risk Assessment [PRRA]. The application is made pursuant to section 72(1) of the Immigration and Refugee Protection Act, SC 2001, c 27 [the IRPA].

[2] Vera Plenishti, the Principal Applicant, is a 53 year old citizen of Albania. Her son, Rodolf Plenishti, is a 24 year old citizen of Albania. The Principal Applicant has two other children who are not parties to this proceeding. They are: Silvana and Mario.

[3] The Principal Applicant alleges that on January 21, 1998, two men from the Sadiku family demanded that her family leave their property. After an altercation, one of the men shot and killed the Principal Applicant's husband Gjelosht Plenishti. A male member of the Principal Applicant's family took revenge by killing a male member of the Sadiku family on March 5th, 2001. The Principal Applicant alleges that on March 10, 2001, the Sadiku family sent a message saying they would kill all Plenishti family members, including women and children.

[4] The Principal Applicant fled Albania with her three children, and arrived in the USA on March 31, 2001. There, she made an unsuccessful refugee and, when faced with deportation, came to Canada.

[5] The Principal Applicant and all three children claimed refugee protection in Canada. Their claim was rejected on December 13, 2012.

[6] Silvana left Canada on August 14, 2014, and Mario departed on October 7, 2014. The Applicants state that both Silvana and Mario remain in the USA.

[7] The RPD concluded that the Applicants had submitted fraudulent documents and that they were not credible. However, on this application, it was accepted by counsel for both parties that the RPD's conclusions were mistaken.

I. The Issue

[8] The issue is whether the Officer's assessment of new evidence in the form of a letter from Mr. Demrozi dated November 6, 2015 [the Letter], was unreasonable. Mr. Demrozi is the Chief of Police in Shkoder, where the blood feud began.

[9] The pertinent portions of the Letter reads as follows:

This was made to verify that on the date of 21-01-1998 a blood feud began between the families of SADIKU and PLENISHTI from the village of Suka-Dajc of Shkoder Municipality; the citizen Gjelosh Plenishti was killed on that date.

In the year 2001 the family of Gjelosh Plenishti left the village and as of today no measures have been taken in regards to this incident, therefore, it is better that this family does not return to the village; they are neighbors with the SADIKU family and new conflicts may arise that may be dangerous for the life of the family members of the two families; there are many cases where revenge for the same problem is carried out even after 20-30 years.

It is very important that these two families do not meet.

[10] The Applicant submits that the Officer failed to appreciate that the Chief of Police was saying that the feud has not been resolved, that one of the original murderers is still at large and that the Applicants should not return to the village because the police cannot protect them from violence that is likely to be ongoing even after many years.

[11] The Applicant says that the Letter means that the State has conceded its inability to protect and that the PRRA should be granted.

[12] However, the Respondent says that, because Mr. Demrozi did not advise the Applicants against returning to Albania, but just warned them to stay away from their village, it is unreasonable to treat the Letter as a concession that the State is unable to protect the Applicants.

[13] In my view, the Officer's assessment of the Letter was unreasonable because:

- a. He does not consider whether the warning not to return to the village constitutes a statement of State inability to protect given that Bulgaria is a relatively small country;
- b. He criticizes the Letter for a lack of detail while acknowledging that other documents name the suspect;
- c. He criticizes the Letter for not updating the status of the feud and explaining why the suspect has not been prosecuted. However, there was no evidence that Mr. Demrozi was asked to provide this information; and
- d. The Officer does not appear to appreciate that the Letter says that the feud could well be ongoing.

[14] The Officer's conclusions about state protection are also unreasonable because he places no weight on the best evidence. It comes from the Ombudsman for Albania. He said that the authorities' efforts to protect families or prevent blood feud killings were "insufficient". Instead, the Officer focussed on legislative efforts to improve the situation.

[15] The Officer also speculated that, contrary to the evidence, Silvana and Mario might have returned to Albania. He then criticizes the lack of any evidence that they have been caught up in the feud. This was manifestly unreasonable.

[16] Finally, the Officer's description of the facts behind the feud illustrate that he did not appear to understand the seriousness of the matter. He said that the Principle Applicant's husband had experienced "tensions in the past". In fact, he was murdered.

[17] For all these reasons, the application will be allowed.

II. Certification

[18] No question was posed for certification for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is allowed. The PRRA application is to be reconsidered by another Officer.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2533-16

STYLE OF CAUSE: RODOLF PLENISHTI, VERA PLENISHTI v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 24, 2016

JUDGMENT AND REASONS: SIMPSON J.

DATED: JANUARY 11, 2017

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