

Federal Court



Cour fédérale

Date: 20130612

Docket: IMM-10650-12

Citation: 2013 FC 641

Montréal, Quebec, June 12, 2013

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**PRIFTI IRMA
PRIFTI ANXHELA
PRIFTI ARLENE**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] The Applicants seek judicial review of a decision by the Refugee Protection Division [RPD] of the Immigration and Refugee Board, wherein it was determined that they are not Convention refugees or persons in need of protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. In particular, the principal Applicant challenges the RPD's finding that she lacks credibility.

II. Judicial Procedure

[2] This is an application under subsection 72(1) of the *IRPA* for judicial review of the decision of the RPD, dated September 20, 2012.

III. Background

[3] The principal Applicant, Ms. Irma Prifti, a citizen of Albania, was born in 1966. Her daughters, Anxhela and Arlene, one a citizen of Albania, born in 1994 and the other, a citizen of the United States, was born in 1997.

[4] In 1995, the principal Applicant allegedly joined the Democratic Party of Albania [DPA] and, on June 29, 1997, was allegedly kidnapped, tortured, and threatened with death for complaining of voting fraud in the Albanian parliamentary elections.

[5] In July 1997, the principal Applicant, her elder daughter, and spouse went to the United States, where her younger daughter was born in November 1997.

[6] On March 8, 1998, the principal Applicant and her elder daughter allegedly returned to Albania. While in Albania from 1998 to December 1999 [alleged period of return], she allegedly renewed her passport, remitting the one she used to return.

[7] On October 10, 1998, the police allegedly detained and beat the principal Applicant and a court imprisoned her for a month for assisting in a constitutional referendum boycott.

[8] On November 22, 1998, the day of the constitutional referendum, the principal Applicant was allegedly assigned to a polling station by the DPA and complained of voting fraud.

[9] The DPA allegedly launched legal proceedings against the Socialist Party of Albania [SPA] and the principal Applicant allegedly testified in a preliminary hearing on April 6, 1999. She alleges that, as a result, (i) she was detained by secret police and removed from the polling station at the SPA's instruction; (ii) she was summoned to the Prosecutor's Office four times and interrogated, tortured, raped, and threatened with death; (iii) her elder daughter was kidnapped; and (iv) the Prosecutor's Office charged her but offered to withdraw the charges if she withdrew her testimony.

[10] On February 5, 2000, the principal Applicant and her elder daughter allegedly fled for the United States, arriving in Chicago on February 6 with a false passport.

[11] On August 25, 2009, the Applicants arrived in Canada.

IV. Decision under Review

[12] The RPD found that the Applicants were not Convention refugees or persons in need of protection.

[13] First, the RPD did not believe that the principal Applicant and her elder daughter returned to Albania in 1998 because: (i) her claim for refugee protection form [Claim Form] did not describe the alleged period of return; (ii) her Claim Form stated that she left Albania on January 14, 1997, lived in Addison, Illinois from July 1998 to August 2000 and Lombard, Illinois from August 2000

to February 2009, and worked as a hair dresser in Oakbrook, Illinois from July 1998 to 1999;

(iii) she claimed she fled Albania's political system 12 years before in her Claim Form; (iv) her Illinois license was issued on April 8, 1999; (v) on December 11, 1997, she requested an extension of non-immigrant status to July 13, 1998; (vi) a March 23, 1998 letter with her signature requesting an extension of non-immigrant status gave her address as Addison, Illinois; (vii) a copy of her passport attached to the March 23, 1998 letter did not mention the period of return; (viii) she told a United States immigration judge she fled Albania, landed in Toronto, and illegally entered the United States via Detroit; (ix) she did not produce travel documents corroborating the alleged period of return; (x) it was not likely she was in Albania in February 1999 since her husband published articles that could expose her to reprisal in Albania; and (xi) it was not likely she would return if the party that tortured her 8 months earlier was in power and violence was high.

[14] The RPD rejected the principal Applicant's explanations that (i) her elder daughter completed the Claim Form in a state of stress, exhaustion, and hunger; (ii) she included the alleged period of her return in her Claim Form statement that she fled Albania 12 years before;

(iii) information on her Illinois license came from her husband; (iv) her husband and brother-in-law forged, without her knowledge, her December 11, 1997 request and March 23, 1998 letter using a copy of her passport made before her return; (v) the United States immigration judge's account was based on forms incorrectly prepared due to translation difficulties; and (vi) her passport corroborating the alleged period of return was unavailable since she remitted it in Albania as part of the renewal process.

[15] Firstly, in rejecting the explanations, the RPD found that: (i) the principal Applicant and her younger daughter assisted her elder daughter in completing the Claim Form; (ii) the omission on the Claim Form concerned events central to her claim; (iii) it was unlikely her husband and brother-in-law would forge the December 11, 1997 request if she intended to return to Albania; (iv) statements to the United States immigration judge about arriving in Toronto were in the form of testimony; (v) it was unlikely testimony on itinerary was susceptible to poor translation; and (vi) it was unlikely she renewed her passport in Albania since there was evidence that it expired in January 2001.

[16] Secondly, the RPD found that the principal Applicant's conflicting testimony on her December 11, 1997 request and the issue and expiry dates of the Albanian passport with which she returned impugned her credibility. She initially testified that she signed the December 11, 1997 request not understanding its English contents. Asked why she signed it without understanding it, she then claimed her brother-in-law forged it.

[17] Thirdly, the RPD did not believe the principal Applicant was persecuted on the basis of political opinion in 1997 because she failed to claim refugee protection in the United States in July 1997.

[18] Fourthly, the RPD found a November 16, 1998 letter on the principal Applicant's involvement in the constitutional referendum fraudulent [DPA Letter]. A DPA secretary in Tirana examined the DPA Letter, noting anomalies in the letterhead, text, seal, and signature location and it was unlikely that the signatory would normally sign such a letter (Certified Tribunal Record [CTR] at p 193). The RPD did not accept that the DPA Letter had been drafted by volunteers. The RPD

also drew a negative credibility inference from her failure to present her DPA membership card at the first RPD hearing on December 9, 2010.

[19] On the basis of the general credibility finding, the RPD did not consider the following documents credible: (i) a letter from the DPA and attestations from 3 DPA members corroborating the principal Applicant's participation in the 1998 constitutional referendum; (ii) a Prosecutor's Office report stating that she was arrested on October 10, 1998; (iii) subpoenas dated October 12, 1998, January 21, 1999, April 14, 1999, and July 6, 1999 ordering her to attend the Prosecutor's Office; (iv) a report from a doctor and medical clinic in Tirana, dated April 27, 1999, on her alleged rape-related injuries; (v) a medical letter, dated April 15, 2004, corroborating her April 27, 1999 rape; (vi) a letter from her elder daughter's school in Albania stating that she was a student from April 1998 to September 30, 1999; (vii) a letter from Luljeta Zhebo stating that she worked with her in Albania in 1998 and 1999; (viii) a letter from a dental office in Albania stating that she was a patient in January 1999. These documents did not contradict the other credibility problems arising from the narrative. Citing *Abid v Canada (Minister of Citizenship and Immigration)*, 2012 FC 483, the RPD found that the general credibility finding was sufficient to taint her evidence.

[20] Although the RPD accepted that the principal Applicant suffered psychological problems, it did not believe that these problems derived from being persecuted in the past.

[21] The RPD rejected the younger daughter's claim for refugee protection because she did not establish any risk in the United States, her country of citizenship.

V. Issue

[22] Was the credibility finding reasonable?

VI. Relevant Legislative Provisions

[23] The following legislative provisions of the *IRPA* are relevant:

Convention refugee

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.

Person in need of protection

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

Définition de « réfugié »

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.

Personne à protéger

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

former habitual residence,
would subject them personally

nationalité, dans lequel elle
avait sa résidence habituelle,
exposée :

(a) to a danger, believed on
substantial grounds to exist,
of torture within the
meaning of Article 1 of the
Convention Against
Torture; or

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
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,

(iii) the risk is not inherent
or incidental to lawful
sanctions, unless imposed
in disregard of accepted
international standards,
and

(iii) la menace ou le
risque ne résulte pas de
sanctions légitimes —
sauf celles infligées au
mépris des normes
internationales — et
inhérents à celles-ci ou
occasionnés par elles,

(iv) the risk is not caused
by the inability of that
country to provide
adequate health or
medical care.

(iv) la menace ou le
risque ne résulte pas de
l'incapacité du pays de
fournir des soins
médicaux ou de santé
adéquats.

Person in need of protection

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

Personne à protéger

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

VII. Position of the Parties

[24] The principal Applicant argues that the RPD's credibility finding was unreasonable because:

- (i) the Claim Form was completed by her elder daughter who was a minor;
- (ii) the inconsistent statements on the Claim Form were attributable to her psychological state;
- (iii) the panel member assumed that cowardice is the only plausible standard of behaviour for an asylum seeker;
- (iv) the panel member did not consider evidence that her domestic situation led her to return to Albania;
- (v) the panel member's assessment of the passport issuance and expiry dates reflects a microscopic view of her recollection of long past events;
- (vi) the panel member ignored evidence from the United States immigration judge's decision that errors had previously been made in her asylum claim;
- (vii) the DPA representative only commented on the anomalous nature of the November 16, 1998 letter and did not expressly state that it was fraudulent;
- (viii) she presented documentary evidence establishing the alleged period of return and her participation in DPA activities;
- (ix) the panel member ignored testimony that her husband forged the December 11, 1997 request and March 23, 1998 letter to convince her to return to the United States; and
- (x) the decision of the United States immigration judge was overturned.

[25] The Respondent counters that the credibility finding is reasonable because: (i) the panel member could rely on statements in the Claim Form and the December 11, 1997 request and March 23, 1998 letter; (ii) psychological problems do not remedy the defects of testimony full of contradictions and errors; (iii) her explanations that her elder daughter completed the Claim Form and that her husband and brother-in-law forged the December 11, 1997 request and March 23, 1998 letter were not satisfactory; (iv) her return to Albania was a key to her claim; (v) the anomalies identified by the DPA in the November 16, 1998 letter were sufficient to establish that it was fraudulent, and (vi) the panel member's general negative credibility finding was sufficient to taint the credibility of the principal Applicant's other documentation.

VII. Standard of review

[26] The RPD's credibility findings are reviewable on the reasonableness standard (*Wiesehahan v Canada (Minister of Citizenship and Immigration)*, 2011 FC 656).

[27] If the reasonableness standard applies, courts may only intervene if reasons are not "justified, transparent or intelligible". To meet the standard, a decision must also fall in the "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).

VIII. Analysis

[28] The RPD could reasonably find that the principal Applicant lacked general credibility.

[29] First, the RPD could rely on the principal Applicant's point of entry statements in making a credibility finding (*Divas v Canada (Minister of Citizenship and Immigration)*, 2013 FC 182 at para 5). Her failure to identify the alleged period of return on the Claim Form created an inconsistency with her statements in her Personal Information Form and testimony that could reasonably lead to a negative credibility inference. Indeed, not only did the principal Applicant fail to state that she returned, she also positively stated that she was living and working in Illinois during the alleged period of return. Moreover, she also stated that she fled Albania 12 years before the date of the Claim Form, August 12, 2009, which would fix her date of arrival in the United States as sometime in 1997.

[30] The principal Applicant's mental health problems do not detract from the reasonability of credibility inferences drawn from the Claim Form. Most of the events on which her claim was based transpired during the alleged period of return. Omitting the alleged period of return from the Claim Form results in a major inconsistency on an essential element of her claim. The Applicant has not established that the panel member was insensitive to her psychological problems as required by *Guideline 8: Guideline on Procedures with respect to Vulnerable Persons Appearing Before the IRB* [Guidelines]. In these circumstances, Justice Luc Martineau's decision in *Mubiala v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1105, is instructive:

[12] ... It should be recalled once again that the purpose of the Guidelines is to make sure that persons recognized as vulnerable are heard with sensitivity by the panel and not to remedy the defects of testimony that is full of major contradictions and implausibilities. Here, these many contradictions or implausibilities pertain to essential aspects of the refugee claim and clearly go beyond simple memory lapses, inconsistencies or an inability to relate relevant events because the applicant is suffering from post-traumatic stress. Other contradictions or implausibilities identified by the panel simply concern the documentary evidence. Contrary to the situation noted by the Court in the decisions raised by the applicant, the rejection of

this refugee claim is not the result of any insensitivity on the part of the panel concerning the applicant's state of psychological vulnerability.

[31] Nor does the fact that the principal Applicant's elder daughter completed the Claim Form in a state of stress, exhaustion, and hunger make the negative credibility inferences unreasonable. In signing the Claim Form, the principal Applicant declared that she understood its contents, "having asked for and obtained an explanation on every point that was not clear to [her]" (CTR at p 584). It would be reasonable to find that the alleged period of return was so central to the claim that, if true, it would be included on the Claim Form, even if the elder daughter was stressed, exhausted, and hungry.

[32] Second, the RPD could rely on the December 11, 1997 request and March 23, 1998 letter, the inconsistent testimony, and the United States immigration judge's account of the alleged landing in Toronto to question her credibility. Her request to extend her non-immigrant status in the United States to July 13, 1998 is inconsistent with her claim that she intended to return to Albania and did return in March 1998. Given the centrality of the alleged period of return, the credibility finding on this point does not amount to a microscopic examination of peripheral issues. The shift in her testimony as to whether she signed the December 11, 1997 request or whether her husband and brother-in-law forged it neither results from a microscopic examination nor involves a peripheral issue. Finally, the United States immigration judge's statement that she claimed she landed in Toronto after the alleged period of return is inconsistent with her later claim that she returned to the United States via Chicago. While the United States immigration judge's decision was overturned, this finding of fact was not at issue (CTR at pp 325-327).

[33] *Kambanda v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1267 holds that the RPD may “consider inconsistencies when assessing a claimant's credibility [if they are] rationally related to the applicant's credibility[,] major enough by themselves to call into question the applicant's credibility[, and do not result from] a microscopic examination of peripheral issues” (at para 42).

[34] Third, the RPD could reasonably find the November 16, 1997 letter on the principal Applicant's involvement in the constitutional referendum fraudulent. A secretary of the DPA indicated that the name of the office on the letterhead was incorrect, the language of the letter was improperly expressed, the signatory did not hold the office of an individual who would normally sign such letters, the signature was not located in the usual place, and the language on the seal was incorrect (CTR at p 193). Given these anomalies, the RPD could reasonably find that the letter was fraudulent.

[35] Fourth, the RPD could refuse to give weight to the other documentary evidence because it was tainted by the general credibility finding. In *Abid v Canada (Minister of Citizenship and Immigration)*, 2012 FC 483, Justice Martineau held that a “general finding of lack of credibility can affect all relevant evidence submitted by [an] applicant” (at para 21). Given the finding that the November 16, 1997 letter was fraudulent, it would also be reasonable (in the absence of countervailing evidence) to find these documents inauthentic. Under *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, this Court may supplement the RPD's reasons in this regard (at para 12).

IX. Conclusion

[36] For all of the above reasons, the Applicants' application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS that the Applicants' application for judicial review be dismissed with no question of general importance for certification.

“Michel M.J. Shore”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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PRIFTI ARLENE
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