



RPD File No. / N° de dossier de la SPR : TA8-02008  
TA8-02009

*Private Proceeding / Huis clos*

## Reasons and Decision – Motifs et décision

|                                     |                                   |  |
|-------------------------------------|-----------------------------------|--|
| <b>Claimant(s)</b>                  | XXXXXX XXXXX<br>XXXXXX XXXXX      | <b>Demandeur(e)(s) d'asile</b>                             |
| <b>Date(s) of Hearing</b>           | JULY 15, 2010<br>OCTOBER 20, 2010 | <b>Date(s) de l'audience</b>                               |
| <b>Place of Hearing</b>             | TORONTO, ONTARIO                  | <b>Lieu de l'audience</b>                                  |
| <b>Date of Decision</b>             | DECEMBER 9, 2010                  | <b>Date de la décision</b>                                 |
| <b>Panel</b>                        | C. BUTTIGIEG                      | <b>Tribunal</b>  |
| <b>Counsel for the Claimant(s)</b>  | ROBERT GERTLER                    | <b>Conseil(s) du / de la / des demandeur(e)(s) d'asile</b> |
| <b>Tribunal Officer</b>             | N/A                               | <b>Agent(e) de tribunal</b>                                |
| <b>Designated Representative(s)</b> | XXXXXX XXXXX                      | <b>Représentant(e)(s) désigné(e)(s)</b>                    |
| <b>Counsel for the Minister</b>     | N/A                               | <b>Conseil du ministre</b>                                 |

[1] XXXXX XXXXX, the principal claimant (hereinafter referred to as “the claimant”), and her minor son, XXXXX XXXXX, the minor claimant, are citizens of Albania. They claim refugee protection pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

[2] The claimant was appointed the Designated Representative for the minor claimant.

### **ALLEGATIONS**

[3] The details of the claimants’ allegations can be found in their Personal Information Form (PIF)<sup>1</sup> narratives and the claimant’s testimony. In 1995, the claimant’s family became involved in a land dispute with the XXXXX family. On XXXXX, 2003, the claimant was raped by two unknown men. She was told by these men that she was going to be a prostitute in Italy. She was kept in a basement for four days, but managed to escape when the men went to get her food. She made her way home and did not inform the police of the incident. Fearing that she would be raped again or forced into prostitution, the claimant left Albania with one of her sons, leaving her husband and other son behind in Albania. She traveled to the United States of America (USA) in March 2004.

[4] On XXXXX, 2004, a fight broke out between her brother-in-law and a member of the XXXX family, XXX, at a bar. Her brother-in-law killed XXX XXXX. The XXXX family declared a blood feud on the claimant’s family. The day after the murder, the police questioned the claimant’s family. When the claimant’s husband told them of the blood feud, the police said that there was nothing they could do. The claimant’s husband told her about these events by telephone in XXXX 2004.

[5] The claimant made an asylum claim in the USA in about XXXXX 2004. Her claim was based on political grounds and was denied. The claimants came to Canada on XXXXX, 2008 and made claims for refugee protection on XXXXX, 2008.

### **DETERMINATION**

[6] The determinative issue in regard to these claims is credibility.

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<sup>1</sup> Exhibits C-1 and C-2.

[7] The panel finds that the claimants are not Convention refugees, as they do not have a well-founded fear of persecution for a Convention ground in Albania. The panel also finds that the claimants are not persons in need of protection in that their removal to Albania would not subject them personally to a risk to their lives or to a risk of cruel and unusual treatment or punishment, and in that there are no substantial grounds to believe that their removal to Albania will subject them personally to a danger of torture.

[8] The panel has considered the *Chairperson's Guidelines on Gender-Related Persecution*.<sup>2</sup>

[9] The panel has also considered the psychological report<sup>3</sup> from Dr. Devins with respect to the claimant.

[10] According to the claimant, the only time she received any psychological help was during this one-hour meeting resulting in this report. Although the report suggests further treatment, the claimant has not received any, except from her doctor who prescribed some medication because she had difficulty sleeping. When asked by counsel if she was considering any further counselling sessions, she stated that she has not discussed this. When asked by the panel why she has not received any other counselling, she stated that she followed the psychologist's advice and got a job and she feels better having been busy working.

[11] An interpreter-in-training was present in the hearing room before starting the hearing. Taking into consideration the Gender Guidelines, the claimant's psychological report and the nature of the claim, the panel gave the claimant the option of not having the interpreter-in-training present during her hearing. She preferred not to have the interpreter-in-training present and the panel accepted the claimant's wishes. The panel was sensitive to the claimant's circumstances. The panel did not ask the claimant to recount the rape. However, counsel asked the claimant whether she was raped continuously or just once. Taking into account the psychological report, specifically where it states: "It will be crucial to exercise sensitivity during the questioning to avoid re-traumatizing her.", the panel immediately interjected, saying that the claimant does not need to

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<sup>2</sup> *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution*: Guidelines issued by the Chairperson pursuant to section 65(3) of the *Immigration Act*, IR, Ottawa, March 9, 1993, Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 under the authority found in section 159(1)(h) of the *Immigration and Refugee Protection Act*.

<sup>3</sup> Exhibit C-5.

answer that question. Moreover, the panel gave the claimant repeated opportunities for breaks during the hearing.

### **ANALYSIS**

[12] The claimants established their personal identities and their identities as nationals of Albania through their testimony and the documents presented.<sup>4</sup>

#### ***The Claimant's Albanian Passport***

[13] The claimant testified that she left Albania because she could not deal with what happened to her in XXXXX 2003, when she was raped. The claimant testified that she has had two Albanian passports in her life. She testified that she obtained the first one when she was 16. The claimant was asked why she obtained her second passport. She stated that she needed it to leave Albania and go to Yugoslavia. According to the copy of her passport<sup>5</sup> provided by Citizenship and Immigration Canada (CIC), the claimant's passport was issued in XXXXX 2003, the month prior to the incident she says caused her to leave Albania. The panel asked the claimant why she obtained her passport in XXXXX 2003. She stated that everyone had to get a new passport. The panel noted that her initial testimony provided that she obtained her second passport because she needed it to leave Albania and go to Yugoslavia. She stated that she could not go anywhere without a passport. Her subsequent testimony, provided only after the panel noted the discrepancy in her evidence, was that everyone had to get a new passport. The panel is not satisfied by the claimant's explanation because it does not account for her inconsistent evidence. Her inconsistent chronology of events undermines her credibility: her evidence is that she left Albania because she was raped in *February* 2003; yet, the claimant first testified that she obtained her second passport in *January* 2003 so that she could to leave Albania.

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<sup>4</sup> Exhibit R/A-2, a copy of the claimant's Albanian passport, and Exhibit C-3, the minor claimant's birth certificate and the claimants' family composition certificate.

<sup>5</sup> Exhibit R/A-2.

### ***The Chronology of Events***

[14] The claimant's initial oral evidence in her first sitting was that the XXXX family declared a blood feud *and then* the police questioned her family. Yet, when questioned by counsel in the second sitting as to whether the police went to her family before or after the blood feud was declared, she replied that she did not know. The panel gave the claimant the opportunity to clarify her evidence in this regard. She stated that she was guessing during her first sitting but has since discussed things with her husband. The panel is not satisfied by the claimant's explanation. She was advised at the start of the hearing that if she does not know the answer to a question, she should say so and not attempt to guess. Moreover, if she had subsequently discussed things with her husband, then it does not make sense that she would not know whether her family spoke to the police before or after the blood feud. The claimant's inconsistent evidence in this regard together with her unreasonable explanation detracts from her credibility.

### ***The Record of Examination***

[15] The panel asked the claimant about the cause of the blood feud. She replied that the blood feud was declared because her brother-in-law killed XXX XXXX. The panel then referred to the Record of Examination (RoE),<sup>6</sup> when the claimant was asked by the Immigration Officer (IO) about why she is making a refugee claim, the claimant referred to a land problem between her family and another family. She made no mention of her allegation that a member of her family killed someone from the XXXX family. This was the very incident that caused the blood feud to be declared, according to the claimant. The panel gave the claimant the chance to explain her omission in this regard. She stated that the interview with the IO lasted for only 15 minutes. Given the relevance of the murder, *vis-à-vis* her refugee claim, it is reasonable to expect the claimant to have referred to this right away when asked about the reason for her claim. Moreover, this omission was not brought to the panel's attention, but rather it was the panel which noted it. Her omission in this regard detracts from her credibility.

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<sup>6</sup> Exhibit R/A-2 (p. 6).

***When was the blood feud declared?***

[16] The claimant's evidence with respect to the declaration of the blood feud is marked by inconsistencies and shifting evidence.

[17] In her first sitting, when questioned by the panel, the claimant testified that the blood feud was declared the day after XXX XXXX murder, on XXXXX, 2004. In her second sitting, when questioned by counsel, the claimant testified that the blood feud was declared on XXXXX, 2004. When counsel asked the claimant how she is able to remember the exact date, she stated that it was *on that day* that her brother-in-law killed XXX XXXX. Later in the second sitting, when still being questioned by counsel, the claimant stated that the blood feud was declared the day *after* XXXX XXXX was murdered.

[18] Counsel noted to the claimant that it is declared in her PIF narrative that the blood feud was declared "in the following days" after the murder, and asked her to clarify when the blood feud was declared. She stated that it was declared the morning after the murder. The panel gave the claimant another opportunity to clarify when the blood feud was declared: on the same day, the day after, or in the following days. She replied that the blood feud was declared on XXXXX, 2004 (the day after the murder). The panel is not satisfied by the claimant's explanation because she has not provided an explanation for the inconsistency as noted, but rather reiterated her subsequent testimony.

[19] The panel acknowledges that the inconsistency, as noted, concerns a matter of days; however, it has been taken into consideration by the panel for the following reasons: Firstly, the declaration of the blood feud is central to her refugee claim and, therefore, it is reasonable to expect her evidence in this regard to be consistent. Secondly, the claimant's inconsistent evidence does not only concern dates, but events. Her inconsistent evidence was provided in relation to the event instigating the declaration of the blood feud, that is, the murder of XXXX XXXX. Her initial testimony was that the XXXX family declared the blood feud the day *after* XXXX was murdered. Her subsequent testimony was that the XXXX family declared the blood feud *on the very day* XXXX was murdered. Her PIF narrative provides that it was declared in the days followings the murder. In fact, when asked by counsel how she remembers the date the blood feud was declared so exactly, she replied that it was *on that date* that XXXX was killed. She herself put the incident

within the context of XXXX murder. Nonetheless, the claimant's testimony then shifted back to saying that the blood feud was declared the day after the murder. The claimant's shifting and inconsistent evidence in this regard, without a reasonable explanation, detracts from the claimant's credibility.

### ***Efforts at Seeking Police Help***

[20] When asked whether her family sought police help with respect to the blood feud, the claimant stated that her family was questioned by the police on XXXXX, 2004, the day after XXXX XXXX was killed. Other than that, the claimant testified that her family had no other exchanges with the police. The claimant was asked to explain what happened during her family's exchanges with the police on that occasion. She stated that the police were looking for her brother-in-law. When asked if she knew anything else, she replied that her husband did not tell her anything else. Moments later in the hearing, when the panel asked the claimant if her husband told the police about the blood feud, the claimant replied in the affirmative and that the police told him that there is nothing the police can do. She then stated that her husband told the police that the family was all in self-confinement.

[21] The panel noted that the claimant did not speak about her family's efforts to seek help from the police in her PIF narrative. The panel gave the claimant the opportunity to explain her important omission in this regard. She stated that perhaps it did not come to her mind at the moment. The panel is not satisfied by the claimant's explanation for her failure to refer to her family's efforts at seeking police help in her narrative. The PIF narrative (Question 31) directs the claimant, *inter alia*, to provide details of any steps taken to obtain protection from any authorities in her country and the result. The claimant was assisted by counsel and declared in writing and at the start of the hearing that the contents of her PIF were interpreted to her and were complete, true and correct. State protection is an important issue in this claim. Her significant omission in this regard detracts from her credibility.

### ***The Claimant is Attacked***

[22] The claimant was raped in XXXXX 2003 by two unknown persons. The men did not identify themselves. When asked what these men said to her, she stated that they said that she

would end up a prostitute in Italy and nothing else. When asked if she knows anything about these two men, she replied in the negative, adding that they were wearing masks so she could not recognize them. The claimant's evidence that she believes that these were members of the XXXX family is based on her speculation.

### ***The Minor Claimant***

[23] The claimant was asked why she thinks her son, a 13-year old, would be a target in this blood feud. She stated that there have been occasions when children have been killed and referred to a specific incident she knows about when a 13-year old was killed in a blood feud. The panel asked her why she did not mention this in her narrative. She stated that she did not know she should. The panel is not satisfied by the claimant's explanation for her omission in this regard. Her PIF narrative (Question 31) directs the claimant, *inter alia*, to indicate the measures taken against similarly situated persons. She was assisted by counsel and declared in writing and at the start of the hearing that the contents of her PIF were interpreted to her and were complete, true and correct. The panel draws a negative inference with respect to the claimant's credibility as a result of her omission in this regard.

### ***Claim in the USA***

[24] The claimant testified that she sought protection in the US in about XXXXX 2003. She did not base her claim on her rape or the problems with the XXXX family because, as she testified, her lawyer told her that such a claim would not work. So, she based her claim in the US on political grounds. Her claim was denied. The claimant did not disclose any documents concerning her claim in the USA until the day of the first sitting, on XXXXX, 2010. The documents, however, do not include information on the grounds on which her claim was based and/or the motivation for her decision. As the panel noted, the letter, dated XXXXX, 2006, refers to a copy of the decision having been enclosed. Yet, the claimant did not disclose any of these attachments and was asked about this. She stated that she did not know. When asked about her efforts to obtain it, she stated that she thought that she did not need it any longer, and when asked about its current whereabouts, she stated that she left it at home, but then stated that she does not know what happened to it. It does not make sense that the claimant would keep a letter from her former counsel referring to her



decision received by them, without keeping the decision with respect to her asylum claim. The claimant was asked why she would do this. She stated that she did not know she should have taken the decision. The panel is not satisfied by the claimant's explanation. The documents the claimant disclosed with respect to her claim in the USA do not address the basis of her claim there or the reasons why her claim was denied. She provided an unreasonable explanation for not having disclosed her decision, despite having been requested by the Board to provide a copy of her USA asylum application and the reasons for refusal on her Screening Form. The panel has no way of knowing the basis of her claim in the USA and the reason for her denial. The panel draws a negative inference with respect to the claimant's credibility as a result of her unreasonable explanation for her lack of effort at disclosing the said documents.

[25] The panel finds that, on a balance of probabilities, the claimant is not involved in a blood feud, as she alleges.

[26] Even without disbelieving every part of a claimant's testimony, a panel may find that the claimant is so lacking in credibility that it concludes that there is no credible evidence relevant to his claim.<sup>7</sup> A claimant's contradictory testimony can cast doubt upon the totality of his oral evidence.<sup>8</sup> The panel finds that the claimant is so lacking in credibility that there is no credible evidence relevant to her claim. It may well be that certain parts of her story are true, but it is impossible for the panel to sift through her evidence and ascertain which parts are false and which are not.

## **CONCLUSION**

[27] The panel has considered all three protection grounds under s. 96 and ss. 97(1) of the *Immigration and Refugee Protection Act* and, on the basis of the totality of all the evidence made available to the panel, finds that there is not a serious possibility that the claimants would be persecuted in Albania, nor that they would be subjected personally to a risk to their lives, cruel and unusual treatment or punishment, or to a danger of torture.

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<sup>7</sup> *Sheikh v. Canada (Minister of Employment and Immigration)*, [1990] 3 F.C. 238 (C.A.).

<sup>8</sup> *Dan-Ash v. Canada (Minister of Employment and Immigration)* (1988), 93 N.R. 33 (F.C.A.) at 35.

[28] As the minor claimant's claim relies almost entirely on the evidence of the claimant and no persuasive evidence was adduced to differentiate his claim from hers, his claim must also fail.

[29] For these reasons, the claims are rejected.

(signed) \_\_\_\_\_ **“C. Buttigieg”**

**C. Buttigieg**

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**December 9, 2010**

**Date**

REFUGEE PROTECTION DIVISION / VENDETTA / VIOLENCE AGAINST WOMEN /  
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