Immigration and Refugee Board of Canada

Refugee Appeal Division

Commission de l'immigration et du statut de réfugié du Canada

Section d'appel des réfugiés

RAD File No. / N° de dossier de la SAR : MB3-04245

Private Proceeding / Huis clos

Reasons and Decision - Motifs et décision

Appellant	**XXXX XXXX**	**Appelante**
Appeal considered/heard at	Montréal, Quebec	**Appel instruit à**
Date of Decision	January 22, 2014	**Date de la décision**
Panel	Normand Leduc	**Tribunal**
Counsel for the Appellant	M[e] Éric Taillefer	**Conseil de l'appelante**
Designated Representative	N/A	**Représentant désigné**
Counsel for the Minister	N/A	**Conseil du Ministre**

Canada

REASONS AND DECISION

INTRODUCTION

[1] **XXXX XXXX**, a citizen of Albania, is appealing against the decision of the Refugee Protection Division (RPD) rejecting her claim for refugee protection.

[2] She has presented new evidence in support of her appeal and is requesting that a hearing be held before the Refugee Appeal Division (RAD).

DETERMINATION OF THE APPEAL

[3] Pursuant to subsection 111(1) of the *Immigration and Refugee Protection Act* (IRPA), the RAD confirms the determination of the RPD, namely, that XXXX XXXX is neither a "Convention refugee" under section 96 of the IRPA nor a "person in need of protection" under section 97 of the IRPA.

BACKGROUND

[4] The appellant is a 36-year-old woman who alleged before the RPD that her family is the target of a vendetta in Albania because of the murder conviction of one of her cousins in 2003. She also alleged that she was targeted because of an assault committed by another cousin in 2011 and a third conflict caused by that same cousin in XXXX 2012. A number of families would therefore like to get revenge by going after her and members of her family under what is known as the Kanun law, which is traditionally observed in northern Albania.

[5] The appellant alleged that her brothers were also victims of this revenge and that some of them had left Albania and others were in hiding because of it.

[6] The appellant alleged that she had XXXX XXXX from home from 2006 to 2013, in addition to doing master's studies in neighbouring Kosovo from 2011 to 2013. She alleged that she moved seven or eight times during that period in order to isolate herself and escape her

pursuers. She alleged that she provided financial support to members of her family, which is why she has been specifically targeted in the last four years by the families who want revenge. Apparently, those families always tracked her down and threatened her.

[7] The appellant alleged that her father's house was attacked on XXXX XXXX XXXX 2011, while her family was gathered because of the serious condition of the appellant's father's health. She alleged that her brothers were able to escape from the house at the time of the attack.

[8] The appellant alleged that she had two miscarriages, in XXXX and XXXX 2012, after being threatened.

[9] On XXXX XXXX, 2013, the appellant left her country the first time for Switzerland, where she filed a claim for refugee protection, which was rejected. She returned to Albania on XXXX XXXX XXXX 2013. On XXXX XXXX, 2013, she left her country again for Canada, where she claimed refugee protection.

[10] The RPD rejected the appellant's claim for refugee protection on the ground that her allegations were not credible. The RPD was of the opinion that, among other things, it was not credible that the appellant would remain confined to her home for her safety when her pursuers did not hesitate to invade her father's home in 2011, thereby breaching the rule of the inviolability of the home under Kanun law. The RPD was also of the opinion that omissions in her Basis of Claim Form (BOC Form) undermined the appellant's credibility and found it implausible that the pursuers never in fact assaulted the appellant.

[11] Before the RAD, the appellant submits that the RPD erred:

- by concluding that she travelled between Albania and Kosovo between 2011 and 2013 for her studies, since the new evidence submitted indicates that she completed her studies in 2008;

- by not taking into account the fact that she relocated regularly to escape her pursuers when the RPD found that it was implausible that her pursuers had not invaded her home as they had her father's home;

- by not taking into consideration the fact that the appellant had mentioned in the appendix to her BOC Form that she had had a miscarriage; and

- by not attaching any probative value to the two letters filed in evidence to corroborate the appellant's allegations.

[12] For these reasons, the appellant is requesting that the RAD set aside the determination of the RPD and refer the matter to the RPD for re-determination.

ADMISSIBILITY OF NEW EVIDENCE

[13] Under a heading in her memorandum entitled [translation] "new evidence" (see page 105 of the memorandum), the appellant presented the following new pieces of evidence for her appeal:

1. undated statement from XXXX XXXX (see pages 106 to 108 of the memorandum);

2. six untranslated documents (see pages 109 to 114 of the memorandum); and

3. email dated November 20, 2013, sent by the appellant to her counsel (see pages 115 and 116 of the memorandum).

[14] Subsection 110(4) of the IRPA states that the person who is the subject of the appeal may present to the RAD only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.

[15] Subparagraph 3(*g*)(iii) of the *Refugee Appeal Division Rules* (RAD Rules) also requires that the appellant's memorandum include full and detailed submissions regarding how any new

evidence presented meets the requirements of subsection 110(4) of the Act and how it relates to them.

[16] Subrule 28(1) of the RAD Rules requires that:

> **28.** (1) All documents used by a person who is the subject of an appeal in an appeal must be in English or French or, if in another language, be provided together with an English or French translation and a declaration signed by the translator.

[17] The six documents mentioned above and found on pages 109 to 114 of the memorandum were not translated into French or English, and I therefore conclude that they cannot be admitted into evidence before the RAD.

[18] With respect to the documents numbered 1 and 3, I note that the appellant's memorandum does not meet the requirements of subparagraph 3(*g*)(iii) of the Rules in that she did not make full and detailed submissions regarding how the evidence meets the requirements of subsection 110(4) of the IRPA. The only references to the new evidence in the memorandum are to Exhibit 2 (see paragraphs 12 and 13 of the memorandum), which I have already rejected because it was not translated.

[19] Therefore, I do not admit exhibits 1 and 3 into evidence either.

DECISION ON WHETHER TO HOLD A HEARING

[20] Pursuant to subsection 110(6) of the IRPA, the RAD may hold a hearing if, in its opinion, there is new evidence that is admissible and that meets the following three criteria: 1) it raises a serious issue with respect to the credibility of the person; 2) it is central to the decision with respect to the refugee protection claim; and 3) if accepted, it would justify allowing or rejecting the refugee protection claim.

[21] Since the provision preliminary to this provision was not met, in that I did not admit the documents submitted by the appellant into evidence, I find that a hearing cannot be held in this appeal.

STANDARD OF REVIEW

[22] The IRPA does not expressly set out the standard of review that the RAD should apply when reviewing RPD decisions, nor is that standard of review set out explicitly in the case law. The appellant also does not suggest a standard of review in her memorandum.

[23] In *Dunsmuir*,[1] rendered in 2008, the Supreme Court of Canada revisited the foundations of judicial review and the standards of review applicable in various situations. In order to simplify the analysis, the Supreme Court determined that there should now be only two standards of review: correctness and reasonableness.

[24] Although the RAD does not conduct judicial reviews of RPD decisions, but rather acts as an appellate body within the same administrative tribunal, the IRB, I am of the opinion that without more direct guidance from the higher courts, the principles developed in *Dunsmuir* may be applied to the RAD.

[25] Paragraph 51 of the Supreme Court's decision in *Dunsmuir* states that "…questions of fact, discretion and policy as well as questions where the legal issues cannot be easily separated from the factual issues generally attract a standard of reasonableness while many legal issues attract a standard of correctness. Some legal issues, however, attract the more deferential standard of reasonableness."

[26] In the case at hand, I find that the errors alleged by the appellant are a question of credibility, thus of fact, and are therefore reviewable on the standard of reasonableness.

[27] At paragraph 47 of *Dunsmuir*, the Court states that "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." Judicial deference is therefore required, and deference must be given to the RPD decision.

---

1 *Dunsmuir v. New Brunswick*, 2008 SCC 9, (2008) 1 SCR 190.

ANALYSIS

[28] The issue in this case is whether the RPD erred in its assessment of the appellant's credibility.

[29] In its reasons, the RPD found that the appellant's allegations were not credible and that she was not the victim of a vendetta as she alleged, for the following reasons:

- The RPD was of the opinion that the appellant's behaviour was inconsistent with that of a person who fears for her life because she worked from home and travelled between Albania and Kosovo for school, while her pursuers did not respect the rule of the inviolability of the home. In addition, the appellant testified that she did not want to try to live in Kosovo, stating that her pursuers could find her in that country (see paragraphs 11 to 13 of the RPD reasons).

- The RPD drew negative inferences from the appellant's failure to state in her BOC Form that she apparently had two miscarriages in XXXX and XXXX 2012 following threats she received, incidents that, in the RPD's opinion, were major (see paragraphs 14 to 16 of the RPD reasons).

- The RPD found it implausible that the individuals who apparently threatened the appellant had never [translation] "taken action," as permitted or required according to the [translation] "rules" of the vendetta, and were content with just making threats (see paragraph 17 of the RPD reasons).

- The RPD attached no probative value to two documents submitted in evidence by the appellant, namely, Exhibit P-8, which is apparently an attestation from the town mayor, and Exhibit P-9, which is apparently an attestation from the Committee of Nationwide Reconciliation, because of when they were allegedly obtained, namely, before the threats that allegedly led the appellant to decide to leave her country for Canada; because of the little information they contained regarding efforts made to attempt a reconciliation; and because of the documentary evidence indicating that the signatory of Exhibit P-9 was

suspected by the Albanian authorities of issuing false attestations and that certain mayors in Albania were accused of issuing attestations that were outside their jurisdiction (see paragraphs 18 to 20 of the RPD reasons).

[30] The appellant submits that the RPD erred in concluding that she travelled between Albania and Kosovo between 2011 and 2013 for school since the new evidence presented shows that she completed her studies in 2008. In my opinion, the RAD cannot accept this argument because, on the one hand, this new evidence was not admitted and, on the other, the fact that the appellant travelled between Albania and Kosovo is only one factor among others the RPD relied on to find that the appellant's behaviour was inconsistent with that of someone who fears for her life.

[31] On that same issue, the appellant submits that the RPD failed to take into account the fact that she had relocated frequently so as not to always be in the same place, thereby escaping from her pursuers. It is true that the RPD did not mention this fact in its reasons but, in my opinion, it is not fatal to the RPD decision since the appellant testified that her pursuers were able to find her in Albania to threaten her and that, according to her, they would be able to find her in Kosovo. I add that, in my opinion, the appellant testified that she worked as XXXX XXXX from home and, therefore, it was permissible to consider that her pursuers would have also been able to track her down because of her profession, which she had to practise publicly and not [translation] "in hiding."

[32] I also conclude that it was open to the RPD not to attach any probative value to exhibits P-8 and P-9, as it did. In my opinion, in paragraphs 18 to 20 of its reasons, the RPD fully explained its reasons, and they are several, for arriving at that conclusion.

[33] The appellant also submits that the RPD erred in failing to take into account the fact that she stated in her BOC Form that she had had a miscarriage. As mentioned above, the RPD drew negative inferences because of what it found to be a major omission in this regard. I note that the appellant wrote in the appendix of her BOC Form that [translation] "I lost my job that I liked and that gave me the money I needed to live, I lost my baby without being able to hold it in my arms,

I lost the man of my dreams" (see page 189 of the RPD record). It seems that this entry escaped both the RPD and the appellant herself, since she did not mention it when asked about the omission.

[34] However, I am of the opinion that even though this particular finding of the RPD was wrong, it is insufficient, considering all the reasons, to render unreasonable the RPD's final finding on the appellant's lack of credibility, since it is based on a number of elements, as indicated above.

[35] As a result of all the foregoing, I find that the RPD's decision, on the whole, is reasonable because it is transparent and intelligible and falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

REMEDIES

[36] For these reasons, I confirm the RPD's determination, namely, that **Flutur STEJA** is not a "Convention refugee" or a "person in need of protection."

[37] The appeal is dismissed.

Normand Leduc

Normand Leduc

January 22, 2014

Date

IRB translation

Original language: French