

CANADA / JUDGMENT

TB9-33961

COURT

Refugee Appeal Division

DECIDED

3 March 2020

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RAD File / Dossier de la SAR : TB9-33961

TB9-33962 / TB9-33963 / TB9-33964

Private Proceeding / Huis clos

Reasons and decision ? Motifs et décision

Persons who are the subject of the appeal

XXXX XXXX XXXXXXXXXX XXXX XXXXXXXXXX XXXX XXXXXXXXXX XXXX

Personnes en cause

Appeal considered / heard at

Montreal, QC

Appel instruit / entendu à

Date of decision

March 3, 2020

Date de la décision

Panel

Julie Corry

Tribunal

Counsel for the persons who are the subject of the appeal

Jeffrey L Goldman

Conseil des personnes en cause

Designated representative

XXXX XXXX

Représentant(e) désigné(e)

Counsel for the Minister

N/A

Conseil du ministre

REASONS FOR DECISION

OVERVIEW OF THE APPEAL

- [1] XXXX XXXX, a citizen of Albania, and her children XXXX XXXX XXXX and XXXX XXXX, citizens of the United States of America (the Appellants), are appealing against a decision of the Refugee Protection Division (RPD) that they are neither "Convention refugee(s)" nor "person(s) in need of protection".
- [2] I allow this appeal in part, setting aside the decision of the RPD and substituting with my own determination that XXXX XXXX XXXX is a "person in need of protection".¹
- [3] Based on my review of the evidence in the file, I conclude that the RPD member erred in her credibility assessment of XXXX XXXX XXXX.
- [4] I find that XXXX XXXX XXXX established in a credible fashion that members of her estranged husband's family, as well as members of her own family, could be a threat to her should she return to Albania. This is based on the fact that there is a violent dispute between the families and XXXX XXXX XXXX is also at risk of facing a forced marriage.
- [5] As well, I find that XXXX XXXX XXXX would not be provided adequate state protection and she would not be able to safely relocate to another part of Albania.
- [6] With respect to XXXX XXXX XXXX and XXXX XXXX, they claimed refugee protection with their mother, XXXX XXXX XXXX. However, they are citizens of the United States (US) and allege no fear of the US. Their claim for refugee protection before the RPD was based on the facts alleged by their mother, which were limited to her fears about Albania.
- [7] I confirm the RPD's determination of their claims. XXXX XXXX XXXX and XXXX XXXX XXXX have not established that they are "Convention refugee(s)" or "person(s) in need of protection" in relation to the US, the country of their citizenship. Their appeals are dismissed.²

Background

- [8] XXXX XXXX XXXX moved to the US on XXXX XXXX XXXX 2004. She alleged she was forced to flee Albania at that time due to her political support and activities with the Democratic Party. She entered the US using a false Italian passport and remained there illegally until she was apprehended by US Immigration authorities in 2006. At this point, she made a claim for refugee protection. This claim in the US was denied in 2014 as well as her subsequent appeal in 2015.
- [9] While in the US, XXXX XXXX XXXX married her now-estranged husband, XXXX XXXX. They had three children, XXXX XXXX XXXX and XXXX XXXX XXXX.
- [10] XXXX XXXX XXXX alleged that she found her husband in bed with another man in 2017. The word spread throughout their families and in Albania that her husband is gay. She claims that she is at risk of harm at the hands of her husband's family in Albania as they blame her for his homosexuality and for ruining their honour and family reputation. She also alleged that her own family will now force her to marry someone else, an older man in Albania who is known to be abusive.
- [11] Realizing that she no longer had any legal status in the US, XXXX XXXX XXXX sent her children to live with her brother in Toronto in XXXX 2017, and came to Canada herself in XXXX 2019. Their claim for asylum in Canada was filed in XXXX 2019.
- [12] XXXX XXXX XXXX was named as the designated representative before the RPD for her three minor children, XXXX XXXX XXXX and XXXX XXXX XXXX, and this designation was confirmed by the Refugee Appeal Division (RAD).

ANALYSIS OF THE MERITS OF THE APPEAL

Standard of review

- [13] When reviewing the RPD decision, I am required to independently assess all the evidence and determine whether the RPD was correct in relation to each alleged error of law, fact, or mixed fact and law. The Appellants also identified correctness as the standard of review to be applied.

Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution³

- [14] The Chairperson's Guidelines 4 (the Guidelines) must be considered in appropriate cases. It is incumbent on IRB decision-makers to exhibit the knowledge required, and to apply it in an understanding, fulsome and sensitive manner when deciding issues relating to women fearing gender-related persecution.
- [15] In the reasons for the RPD decision, the Member did not mention the Guidelines.

- [16] In the memorandum of appeal, XXXX XXXX XXXX argues that the RPD did not consider or apply the Guidelines, which was an error of law and a breach of natural justice.
- [17] The only mentions of a gender-related issue in the RPD reasons is that the RPD noted that XXXX XXXX XXXX submitted that she was forced to acquiesce to her husband's wishes, and a finding about XXXX XXXX XXXX allegation of forced marriage. The RPD briefly concludes that as a XXXX-year-old woman with three children, who is not yet divorced from her first husband, there is insufficient evidence to establish that she would have to acquiesce and marry anyone against her will. In my view, the RPD failed to consider XXXX XXXX XXXX background and her cultural context as an Albanian woman.
- [18] In my opinion, the RPD did not properly assess XXXX XXXX XXXX credibility through the lens of the Guidelines. I agree with XXXX XXXX XXXX that the RPD reasons are absent of consideration of the Guidelines and that this was an error.
- [19] In the present decision and reasons, I am mindful of XXXX XXXX XXXX social, cultural and economic context. Throughout my analysis of the testimony and the evidence in the file, I have considered the Guidelines and the fact that XXXX XXXX XXXX was raised in a patriarchal society, does not want to return to Albania where she will be subjected to further oppression and intergenerational family control, as well as being threatened with a forced marriage.

The RPD erred in assessing XXXX XXXX XXXX credibility

- [20] The RPD found that XXXX XXXX XXXX testimony was inconsistent and that she was neither a reliable nor trustworthy witness. The RPD also gave little or no weight to XXXX XXXX XXXX supporting documents.
- [21] Having assessed the record, including the Appellants' supporting documents as well as listening to the recording of the hearing, I am not satisfied with the RPD's credibility assessment.

Breach of Natural Justice

- [22] In the memorandum of appeal, XXXX XXXX XXXX argues that there was a breach of natural justice because the RPD failed to put issues to her so that she could know the case against her and respond and that it also failed to consider submissions.

- [23] The issues that were not put to her during the hearing included:

* Not providing evidence of her political involvement in Albania and no request for an explanation for this;

* Presuming that she intended to reside in the US without asking her about this;

* Not asking her how her family would be able to force her to marry a second time, as she has not yet divorced her first husband;

- * Giving little weight to XXXX XXXX affidavit without asking questions about it;
- * Giving no weight to two supporting letters, one from XXXX XXXX XXXX, a pastor, and the other from XXXX XXXX XXXX XXXX XXXX XXXX aunt, as they do not have first-hand knowledge of the events described, and because the RPD found XXXX XXXX XXXX not to be credible.
- [24] Related to her allegations of forced marriage, the submissions that XXXX XXXX XXXX says the RPD did not consider were written submissions on the situation of women in Albania, dated October 7, 2019, that were part of the RPD record.
- [25] I have reviewed the RPD record and listened to the recording of the hearing and I agree with the Appellant that the above-listed issues were not put to XXXX XXXX XXXX during the hearing. Given that these issues then resulted in negative credibility findings, in my opinion, it was an error for the RPD not to confront XXXX XXXX XXXX with them and provide her with an opportunity to respond.
- [26] Regarding the supporting affidavit and two letters, it is not just that they were not discussed during the hearing, it is more that the RPD took the position that because she found XXXX XXXX XXXX not to be credible, these other documents were then discounted, without being assessed independently.
- [27] The RPD did say that these documents did not contain any first-hand knowledge and could only be based on what XXXX XXXX XXXX stated or on what the authors were told by others.
- [28] In the memorandum of appeal, XXXX XXXX XXXX rightly points out that this is not always the case, as there are elements in each of the three documents that are based on first-hand knowledge. There are also elements based on what other family members or colleagues told the authors of the three documents, and this is not sourced from XXXX XXXX XXXX herself. Indeed, these are the elements of this evidence that independently corroborate XXXX XXXX XXXX narrative and, in my opinion, they do have weight in the assessment of her credibility. I also agree that family members who observed alleged persecution are often the best positioned to give evidence related to those events.
- [29] With respect to the written submissions on the situation of women in Albania, while I understand that the RPD is not required to refer to every piece of evidence, given that a good part of the basis for this claim is a gender issue, these submissions should have been addressed. The RPD did refer to Tab 5.6 of the NDP on forced marriages, but in my view, her analysis was lacking depth and should have included these other submissions.
- [30] As a result, I find that the RPD's negative credibility findings on the following are incorrect:
- * XXXX XXXX XXXX reasons for fleeing Albania;
- * Allegation of forced marriage in Albania;
- * XXXX XXXX supporting affidavit;

* The additional supporting letters from XXXX XXXX XXXX and XXXX XXXX.

Delay to claim in the US

- [31] XXXX XXXX XXXX was asked why she did not make an asylum claim as soon as she arrived in the US. She responded, amongst other things, that she was unaware of the process.
- [32] The RPD did not accept this response and found that ignorance of the system was not a reasonable excuse for failing to seek protection immediately upon her arrival. The RPD also noted that XXXX XXXX XXXX, because of her work for the Democratic Party and her resourcefulness in getting to the US in the first place, would have had some sophistication and knowledge of how to conduct research. This led the RPD to the conclusion that XXXX XXXX XXXX credibility was undermined, in that she made a refugee claim only after she was apprehended by the US authorities.
- [33] In appeal, XXXX XXXX XXXX argues that this is an implausibility finding which is erroneous, that the RPD failed to consider that XXXX XXXX XXXX comes from a society that oppresses women. She adds that there is no relationship between her work for the Democratic Party, how she got to the US and how to make a refugee claim, that the RPD was speculating, and failed to provide transparent and understandable reasons.
- [34] In my opinion, this argument has no merit. I would say the RPD made an inference about XXXX XXXX XXXX level of sophistication and found that the explanation she gave for not seeking asylum at her first opportunity undermined her credibility. I agree with the RPD and would add that the record shows that XXXX XXXX XXXX brother and parents had made refugee claims in the US in 2002 and 2003, before she arrived, and thus it is not credible that she was unaware of this process.⁴
- [35] This credibility finding of the RPD, about XXXX XXXX XXXX delay to claim in the US, is correct. That being said, even though this leaves a negative inference with respect to her credibility, her delay to claim in the US and the reason she left Albania at the time have little relevance to the basis of her claim now in Canada.

US asylum claim

- [36] XXXX XXXX XXXX did end up making a refugee claim in the US in 2006. It is unclear from her testimony and the letter in evidence from the US authorities rejecting the appeal of her claim, whether she initially claimed with her husband and subsequently severed the claims, or if she claimed separately to begin with. The letter in evidence refers to both XXXX XXXX XXXX and her husband and concludes that both their appeals are denied, whether they were filed separately or not.

- [37] The RPD found that the letter made it clear that XXXX XXXX XXXX had filed separately and that she was not to be believed when she claimed that she had no other documents in her possession about this claim. She should have the set of reasons and the decision that was provided to her. This led the RPD to conclude that she was not being forthright, transparent or credible regarding her US asylum claim and that she was thus neither a trustworthy nor reliable witness.
- [38] In appeal, XXXX XXXX XXXX argues that she had clearly confused different stages in the asylum process in the US, and in any event, that the RPD member was being microscopic in her analysis.
- [39] She adds that this adverse credibility finding is neither relevant nor central to the claim. She also submits that the RPD did not consider XXXX XXXX XXXX education, cultural context and reliance on her family and husband in the US and that they would have taken charge of her claim and this could explain why she did not clearly understand it nor had any documentation in her possession.
- [40] In my view, it is a peripheral matter whether XXXX XXXX XXXX claimed with her husband or not. She testified that she gave testimony at a hearing at the same time as her husband, and the appeal letter refers to both of them as respondents in the appeal. I also understand that given her family dynamics, it could be that she did not have documents in her possession beyond the letter that she submitted in evidence. Again, this does not have much relevance to the basis for her claim now in Canada, and I do not agree that she was not being forthright and transparent, on a balance of probabilities.
- [41] The RPD's assessment that this made XXXX XXXX XXXX an untrustworthy and unreliable witness is incorrect.

Details of travel to Canada

- [42] XXXX XXXX XXXX said that she entered Canada illegally on the back of a truck. The RPD questioned her about details surrounding this event but found that her testimony was scant and negligible. The RPD concluded that this undermined her credibility about her entry into Canada.
- [43] In appeal, XXXX XXXX XXXX argues that this is a plausibility finding made in error. Given that XXXX XXXX XXXX is not a smuggler, she should not be expected to know about their illegal modes of operation.
- [44] In listening to the recording of the hearing, I found that XXXX XXXX XXXX gave sufficient detail about this event. She said she met a woman in the US who knew someone who could get her across the border, where she left from and where she crossed, details about the truck and the payment that was made. She also testified that she did not know of any other way to get into Canada to make a claim. In my mind, this testimony was sufficient. Furthermore, I again do not find this aspect of her narrative greatly relevant to the basis of her claim.

- [45] The RPD's finding that her testimony on her travel to Canada undermined her credibility regarding her entry to Canada is incorrect.

Peace Reconciliation Mission certificate

- [46] XXXX XXXX XXXX submitted a certificate from the Peace Reconciliation Missionaries dated XXXX XXXX XXXX 2019, that speaks of the dispute between her husband's family and hers in Albania.
- [47] Her husband's family needs to restore their honour after he was outed as a homosexual, and they want XXXX XXXX XXXX family to "deal" with her as she is the cause of her husband's homosexuality. They first approached XXXX XXXX XXXX cousin, an argument ensued, and he was beaten up and hospitalized.
- [48] The certificate corroborates other evidence in the record, including XXXX XXXX XXXX testimony, that two women in her family asked this organization for help to prevent a blood feud at the end of XXXX 2018. However, the other family refused to participate in a reconciliation. XXXX XXXX XXXX testified that the conflict began when her cousin was beaten up in XXXX of 2018, and when the other family refused to talk, this meant the men were in a conflict and that there was therefore a blood feud. However, her BOC narrative, signed in XXXX of 2019, says that the dispute had not risen to the level of a blood feud. XXXX XXXX XXXX could not explain the discrepancy. The RPD found that this brought into question that there is indeed a blood feud.
- [49] The RPD also found that the certificate from the Peace Reconciliation Missionaries relies entirely on what was told to the author by other individuals, which makes this third-hand information. The RPD took issue with the fact that the letter's author relates what an associate told him about what happened when he approached the husband's family, and that there was no first-hand statement from this associate.
- [50] Given that the RPD found reason to doubt XXXX XXXX XXXX credibility, the RPD found this certificate did little to corroborate her allegations.
- [51] In appeal, XXXX XXXX XXXX submits that when she said in her BOC narrative that the conflict had not risen to the level of a blood feud, this was all the information she had at the time, that she was not present in Albania and that she was piecing together whatever information the family gave her, which was not always forthcoming. She repeats her testimony that she does not know when the family declared a blood feud, and that there were many conflicts between the families.
- [52] XXXX XXXX XXXX also argues that the RPD did not consider her situation as an Albanian woman and that she is not privy to information that men have. As well, she argues that the RPD erred by not even asking her what she knew of the blood feud custom and not considering the difficulties of testifying about such a nuanced issue through an interpreter.

- [53] XXXX XXXX XXXX also says that the RPD erred in rejecting this certificate merely based on the fact that there were previous reasons to doubt XXXX XXXX XXXX credibility. She submits that the undisputed evidence in this certificate is that there is a dispute between the families which has not been resolved.
- [54] She also argues that there is no reason why the head of an organization cannot write on behalf of the organization and relay the information that his associate has given him and the actions this associate has taken.
- [55] Finally, XXXX XXXX XXXX submits that whether there is a blood feud or not is not relevant, the point is that there is an evolving conflict.
- [56] In my opinion, I agree with XXXX XXXX XXXX that the importance of the evidence in the certificate is that there is a violent dispute between the families which is the conflict that is putting her at risk. I also find that the RPD was being microscopic about the author of the certificate and what information he was relating.
- [57] The certificate corroborates other supporting documents in the file, such as XXXX affidavit and the aunt's letter, it describes the events in the evolving conflict, and that the husband's family has sworn revenge and vowed to kill XXXX XXXX XXXX. I also note that the associate referred to in the certificate is not another individual but indeed the author of the certificate, a XXXX XXXX XXXX XXXX, and thus the RPD was wrong to call this third-hand information.
- [58] In listening to the recording of the hearing, I would say that XXXX XXXX XXXX misspoke when she said there was a blood feud based on the fact that there was a conflict and that the other family had refused to talk. The certificate does not say that there is officially a blood feud but it describes violent attacks, sworn revenge, and a threat to XXXX XXXX XXXX life.
- [59] For these reasons, and the fact that I do not agree with the majority of the RPD's credibility assessment, I find that the RPD was incorrect to conclude that this certificate did little to corroborate XXXX XXXX XXXX allegations.

Prospective risk in Albania

- [60] I conclude that XXXX XXXX XXXX is credible, on a balance of probabilities, and has established that members of her estranged husband's family, as well as members of her own family, could be a threat to her should she return to Albania. Her estranged husband's family has threatened to kill her out of revenge, and her own family is trying to force her to marry another man in Albania.

- [61] Because I find that the RPD's credibility assessment is incorrect, I will now go on to assess the issues of state protection and internal flight alternative (IFA) by analyzing the objective documentary evidence of the country conditions in Albania. The purpose of this assessment is to determine if XXXX XXXX XXXX could get adequate protection from her agents of persecution should she return to Albania, and whether she could safely relocate elsewhere in the country, given her personal circumstances.

State protection

- [62] There is a presumption that a state is willing and able to adequately protect its citizens. To rebut this presumption, an applicant must persuade the Board that the evidence establishes that state protection is inadequate on a balance of probabilities.⁵
- [63] The RPD did not assess this aspect of the claim, however, there was substantial material on this topic in the record filed by XXXX XXXX XXXX XXXX Another source of information I will be referring to, which was also cited at length by XXXX XXXX XXXX, is the most recent national documentation package (NDP).⁶
- [64] In the appeal memo, as well as in the final submissions before the RPD, XXXX XXXX XXXX lawyer referred to country documentation on Albania that speaks of the situation for women in Albania as well as the need to assess this claim through the lens of the Gender Guidelines.
- [65] The Guidelines say that when assessing the adequacy of state protection with respect to gender-related claims, XXXX XXXX XXXX social, cultural and economic context must be kept in mind when considering whether it is objectively reasonable to expect her to seek state protection and whether she will actually get it.
- [66] The burden of proving an absence of state protection is directly proportional to the level of democracy that exists in the state.
- [67] It is well documented that Albania's transition to a parliamentary democracy (1990s) has been challenging, given high unemployment, widespread corruption, dilapidated infrastructure, powerful organized crime networks and combative political opponents. Albania, with the assistance of international monitoring and supervision, has engaged in an ongoing process to strengthen weak state institutions and stabilize its political infrastructure and implement reforms.
- [68] I recognize that the country documentation shows that there have been significant efforts to improve institutions and services in Albania, for one reason, as they aspire to join the European Union.
- [69] However, I must assess the operational adequacy of state protection, and this is a forward-looking assessment. As noted by the Federal Court in Garcia Bautista, "regard must be given to what is actually happening and not what the state is endeavouring to put in place."⁷

- [70] The onus is on XXXX XXXX XXXX to approach the state for protection in a situation where state protection might reasonably be forthcoming. In her situation, she has not returned to Albania yet, and thus has not made any attempts to seek protection yet. She argues that should she go back, she will not be given adequate state protection. In this case, I must determine whether she should even be expected to seek protection, given the country conditions and her particular circumstances.
- [71] In final submissions before the RPD, XXXX XXXX XXXX counsel argued that the country is even more recently, since the last elections in July 2019, in a state of upheaval and the pillars of democracy have been eroded. As such, state protection is not adequate at an operational level.
- [72] Most sources in the NDP maintain that corruption and impunity are still problems in Albania and that the country has much work ahead in terms of its reform measures. Crime, including honour-related crime, continues to occur and much of it is unreported as public trust is still relatively low.
- [73] Tab 7.7 of the NDP provides information on blood feuds and the state's attempts to curb the violence. It shows that attempts are being made, but also that the judiciary remains weak in implementing new laws, and that conviction rates are low.⁸ This report shows that the police in Albania themselves say that there has been definite progress and blood feuds are decreasing with more active police presence, investigation and intervention.
- [74] The report says that as far as the larger sections of Albanian society are concerned, it appears that distrust towards the police does not seem to be an issue anymore. However, despite improvements in police work and better trust in the police by larger sections of Albanian society, it appears that when citizens find themselves in a contemporary blood feud situation they still tend to avoid contact with the police forces. Multiple sources confirmed that in many cases citizens still cannot overcome feelings of distrust towards the police and keep their problems from them.
- [75] There is a more recent report on blood feud violence in Albania at Tab 7.17, which refers at length to Tab 7.7, but also confirmed that women and girls have become victims of contemporary blood feuds.⁹
- [76] The USSD HR Report 2017 stated, "The ombudsman reported that authorities' efforts to protect families or prevent blood-feud deaths were insufficient, although the government increased efforts to prosecute such crimes."¹⁰
- [77] I also recognize that in XXXX XXXX XXXX situation, we are not necessarily dealing with a blood feud, but rather a violent family dispute that has not been resolved. That being said, these types of crimes are still a significant problem in Albania and part of the country documentation shows that the authorities' efforts to protect people are insufficient. One source in Tab 7.17 states that the police most often respond to crimes reactively instead of proactively. There are other independent sources from the police who say they are not

effective in the fight against the contemporary blood feud phenomenon.

- [78] In my opinion, the statistics and sources cited in the country documentation on blood feud-style violence and the authorities' attempts to fight this phenomenon vary. For this reason, looking at the totality of the evidence, I cannot say that on a balance of probabilities state protection would be reasonably forthcoming if XXXX XXXX XXXX were to seek it, should she return to Albania and be threatened or attacked by her estranged husband's family.
- [79] With respect to XXXX XXXX XXXX own family and their threat to force her to marry another man who is known to be abusive, her submissions state that some parts of Albania still adhere to principles stemming from the customary law of Kanun, in which a man's wife is regarded as his property.
- [80] Also, violence against women in Albania is deeply rooted in patriarchal traditions and customs, such as strict gender identities and roles, patriarchal authority, adherence to an honour-and-shame system, and customs of hierarchal ordering with the family and intergenerational family control. Albanians tend to consider domestic violence to be a private, family matter and a normal part of married and family life.
- [81] In final submissions before the RPD, XXXX XXXX XXXX counsel argued that the police will not help her should she seek protection from her own family, as the police will be reluctant to intervene in a family matter and will let the family work things out. In this sense, if her own family finds her in Albania, there is not an effective system in place to protect her as the mechanisms to address gender violence are poor.
- [82] The submissions go on to say that although there is legislation against spousal abuse, the government does not enforce the law, officials do not actually prosecute offences, and victims rarely reported abuse. Criminal proceedings are slow and courts violate procedural deadlines for reviewing protection orders and issuing decisions.
- [83] An important factor for me in the present case is that XXXX XXXX XXXX will have no family support should go back and in fact will have her Albanian family against her, pressuring her into a forced marriage.
- [84] Tab 5.6 of the NDP on forced marriage confirms that there is little to no research on this in Albania. Sources say that forced marriage occurs and is a well-known phenomenon in the country, but that it is underreported.¹¹ The report also states that forced marriages are a product of society, which nurtures it, particularly in patriarchal family structures in rural areas and informal settlements. It is recognized that before a family can force a woman who is already married to marry again, legally there must be a divorce first.
- [85] As was argued by XXXX XXXX XXXX counsel, there is nothing to say that her family would not pressure her to divorce, and then proceed with the second marriage.

- [86] There are minimal criminal penalties for offenders or the perpetrators of forced marriage, and few cases are actually submitted to the courts. One source stated that the fact that such issues are not addressed by the responsible bodies testifies not only to the low level of awareness that women/girls have, but also their lack of belief in institutions responsible for tackling this problem.¹²
- [87] In my opinion, given the current country conditions in Albania described in the NDP, as well as XXXX XXXX XXXX supporting documentation in the RPD record, it has not been established, on a balance of probabilities, that she would receive adequate protection from the police should she seek protection from her family based on their imposition of a forced marriage, nor from her estranged husband's family who has threatened to kill her.
- [88] In other words, she has rebutted the presumption of state protection.

Internal Flight Alternative (IFA)

- [89] The issue of an internal flight alternative (IFA) in Tirana was discussed during the RPD hearing, however, the RPD member did not make a finding on this, limiting her reasons to the issue of credibility which was determinative for her.
- [90] XXXX XXXX XXXX testified that she would not be safe anywhere in Albania as the country is too small, and especially in Tirana as her agents of persecution have family members who work and study in that city. She testified that she would stand out as a foreigner, having been away so long, especially if her three children were with her, who have never lived in Albania and do not speak the language. She added that she speaks a different dialect than the one spoken in Tirana and this would also make her more noticeable.
- [91] Tirana is only one hour away from XXXX XXXX XXXX hometown. She would easily be spotted if she went out to find a job or even a place to live, and eventually word would get back to her aggressors, be it either her own family, or her estranged husband's family.
- [92] In my opinion, with respect to a possible IFA, given my findings on state protection above, I find that these conditions exist all over Albania, and that there would be no place where XXXX XXXX XXXX would not face a risk of serious harm, as described in sec. 97(1) of the IRPA, from her agents of persecution, and this, on a balance of probabilities.

XXXX XXXX XXXXandXXXX XXXX XXXX situation in the United States

- [93] When asked during the hearing to explain XXXX XXXX XXXXandXXXX XXXX fear in the US, XXXX XXXX XXXX testified that they would live with her brother and nothing would happen to them, but that she did not want to be separated from her children, should she be sent back to Albania. Their counsel advanced no claims or allegations with respect to the US.

[94] On this point, the RPD made no error and was justified in rejecting XXXX XXXX XXXXandXXXX XXXX claims, since they, as US citizens, did not present any evidence to establish that they had any fear against the United States.

RAD CONCLUSION

[95] I allow this appeal in part, set aside the decision of the RPD and am substituting with my own determination that XXXX XXXX is a person in need of protection.¹³

[96] However, with respect to XXXX XXXX XXXXandXXXX XXXX XXXX, I confirm the RPD's decision that they are neither "Convention refugee(s)" under section 96 nor "person(s) in need of protection" under section 97(1) of the IRPA.¹⁴

Julie Corry

Julie Corry

March 3, 2020

Date

JC/lp

1 Immigration and Refugee Protection Act (IRPA), S.C. 2001, c. 27, s. 97(1)(b) and 111(1)(b).

2 IRPA, S.C. 2001, c. 27, s. 111(1)(a).

3 Immigration and Refugee Board of Canada (IRB), Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution, entered into effect on November 13, 1996. These guidelines are available on the IRB website.

4 See RPD Record p. 18.

5 Flores Carillo v. Canada (Minister of Citizenship and Immigration) [2008] 4 F.C.R. 636 (FCA) paras 20, 24.

6 See National Documentation Package (NDP), Albania, 30 September 2019.

7 Garcia Bautista v Canada (Citizenship and Immigration) 2010 FC 126, para. 10.

8 NDP, Tab 7.7: "Blood Feuds in contemporary Albania: Characterisation, Prevalence and Response by the State. Belgium. Commissioner General for Refugees and Stateless Persons. 29 June 2017.

9 NDP, Tab 7.17: "Country Policy and Information Note. Albania: Blood Feuds. Version 3.0. United Kingdom. Home Office. October 2018, sec. 4.6.1.

10 Ibid, sec. 8.1.8.

11 NDP, Tab 5.6: "Forced marriages of women, including those who are already married; state protection and resources provided to women who try to avoid a marriage imposed on them (2010-June 2015). Immigration and Refugee Board of Canada. 13 August 2015. ALB105216.E.

12 Ibid, p. 4/6.

13 IRPA, sec. 97(1)(b), 111(1)(b).

14 IRPA, sec. 111(1)(a).

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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

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