

Date: 20100223

Docket: IMM-2304-09

Citation: 2010 FC 199

Toronto, Ontario, February 23, 2010

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

**HERIONA DUHANAJ
PASHK DUHANAJ
BERLINDA DUHANAJ
NIKOLETA DUHANAJ
JOSEPHINA DUHANAJ**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of a Member of the Immigration and Refugee Board of Canada, Refugee Protection Division, dated April 22, 2009 wherein it was determined that the Applicants were not Convention Refugees and not persons in need of protection. For the reasons that follow I find that this decision in respect of the adult male applicant,

Pashk Duhanaj, is set aside and returned to the Board for redetermination by a different member, the application is otherwise dismissed.

[2] The principal applicant, Heriona Duhanaj is an adult female person, a citizen of Albania, now married to the male applicant Pashk Duhanaj with whom she has borne the three other applicants, their children.

[3] The principal applicant Heriona Duhanaj was born in Albania and is a citizen of that country. She was sent by her parents to the United States of America when she was 15 years of age. She had sisters living in the United States. She was sent there for fear that she would be kidnapped by human traffickers in Albania and sold into prostitution. She lived in the United States since 1995 without making a claim for refugee protection there. Her parents and younger brother remain in Albania although this applicant's evidence is that they intend to come to Canada under the sponsorship of one of her brothers who lives in Canada.

[4] The adult male Applicant Pashk Duhanaj was born in what was then known as Serbia Montenegro in the Kosovo area. He is a Catholic Christian. He arrived in the United States of America in 1996, made a refugee claim there which failed. Subsequent appeals were unsuccessful. Nonetheless he remained in the United States, without status until he came to Canada with the other applicants in August 2007.

[5] The adult female and male applicants met in the United States of America and entered into a common law relationship in which the three other applicants were born. In February 2007, shortly before coming to Canada, the adult female and male applicants married in the United States of America. They and their children came to Canada in August 2007 where as a family, a claim for refugee protection was made. The adult female applicant Heriona was, for some unexplained reason, named as the principal applicant.

[6] The basis for the claim for refugee status by the principal applicant Heriona was made on the basis that she feared returning to that country because her husband would not be allowed to accompany her and, as an unaccompanied and thus unprotected woman, she was likely to be kidnapped and sold into prostitution, just as she feared would happen to her when she left at age 15. The Board Member, I am satisfied, gave a sympathetic hearing to her submissions and considered the relevant evidence. Unfortunately for her, the Member found that her failure to claim refugee status in the United States for more than a decade meant that she had not established a well-founded fear of persecution. In any event, the Member found that there was no evidence that she would be singled out for kidnapping and that the state of Albania had in place a number of measures to guard against such kidnapping which, even if not a hundred percent successful, given the burden on the applicant to prove otherwise, was adequate.

[7] I find no reviewable error in respect of the findings and conclusion in respect of the claim by the female applicant.

[8] Similarly, with regard to the three minor children, they are citizens of the United States of America and there was no evidence as to any fear of their return to that country. Their claim for refugee status was properly rejected.

[9] The matter is different with respect to the adult male claimant Pashk Duhanaj. When he left Serbia Montenegro it was a single country with Kosovo being an area within that country. Since that time Montenegro has become a separate country and Kosovo has become separate from Serbia with unclear status. Kosovo's affairs are administered by a United Nations entity known as UNMIK – United Nations Interim Administrative Mission in Kosovo. The evidence in this case is that this administration is dealing with inherently unstable transitions to democracy and centuries old bad habits such as a means of settling age old grievances by murdering members of the presumably offending clan, the so-called blood feud.

[10] The adult male applicant's claim for refugee status was based on two grounds. The first was that there was a blood feud between his clan and another in Kosovo and he feared that he would be targeted, without adequate state protection, should he return to Kosovo. The second basis for his claim was that he was a Catholic Christian and would suffer discrimination and worse should he return to Kosovo which was principally Muslim with a minority of Serbian Orthodox persons. This second ground was not actively pursued by his counsel at the hearing before me.

[11] The Board Member begins his reasons for dismissing the male applicant's claim by pointing out that he had "*...the status as a refugee and enjoyed the protection of the USA, however, he lost it*

because of his actions.” I agree that such a finding would be, in any event irrelevant, however it seems to have coloured the Member’s view of this applicant’s claim. Neither counsel before me could point to anything in the record that would provide a basis for such a remark. The making of such an unfounded statement creates doubt as to the reasonableness of subsequent findings by the Member.

[12] With respect to a blood feud the Member found that, on a balance of probabilities, the claimant’s family was involved in a blood feud. However the Member found that the claimant had *“failed to provide any probative evidence that supports his belief that the international presence in Serbia/Kosovo is unable or unlikely to provide adequate state protection....”*

[13] This is simply not so. The evidence includes a paper by a Member of the Politics Department of Brandeis University which endeavours to demonstrate the uncertainties of state protection in Kosovo in respect of blood feuds. A publication of the U.S. Department of State addresses problems in some areas of abuse in UNMIK administered Kosovo. A website blog by a missionary in Kosovo speaks to the prevailing attitudes in Kosovo that whoever kills will be killed.

[14] It is apparent that the Board Member simply failed to see the evidence or if he did, he failed to give it appropriate consideration as to the ability of UNMIK to deal with blood feuds. Having found that it was probable that this applicant’s family was engaged in a blood feud, the Member was required to address this evidence.

[15] Accordingly, I will allow the application in respect of Pashk Duhanaj.

[16] Neither counsel requested that a question be certified and I find no need to do so.

JUDGMENT

For the reasons provided;

THIS COURT ORDERS AND ADJUDGES that:

1. The application is allowed in respect of the applicant Pashk Duhanaj. The decision denying his claim for refugee status is set aside and the matter returned for redetermination by a different Member;
2. The application in respect of all other applicants is dismissed;
3. There is no question for certification;
4. There is no order as to costs.

“Roger T. Hughes”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-2304-09

STYLE OF CAUSE: HERIONA DUHANAJ, PASHK DUHANAJ,
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JOSEPHINA DUHANAJ v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 22, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** HUGHES J.

DATED: February 23, 2010

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