Federal Court  Cour fédérale

Date: 20180718

Docket: IMM-60-18

Citation: 2018 FC 752

Ottawa, Ontario, July 18, 2018

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

VITOR MERNACAJ
DRITA MERNACAJ
ROMEO MERNACAJ

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], of a decision made by the Immigration and Refugee Board of Canada, Refugee Protection Division (the "Panel"), refusing Romeo Mernacaj's (the "Applicant") claim for protection under subsection 97(1) of the *IRPA*. The other

two Applicants, Vitor Mernacaj and Drita Mernacaj, have filed a “Notice of Discontinuance” from this application. Therefore, the only Applicant remaining is Romeo Mernacaj.

II. Background

[2] The Applicant was born in 1993 and is a citizen of Albania. In 1999, his great uncle mistakenly murdered Artan Dervishi in an attempted revenge for the murder of his own son, who had been killed by a different man. Soon thereafter, the great uncle was arrested and a blood feud was initiated by the Dervish family. Since then, the Applicant’s family has gone into hiding and feared for their lives.

[3] In December 1999, the Applicant’s father fled to the United States. His wife, daughter and the Applicant joined him in January 2001. Their claim for asylum was denied, along with all subsequent appeals. That claim was not based on blood feud, as that is not a recognized ground as a basis for an asylum claim in the United States.

[4] After their appeals were exhausted, the family came to Canada and claimed protection in September 2009. In July 2011, the Refugee Protection Division (“RPD”) rejected their claim, finding that the Applicant’s father was not credible. In June 2012, this Court granted the family’s application for judicial review and remitted the claim back to the RPD for redetermination. The daughter’s claim was abandoned because she married a Canadian citizen.

[5] The family's claim for protection was heard by the Panel on November 16, 2017. They sought protection under section 97 of the *IRPA* and alleged that the blood feud was still active and state protection was not adequate.

[6] The Panel rejected the claim on November 27, 2017. Essentially, it found that the family's evidence of state protection was dated and stale, whereas more recent country-conditions evidence showed that Albania had made significant, effective reforms and therefore the family had failed to rebut the presumption that state protection was available.

[7] On January 8, 2018, the family submitted an application for judicial review of the Panel's decision. Shortly afterwards, the Applicant's parents filed a notice of discontinuance. The application is now pursued by only the Applicant.

III. Issues

[8] The Applicant raises three issues:

A. Did the Panel err in assessing state protection?
B. Did the Panel err in not giving the Applicant's documents the appropriate weight?
C. Did the Panel err in misconstruing evidence?

[9] These issues are interrelated and should be considered together. The sole issue is whether the Panel's finding of adequate state protection was reasonable.

IV. Standard of Review

[10] The finding on state protection is a question of mixed fact and law and the applicable standard of review is reasonableness (*Hinzman v Canada (Citizenship and Immigration)*, 2007 FCA 171 at para 38).

V. Analysis

[11] The Applicant submits that he provided the Panel with clear evidence that the blood feud still exists and that state protection in Albania is inadequate. He says that the Panel either ignored this evidence or did not give it proper weight. That evidence includes:

- letters and declarations from friends, family and reconciliation organizations, which state that the blood feud still exists and the Applicant's family is in danger; and
- articles from 2014-2017, which show that many Albanians live in fear and hiding due to blood feuds.

[12] The Applicant's position is that he cannot return to Albania given that there is no police protection or *de facto* protection available for him in Albania.

[13] The Panel found that the Applicant's evidence was credible and that he is targeted as alleged by the Dervish clan.

[14] However, the Panel also found that the Applicant's testimony was unreliable as being stale regarding the sufficiency of state protection in Albania.

[15] Contrary to he Applicant's assertions, the record supports the Panel's conclusion that the Applicant failed to rebut the presumption of adequate state protection and show that if he were to return to Albania and approach the police and state authorities, he would not receive the protection that he needs.

[16] The Panel correctly noted that in a functioning democracy, the state is presumed to be able to protect its citizens and the burden was on the Applicant to provide relevant, reliable and convincing evidence to rebut that presumption (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at 724-725; and *Flores Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at para 30). It also correctly noted that the standard for state protection is adequacy at the operational level with regard to the country and the circumstances (*Kovacs v Canada (Minister of Citizenship and Immigration)*, 2015 FC 337 at paras 66-73).

[17] The Panel then reviewed the country-conditions evidence. It found that by the year 2011, the Albanian government had instituted significant reforms to strengthen the protection of blood feud victims and to investigate the perpetrators of those crimes (citing UK Home Office, *Country Information and Guidance. Albania: Blood feuds. Version 2.0*, 6 July 2016 [*UK Home Office Report*] at 19). It also reasonably found that by 2013, Albania had reformed its criminal laws to lengthen sentences for blood feud murders, criminalized incitement or intimidation to blood feud and set up a database to keep track of potential victims.

[18] The Panel also noted that there had been a reduction in the incidence of blood feud murders in Albania in the years during the Applicant's absence, which indicated that these reforms had been effective (citing the Albanian Helsinki Committee, *Report on the Situation of Respect for Human Rights and Freedoms in Albania During 2016*, April 2017 at 15; and *UK Home Office Report* at 16).

[19] As well, the Panel assigned high evidentiary weight to the Office of the Commissioner General for Refugees and Stateless Persons, *Blood Feuds in contemporary Albania: Characterisation, Prevalence and Response by the State*, 29 June 2017. It provided a lengthy quote from page 22 of this report, which described the personalized service and apparent reach of the Albanian police for families affected by blood feuds. The Panel wrote:

> I find that this report reliably indicates that in 2017 Albania, including the Shkoder area from where the claimants came, police protection from blood feud would include operation steps such as regular patrols in the potential victims' neighbourhood, relevant police officers personally becoming acquainted with potential victims, and personal visits with by prosecutors and police for the purpose of gathering evidence for prosecution of threats. Furthermore, I note that the police appear to be willing to provide personal protection on occasion when called upon for special occasions. I find that this evidence indicates a fairly high level of police protection in Albania for blood feud victims who feel threatened by people who seek to commit a vengeance murder. I find that this evidence indicates that there is adequate state protection in Albania.

[20] The Panel noted that the information in this report was consistent with other country-conditions documents that described the visible presence of police and the degree of protection provided to affected families.

[21] Moreover, the Panel reviewed the country-conditions evidence with respect to corruption in the police, judiciary and prosecution services. It found that there were valid concerns about corruption in Albania, but there was insufficient evidence that corruption had affected the adequacy of state protection in relation to blood feuds or could be connected to the Applicant's particular circumstances. The documentary evidence linked corruption with organized crime, not necessarily revenge killings.

[22] Finally, I reject the Applicant's submission that the Panel ignored or disregarded the evidence that he submitted. The Panel referred to that evidence and provided reasons for preferring the evidence cited above. For example:

- the Applicant's mother was told by the police in 1999 and 2000 that they could not protect everyone that was threatened by blood feuds; however, it found that this evidence was dated, stale and not representative of the current situation;
- an article submitted by the Applicant showed that the blood feud problem was underreported, and the Albanian Ombudsman had previously stated that police protection for blood feuds was "insufficient"; however, it found that those concerns were subjective and related to whether protection was "perfect" as opposed to "adequate";
- a 2008 report suggested state protection was inadequate; however, the Panel gave little weight to this report because it was dated and stale; and
- the Applicant's personal documentation spoke only generally to the question of state protection, and its vagueness and lack of specificity adversely affected its reliability and evidentiary weight.

[23] Notwithstanding the Applicant's argument that the Panel ignored *de facto* lack of state protection for this Applicant, I find that essentially the Applicant is asking this Court to reweigh the evidence with respect to an issue on which the Panel is entitled to deference. The Panel considered all of the Applicant's submissions and preferred the most recent, reliable documentary evidence with respect to state protection in Albania. Its decision-making process was justifiable, transparent and intelligible, and its conclusion was within the range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[24] The Panel reasonably found that the Applicant had failed to rebut the presumption that adequate state protection was available.

JUDGMENT in IMM-60-18

THIS COURT'S JUDGMENT is that:

1. The application is dismissed;

2. There is no question for certification.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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