

Date: 20080125

Docket: IMM-3144-07

Citation: 2008 FC 102

Ottawa, Ontario, January 25, 2008

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

LUIGJ MIRASHI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The Refugee Division of the Immigration and Refugee Protection Board found that Mr. Mirashi was neither a refugee within the meaning of the United Nations Convention nor a person otherwise in need of international protection because he had an internal flight alternative available to him in Albania. The member gave her decision orally immediately following the hearing. She made a number of errors in her recital of the facts, errors which were brought to her attention as she spoke, and which were corrected when her reasons were reduced to writing some two weeks later. This is a judicial review of her decision.

[2] Mr. Mirashi's claim arises from his position with the Land Reform Commission which was charged with the responsibility of returning land to those who owned it before the communist regime. He feared a particular individual who threatened him and then assaulted him. Notwithstanding a report, no police action was taken. He then left with his family for the United States in 2000, but was deported back to Albania in 2005. Within three days of his return, while living with his parents, a shot was fired into their front yard. Taking this to be an attempt to shoot him, he fled to another area of Albania to live with his cousin. Some eight months later, he left for Canada, where his family was already situated. There is nothing in the record about his family's status here.

[3] During her oral decision, which was recorded, the member erred in stating that he had been back in Albania for three years after being deported from the United States, that he had travelled with his family from Albania to Canada, while they were already here, and that there were two personal information forms, while there is only one. These errors were all corrected in the signed decision.

[4] In dialogue with Mr. Mirashi's counsel while she was delivering her oral decision, she said she would ensure that she got the facts right and that in any event none of them were particularly relevant and were, in any event, immediately corrected on the record. She said that she had not determined whether there was a nexus between his allegations and the Convention definition of a refugee. However she said "I have based my decision on the existence of a viable IFA in Tirana." There is no indication that she took the country conditions out of context. Although she made no

finding that Mr. Mirashi was not credible, presumably meaning that she believed that he had a subjective fear if he returned to Albania, she held there was not objective basis for that fear.

[5] I am satisfied that the oral and written reasons substantially conform to each other. It is perfectly clear that the decision in both versions was based on the internal flight alternative, and there is no fundamental discrepancy (*Canada (Minister of Citizenship and Immigration) v. Pourbahri-Ghesmat*), 2007 FC 357, [2007] F.C.J. No. 492). Therefore, there was no error in law or unfairness arising from giving contradictory reasons.

[6] The internal flight alternative is a pure question of fact. The standard of review is that of patent unreasonableness (*Martinez v. Canada (Citizenship and Immigration)*), 2007 FC 982, [2007] F.C.J. 1276. Although state protection was mentioned in the reasons, and the applicable standard of review is usually considered to be reasonableness *simpliciter* (*Martinez*, above), the decision was based solely on the internal flight alternative. The decision was not unreasonable, must less patently so, and so should stand.

ORDER

THIS COURT ORDERS that:

1. The application for judicial review is dismissed.
2. There is no serious question of general importance to certify.

“Sean Harrington”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3144-07

STYLE OF CAUSE: LUIGJ MIRASHI v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: January 23, 2008

**REASONS FOR ORDER
AND ORDER:** HARRINGTON J.

DATED: January 25, 2008

APPEARANCES:

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