

Federal Court



Cour fédérale

**Date: 20110519**

**Docket: IMM-5925-10**

**Citation: 2011 FC 586**

**Ottawa, Ontario, May 19, 2011**

**PRESENT: The Honourable Mr. Justice Scott**

**BETWEEN:**

**UDI NASUFI  
MUKADES NASUFI  
SHKUMBIN NASUFI  
and ALJBION NASUFI**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Facts**

[1] The applicants are ethnic Albanians. They consist of Udi Nasufi (“the male applicant”), his wife, Mukades (“the female applicant”), their son, Aljbion (“the older minor applicant”) and their

younger son, Shkumbin (“the younger minor applicant”). The applicants are all citizens of Macedonia except for Shkumbin, who is a citizen of the United States.

[2] The male applicant was involved in the Kosovo National Movement which fought for an independent Albanian national state, viewed by Macedonian security forces as a revolutionary organization. The male applicant claimed there was prevalent persecution and harassment, and that he was particularly targeted due to his participation in the movement.

[3] The male applicant recalled one particular incident involving a fight with Macedonians, where he was arrested and detained for three days in 1986. He fled to Switzerland in 1988 and remained there while working in an Albanian nationalist organization, until he returned to Macedonia in 1996. While he was in Switzerland, Macedonian security forces searched for him at his parents’ home in Macedonia, several times. His mother and other family members were harassed by the Macedonian police. Even after returning to Macedonia, the security forces have attempted to find him although, without success. The applicant also claimed he has been roughed up and threatened by the police due to his political activity.

[4] In another unrelated incident about six years before the claim, the male applicant’s brother, Sefer, was involved in a dispute against a man named Zhuda Xhevdet and in the process of defending himself against him, shot Xhevdet, causing him to lose his leg. The family of the victim declared a blood feud against Sefer and the Nasufi family. The male claimant claimed that a blood feud still exists in Macedonia, despite attempts of reconciliation.

[5] The applicant family went to the United States, in November 1998, and remained there until October 2008, when they came to Canada and made a claim for asylum.

## II. Decision under review

[6] In the decision dated September 22, 2010, the Immigration and Refugee Board's Refugee Protection Division [RPD] found that the applicants were neither Convention Refugees nor persons in need of protection.

[7] In reviewing the applicants' claim, and the documents about ethnic Albanians in Macedonia, the RPD found "there may be discrimination of a person such as the male claimant and his family." However, the RPD found that what he experienced was discrimination only and not persecution and therefore, he was not and is not a Convention refugee. In providing reasons for this conclusion, the RPD observed that even though there was still unrest in the country, there were serious efforts to remedy this discrimination and that the ethnic Albanian population "have a voice in government, educational opportunities exist, and the language is recognized as official in areas that are predominantly Albanian." The RPD explained that it preferred these documents over those provided by the applicant because they came from a variety of reliable and objective sources with no vested interest in the outcome of the decision.

[8] As such, the RPD found that there was no persuasive evidence that the male applicant was still politically active or that the authorities would still seek him out for his political activities from fifteen years ago.

[9] The RPD also found that fear of a blood feud did not give rise to a nexus to the Convention Refugee definition. The RPD acknowledged the documentary evidence of the blood feud between the families, in form of letters, but noted that the male applicant's father returns to Macedonia because of his brothers who are "self-confined". The RPD found that this was not the action of a person who feared being a target in a blood feud. The RPD also did not find the male applicant's testimony to be credible, that anything could happen regarding his wife, given his statement that women were not targeted in blood feuds. The RPD then found, based on the fact that there were no documents describing blood feuds in general in Macedonia, that there was no persuasive evidence of an ongoing blood feud.

[10] The RPD therefore found no objective basis to the applicants' fear of being returned to Macedonia because of their Albanian ethnicity.

[11] The RPD also considered whether there were compelling reasons not to send the applicants' family back to Macedonia. The RPD considered the medical evidence, but found that although there may have been discrimination, the applicants did not suffer persecution in Macedonia, and that there was nothing atrocious or appalling about the circumstances.

[12] As such, the RPD rejected the applicants' claims.

### III. Relevant legislation

#### *Immigration and Refugee Protection Act, 2001, c 27 [IRPA]*

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the

96. A qualité de réfugié au sens de la Convention - le réfugié - la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier

Convention Against  
Torture; or

de la Convention contre la  
torture;

(b) to a risk to their life or to  
a risk of cruel and unusual  
treatment or punishment if

b) soit à une menace à sa  
vie ou au risque de  
traitements ou peines cruels  
et inusités dans le cas  
suivant :

(i) the person is unable  
or, because of that risk,  
unwilling to avail  
themselves of the protection  
of that country,

(i) elle ne peut ou, de ce  
fait, ne veut se réclamer  
de la protection de ce  
pays,

(ii) the risk would be  
faced by the person in  
every part of that country  
and is not faced  
generally by other  
individuals in or from  
that country...

(ii) elle y est exposée en  
tout lieu de ce pays alors  
que d'autres personnes  
originaires de ce pays ou  
qui s'y trouvent ne le  
sont généralement pas,

#### IV. Issue

[13] The issue raised by this application is the following: Is the Board's decision reasonable with respect to the existence of blood feuds in Macedonia and with respect to the applicants' fear of persecution if they are returned to Macedonia?

#### A. The Standard of Review

[14] Both the applicants and the respondent agree that the issue of whether a claim is objectively well-founded is a question of mixed fact and law, and reviewable on the standard of reasonableness

*(Dunsmuir v New Brunswick, 2008 SCC 9 at para 47, and Canada (Minister of Citizenship and Immigration) v Khosa, 2009 SCC 12 at para 59).*

(1) Reasonableness of the RPD's finding on the blood feud

[15] The applicants observe that the RPD concluded there was no blood feud based on two factors: the lack of subjective fear because the male applicant had re-availed himself to Macedonia after the blood feud was declared, and the lack of documentation regarding blood feuds in Macedonia.

(2) Available documentation regarding blood feuds

[16] Regarding the latter matter, the applicants submit that the documentary evidence before the RPD was a letter from a community leader, attesting to the existence of a blood feud. This letter was acknowledged by the RPD in its decision, but should not have been discounted as it came from an impartial source.

[17] In response, the respondent argues that the RPD specifically mentioned this letter and therefore did not discount it.

[18] Although the RPD claimed that there were no RPD documents that made reference to blood feuds in Macedonia, the applicants point out that there were several references to blood feuds, including in the RPD's own documents such as its "Issue Paper: Albanian Blood Feuds".

[19] The respondent claims that the overall determination is not affected by minor errors; instead, the finding of fact must be truly erroneous and made capriciously or without regard to the evidence, and the decision must be based on the erroneous finding (*Rohm and Haas Canada Ltd v Canada (Anti-Dumping Tribunal)*, [1978] FCJ No 522 at para 5, affirmed in the immigration context in *Rajakse v Canada (Minister of Employment and Immigration)*, [1993] FCJ (TD) 649 at para 3). Although the RPD erred in stating that the RPD documents made *no* references to blood feuds in Macedonia, the respondent argues that most of these documents refer to Albania, and not Macedonia, and that the mere mention of Macedonia in the list of countries where blood feuds occur, outside Albania, is not sufficient to result in a different outcome. This was therefore a reasonable finding, not a perverse or capricious one.

[20] The applicants reply by arguing that it was still incorrect for the RPD to state that the country documentation made no reference to blood feuds in Macedonia, as it casts doubt on the RPD's reading and understanding of the evidence that was before it. Even though the documents mostly referred to Albania (as opposed to Macedonia), the applicants point out that blood feuds are a part of ethnic Albanian society, and cultural traditions prevail despite political borders. There was therefore objective, credible evidence of blood feuds taking place outside of Albania and in Macedonia specifically, which the RPD ignored.

[21] However, the respondents note that other than the one mention of Macedonia, there are no detailed accounts of Albanian blood feuds occurring in Macedonia. The RPD is presumed to have considered all of the evidence (*Woolaston v Canada (Minister of Manpower and Immigration)*),



[1973] SCR 102 and *Hassan v Canada (Minister of Citizenship and Immigration)*, [1992] FCJ No 946).

[22] In terms of the alleged re-availment, the applicants submit that the RPD made an error in stating that the male applicant had returned to Macedonia after the blood feud was declared. The male applicant was last in Macedonia, in 1998, before he fled to the United States, and therefore did not re-avail himself to Macedonia. The applicant argues that errors of fact constitute reviewable errors, particularly where they lead the RPD to make an inference about credibility. The applicants cite *Anwar v Canada (Minister of Citizenship and Immigration)*, 2008 FC 305, where the RPD had found many aspects of the applicants' story to be implausible. Justice Lagace found that the RPD had made a clear error of fact, which formed the basis of the RPD's finding that the events never occurred, and because it was not an insignificant error but an important finding made without regard to the fact, it constituted sufficient grounds for review "in view of the strong negative inference drawn from a wrong understanding of the principal applicant's testimony." (*Anwar v Canada (Minister of Citizenship and Immigration)*, 2008 FC 305 at para 26). The applicants also cite *Yang v Canada (Minister of Citizenship and Immigration)*, 2010 FC 468, where Justice Campbell found that the RPD made a fundamental reviewable error in mistakenly stating that the applicant lived in Guangdong Province, when the applicant was actually a native of Fujian Province, which had an unfair contaminating influence on the outcome *Yang v Canada (Minister of Citizenship and Immigration)*, 2010 FC 468 at paras 2 and 3.

[23] In response, the respondent submits that the applicants have misread the RPD's finding, and the sentence in question: "the male claimant said he returned to Macedonia because of the

claimant's brothers who are allegedly self-confined"; the RPD was referring to the male applicant's father, not the male applicant himself. At the hearing, the applicants' counsel acknowledged that the RPD was actually referring to the father.

[24] The applicants submit that the RPD's finding of the male applicant's testimony about his wife to be not credible demonstrates a lack of understanding of violence and the history of blood feuds. The applicants point out that there was evidence before the RPD of females being killed as well, even though adult males are the traditional targets in a blood feud. The applicants argue that there was nothing contradictory in worrying about the safety of his wife. As such, the applicants submit that the RPD ignored important and on topic material before it in making this negative credibility finding (*Mendoza v Canada (Minister of Citizenship and Immigration)*, 2008 FC 387 at para 16).

[25] The respondent argues, however, that the incidents of females being targeted were not in the documentary evidence but in the psychologist's report. The respondent submits that the applicants did adduce any real evidence and have not shown why exists a real possibility that is likely to occur to the adult female applicant, in Macedonia.

[26] In general, the applicants submit there was no reason to question the male applicant's credibility, and that an applicant's testimony is presumed to be truthful, unless there is reason to doubt his truthfulness (*Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 at para 5) [*Maldonado*]. The applicants conclude that because the RPD relied on errors of

fact and made improper inferences as to the applicants' credibility based on those errors, the entire reasoning as to blood feud is unreasonable.

[27] The respondent points out that having a fear of a blood feud does not give rise to a Convention Ground, and that the applicants have not offered any non-speculative evidence to support their allegation of future persecution in Macedonia.

## V. Analysis

Several issues need to be examined in this case:

[28] The first and most important issue involves the RPD's findings on the available evidence of blood feuds. The applicants submit that the RPD should not have discounted the letter from the community letter attesting to the existence of the blood feud. The respondent, however, points out that the RPD specifically mentions the letter and, therefore, clearly did not ignore it and claims that the applicants are asking the Court to re-weigh the evidence, which is not for the Court to do.

[29] This Court is concerned, however, by the RPD's explanation in paragraph 31 of its decision: "I prefer the documentary evidence referred to above to that provided by the claimant because it comes from a variety of reliable and objective sources that have no vested interest in the outcome of this decision." This Court has, in the past, questioned the RPD's preference of "disinterested" documentary evidence over the applicants' evidence. Justice Snider wrote, in *Coitinho v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1037 at para 7:

The Board goes on to make a most disturbing finding. In the absence of stating that the applicants' evidence is not credible, the Board concludes that it "gives more weight to the documentary evidence because it comes from (sic) reputable, knowledgeable sources, none of whom have any interest in the outcome of this particular refugee hearing". This statement is tantamount to stating that documentary evidence should always be preferred to that of a refugee claimant's because the latter is interested in the outcome of the hearing. If permitted, such reasoning would always defeat a claimant's evidence. The Board's decision in this case does not inform the reader why the applicants' evidence, when supposed to be presumed true (Adu, *supra*), was considered suspect. Further, this reasoning cannot even stand on the facts of this case.

[30] This was affirmed again in *Nilam v Canada (Minister of Citizenship and Immigration)*, 2008 FC 689 at para 16, where Justice Mandamin pointed out that all applicants have an interest in the outcome of their hearing, and to discount their evidence on that ground goes against the proposition in *Maldonado* that there is a presumption of truth in the sworn testimony of a claimant. The Federal Court's jurisprudence has cautioned the RPD against this kind of reasoning in weighing the evidence. Hence, this Court is not convinced that the RPD was reasonable in rejecting the evidence, including the letter from the community leader, in favour of the RPD documentary evidence, on the sole grounds that the latter did not have a vested interest in the outcome.

[31] However, the RPD did reject the applicants' claims for other reasons as well, including for credibility reasons. In particular, the RPD did not find the male applicant's testimony about his wife's safety to be credible, given that the male applicant had given evidence that women were not usually targets in blood feuds. Although the applicants now attempt to explain this inconsistency, it would seem to me that it was reasonably open to the RPD to find that this inconsistency impacted negatively on the applicants' credibility.

[32] The applicants also take issue with the RPD's findings on the documentary evidence. Both the respondent and applicants appear in agreement that the RPD made a mistake in stating "The RPD documents make no reference to blood feuds in Macedonia." As pointed out by the applicants, the Immigration Refugee Board's [IRB] document, "Issue Paper: Albania Blood Feuds", clearly reads: "In addition, blood feuds occur outside Albania, including in Macedonia, Kosovo, southern Serbia, Greece and Italy. Pano acknowledged that blood feuds do occur outside Albania, but indicated that they are few." The respondent claims this mistake is minor and would not change the RPD's decision, particularly given that other sources cited by the applicants. This Court does not qualify that mistake as minor since it goes to the very heart of applicant's fear of becoming victims of the blood feud should they be forced to return to Macedonia. It might have been open to the RPD to find that it was not convinced by the documentary evidence that blood feuds existed in Macedonia; it is however, quite different to claim that there was no documentary evidence on Macedonian blood feuds, and to therefore reject the applicants' claim of an ongoing blood feud on the basis of implausibility, which the RPD did despite the existence of evidence that blood feuds sometimes occurred in Macedonia. While the RPD is presumed to have considered all the evidence, when there is evidence to the contrary of its decision, it must analyze the evidence and provide reasons why it does not consider it relevant or trustworthy or why it chose to disregard it (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 and *Khan v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1076 at para 10). The RPD clearly did not acknowledge this contrary evidence and instead claimed that none existed.

[33] In the present case, the main question is whether the RPD has made a reviewable error that warrants this Court's intervention. This Court finds that the RPD has made two such reviewable errors. Firstly, in choosing the RPD documentary evidence over the applicants' evidence on the grounds that the former had "no vested interest in the outcome of this decision". The second error lies in basing its decision on the fact that no ongoing blood feud existed due in part to an absence of evidence in the RPD documents of blood feuds in Macedonia, when there was such evidence. The RPD was required to acknowledge contrary evidence and explain why it did not accept it. It was open to the RPD to make negative credibility findings against the applicants; however, it was required to explain why it also rejected the other contrary evidence in concluding that it was implausible that such an ongoing blood feud existed.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is granted.
2. The board's decision is set aside and the matter is referred back for consideration.
3. There is no question of general interest to certify.

"André F.J. Scott"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5925-10

**STYLE OF CAUSE:** UDI NASUFI, MUKADES NASUFI,  
SHKUMBIN NASUFI and ALJBION NASUFI

Applicants

v

THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

Respondent

**PLACE OF HEARING:** Toronto

**DATE OF HEARING:** May 5, 2011

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

**DATED:** May 19, 2011

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