

Federal Court



Cour fédérale

Date: 20131119

Docket: IMM-11580-12

Citation: 2013 FC 1174

Ottawa, Ontario, November 19, 2013

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**SUZANA PRECI
FLAVIA-ALESSIA PRECI
LUISON LEONARDO PRECI**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Refugee Protection Division of the Immigration and Refugee Board of Canada [RPD] denied the Applicants' application for refugee protection on the grounds that they failed to provide sufficient and credible evidence to support a well-founded fear of persecution as required by ss. 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] Suzana Preci is a 43 year old citizen of Albania. The two other applicants are her daughter and her son.

[3] In her Personal Information Form [PIF], Ms. Preci states that she is claiming protection because she fears “ill-treatment or even murder from Lekë Preci (my ex-husband), his family and the males of the Nikolli family [i.e. her family]”

[4] I can find nothing unreasonable in the findings of the RPD that Ms. Preci had failed to establish that she was at risk from either Lekë Preci or his family. She testified that although she had been a battered spouse during their marriage, they were now divorced and she did not know where her ex-husband was or whether he was looking for her. She also admitted that neither Mr. Preci, nor his family, had declared a blood feud on her family.

[5] However, the analysis by the RPD of the other agent of persecution, her own family, I find to have been unreasonable because it was based on speculation and perverse inferences, and ignored evidence.

Background

[6] Ms. Preci’s extended family practices medieval customs, prevalent in Northern Albania, known as Lek Dukagjini. These customs view women as chattel and hold the male family honour in the highest esteem. In 1999, Ms. Preci’s family forced her to marry Mr. Preci, a man she had never met. Following their marriage, she moved to Italy where Mr. Preci resided and worked.

[7] For the next 10 years, Ms. Preci was physically and emotionally abused: she was repeatedly raped, beat, threatened with death, and mentally abused. Her children were also victimized by Mr. Preci.

[8] In 2002, Ms. Preci called her family and asked if she could divorce Mr. Preci given the abuse she and her children were suffering. Her family told her she could not divorce Mr. Preci and that if she did, she should never return.

[9] In 2009, Ms. Preci called the police to report the abuse but requested that they not take any action because she was afraid of Mr. Preci's response. Around this time she also told Mr. Preci that she intended to divorce him. In response, he threatened to kill her and he transferred ownership of the matrimonial home to his brother to protect the asset in the event of a divorce.

[10] On June 7, 2010, a decree of divorce was obtained by Mr. Preci, in Albania, without Ms. Preci's knowledge. On June 22, 2010, Ms. Preci returned to Albania. Her family learned of the divorce and told her that she had brought dishonour to their family and that the family felt obligated to kill her themselves if she did not leave Albania.

[11] On June 27, 2010, Ms. Preci fled to the United States where she met her sister. A second sister who lived in Canada eventually helped her come to Canada on August 1, 2010. While in the U.S., Ms. Preci did not file for asylum.

[12] In 2000, a cousin of Ms. Preci's who was divorced by her husband, was sent back to her family. She had allegedly had a relationship with another man. Despite being pregnant, her own family killed Ms. Preci's cousin in order to restore the family honour.

Decision

[13] The RPD emphasized the fact that it was Mr. Preci who obtained the divorce without Ms. Preci's knowledge and that as a result of having been the recipient of the divorce and not the initiator, she had not broken the Lek Dukagjini code. The RPD found that there was no basis for the breach of her family's honour and no reason for them to seek retribution. On this basis, the RPD found that Ms. Preci was not at risk at the hands of her own family.

[14] The RPD also commented on the fact that Mr. Preci did not give evidence at the hearing and did not accept Ms. Preci's testimony that Mr. Preci blamed her for the divorce because, in the RPD's view, it was "against the grain of common sense and reason that after [Mr. Preci] obtained the decree of divorce in Albania without the knowledge of [Ms. Preci], he would still blame her for his action of divorcing her." On this basis, the RPD determined that Ms. Preci's evidence deserved "no weight at all" and that her claim of fear of her own family was not believable.

Issue

[15] The Applicants raise a multitude of issues, which are just variations of the central issue: was the RPD's decision that Ms. Preci had no fear from her family unreasonable because it ignored evidence or came to perverse or capricious findings?

Analysis

[16] There are four reasons that the RPD's decision in this case was unreasonable:

1. The RPD unreasonably inferred that Ms. Preci had not broken the ancient code of Lek Dukagjini because it was Mr. Preci who obtained the divorce;
2. The RPD perversely determined that because Mr. Preci filed for divorce, he would not have continued to blame his ex-wife for the divorce and disregarded evidence to the contrary;
3. The RPD drew an adverse inference from an inconsistency between Ms. Preci's testimony and her PIF, which did not exist; and
4. The RPD failed to give reasons for excluding probative evidence.

[17] The RPD's determination that there was no basis for the assertion that there was a breach of family honour and therefore no reason to fear persecution, was grounded in its assessment of the consequences of it having been Mr. Preci and not Ms. Preci who obtained their divorce:

It can not be said nor even be implied that [Ms. Preci] broke the ancient code of Lek Dukagjini, as there was no evidence adduced that she caused or forced her ex-husband to obtain the divorce decree. It is not even plausible or credible that she could have caused or forced her husband to divorce her, given her central allegation that she was totally abused and dominated by her ex-husband for all the time they were together in Italy. The principal claimant's statement in her narrative, 'I would be a shame to the family if I divorced Leke Preci,' and her further statement that her actions in divorcing Leke Preci are not consistent with the evidence that it was Leke who divorced her. (emphasis in the original)

[18] It is apparent from a review of the transcript of the hearing that when Ms. Preci made statements that she would be a shame to the family if she divorced her husband, she was not referring to the act of initiating an action for divorce herself, but of becoming divorced, regardless of who initiated it. All of her references to “divorcing” refer to divorce in the general sense and she never places any importance on who filed for divorce. For example, the RPD asked her directly whether there was any significance to the fact that it was the husband who filed for divorce and not her:

Presiding Member: Now – and listen to my question carefully – the fact that it was your ex-husband... who divorced you... would that not impact on your family’s position that you brought dishonour to them?

Claimant: This is precisely the reason that he asked for the divorce.

...

Presiding Member: Because the divorce brought dishonour and disgrace to your family... Okay. Now I’m going to ask you again. The fact that it was not you who sought the divorce; it was Leki Preci... would that not change how your family feels towards you that you were not the one who brought disgrace and honour to your family?

Claimant: It is precisely such divorce which rendered my position vis-à-vis my family even more difficult. Because that divorce implies that I am the reason behind the divorce.

[19] Ms. Preci clearly answered the RPD’s question by saying that it was the act of divorce itself, irrespective of who filed for it, that was dishonourable. She repeatedly stated during the hearing that “my family would never agree to a divorce, even if I could have been the person filing for the divorce,” and that “any kind of divorce was objected by my family” (emphasis added).

[20] This evidence is not inconsistent with her PIF wherein she also appears to be speaking generally about being divorced except for the occasions when she is speaking directly of the possibility of her divorcing her husband.

[21] Ms. Preci's evidence was that it is the act of divorce itself that brings shame to her family, irrespective of who filed for the divorce. There is no reason for the RPD to discount her repeated testimony that any divorce would subject her to the persecution she feared at the hands of her family.

[22] I also take issue with the RPD's conclusion that it is "against the grain of common sense and reason" that a husband who files for divorce would continue to blame his ex-wife for the divorce. This conclusion is itself devoid of common sense and reason and is directly contradicted by the evidence.

[23] First, on a strictly logical level, it is completely conceivable that a man who verbally, psychologically, physically, and sexually abused his wife for years, would file for divorce and then continue to psychologically abuse her by blaming her for it. In fact, in many divorce situations, filing for divorce while blaming your spouse for being the root cause of the divorce is not uncommon. Even if it is uncommon, the fact remains that the two acts are not mutually exclusive.

[24] Second, the official judgment granting the divorce itself states that Mr. Preci, the plaintiff, blames the divorce on Ms. Preci. The translated judgment reads "the reports have

become weak and therefore the plaintiff accuses his ex for good behaviours toward him.” This is clearly a translation issue as you cannot blame someone for “good behaviour” but what the decision actually said was clarified by Ms. Preci at the hearing:

Presiding Member: “The plaintiff accuses his ex for good behaviours towards him.” ... It doesn’t make sense to me... Okay. So the cause of it. I, I didn’t come across anything in the divorce judgment that you [Ms. Preci] were the reason for or you were the cause of the divorce.

Claimant: I have given a very careful reading to the court judgment. I’ve read it in Albanian, of course. And it says, and it states that the relationship in this, relationships in this family are in a bad shape through my [the Applicant’s] fault. (emphasis added)

[25] In ignoring this evidence, the RPD also made note of the fact that Mr. Preci himself did not show up to the hearing to give evidence as to who filed for divorce and who was to blame, and perversely, seems to have drawn some sort of adverse inference from this. I cannot conceive of any situation where one would expect the ex-husband of someone whom he abused to show up to their refugee protection hearing. There is nothing relevant about the fact that Mr. Preci did not testify at the hearing—it was illogical to expect him to testify and it is not a valid reason to ignore the documentary evidence and Ms. Preci’s testimony.

[26] Finally, the RPD also failed to address the evidence that Ms. Preci’s cousin was killed by her family after she and her husband were divorced. At the hearing the Member said that he did not see it as relevant, but fails to state the reason for so finding. At first blush, it appears quite germane to the claim and strong evidence of the family’s views on women who bring dishonour to the family by divorce. Counsel for the Respondent pointed out that Ms. Preci’s cousin was the person who filed for divorce and that she had been adulterous. If this was the basis on which the

RPD determined that this otherwise probative evidence was irrelevant, it had the obligation to state that; otherwise, as counsel for the Respondent has done, we can only speculate as to what the actual reasons for excluding the evidence were.

[27] In summary, the RPD's conclusion that because Mr. Preci filed for divorce, he could not have also blamed Ms. Preci for the divorce is illogical and is directly refuted by the evidence in the record and the sworn testimony. Critically, the RPD erroneously used this illogical and unfounded conclusion to determine that Ms. Preci's claim that she had broken the rules of Lek Dukagjini "is simply nonsensical," that "this evidence deserves no weight at all," and that her "fear of her own family is also not believable." In drawing an adverse inference on Ms. Preci's credibility and discounting her fear of her own family with no evidentiary or logical basis, the RPD erred and the application must be returned to be reconsidered.

[28] No question for certification was proposed.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is allowed, the decision dismissing the Applicants' refugee claims is set aside and their claim is to be determined by a different Member, and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-11580-12

STYLE OF CAUSE: SUZANA PRECI ET AL v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

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**REASONS FOR JUDGMENT
AND JUDGMENT BY:** ZINN, J.

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APPEARANCES:

Jeffrey L. Goldman FOR THE APPLICANTS

David Knapp FOR THE RESPONDENT

SOLICITORS OF RECORD:

JEFREY L. GOLDMAN FOR THE APPLICANTS
Barrister and Solicitor
Toronto, Ontario

WILLIAM F. PENTNEY FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario