

Date: 20071023

Docket: IMM-1304-07

Citation: 2007 FC 2004

Ottawa, Ontario, October 23, 2007

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

HARUSHA, Paulin

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Paulin Harusha is an Albanian citizen, who claims to fear persecution in Albania, because of his family's involvement in a blood feud. The Refugee Protection Division of the Immigration and Refugee Board rejected his claim, finding that Mr. Harusha was not credible and that the documents that he provided in support of his claim were not reliable.

[2] For the reasons that follow, I am of the view that several of the Board's central credibility findings were patently unreasonable. As a consequence, the application for judicial review will be allowed, and the Board's decision set aside.

Background

[3] Mr. Harusha testified that in 1993, his father was working as a security guard at a government warehouse in the city of Shkodra. In August of that year, several individuals broke into the warehouse. The applicant's father shot and killed one of the intruders, a man by the name of Arden Alia. Arden Alia was a member of the Aprian Alia family.

[4] According to Mr. Harusha, the Aprian Alia family then declared a blood feud against his family. As a result of the declaration of the feud, Mr. Harusha's family went into hiding in the mountains in the Dugagjine area, where they remained for some four years.

[5] In 1996, Mr. Harusha's brother came to Canada with his wife and children. Once in Canada the family sought and obtained refugee protection, basing their claims on their fears arising from the blood feud.

[6] The following year, Mr. Harusha was sent to live with relatives in the United States. A few months later, Mr. Harusha's father left Albania for the United States. Father and son were both subsequently accepted as Convention refugees in the U.S.

[7] In 2002, Mr. Harusha was convicted of several criminal offences. After serving time in prison, he was deported back to Albania on August 1, 2005.

[8] Mr. Harusha says that three days after he arrived back in Albania, the family home in Shkodra was riddled with bullets. Believing that this was an attempt by the Aprian Alia family to send him a message, Mr. Harusha once again fled Albania, this time coming to Canada, where he sought refugee protection.

[9] In support of his claim for refugee protection, Mr. Harusha produced a letter from the Chief of Police in Shkodra, which confirms that a shooting took place at the Harusha home on August 5, 2005. The letter further confirms that the attack occurred because of a blood feud.

[10] Mr. Harusha also produced a letter from the Peace Reconciliation Missionaries of Albania, which confirms the existence of the blood feud with “citizen Aprian Alia”. The letter further states that the Peace Reconciliation Missionaries had been in contact with the Aprian Alia family in an effort to resolve the feud, but that these efforts had not been successful. Finally, the letter states that as a result of the tense situation between the Harusha and Aprian Alia families, Mr. Harusha was forced to leave Albania.

The Board’s Decision

[11] The Board accepted that Mr. Harusha was a citizen of Albania. Recognizing that blood feuds are a serious problem in Albania, particularly in the Shkodra area, the Board stated that it would have had no hesitation in accepting the applicant as a refugee had it believed his story. However, as the Board did not believe Mr. Harusha’s story, the claim was rejected on credibility grounds.

[12] Amongst other reasons given for rejecting the claim, the Board found that there were material discrepancies in Mr. Harusha's story with respect to the identity of the agents of persecution. In this regard, the Board noted that while Mr. Harusha usually referred to the family with whom his own family was engaged in a feud as the "Aprian Alia" family, at the port of entry, he stated that he feared the "Hoxja" family. The Board did not accept Mr. Harusha's explanation for this discrepancy.

[13] The Board further found that there were inconsistencies in Mr. Harusha's story as it related to the timing of his return to Albania, and the attack on the family home. Moreover, the Board took issue with the fact that there was no credible evidence given by Mr. Harusha that he had reported the shooting to the police.

[14] The focus of much of the Board's analysis was on the documents proffered by Mr. Harusha to support his claim. In this regard, the Board commenced its analysis by questioning the fact that neither document was dated.

[15] With respect to the letter from the Peace Reconciliation Missionaries, the Board was concerned that while the letter described Mr. Harusha's situation, it did not mention the fact that other family members had also been forced to flee Albania.

[16] Finally, the Board noted that while Mr. Harusha's Personal Information Form (or "PIF") did not record the date on which his father shot and killed the intruder, Mr. Harusha had testified that

this occurred on August 10, 1993. According to the Board, this "... 'coincides' with the date in the Missionary's letter. It is obvious to me therefore that that the claimant's oral testimony before me had to 'jive' with the date of the shooting as set out in the Missionary's letter."

[17] Insofar as the letter from the police chief was concerned, the Board noted that the shooting at Mr. Harusha's house ostensibly took place on August 5, 2005. According to the Board, this raised a material inconsistency in Mr. Harusha's story, given that he stated that he left the United States on August 1, 2005, and that the shooting took place three days after he returned to Albania.

[18] Noting the ready availability of fraudulent documents in Albania, the Board found that the documents in question were not genuine.

[19] Having found that Mr. Harusha was not credible and that the documents that he provided in support of his claim were not reliable, the claim was dismissed.

Standard of Review

[20] The only issue before the Court is whether the Board's negative credibility findings are patently unreasonable.

[21] The Refugee Protection Division has a well-established expertise in the determination of questions of fact, including the evaluation of the credibility of refugee claimants. Indeed, such determinations lie at the very heart of the Board's jurisdiction. As a consequence, before a finding

of fact made by the Board will be set aside by this Court, it must be demonstrated that such finding is patently unreasonable. *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982, at ¶49, and *Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315 (F.C.A.).

[22] Similarly, the standard of review of findings relating to the authenticity of documents is one of patent unreasonableness: *Adar v. Canada (Minister of Citizenship and Immigration)*, (1997) 132 F.T.R. 35.

Analysis

[23] Notwithstanding the high degree of deference to be paid to findings of fact made by the Refugee Protection Division, I am satisfied that several of the Board's key negative credibility findings are patently unreasonable.

[24] For example, it was simply perverse for the Board to base a negative credibility finding on the fact that Mr. Harusha's oral testimony was *consistent* with the documentary evidence offered in support of his claim.

[25] Insofar as the timing of the attack on the Harusha family home is concerned, the Board attached considerable importance to the fact that the letter from the police chief stated that the attack occurred on August 5, 2005, whereas Mr. Harusha had said that he left the United States on August

1, 2005, and that the shooting took place three days after he returned to Albania. According to the Board, this meant that the attack should have occurred on August 4, 2005.

[26] In my view, the Board was finding an inconsistency where none existed. It is true that Mr. Harusha testified that he left the United States on August 1, 2005. However, the copy of his passport contained in the tribunal record shows that he entered Albania the next day. This is not unusual or unexpected, given the distance between the United States and Albania, the time that it would take to travel between the two destinations, and the fact that many trans-Atlantic flights are overnight flights.

[27] Mr. Harusha clearly arrived in Albania three days before the attack on the family home. As such, there was no inconsistency between his evidence and the letter from the police chief, and the Board's finding in this regard is patently unreasonable.

[28] The Board's finding that there was no credible evidence given by Mr. Harusha that he had reported the shooting to the police is puzzling. Questions as to whether a crime has been reported to the police often arise where the availability of state protection is in issue. This is not such a case.

[29] Moreover, Mr. Harusha never claimed to have reported the crime to the police. In this regard, he noted that the attack was reported on the television news, and that the police were clearly well aware of it.

[30] Finally, the Board took issue with the fact that while Mr. Harusha usually referred to the family with whom his own family was engaged in a feud as the “Aprian Alia” family, he stated at the port of entry that he feared the “Hoxja” family.

[31] A review of the transcript from the hearing discloses that Mr. Harusha explained that Arden Alia’s father was an imam and that Imams are known in Albania as “Hoxja”. Mr. Harusha further explained that the father was known as Ismet Hoxja, although his family name was Alia. According to Mr. Harusha, when he was asked for the names of the agents of persecution at the port of entry, it was the name of Arden Alia’s father that sprang to mind.

[32] It was certainly open to the Board to disbelieve Mr. Harusha’s explanation for the discrepancy in the identity of the agents of persecution.

[33] That said, the reasons given by the Board for doing so were that “There’s no credible evidence before me that [Imams] in Albania are called Hoxja.”

[34] However, the transcript discloses that after the exchange between Mr. Harusha and the presiding member on this issue, the interpreter interjected, apparently in an attempt to help clarify the matter, explaining that Imams are indeed called “Hoxja” in Albania. No mention of this was made by the Board, and no reasons are given for rejecting the interpreter’s confirmation of Mr. Harusha’s explanation. In my view, this was an error: see *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* [1998] F.C.J. No. 1425, 157 F.T.R. 35 at ¶14 – 17.

Conclusion

[35] It is true that the Board had a number of different reasons for disbelieving Mr. Harusha. However, given the central role that the findings discussed above played in the Board's analysis, it would, in my view, be unsafe to allow the decision to stand.

[36] As a consequence, the application for judicial review is allowed.

Certification

[37] Neither party has suggested a question for certification, and none arises here.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is allowed, and the matter is remitted to a differently constituted panel for re-determination; and
2. No serious question of general importance is certified.

“Anne Mactavish”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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STYLE OF CAUSE: HARUSHA, Paulin v.
THE MINISTER OF CITIZENSHIP
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