

Federal Court



Cour fédérale

Date: 20121109

Docket: IMM-1200-12

Citation: 2012 FC 1312

Ottawa, Ontario, November 9, 2012

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

**GJOVALIN MELAJ
JOZEFINA MELAJ
JOZEF MELAJ**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicants seek judicial review of the January 3, 2012, decision of the Refugee Protection Division of the Immigration and Refugee Board (“the Board”) in which the Board determined that the Applicants were neither Convention refugees nor persons in need of protection under sections 96 and 97, respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

[2] For the reasons that follow, the application for judicial review is dismissed.

I. Facts

[3] The Applicants are Mr. Gjovalin Melaj and his two minor children, Jozefina and Jozef Melaj. Mr. Melaj and his daughter are citizens of Albania, while his son is an American citizen. They came to Canada on July 15, 2008, and submitted their claim for refugee protection two days later on the basis of their fear of harm pursuant to a blood feud declared against their family in Albania.

[4] Mr. Melaj was a police officer in Albania until 1996, when the country fell into civil war. He was taken into custody and tortured by his fellow officers after he refused to shoot at civilians who opposed the government, as ordered by his superiors. He fled with his family to the United States, where his claim for asylum was ultimately refused because the civil war had ended.

[5] While in the United States, Mr. Melaj discovered that a blood feud had been declared against his family back in Albania. The origin of the dispute purportedly dates back to Mr. Melaj's time working as a police officer. While a customs inspector in 1996, Mr. Melaj confiscated contraband goods from three individuals. A skirmish ensued, in which Mr. Melaj suffered a knife wound. While he arrested two of the three men, one of them escaped. The two were then released from custody shortly after their arrest. Mr. Melaj attributed this to their participation in a crime ring that also involved the chief of police of the same region where they were arrested.

[6] Two years after this confrontation, the three men approached Mr. Melaj's brother for compensation for the confiscated goods that were not returned. When the brother did not acquiesce, the three men began to beat him. Mr. Melaj's cousins, returning from work right around this time, came to his brother's assistance. They brought weapons, and shot one of the three men. Mr. Melaj asserts that the blood feud was declared the following day.

[7] In the course of the following years, Mr. Melaj recounts that one of his cousins was shot and wounded, though not killed, and his father was killed. While the evidence is not entirely clear on this particular point, Mr. Melaj testified that the Dokaj family decided that the blood had been satisfied by taking the life of the head of the family, but that the Melaj family was not willing to reconcile.

II. Impugned Decision

[8] The Board first dismissed the claim of the Applicant with American citizenship, as no submissions were made, nor was evidence adduced, to establish that state protection in the United States would be inadequate.

[9] The Board then rejected the claim of the two other Applicants on the basis that the principal Applicant's testimony was not credible. While it recognized that there are documents that, on their face, support the Applicants' claim, the Board concluded that these documents depended on the credible testimony of the principal Applicant.

[10] The Board drew a series of negative credibility inferences from Mr. Melaj's testimony. First, Mr. Melaj failed to testify that his mother told him that a blood feud was actually declared the day following the first altercation, in which his brother was attacked.

[11] Second, the Board drew a negative inference from Mr. Melaj's explanation about why his brother's name was on the DHL package that he claimed was sent by his mother. If the Applicant's brother was purportedly hiding in Italy, and only returned to Albania occasionally, the Board found it reasonable that one of the Applicant's sisters would assist their mother with mailing the documents, should she require assistance. As such, the Board concluded that the documents were actually sent by Mr. Melaj's brother and that, by extension, he was no longer in self-confinement or hiding in Italy.

[12] Third, the Board drew a negative credibility inference from the Applicant's inability to explain why his father's death certificate was printed on lined paper. The Board concluded that it had been altered for the purpose of advancing the claim for refugee protection. The Board further noted that only one report made in connection with Mr. Melaj's father's death mentioned the blood feud.

[13] The Board was also not convinced that the blood feud was sparked by the Dokaj family's attempt to obtain compensation from the contraband goods that were seized two years prior to the declaration of the blood feud. First, the Board did not find it plausible that the demands would be made two years after the actions. Second, Mr. Melaj was only one of three officers involved in the

confiscation, and there was no evidence that any similar demands were made of the other two officers or their families.

[14] Finally, the Board noted that it would have been incumbent on the Applicant to seek the assistance of his former employer before making a claim for protection in Canada. The Board was not satisfied that he did so, and concluded that the Applicant failed to show that state protection from the illegal demands for compensation would not be adequate.

III. Issues

[15] The determinative issue in this case is whether the Board's credibility finding was reasonable.

IV. Standard of Review

[16] Credibility determinations are questions of fact and of mixed fact and law. As such, they are owed significant deference, and are reviewable on the standard of reasonableness (see *Baykus v Canada (Minister of Citizenship and Immigration)*, 2010 FC 851, [2010] FCJ No 1058 at para 14; *Mejia v Canada (Minister of Citizenship and Immigration)*, 2009 FC 354, [2009] FCJ No 438 at para 29).

[17] Reasonableness is concerned "mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the

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

V. Analysis

[18] The Applicants contest the Board’s finding with respect to the following main points: (a) the Applicant’s testimony about the declaration of the blood feud; (b) whether the Applicant’s brother is in hiding; (c) the “fraudulent” death certificate; (d) the connection between the Applicant’s father’s death and the blood feud; (e) the plausibility of the Dokaj brothers’ demands two years after the 1996 confiscation of goods; and (f) the Applicant’s failure to seek state protection.

[19] Based on the record, it is evident that the Applicant’s testimony was not clear on when or by whom the blood feud was declared. As such, it was open to the Board to make a negative credibility inference on this point. The Board’s conclusion in this regard was reasonable.

[20] The Board’s conclusion that the Applicant’s brother is not in hiding in Italy hinges on the credibility of the Applicant’s account as to why the brother’s name is on the courier package of documents that were sent to the Applicant, when he testified that it was his mother who physically sent them. There were inconsistencies in the record with respect to the mother’s level of literacy, and, as the Respondent points out, it is clear that the Applicant’s mother was very active and involved in retrieving documents, reporting incidents to the police, and going to the public attorney’s office. I am satisfied that the Board’s conclusion on this point was reasonable, particularly in the absence of evidence that it was unreasonable to expect that the Applicant’s sisters

may be able to help their mother with the documents. Given the dangers associated with a blood feud, it would be reasonable to expect that the Applicant's family might change the manner in which the Applicant described they sent documents historically, so as to protect the brother from being targeted.

[21] Furthermore, I find the Board's conclusion with respect to the death certificate reasonable. Its conclusion was based on the appearance of the document, and not on any "specialized knowledge," as the Applicants contend. I note that the birth certificates of the Applicants contained in the record were not printed on lined paper, and the Board did give the Applicant an opportunity to explain the appearance of the document. Given the evidence in the record, the Board's conclusion on this point was within the range of possible, acceptable outcomes.

[22] The Board decided that, even if it were to accept that the Applicant's father had been killed in connection with the blood feud, the Applicant testified that the Dokaj family told villagers that the feud was settled for now. It was reasonable, when considering the whole of the decision, to conclude that the Applicant was no longer at risk. This is particularly so given the Applicant's testimony that it was in fact his own family that was unwilling to settle the feud, considering that too much blood had been shed.

[23] Relatedly, the Board made an adverse credibility finding on the basis that it was not plausible that the blood feud had as its root the compensation sought by the Dokaj brothers, particularly since there was no evidence that either of the other two officers involved in that incident had been targeted. This Court has determined that "a tribunal may make adverse findings of

credibility based on the implausibility of an applicant's story provided the inferences drawn can be reasonably said to exist" (*Valtchez v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776, [2001] FCJ No 1131 at para 7). I am satisfied that the inferences drawn can reasonably be said to exist on a consideration of the whole of the evidence.

[24] Finally, the Board states that the Applicant failed to show that state protection would not be forthcoming with respect to the illegal claim for compensation purportedly made by the Dokaj brothers. The Applicant testified that his mother went to the police to report incidents related to the blood feud, though there was no evidence that the alleged source of the feud was recounted to police at all. The Applicant's mother further obtained a record of the 1996 customs incident from the police, apparently without difficulty. These events tend to show that state protection would be forthcoming.

[25] The Applicants further posit that the Board did not raise state protection as a determinative issue. While I agree that the Board did not refer to state protection generally at the hearing, and that it did not acknowledge any consultation of the documentary evidence, its decision was centered on its credibility findings. In other words, state protection was not, in fact, determinative of the claim. As such, I find the Board's overall conclusion to be within the range of possible, acceptable outcomes.

VI. Conclusion

[26] The Board's credibility decision, when evaluated in its entirety, is defensible in respect of the facts and the law, and is thus reasonable.

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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**REASONS FOR JUDGMENT
AND JUDGMENT BY:** NEAR J.

DATED: NOVEMBER 9, 2012

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