

Federal Court



Cour fédérale

**Date: 20110623**

**Docket: IMM-4797-10**

**Citation: 2011 FC 759**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Ottawa, Ontario, June 23, 2011**

**PRESENT: The Honourable Mr. Justice Simon Noël**

**BETWEEN:**

**AGIM LAJQI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of a decision by the Refugee Protection Division (RPD) of the Immigration and Refugee Board that the applicant is not a refugee or a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001,

c. 27 (IRPA). The applicant sought refugee protection in Canada after his claim in the United States was rejected.

[2] The applicant is a native of Kosovo. He alleges that he fears the ethnic tensions unique to the former Republic of Yugoslavia. More specifically, the applicant raises three reasons in support of his alleged persecution. First, he indicates that he worked for the Democratic League of Kosovo (DLK), which was opposed to the war. He purportedly also fled Kosovo during the war. As a result, he was apparently targeted as a “traitor” and beaten. Second, he fears persecution because his father, now a German citizen, married a woman of Serbian origin, which allegedly led to “illegal organizations” persecuting him. The applicant was allegedly beaten on two occasions; one while he was with his father. Finally, he alleges that he fears a blood feud with the Mugiri family. An incident purportedly occurred in a German ship yard, where the applicant’s brother apparently shot and injured a member of the Mugiri family. This attack is allegedly part of the overall context of the blood feud between the two families.

### **RPD’s decision**

[3] The applicant was found not credible by the RPD. First, he apparently gave vague answers with respect to the identity of the agents of persecution. The RPD faulted him for significant discrepancies between his point of entry form (PEF), his Personal Information Form (PIF) and his testimony at the hearing. The RPD did not believe that his political opinion and involvement with the DLK were true sources of persecution because the documentation indicates that the DLK won the elections in the applicant’s home city a little more than a week after his departure. The

applicant's opinion would therefore apparently have been shared and accepted by the population. Therefore, the RPD indicated that it believed that the applicant was the victim of random attacks.

[4] Moreover, the blood feud between the Mugiris and his family was minimized by the RPD. First, the Mugiri family is not an "illegal organization", yet that was what the applicant initially described as his agent of persecution. The source of the alleged persecution was therefore not sufficiently clear to the RPD.

[5] The supposed persecution resulting from his father's second marriage to a woman of Serbian origin was also minimized as the applicant did not indicate in his PIF that ethnicity reasons were apparently involved in his claim. He did not speak of his stepmother during his point of entry interview. Furthermore, the applicant is himself a true Kosovar. His father's marriage took place in Germany and this marriage was not a source of tension before the war, by the applicant's own admission. Furthermore, the applicant's father returned to Kosovo only in 1999 to rebuild the family home, and was then attacked. He returned to Germany a little while later, and his Serbian spouse stayed in Germany the whole time.

[6] The applicant did not establish that the attack on him and his father was connected to the alleged agents of persecution. The applicant himself indicated that the people responsible for the attack were never identified. A second attack purportedly took place, in which he was apparently treated as a traitor, and he attributed this attack to the Mugiri family. The RPD ruled that there was no evidence, on a balance of probabilities, establishing the responsibility and the identity of the alleged agents of persecution.

[7] Moreover, the RPD criticized the applicant for failing to take reasonable steps with the American authorities to obtain a copy of his asylum claim rejection.

[8] Finally, the RPD relied on the documentary evidence to establish that blood feuds are apparently less and less of an issue in Kosovo. Moreover, in the applicant's PIF, the Mugiris are introduced in his account only when he mentions that his brother and cousin were attacked in Kosovo in 2003 by "an extremist from the Mugiri family". The applicant indicated that, in 2007, members of the two families met "by chance" in Germany and that a gun battle erupted. However, a newspaper article reported that the meeting was not by chance, that the gunshot victim and the applicant's brother worked in the same ship yard and that an altercation had taken place three years earlier. This contradicts the applicant's version of events.

[9] Therefore, the RPD is of the opinion that the blood feud between the families was not established, especially since the Mugiri family members present in Kosovo were not specified. The documentation also establishes that blood feuds are purportedly less of an issue and that the authorities apparently put in place programs to mitigate them. Even though the judiciary is in disrepute in Kosovo and state protection is not perfect, the RPD indicated that the documentary evidence establishes that this is improving. Therefore, the applicant did not demonstrate the alleged source of persecution, or that the risk still exists if he were to return to Kosovo and that state protection would not be available.

### **Standard of review and analysis**

[10] The determinative issue in this case is credibility. It has been well established that assessing a refugee claimant's credibility is a question of fact, which is assessed by the Court on the standard of reasonableness (*Aguebor v. Canada (Citizenship and Immigration)*, [1993] F.C.J. No. 732 (FCA); *Singh v. Canada (Citizenship and Immigration)*, 2008 FC 408; *Sahota v. Canada (Citizenship and Immigration)*, 2004 FC 1256). Accordingly, the Court must pay particular attention to the intelligibility of the decision, its factual and legal basis as well as its reasonableness: the Court is not called upon to substitute its judgment for that of the administrative decision-maker (*Dunsmuir v. New Brunswick*, 2008 SCC 9).

[11] In this case, the RPD began by assessing the applicant's failure to provide written reasons for his negative asylum claim in the United States. The applicant's lack of diligence in this respect was highlighted by the RPD. Considering that the omissions and contradictions in the documentation and testimony provided by the applicant were at issue, it was reasonable for the RPD to fault the failure to take steps to obtain the evidence corroborating his refugee claim, including the grounds for the refusal in the United States (*Zareiaghdaragh v. Canada (Citizenship and Immigration)*, 2008 FC 745; *Ramanathan v. Canada (Citizenship and Immigration)*, 2004 FC 862).

[12] The RPD's findings with respect to the applicant's persecution because of his political opinion are also reasonable. By relying on recent election results, the RPD determined that the applicant's opinion was more common and accepted than the applicant suggested. This is reasonable. Furthermore, it may be added that, even if the applicant's political party had received a

lower percentage of votes, the opinion shared by DLK supporters is not sufficient to establish that they would be persecuted on this basis.

[13] A substantial disparity between the agents of persecution alleged is apparent in the applicant's documents and testimony. Initially, his political opinion was at the forefront. Then, elements of ethnic tension due to his stepmother's ethnicity were added. Finally, it seems that he fears mainly the Mugiri family. In addition to these disparities, the applicant's statements are inconsistent with the documentation submitted, namely, with respect to the source of his brother's altercation in Germany with a Mugiri. Faced with these elements, the RPD made a negative finding with respect to the applicant's credibility.

[14] This finding is reasonable as it relies on a realistic and thought-out assessment of the evidence submitted by the applicant. As emphasized by counsel for the Minister, it is open to the RPD to make a negative credibility finding when an important element of the account is omitted at the point of entry (*Eustace v. Canada (Citizenship and Immigration)*, 2005 FC 1553) and when significant contradictions are identified between the various statements and documents submitted (*Sahota v. Canada (Citizenship and Immigration)*, 2004 FC 1256).

[15] The application for judicial review is therefore dismissed. No question for certification arises.

**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES that** the application for judicial review is dismissed. No question is certified.

“Simon Noël”

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Judge

Certified true translation  
Janine Anderson, Translator

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

**DOCKET:** IMM-4797-10

**STYLE OF CAUSE:** AGIM LAJQI v. MCI

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** June 2, 2011

**REASONS FOR JUDGMENT:** SIMON NOËL J.

**DATED:** June 23, 2011

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