

Date: 20081020

Docket: IMM-1708-08

Citation: 2008 FC 1179

Ottawa, Ontario, October 20, 2008

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**DOD NDREU
ERGYS NDREU
RENATO NDREU
REBEKA NDREU**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Hospitality and honour are two positive themes of the *Kanun*, a medieval code that still touches the lives of Albanians. Vengeance is one of its less positive themes. In this case, the Immigration and Refugee Board disbelieved that each Ndreu male is a marked man under the terms of a *Kanun* blood feud. For the reasons that follow, I am of the view that the Board's decision must be set aside.

Background

[2] Mr. Dod Ndreu is the principal applicant in this matter. The claims of his three children Ergys, Renato and Rebeka have been joined to his. Mr. Ndreu fled his native Albania for Canada. He claims to have fled Albania with his daughter and his two sons after a blood-feud vendetta was declared against his family. The blood-feud allegedly grew out of a property dispute. The applicants provided the following history of the feud.

[3] In 1992, the principal applicant's father took ownership of a parcel of land in the village of Ishull, Albania as a beneficiary of land reforms which accompanied the end of Communist rule in Albania. The Kola family, who are said to have power and influence in the village and beyond, claim that they were dispossessed of the land in question after World War II by the Communist regime, and consider that the land is rightfully theirs.

[4] In 1997, Ilir Kola made it known that he intended to repossess the property, by force if necessary. The dispute persisted unresolved until, in February of 2006, Mr. Kola destroyed part of a new building on the property and demanded that Mr. Ndreu's father vacate altogether. Upon learning of the incident, Mr. Ndreu informed the local authorities of what had happened, and was reassured that his father was in lawful possession, although the police were not willing to further intervene.

[5] Two days later, on February 20, 2006, Mr. Kola reappeared at the property with a weapon. Things went badly and the principal applicant's father shot and killed Mr. Kola, allegedly in self-

defence. News of the incident spread quickly and the patriarch of the Ndreu family went into hiding, fearing arrest by the authorities, or death at the hands of the Kola family. That evening, the Kola family dispatched an envoy to announce a blood-feud and to inform every male of the Ndreu extended family that they were now targets. Mr. Ndreu was the principal target, followed by his two sons.

[6] Mr. Ndreu called the police to inform them of the threat, to no avail. His wife went in person to the police station the next day. She was told that the police's principal concern was to arrest her father-in-law for the murder. Local blood-feud conciliators were then asked to intervene, but could not broker a peaceful solution to the feud. Police intervention was sought once again, but no help was offered, other than a general statement that they would go after anyone who commits a crime.

[7] Mr. Ndreu then took steps to flee. A smuggler was contacted. On February 28, 2006, he and his children left Albania, arriving in Canada via Italy on March 2, 2006. His wife stayed in Albania, apparently because she was unable to obtain false travel documents.

[8] Various documents were submitted in support of the Ndreu family's claim, notably an article reporting on the blood-feud from the February 11, 2007 edition of *Metropol*, an Albanian-language newspaper; sworn declarations from the headman of the village of Ishull and Mrs. Ndreu; and documentation relating to ownership of the disputed parcel of land.

[9] The Board found that there was no nexus between the persecution alleged by the applicants and Convention grounds. Otherwise, the Board rejected the applicants' claim on the basis of lack of credibility. In coming to this conclusion, the Board made the following findings:

- It was not credible that Mr. Kola, allegedly an influential man, would have waited until 2006 to obtain by force the land he claimed was his, where he first alleged the land was his in 1992.
- Mr. Ndreu did not have a copy of a warrant for his father's arrest and claimed at the hearing that a warrant could only be obtained by asking the police directly. He also stated that he did not think the police would disclose one. The Board found that this was not credible, and that no warrant was produced because there was none, as the country documentation indicates that serious crime is a matter not only for local police but also for prosecutors and the judicial police.
- The newspaper article submitted by Mr. Ndreu indicated that he was in Canada. The Board found that it was not credible that his wife would disclose publicly that he was in Canada, while up to that point, the Kola family knew only that he and his children were not in Lezhe.
- Mr. Ndreu had no explanation as to why a newspaper would report on a year-old blood-feud, where so many families are involved in blood-feuds. It was put to him

that articles could be inserted in Albanian newspapers, and on a balance of probabilities the Board concluded that the article was tendered for the express purpose of misleading the Board. The Board held that the submission of this fraudulent document was reason enough to reject the entirety of the applicants' evidence.

- Mr. Ndreu affirmed that the mediators, the "Peace Missionaries", were the Lezhe branch of the National Reconciliation Committee, whereas country documentation clearly indicates that these are two separate organizations.
- Mr. Ndreu tendered a document dated June 31, 2004, indicating that his father owned the disputed land, and testified that earlier documents were destroyed in a widespread fire in 1997 that consumed the local land registry. Noting that documentary evidence of a widespread fire would have been easily obtained, the Board found that the fire story was a fabrication added at the hearing to embellish the claim.
- Mr. Ndreu testified that on several occasions he contacted authorities to ensure that his father had legal title to the disputed land. The Board considered that it was not reasonable that he would have constantly sought reassurance when that reassurance resulted in nothing, including no action on the part of the police.

- Asked why he did not seek assistance from a higher authority when the local police refused to help, Mr. Ndreu stated that he did not know that one could go to any other authority besides the local police and that he did not know that one could go to a prosecutor or the Ombudsman. The Board did not accept this as credible, where his wife knew enough to contact the Ministry of Labour and Equal Chances for assistance in obtaining a Canadian visa.

Issues

[10] The applicants raise only a single issue. They allege that the Board's adverse credibility findings are not based on actual inconsistency and implausibility, but rather on assumption and speculation for which there is no evidentiary basis. In this vein, the applicants submit that it was not open to the Board to reject the authenticity of the newspaper article without giving reasonable grounds for doing so, and that the conclusion that it was tendered with the express purpose of misleading the Board was absurd. The applicants contend that it was not open to the Board to require evidence of the 1997 fire that destroyed the Lezhe land registry without first providing them an opportunity to provide such evidence.

[11] The respondent submits that the Board's credibility findings were open to it on the record and that it is entitled to the highest level of deference from the Court. The respondent adds that the Board is entitled to make adverse credibility findings regarding credibility on the basis of the implausibility of Mr. Ndreu's testimony alone.

Analysis

[12] The Board's adverse credibility finding in this case was grounded in a number of distinct determinations that various aspects of Mr. Ndreu's story were not plausible. The applicants submit that in some instances the Board made inferences and assumptions that were simply not warranted and which do not sit with the presumption that an applicant's testimony is truthful: See *Maldonado v. Minister of Employment and Immigration*, [1980] 2 F.C. 302 and *Valtchev v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776. I agree.

[13] The finding that Mr. Kola would have taken steps to repossess the disputed land before 2006, as an example, seems arbitrary. In fact, there were submissions made by counsel as to why he would have been unlikely to take steps to recover the land between 1992 and 1997. Further, there was evidence that he actively advanced claims against the land between 1997 and 2006. There was no evidence as to what triggered his precipitous acts in 2006, but that is not to say it is implausible that he took no steps, legally or through violent acts, to recover the land prior to 2006. There is a distinction between the unexplained and the implausible that seems to have been blurred in the Board's mind. What is unexplained, and is perhaps unexplainable by the applicants is why in 2006 Mr. Kola decided to take matters into his own hands.

[14] I find three of the Board's determinations particularly troubling. The first deals with the fact that the land ownership documents produced by the applicants were dated in 2004. The Board states:

The claimant tendered a document indicating that his father owned the land. The document is dated June 31, 2004. The claimant

alleged in testimony that his father's original documents were consumed by a widespread fire, which included the registry, which occurred in 1997. The claimant had no documents to indicate that Lezhe was involved in a widespread fire in 1997, claiming that it was well known. Therefore on the balance of probabilities, I find that documents regarding a well known fire, which destroyed the land registry, would be easily obtained. On the balance of probabilities, I find the claimant added the fire to the registry on the day of the hearing as an embellishment to bolster his claim, and I find that he is not a credible or trustworthy witness.

[15] Mr. Ndreu's evidence with respect to this "widespread fire" is telling. When asked by the officer at the hearing whether he had any document that would show that the registry office in Lezhe burned down in 1997, he responded as follows:

Many, many government offices, almost everything was burned down. The banks were burned down, with the money. People saw money flying from the banks and being burned, in the main streets. I've hear (*sic*) this from people, when the bank got burned.

But the smoke was visible, you could see it, people were shouting [*sic*] in the air, it was like the whole country was burning. And I think it's a well known fact that in Albania, many artefacts, many offices were destroyed. The whole world knows about this, because if the outside world would not intervene, I don't know what would have happened. We were assisted by other countries, because people started killing each other, (*inaudible*) with each other.

[16] It is an historical fact that in September 1997, there was a widespread insurrection in Albania. The uprising was sparked when the government took action against the Albanian banks which were engaged in some kind of scheme offering huge monthly interest rates into which many Albanians had deposited their life savings. The government actions resulted in most citizens losing their money. The people took matters into their own hands. Armories were attacked and the weapons distributed; prisoners were released; government buildings torched; police stations and

courts burnt to the ground; secret police agents killed; banks looted; presidential palaces occupied. The revolt spread and soon covered nearly the whole of the country. Many were killed.

[17] Counsel for the applicants in his submissions to the Board made reference to the “turmoil” in the country in 1997. Perhaps counsel should have been more specific; nonetheless, the Board ought to have taken notice of these undisputed historical facts, but did not do so. As a result, the Board concluded that Mr. Ndreu’s evidence was a recent fabrication designed to bolster his claim, and, as is noted in the passage from the decision, quoted above, rejected all of his evidence. These historical facts, however, accord with Mr. Ndreu’s evidence and support his version of events. On this basis alone, I would allow this application and set aside the decision as being unreasonable. However, it was not the only finding of fact that was made that did not accord with the evidence.

[18] Mr. Ndreu also produced for the Board an Albanian newspaper story dated February 11, 2007, which outlines the blood-feud involving the Ndreu family, the plight of his wife left in Albania, and recites the fact that her husband and children have fled to Canada. The Board discounted this evidence entirely, citing documentary evidence that indicates that articles can be inserted in Albanian newspapers for a price. The relevant passage from the Board’s decision reads:

There were 860 families involved in blood-feuds in 2006. On the balance of probabilities, I find that it is not reasonable that a newspaper would report on a year old blood-feud. It was put to the claimant that articles could be inserted in Albanian newspapers and which were unreliable. The claimant had no explanation for the recent article. On the balance of probabilities, I find that the article was tendered with the express purpose if (*sic*) misleading the Board and give it no weight. On the balance of probabilities, I find the claimant not to be a credible or trustworthy witness.

[19] There are two serious flaws with the Board's reasoning. First, our Canadian newspapers constantly carry "human interest stories" which are not new, or current, or arguably even newsworthy. There is nothing intrinsically unreasonable in an Albanian newspaper doing likewise. Second, and perhaps of greater concern is that the document the Board references in the decision as support for its proposition that one may purchase the insertion of stories in Albanian newspapers does not quite say that. The 2002 document in question states that while that is possible, and perhaps commonplace in some papers, the situation with national papers is different. Specifically, the document, quoting the counsellor in immigration at the Canadian embassy in Italy, states: "Our Tirana office is of the opinion that a journalist in a mainstream paper would probably be unable and/or unlikely to "plant" an absolutely false article on his own, at least not without the clearance from the editor/owner." There was no evidence before the Board as to whether the newspaper produced by Mr. Ndreu was a mainstream paper or not. It is only if the paper were not mainstream that the Board's conclusion might be reasonable. Not knowing the status of the newspaper, it was unreasonable for the Board to reject this evidence, as it did.

[20] The third concern I have with the Board's decision arises from its finding that the letter tendered by the applicants from the National Reconciliation Committee should be given no weight. The letter contains statements confirming the applicants' evidence of a blood-feud, the circumstances giving rise to it, and the failed efforts of the Committee to resolve the dispute. The Board rejected this evidence because in his Personal Information Form, dated April 6, 2006, Mr. Ndreu said that he had turned to the "Peace Missionaries" for assistance, whereas the document tendered was from the National Reconciliation Committee. The Board found that it was not

credible that he would not know the name of the organization to which he turned for help. The

Board writes:

The country documents clearly indicate that the Peace Missionaries and the National Reconciliation Committee are two separate organizations. While counsel submitted that the term Peace Missionaries is a commonly used term, I do not accept this as credible. The claimant would know the name of the organization to which he turned on such an important issue. His explanation was not that he used the term as a common figure of speech, but that that was the name of the organization in Lezhe. Therefore, on the balance of probabilities, I find the claimant not to be a credible or a trustworthy witness and that he tendered a false document to the Board in an attempt to mislead the Board.

The Federal Court has held that, where a claimant is shown to have impeached his credibility by tendering a false document, this act alone is sufficient to impeach the credibility of his entire evidence. Therefore on the balance of probabilities, I find that the Board has valid reasons to doubt and reject the entirety of the claimant's evidence. (emphasis added and footnotes omitted)

[21] In fact, the evidence of Mr. Ndreu is not as clear or as definitive as the Board states. It is a fair reading of his evidence that Mr. Ndreu was indeed saying that people commonly refer to these mediators as "peace missionaries", although the official name of their association is not that. The following exchange occurred at the hearing, when the Refugee Protection Officer was questioning Mr. Ndreu as to the apparent contradiction between the letterhead showing the name National Reconciliation Committee and his reference to "peace missionaries" (Certified Record, page 431):

RPO: So the Mission of National Conciliation is the same as the peace missionaries. Is that correct, sir? (Inaudible)?

CLAIMANT 1: (Inaudible).

RPO: Because you've told us you had - - sorry.

CLAIMANT 1: Yes, These are the peace missionaries who came in my home, yes.

RPO: Because their letterhead that I say usually says peace missionaries.

CLAIMANT 1: So what, what's the difference?

RPO: Well, this is a Mission of National Conciliation, and not peace missionaries.

CLAIMANT 1: This is the branch of Lezhe, this is the name of the association. Actually it's Mission, ---

COUNSEL: Where are we getting peace missionaries from?

RPO: He's told us peace missionaries, he saw the peace missionaries, and I also believe it's in his PIF, but he has testified to that (inaudible).

CLAIMANT 1: These are the peace missionaries, people call them peace missionaries.

RPO: Okay.

CLAIMANT 1: People refer to them as the peace missionaries, but that's the official name of the organization. It's the first time that I had to deal with the association.

(emphasis added)

[22] In light of this testimony, there is no support for the Board's finding that the letter tendered from the National Reconciliation Committee was fraudulent.

[23] The historical fact of the 1997 uprising and the burning of government offices and banks, the newspaper article, and the letter from the National Reconciliation Committee all support the applicants' story and Mr. Ndreu's evidence. The Board, respectively, ignored the history, assumed the paper was not national, and misinterpreted Mr. Ndreu's evidence concerning "peace

missionaries”. For these reasons the decision is set aside and remitted to another Board for redetermination.

[24] Neither party proposed a question for certification. On the facts of this case no question is certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application is allowed and the applicants' claim is remitted to a differently constituted Board for redetermination; and
2. No question is certified.

“Russel W. Zinn”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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THE MINISTER OF CITIZENSHIP AND
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