

Federal Court



Cour fédérale

Date: 20171004

Docket: IMM-4694-16

Citation: 2017 FC 880

Ottawa, Ontario, October 04, 2017

PRESENT: The Honourable Madam Justice McDonald

BETWEEN:

LEONARD LIKA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks refugee protection claiming he is the target of a blood feud in his home country of Albania. By this application he seeks review of a decision of the Refugee Appeal Division [RAD] upholding a decision of the Refugee Protection Division [RPD] that he was neither a Convention refugee nor a person in need of protection.

[2] For the reasons that follow, this application for judicial review is allowed on the basis that the RAD decision is neither intelligible nor transparent with respect to its treatment of the documentary evidence.

I. Background

[3] In April 2015 the Applicant was involved in a traffic accident which left a member of the Hysa family paralyzed. Following this, the Hysa family declared a blood feud against the Lika family. The families reached an agreement not to harm each other. However, the agreement did not apply to the Applicant who consequently went into hiding.

[4] In August 2015, following a shooting incident where the Applicant's cousin was mistaken for the Applicant, the Applicant obtained a visa allowing him to travel to the United States [US]. In September 2015 he travelled to Germany where he remained until October 2015. In October 2015 he travelled to the United States. In March 2016 he arrived in Canada and made a refugee claim on the basis of the blood feud.

[5] In June 2016, the RPD rejected his claim on credibility grounds, noting that he did not claim refugee protection in either Germany or the United States. The RPD also noted important omissions in his Basis of Claim [BOC]. He appealed to the RAD.

II. RAD Decision

[6] In October 2016, the RAD dismissed his appeal. Like the RPD, the RAD concluded that the Applicant's failure to claim refugee protection in Germany or in the US was indicative of a lack of subjective fear. The Applicant explained that he delayed in making a refugee claim because he was hoping the blood feud would end and he would be able to return to Albania.

[7] Before the RPD, the Applicant testified that the Hysa family admitted to being involved in the shooting of his cousin, a fact which was corroborated by a document from the village elders. However, as the Applicant did not mention this in his BOC, the RAD and the RPD, determined that this omission brought his credibility into question.

[8] Further, the RAD gave no weight to the elders' document or the documents relating to the Applicant's cousin being involved in a shooting because of the overall finding that the Applicant lacked credibility.

[9] The RAD concluded that the Applicant was likely not the target of a blood feud, and therefore he was not a Convention refugee or person in need of protection.

III. Issues

[10] The Applicant raises a number of arguments with respect to the reasonableness of the RAD decision. However, the RAD's treatment of the documentary evidence is dispositive of this application.

IV. Standard of Review

[11] The standard of review of the RAD's decision is reasonableness (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35; *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at paras 29 and 30).

V. Analysis

[12] The Applicant argues that the negative credibility finding made against him led the RAD to disregard documentary evidence, notably a medical report related to the shooting of his cousin and the letter from the village elders.

[13] At the RPD, the Applicant testified about the shooting incident involving his cousin. He provided evidence, in the form of a letter from village elders, that the Hysa family had admitted the existence of the blood feud, and that police were aware of the feud. Because these facts were not included in his BOC, the RPD and the RAD made a negative credibility finding against the Applicant.

[14] However, the RAD failed to assess this evidence as corroborating his claim. While it is not necessary for the RAD to refer to every piece of evidence, when it is evidence from an official source and it corroborates the underlying claim, the RAD has a duty to address the evidence.

[15] As the Court explained in *Vushaj v Canada (Citizenship and Immigration)*, 2016 FC 255 at paras 15 and 17:

[15] However, in respect of the documents from the official sources, the Village Elders and the Commune, the RPD gave them low probative value because of the prevalence of fraudulent documents. Neither the RPD nor the RAD explained why these documents could reasonably be fraudulent. There were no concerns about the contents, the form or the source of the documents.

[17] In the absence of a considered, articulated rationale for rejecting documents that on their face appear official, the RAD cannot dismiss as not credible that part of the Applicants' story related to the existence of a blood feud.

[16] Here the RAD does not indicate why it is disregarding these documents, other than the general negative credibility of the Applicant. That is not enough.

[17] The RAD decision is therefore unreasonable.

JUDGMENT in IMM-4694-16

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted. The decision of the RAD is set aside and the matter is remitted for redetermination by a different panel;
2. No question of general importance is proposed by the parties and none arises; and
3. There will be no order as to costs.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4694-16

STYLE OF CAUSE: LEONARD LIKA v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JULY 25, 2017

JUDGMENT AND REASONS: MCDONALD J.

DATED: OCTOBER 04, 2017

APPEARANCES:

D. Clifford Luyt FOR THE APPLICANT

Nadine Silverman FOR THE RESPONDENT

SOLICITORS OF RECORD:

Barrister and Solicitor FOR THE APPLICANT
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario