Federal Court  Cour fédérale

Date: 20110906

Docket: IMM-5210-10

Citation: 2011 FC 1048

Ottawa, Ontario, September 6, 2011

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

NDRICIM PULAKU

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 of Pre-Removal Risk Assessment Officer N. Bostjancic (the PRRA Officer) dated July 30, 2010, wherein the Officer determined that the Applicant would not be subject to risk of persecution, danger of torture, risk to life or risk of cruel and unusual treatment or punishment if returned to Albania.

[2] Based on the reasons below, this application is dismissed.

I. Background

A. *Factual Background*

[3] Ndricim Pulaku, the Applicant, is a citizen of Albania. He first came to Canada in April 1998 and made a refugee claim based on political opinion. The (then) Convention Refugee Determination Division (CRDD) of the Immigration and Refugee Board rejected the claim based largely on the Applicant's lack of credibility. The Applicant applied for leave and judicial review of the decision. Leave was granted, but the judicial review was subsequently dismissed in December 2000.

[4] In the interim, the Applicant returned to Albania, leaving Canada approximately one month after the CRDD decision was issued, in August 1999. He claims that there was an attempted kidnapping of his son, and he had to return home despite the personal risk.

[5] The Applicant now alleges that the political persecution he formerly feared has turned personal, and he is the target of a blood feud. He claims to fear Edmond Koseni, former head of the Elbasan Police Commissariat. Six months after his return, he got a phone call warning him that he would be found, even if he hid in a "rat hole" (Applicant's Record pg 28). In September 2000, shortly before the local elections, the Applicant was arrested along with his two brothers, Sami and Naim. They were detained for three days. During that time, the brothers were beaten by Koseni

and Xhaferr Elezi. Naim suffered a life-threatening injury. The Applicant speculates that the detention was a tactic to scare Democratic Party supporters; a characterization the Applicant claims applies to him and his family.

[6] Due to the incident, Edmond Koseni was charged with attempted murder, but was later acquitted. Amnesty International and the Albanian Human Rights Group reported on the incident and condemned the police.

[7] In December, 2001 Naim was returning to Elbasan. He was stopped at a police checkpoint and allegedly mistaken for the Applicant. He was beaten by Elezi and Koseni, who also later threatened him in the hospital. As a result of this incident, Koseni was detained for a few days and lost his job. It was at this point that Koseni apparently declared a blood feud against the Applicant's family. The Applicant claims that as the oldest, he was the main target.

[8] The Applicant was repeatedly threatened by Koseni and his cronies. He reported incidents to the Albanian Human Rights Group, since Koseni was still well-connected with the police. However, he was told that they could not protect him, so he had better leave the country.

[9] The Applicant finally decided to leave Albania in May 2008, when, after visiting his mother-in-law, his car was struck with a volley of Kalashnikov bullets. He went to the police, but they would not take a report since the only witnesses were his family members.

[10] He arrived in Canada in June 2008 and attempted to make a refugee claim. He was determined to be ineligible due to his previous unsuccessful refugee claim, but was given an opportunity to make a Pre-Removal Risk Assessment (PRRA) application.

B. *Impugned Decision*

[11] The PRRA Officer reviewed the Applicant's submissions and concluded that they did not establish, on a balance of probabilities, a political basis to the Applicant's allegations of harm. Amnesty International reported on the 2000 and 2001 incidents in which Naim was harmed, but the Officer found that this report contained insufficient evidence to indicate that the attacks had political undertones or were politically-motivated. Another Amnesty International report referred to the beating of Naim in September 2000. According to that report, Naim and his brothers were arrested on suspicion of stealing car tires.

[12] The Officer noted, that although Amnesty International's 2003 press release reported that Koseni and Elezi returned to the hospital and threatened to eliminate the Applicant's brother and his family, the Applicant's family has continued to reside in Albania without coming to any apparent harm.

[13] As for the allegation of a blood feud, the Officer found that there was a lack of objective evidence to support the Applicant's allegation that he was mainly targeted as the oldest. The Officer also found the Applicant's affidavit vague and lacking specifics surrounding the declaration of a blood feud, and so assigned the Applicant's statements minimal probative value.

[14] Although the Officer acknowledged the existence of blood feuds and their continued practice in Albania, he found that the country condition documents highlighting the problem were general in nature and not personalized to the Applicant. The document provided by the Albanian Human Rights Group (AHRG) dated August 2008, did not mention that the Applicant and his family were involved in a blood feud, even though AHRG is well acquainted with the problems of the Pulaku brothers. Moreover, the Officer found insufficient evidence to indicate that the Applicant approached organizations such as reconciliation committees which specifically support and assist with blood feud issues. The Officer concluded that there was insufficient objective evidence on a balance of probabilities to indicate the existence or declaration of a blood feud.

[15] The Officer found that the Applicant's statements of a personal vendetta against him provided no nexus to a Convention ground, and rather, he was a victim of personal crime since his fear was not linked to race, religion, nationality, political opinion or membership in a particular social group.

[16] The Officer also found that the Applicant had failed to rebut the presumption of state protection with clear and convincing evidence. The Applicant visited the police in 1998 when he was attacked and in 2008 when bullets were fired at his car. The Officer was of the opinion that two visits to the police in a period of ten years was insufficient to conclude that state protection would not be reasonably forthcoming. Based on the information before him, the Officer found that the Applicant did not attempt to seek assistance from a higher authority when local police refused to

help. The Officer also noted that seeking the help of the AHRG did not equate to seeking state protection as the AHRG is not a replacement or substitute for the state security apparatus.

II. Issues

[17] This application raises the following issues:

(a) Did the Officer err by referring to a report that post-dated the Applicant's submissions?

(b) Did the Officer err in failing to interview the Applicant?

(c) Did the Officer make a reasonable state protection finding?

III. Standard of Review

[18] The appropriate standard of review to apply to findings of fact, or mixed fact and law in a PRRA decision is reasonableness (*Hnatusko v Canada (Minister of Citizenship and Immigration)*, 2010 FC 18 at para 25). Judicial deference to the decision is appropriate where the decision demonstrates justification, transparency and intelligibility within the decision making process, and where the outcome falls within a range of possible, acceptable outcomes, defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

[19] Some of the issues raised by the Applicant in this application relate to procedural fairness and will be reviewed on a standard of correctness.

IV. Argument and Analysis

A. *Did the Officer Err in Relying on Extrinsic Evidence?*

[20] The Applicant submits that the Officer breached the duty of fairness owed to the Applicant by relying on a 2009 US DOS report which was published after the Applicant's submissions were filed. The Applicant argues that he was not afforded a chance to respond to the new evidence, which described many more anti-corruption measures than the 2007 US DOS report (*Selliah v Canada (Minister of Citizenship and Immigration)*, 2004 FC 872, 256 FTR 53 at para 29).

[21] The Respondent submits that the Officer was required to rely on the most recent country condition reports in preparing his decision and that advance disclosure of such reports are limited to instances where the conditions are "novel and significant" and where the evidence may affect the decision (*Hassaballa v Canada (Minister of Citizenship and Immigration)*, 2007 FC 489, 157 ACWS (3d) 602 at paras 32 and 33).

[22] The Applicant has not specifically pointed the Court to the information in the 2009 report that is "novel and significant", but suggests that had the Applicant had notice, he would have commented on the more extensive anti-corruption measures outlined in the 2009 report, and would have pointed out that the report shows that these measures, relied on by the Officer, do not work.

[23] The 2007 report stated that:

> the overall performance of law enforcement remained weak. Unprofessional behaviour and corruption remained major impediments to the development of an effective civilian police force […]

[24] The 2009 report states:

> Notwithstanding police officer recruitment reforms and other standardization by the Ministry of the Interior, the overall performance of law enforcement remained weak. Unprofessional behaviour and corruption, compounded by low salaries, remained major impediments to the development of an effective civilian police force.

[25] I am not of the opinion that the country condition evidence referenced by the Officer establishes a change in country conditions that may affect the decision. In fact, the Applicant states that the 2009 report is equally devastating regarding the state's ability to protect its citizens. The Applicant, through this submission, does not raise a breach of procedural fairness, rather he disagrees with the Officer's state protection finding.

B. *Was the Officer Required to Consider Whether an Oral Interview was Required?*

[26] The Applicant submits that in assigning little weight to the Applicant's sworn statements that he is the victim of a blood feud, the Officer makes a credibility finding. As such, pursuant to section 167 of the *Immigration and Refugee Protection Regulations* (SOR/2002-227) (the Regulations), the Officer was required to consider whether to hold an interview (*Zemo v Canada (Minister of Citizenship and Immigration)*, 2010 FC 800, 372 FTR 292 at para 18).

[27] The Respondent submits that there was no credibility finding. The only basis for the Applicant's allegation that he is the target of a blood feud is his own assertion. The Respondent argues that this Court has held that even if an applicant is found credible, an officer is not required to accept his or her interpretation of events or speculative statements as reflective of objective reality. Applying this to the present matter, the Respondent submits that while the Applicant might believe that he is the target of a blood feud, it was open to the Officer to find that there was insufficient evidence to support that as the objective reality of the situation (*Khan v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 400, 113 ACWS (3d) 324 at para 18).

[28] It is not always easy to distinguish between a claim that fails due to insufficient corroborating evidence versus one that fails because a claimant is not believed. The two findings often seem inextricably entwined, and there is ample jurisprudence from this Court surveying the debate.

[29] In this case, the Officer attributed little weight to the Applicant's statement that he was embroiled in a blood feud because his affidavit was vague and lacked details regarding this element of his claim. Furthermore, the existence of a blood feud was not corroborated by any of the documentary evidence which acknowledged the attacks on the Applicant's brother, or by the letter provided by the Human Rights organization familiar with the Applicant's problems. The Applicant also claimed that he was especially targeted as the oldest. The Officer noted that there was no documentary support for that assertion. The Officer did, however, accept the majority of events as relayed by the Applicant, including that there was some kind of personal vendetta between the Applicant and Koseni.

[30] I find that this case is properly characterized as one in which the Applicant failed to provide sufficient evidence to prove, on a balance of probabilities, that a blood feud was ever declared or existed. As such, procedural fairness did not require that the Officer conduct a hearing. The burden of proof was on the Applicant, and he failed to meet it. The Applicant only presented his subjective belief that a blood feud existed, and this was not sufficient to convince the Officer given the other documentary evidence (*Ferguson v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067, 74 Imm LR (3d) 306).

C. *Was the Officer's State Protection Finding Reasonable?*

[31] The determinative issue turned out to be state protection, the Officer coming to the conclusion that the Applicant failed to provide clear and convincing evidence to show that state protection would not reasonably be forthcoming. The Applicant argues that this finding is unreasonable.

[32] The Respondent submits that the Officer reasonably came to the state protection finding based on the fact that the Applicant only approached the police once since his return to Albania in 1999.

[33] Based on the evidence in the record, I regret that I have come to the conclusion that the Officer's finding was reasonable. The Applicant has documented that his family was targeted by

members of the police force. The record equally supports that Koseni was removed from the police force due to his actions. This supports the Officer's finding that state protection is available.

[34] Although the documentary evidence shows that there is corruption in the police force, the documentary evidence also suggests that the state is taking actions to address these issues. The Applicant may have had his reasons for not approaching the authorities before 2008, but unfortunately, his subjective feelings on the efficacy of the authorities do not go a long way to showing that the state is unable or unwilling to protect him.

[35] Based on the reasons above, this judicial review is dismissed.

V. Conclusion

[36] No question was proposed for certification and none arises.

[37] In consideration of the above conclusions, this application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

" D. G. Near "

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	**PULAKU v. MCI**
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