

CANADA / JUDGMENT

VB9-10043

COURT

Refugee Appeal Division

DECIDED

26 February 2020

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RAD File / Dossier de la SAR : VB9-10043 VB9-10044 / VB9-10045 Private Proceeding / Huis clos
Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXXXXXX XXXX XXXXXXXXXXX XXXX Personnes en cause Appeal considered / heard at Vancouver,
BC Appel instruit / entendu à Date of decision February 26, 2020 Date de la décision Panel Kim
Polowek Tribunal Counsel for the persons who are the subject of the appeal Bjorna Shkurti
Barrister and Solicitor Conseil des personnes en cause Designated representative XXXX
XXXXforXXXXXXXX XXXX Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du
ministre REASONS FOR DECISION OVERVIEW

- [1] I allow this appeal. XXXX XXXX (Principal Appellant) and his spouse, XXXX XXXX (Female Associate Appellant) and their son XXXX XXXX (Associate Appellant) are citizens of Albania appealing a decision of the Refugee Protection Division (RPD) dated December 5, 2019, rejecting their claims for refugee protection.
- [2] Prior to coming to Canada, the Principal Appellant and his spouse were both employed with the XXXX XXXX XXXX XXXX XXXX XXXX XXXX in the XXXX XXXX XXXX department. They fear a return to Albania because they are being targeted by an organized criminal group, which was being monitored by a colleague that worked in the same XXXX XXXX XXXX.
- [3] There are a number of issues raised on appeal which will not be addressed as I have found that the determinative issue is a breach of natural justice as a result of the lack of Designated Representative due to their vulnerability. The Appellants were not represented by Legal Counsel at the RPD. There is a XXXX assessment which I have accepted as new evidence which is persuasive that a Designated Representative should have been appointed for the Appellants at the RPD. The XXXX assessment evidence indicated that the Appellants were unable to appreciate the nature of the proceedings given their compromised XXXX health and were likely not competent to represent themselves before the RPD. Given the breach of natural justice at the RPD, I am allowing this appeal and referring the matter back to the RPD for redetermination. DECISION
- [4] The appeal is allowed. I send this matter back to the RPD to be redetermined. NEW EVIDENCE

- [5] The new evidence presented by the Appellants is accepted. This evidence includes the following:
1. XXXX Report for XXXX XXXX, dated XXXX XXXX XXXX 2020;
 2. Email statement from XXXX XXXX XXXX dated XXXX XXXX, 2020;
 3. Email statement from XXXX XXXX XXXX, dated XXXX XXXX, 2020;
 4. Email statement from XXXX XXXX XXXX dated XXXX XXXX XXXX 2020;
 5. Email statement from XXXX XXXX XXXX XXXX XXXX, dated XXXX XXXX, 2020;
 6. Email statements from XXXX XXXX, dated XXXX XXXX, 2020;
 7. Email statement from XXXX XXXX XXXX XXXX XXXX dated XXXX XXXX, 2020;
 8. Letter from XXXX XXXX XXXX XXXX XXXX XXXX dated XXXX XXXX XXXX 2019;
 9. Letter from XXXX XXXX;
 10. News Article titled "Avni Bajraktari verdict convicts offender with 12-year sentence, sentenced to 7 years in prison", dated January 6, 2014;
 11. News Article titled "The Irony of a Dictatorial Country Like Albania Taking Over the OSCE Chairmanship", dated January 11, 2020;
 12. News Article titled "Albania government denies links to organised crime", dated May 23, 2019;
 13. News Article titled "Courts, cannabis, corruption: Albania struggles against old demons", dated June 18, 2019; and,
 14. News Article titled "The Inside Story of Europe's First Narco-State".
- [6] According to the law,¹ I can only accept evidence that:
- i. arose after the RPD decision; ii. was not reasonably available at the time of the decision; or, iii. that you could not reasonably have been expected in the circumstances to bring to the RPD before the decision. If the evidence meets one or more of these requirements, I must decide if the evidence is new, credible and relevant before I can accept it.²
- [7] While the majority of the Appellants' new evidence was available for them to present to the RPD, I find that that the XXXX assessment reveals that the Appellants suffer from XXXX XXXX that resulted in a low functional capacity which significantly compromised their ability to competently and fully present their case to the RPD. Further, the Appellants were not represented by Legal Counsel and they were unable to appreciate the negative impact of their limited functional capacity. Accordingly, I find that under these unique circumstances this evidence was not reasonably available to be placed before the RPD given the Appellants' compromised XXXX state. On its face, the new evidence presented is relevant and material to the central issue of ongoing risk in Albania and I have no good reason to doubt its

credibility.

ANALYSIS

- [8] My role is to look at all the evidence and decide if the RPD made the correct decision.³ I find that there has been a breach of natural justice in this case.
- [9] The Appellants appeared at the RPD represented by a person who did not charge a fee. They did not request to be identified as vulnerable persons nor was the issue of whether a Designated Representative should be appointed canvassed at the RPD. As such, Chairperson Guideline 8: Procedures with Respect to Vulnerable Persons Appearing Before the IRB⁴ was not considered by the RPD in their assessment of their claims. It appears that the limited capacity of the Appellants was not fully recognized until after the hearing.
- [10] For their appeal, the Appellants attained Legal Counsel who observed that their memory and behaviour was impaired and a XXXX report on the Appellants was completed by XXXX XXXX XXXX. This report, dated XXXX XXXX XXXX 2020, I have accepted as new evidence for this appeal. The report concludes that both the Principal and Female Appellant suffer with XXXX XXXX XXXX that severely compromised their XXXX XXXX to fully respond to questions posed by their Basis of Claim. It is the opinion of XXXX XXXX XXXX that the Appellants were not competent to communicate appropriately with an immigration lawyer at their initial RPD hearing and their XXXX health issues undoubtedly XXXX XXXX XXXX to XXXXandXXXX XXXX XXXX relevant to their claim for asylum in Canada.
- [11] These conclusions of XXXX XXXX XXXX were persuasive in my determination that a breach of natural justice occurred at the RPD. I find that it is more likely than not that the Appellants were unable to appreciate the nature of the RPD proceedings given their compromised XXXX health and fairness requires they be identified as vulnerable persons and a Designated Representative be appointed. I need not address the other issues raised on appeal given that this matter is going back to the RPD. The only option is to refer this matter back to the RPD
- [12] I find that without hearing evidence presented to the RPD under circumstances which consider and accommodate their vulnerable status, I am unable to come to a final determination, either positive or negative. I find that that the conditions described in subsection 111(2) have been met and I refer this matter back to the RPD for redetermination by a differently-constituted Panel.

CONCLUSION

- [13] The appeal is allowed. I send this matter to the RPD for redetermination by a differently-constituted Panel. (signed) "Kim Polowek" Kim Polowek February 26, 2020 Date 1 Immigration and Refugee Protection Act, S.C. 2001, c. 27; subsection 110(4) . 2 Canada (Citizenship and Immigration v. Singh, 2016 FCA 96; Canada (Citizenship and Immigration) v. Raza FC 385. 3Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93; Rozas del

Solar v. Canada (Citizenship and Immigration), 2018 FC 1145. 4 Immigration and Refugee Board of Canada, Guideline issued by the Chairperson pursuant to paragraph 159(1)(h) of the Immigration and Refugee Protection Act: Guideline 8: Procedures With Respect to Vulnerable Persons Appearing Before the IRB, Effective date: December 15, 2006 Amended: December 15, 2012.

RAD File / Dossier de la SAR : VB9-10043 VB9-10044 / VB9-10045 RAD.25.02 (January, 2020)
Disponible en français 2 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.25.02 (January, 2020) Disponible en français

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Prepared on 28 October 2026 · Esheria