Federal Court  Cour fédérale

Date: 20120417

Docket: IMM-5711-11

Citation: 2012 FC 439

Ottawa, Ontario, April 17, 2012

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

SHEAT BUDJAKU, SUZANA BUDJAKU AND ISEN BUDJAKU

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 the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated August 8, 2011. The Board found that the Applicants were not Convention refugees or persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] For the following reasons, the application is dismissed.

I. Facts

[3] The Principal Applicant, Sheat Budjaku, and his wife, Suzana Budjaku and their minor child, Isen Budjaku (collectively the Applicants) are ethnic Albanians and citizens of Macedonia. They arrived in Canada on May 5, 2009 and filed a refugee claim on July 28, 2009.

[4] Their claim is based on a blood feud declared in 2005 by the Marku family after an incident involving the shooting of a horse. The Principal Applicant insists he approached village elders to reconcile with the Marku family but was unsuccessful. He and his elder son were attacked by members of the Marku family, although he managed to escape without injury.

II. Decision under Review

[5] The Board found that the Principal Applicant had not provided credible evidence to support the central allegations of the claim. His actions after the blood feud were not consistent with his testimony of self-confinement of the family for their safety. He ventured outside the home to work in a bakery and his son attended school, although on an irregular basis. This undermined the credibility of the risks they faced as a result of the blood feud declared against the family.

[6] A letter from a village elder, Nazif Kaziu, on efforts to reconcile the parties was found to be of very little probative value. The letter was only signed by one of the elders when they were

supposed to act as a group. There was no mention as to why and when the blood feud was declared by the Marku family. Also, it was "written on a plain piece of paper with no semblance whatsoever of being an official statement from the elders of the village."

[7] The Principal Applicant could not explain inconsistencies in his testimony that while blood feuds are widespread in Macedonia, he was not aware of other incidents. He stated that "he could only testify to his own case and if it happened to other persons, he did not know."

[8] At paragraph 10 of its reasons, the Board summarized the assessment of the Applicants' credibility:

> Given the principal claimant's actions after the alleged blood feud was declared, which were not consistent with the risks associated with a family against whom a blood feud was declared, and the questionable statement from the elders from the village, I am not convinced of the truthfulness of the blood feud and ultimately, the well-foundedness of the claimant's alleged fear.

III. Issue

[9] The issue to be considered is the reasonableness of the Board's credibility findings.

IV. Standard of Review

[10] Questions of fact and credibility are reviewed based on reasonableness (see for example *Aguirre v Canada (Minister of Citizenship and Immigration)*, 2008 FC 571, [2008] FCJ no 732 at paras 13-14). Reasonableness is concerned with "the existence of justification, transparency and

intelligibility" as well as "whether the decision falls within a range of possible, acceptable outcomes defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2009] 1 SCR 190 at para 47).

V. Analysis

[11] The Applicants dispute the Board's negative credibility findings based on the inconsistency regarding the family's self-confinement; the letter from the village elder; and the mention of blood feuds as prevalent without providing other examples. Although I am not convinced that these findings were unreasonable, I will address each of the arguments raised by the Applicants in turn.

[12] It is Applicants' contention that the Board unreasonably drew a negative inference as to subjective fear from the reference to self-confinement and inconsistent actions in attending work and school. The term "self-confinement" was not used in the Personal Information Form (PIF). The Principal Applicant referred to it in his testimony but subsequently explained that his family simply took precautions before going out of the house. Refugees are not required to stay confined to their homes as this would be a denial of basic human rights. According to the Applicants, the Board exaggerated a "few apparent contradictions" while forgetting the substance of the claim related to the blood feud and attacks based on *Djama v Canada (Minister of Employment and Immigration)*, [1992] FCJ no 531, 1992 CarswellNat 1136 (CA).

[13] However, I am satisfied by the Respondent's submissions that the Board was justified in its consideration of the inconsistency related to self-confinement. The Principal Applicant's testimony

suggested that between 2005 and 2008 he worked at the bakery "[a]ll the time", or whenever he had the opportunity to do so "in a hidden way." His son continued to attend school during this time, although on an irregular basis. This was at odds with his claim that "I was forced to protect myself. I self-confined the whole family in the house." He referred to the notion of self-confinement on two occasions.

[14] It was open to the Board to find that this evidence was inconsistent with a subjective fear of the threat posed by the Marku family. The Board did not imply that the Applicants would have to be self-confined to qualify as refugees, but that there were issues in the statements made regarding the threat posed by the Marku family and the actions of the Applicants. Their subjective fear as to the existence of the blood feud as the substance of their claim received reasonable consideration.

[15] Credibility findings based on internal contradictions, inconsistencies and evasions are at the heartland of the discretion of the trier of fact (see *Dhindsa v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ no 2011, 102 ACWS (3d) 165 at para 41; *Giron v Canada (Minister of Employment and Immigration)* (1992), 143 NR 238, [1992] FCJ no 481 (CA)). The Applicants merely disagree with the significance the Board accorded to this particular inconsistency.

[16] Contrary to the Applicants' submissions, it also appears that the Board put the inconsistency to the Principal Applicant at the hearing. The Applicants were aware that credibility was an issue. The Board was not necessarily even required to ask the Principal Applicant about this inconsistency in the circumstances (see *Tekin v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 357, [2003] FCJ no 506 at para 14).

[17] The Applicants further assert that it was unreasonable for the Board to consider the letter from village elder, Nazif Kaziu, an official statement and attribute “very little probative value” simply because it was not signed by all elders, did not mention when and why the blood feud was declared and was written on a plain piece of paper. They insist that village elders do not act in any governmental or other official capacity; therefore, the Board should not have expected a letter by an informal group of older community members to respect certain formalities. The Applicants also point to evidence that they suggest corroborates the underlying cause of the feud, namely a reference in the Kaziu letter to another elder and a second letter from a former neighbour.

[18] I must agree with the Respondent’s position that it was reasonable for the Board to attribute little probative value to the letter based solely on the failure to identify relevant information as to when and why the blood feud was declared by the Marku family.

[19] The Applicants are placing too much emphasis on the Board’s suggestion that the letter was supposed to be an “official statement.” During the hearing, the Applicant acknowledged that the elders acted as a group so it was justifiable to question why the letter was only signed by Nazif Kaziu. Similarly, there were issues associated with the credibility of the letter as it was written on a plain piece of paper and had no indication that it was made on behalf of a group of elders. As the Respondent also makes clear, the Applicants cannot now attempt to introduce further explanations as to how the elders operate in these instances. The Principal Applicant was already questioned about the elders’ involvement in the course of the hearing.

[20] I should stress that the Board is entitled, as it did in this instance, to make reasonable findings based on implausibilities, common sense and rationality (*Araya v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 626, [2003] FCJ no 821 at para 6; *Shahamati v Canada (Minister of Employment and Immigration)*, [1994] FCJ no 415 at para 2 (CA)).

[21] Finally, the Principal Applicant takes issue with the Board's statement that he testified blood feuds were "prevalent" in Macedonia but "did not know" of any examples. It is argued that this amounts to an error of fact. As stated, he could not provide specific details because he was unaware of them and could only speak of his own experiences. According to the Applicant, the Board inferred that he ought to have knowledge of other people's situations.

[22] I nonetheless consider the Board's assessment reasonable, since the Principal Applicant confirmed twice in his testimony that blood feuds were prevalent in Macedonia but was unable to provide a general example. As the Respondent suggests, even if the Board misunderstood the Principal Applicant's testimony to a small degree, it does not alter the broader conclusion.

[23] The discussion during oral testimony between the Board Member and the Principal Applicant was understandably confusing. Initially, the Principal Applicant responded that he was not aware of other blood feud incidents but when asked for confirmation, he suggested this occurred "[a]mong the Albanians, where the Albanians live." He further commented "if there is a specific person that this happened…to a specific person I don't know." When prompted again, he insisted "[i]t has happened, but I don't know." The Board's summation that "he stated he could only testify

to his own case and if it happened to other persons, he did not know" reflects the words of the Principal Applicant and the principles of justification, transparency and intelligibility.

[24] In addition, the Board was not required to specifically mention the documentary evidence. The Applicants were not found credible and lacked subjective fear. The Board did not have to look further into the objective basis for fear in the documentary evidence. The Respondent has also questioned the significance of that relatively general documentation.

VI. Conclusion

[25] As the Board's negative credibility findings were reasonable, the 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

DOCKET:	**IMM-5711-11**
STYLE OF CAUSE:	**BUDJAKU ET AL v MCI**
PLACE OF HEARING:	**TORONTO**
DATE OF HEARING:	**MARCH 8, 2012**
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