Date: 20030129

Docket: IMM-5640-01

Neutral Citation: 2003 FCT 95

OTTAWA, ONTARIO, THE 29TH DAY OF JANUARY 2003

PRESENT: THE HONOURABLE MR. JUSTICE LUC MARTINEAU

BETWEEN:

SPIRO SOPIQOTI

DHURATA SOPIQOTI

Applicants

- and -

THE MINISTER OF CITIZENSHIP

AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] Mr. Spiro Sopiqoti (the male applicant) and his wife (the female applicant) are citizens of Albania. The male applicant, a former police officer, was previously employed by the Ministry of Internal Affairs, first as an automobile mechanic and then as an officer in charge of the security service in a district of Tirana, until 1990. He claims to have a well-founded fear of persecution by reason of imputed political opinion. The female applicant bases her claim on her husband's.

[2] Their problems, they say, began in January 1990 when the male applicant refused to fire on a crowd of students demonstrating in favour of democracy. He was arrested and detained for several months; the female applicant and their two sons were also arrested while the male applicant was detained. In 1991, he and his sons decided to flee to Greece, his wife having decided to remain in Albania.

[3] In 1992, the male applicant and his sons returned to Albania, as a government composed of representatives of the Democratic party had meanwhile been elected to office. After his return, he was threatened by a former co-worker, who even managed to have his sons arrested as an act of revenge. The male applicant was also threatened with reprisals by other, unidentified persons who blamed him for problems they had allegedly had under the Communist regime. In 1995, his father died when their house was deliberately set on fire, and this convinced him to leave again for Greece, where he lived until June 1999. Meanwhile, his sons arrived in Canada where, in 1997, they were recognized as Convention refugees.

[4] In 1999, the male applicant returned to Albania. In April 2000, he was arrested and beaten by some police in his neighbourhood, who arrested him on false charges in an attempt to extort money from him by threatening to contact "[translation] certain former political prisoners [who] might be informed of [his] 'responsibility' in their problems". The male applicant yielded to the blackmail and paid them the money they were demanding (US$1,000 per month). Later, he refused to make further payments ([translation] both out of principle and for purely economic considerations". In May and June 2000, the male applicant participated in two demonstrations "[translation] to protest against the violence and abuses committed by the authorities"; because of his participation he and his wife received death threats. In August 2000, therefore, they decided to flee Albania and, after spending a few months in Greece, they came to Canada in November 2000 and claimed refugee status.

[5] The Immigration and Refugee Board, Refugee Division (the Board), in a decision dated November 21, 2001, dismissed the applicants' claim, resulting in this application for judicial review.

[6] Subsection 2(1) of the *Immigration Act*, R.S.C. 1985, c. I-2, as amended, defines a "Convention refugee" as:

any person who

(*a*) by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(i) is outside the country of the person's nationality and is unable or, by reason of that fear, is unwilling to avail himself of the protection of that country, ...

but does not include any person to whom the Convention does not apply pursuant to section E or F of Article 1 thereof, which sections are set out in the schedule to this Act;

[Emphasis added]

[7] Essentially, the Board held that applicants' fear of persecution was not based on one of the five grounds cited in the definition reproduced above.

[8] First, the Board summarily dismisses "the argument of the claimant's imputed political opinion" because the applicant did not campaign in favour of a political party and had no particular political opinion:

At the hearing, the principal claimant was questioned as to whether he was politically involved in either the ruling party or the opposition. He very clearly answered that he had never actively supported any political party. He even showed complete ignorance of his country's political ideologies. It was only after his counsel insisted that he said he had democratic sentiments. Despite its great respect for M[e] Saint-Pierre, the panel feels that the argument of the claimant's imputed political opinion is insufficient and, consequently, dismisses it.

[9] Second, the Board determined that there was no relationship between the applicants' fear of being harassed by a former co-worker and some people that the applicant had arrested in the course of his duties, and one of the five grounds set out in the Convention. Instead, the male applicant was held to be the victim of a vendetta. We can read in the Board's decision:

The claimant's testimony primarily revealed that he was subject to a very personal kind of persecution because of his duties as deputy chief of national security for the Ministry of Internal Affairs. This individual fear was chiefly due to one of his former police colleagues who sought revenge after being arrested on the claimant's orders.

Although this order of arrest was withdrawn, the claimant stated that he was also threatened by individuals who were arrested while he was deputy chief. Admittedly, as he himself testified, he was simply following orders from his own superiors when he ordered his subordinates to arrest and imprison the individuals in question; he then merely reported to his superiors that he had carried out the task. It is not up to the panel to judge his actions, given that they were part of his duties; nevertheless, everything points to the fact that the threats he received resulted from the arrests that he ordered, and that he was therefore a victim of personal vendettas. ...

However, the fact that the claimant refused to allow the extortion to continue-both on principle and because he lacked money-does not constitute an imputed political opinion [*Femenia, Guillermo v. M.C.I.* (F.C.T.D., IMM-3852-94), Simpson, October 20, 1995]. With regard to victims of vendetta, as in the present case, the Convention Refugee Determination Division (CRDD) was upheld by the Federal Court [*Rivero, Omar Ramon v. M.C.I.* (F.C.T.D., IMM-511-96), Pinard, November 22, 1996] in its finding of no nexus where the claimant was the target of a personal vendetta by a government official-in this case, the claimant's former police colleague.

[10] Did the Board err in law or otherwise overlook the evidence in finding that the applicants had failed to prove the existence of a relationship between their fear of persecution and one of the five grounds referred to in the definition?

[11] It is clear in this case that the Board erred in law in determining that since the applicant had admitted he "never actively supported any political party" and "showed complete ignorance of his country's political ideologies ... the argument of ... imputed political opinion is insufficient". The Board's conclusion is in contradiction with the principles of law that are applicable in this case. The courts clearly hold that the ground of political opinion may correspond either to the claimant's actual opinions or to those rightly or wrongly attributed to him: *Astudillo v. Canada (Minister of Employment and Immigration)* (1979), 31 N.R. 121 (F.C.A.), at page 122; *Oyarzo v. Minister of Employment and Immigration*, [1982] 2 F.C. 779 (F.C.A.); and *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, at pages 746 and 747.

[12] In the case at bar, the crucial test is not whether the Board thinks the applicant participated in political activities, but rather whether the Albanian governmental authority considers his conduct as political activity (*Oyarzo, supra*, paragraph 12). In this regard, the imputed political opinions need not have been directly expressed by the applicant or be necessarily consistent with his deepest convictions. Even if, in such a case, the applicant may have more difficulty in establishing the relationship between this opinion and his fear of persecution, this does not prevent him from being protected (*Ward, supra*, at pages 746-47).

[13] According to the uncontradicted evidence accepted by the Board, the applicant refused in 1990 to fire upon a crowd of students demonstrating in favour of democracy and in 2000 he also participated in two demonstrations against the governmental authority. These actions had some real and immediate consequences. In the first case, the applicant was arrested and imprisoned for several months; in the second, he was the object of death threats. *Prima facie*, therefore, there is a direct relationship between the actions taken by the applicant and the acts of persecution he attributes to the governmental authority. Unless it clearly stated that it placed no faith in the applicant's account and indicated why, if so, it doubted his credibility, the Board had to consider the evidence as a whole. The Board therefore had to examine the latter events and assign them the weight they deserved, having regard to all the facts adduced in evidence that go back to 1990. The decision's lack of analysis of this part of the evidence lends probability to the applicants' allegation that the Board overlooked some relevant evidence.

[14] Having said that, I will add that the fact the male applicant may have had his "reasons" for refusing to fire on a crowd of students demonstrating for democracy or for participating in certain demonstrations against the governmental authority in no way diminishes the "political" value of such actions. As the Federal Court of Appeal noted in *Zhu v. Canada (Minister of Citizenship and Immigration)*, [1994] F.C.J. No. 80, at paragraph 2, "People frequently act out of mixed motives, and it is enough for the existence of political motivation that one of the motives was political." Similarly, the fact that the acts of persecution of which the applicant says he was the target may have been engaged in for personal or pecuniary reasons does not exempt the Board from its duty as a decision-maker, to examine whether in fact, according to the evidence in the record, some political opinions had or might have been imputed to the applicant by the governmental authority, especially because the record indicates that some of the acts of persecution alleged here were perpetrated by state agents (the police) and were not limited to the actions of a former official or citizens wishing to avenge themselves (*Ward, supra*).

[15] The Board possibly thought that the incident and the imprisonment of the male applicant in 1990 no longer had any relationship to what happened to him subsequently, but it did not say so in its decision. In any event, the basis of a present fear must be examined, and these previous incidents are part of a whole and cannot be completely excluded from the reasons for the fear, even if they were overshadowed by the subsequent events (*Oyarzo*, *supra*, paragraph 5). Similarly, the Board may have considered that the death threats against the applicants in 2000 were not related to the male applicant's participation in demonstrations or his actual or imputed political opinions, but one must still be able to understand the line of thought leading to such a conclusion - and this, once again, is not expressed in the Board's decision.

[16] Consequently, I am of the opinion that the Board failed to consider the evidence as a whole and erred in the application of the relevant principles of law in this case. Furthermore, the lack of a real analysis and the terseness of the reasons given for the Board's decision reinforce my conviction that the Board failed to take into account some relevant factors. I think it is necessary, therefore, to set aside the decision in question and to send the matter back to a differently constituted panel of the Board for rehearing and redetermination in light of the evidence as a whole and the applicable principles of law in this case. Incidentally, I agree with counsel for the parties that no serious question of general importance is raised here.

ORDER

The application for judicial review by the applicants is allowed, the decision of the Board dated November 21, 2001, in files MA0-10132 and MA0-10133 is set aside and the matter is sent back to a different panel for rehearing and redetermination in light of the evidence as a whole and the applicable principles of law in this case.

"Luc Martineau"

Judge

Certified true translation

Suzanne M. Gauthier, C. Tr., LL.L.

FEDERAL COURT OF CANADA

TRIAL DIVISION

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET NO: IMM-5640-01

STYLE: SPIRO SOPIQOTI ET AL. v. MCI

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: January 21, 2003

REASONS FOR ORDER

AND ORDER OF: Martineau J.

DATED: January 29, 2003

APPEARANCES:

Sonia RODRIGUE	FOR THE APPLICANTS
Steve BELL	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Sonia Rodrigue, Advocate 63-460 St-Gabriel Montréal, Quebec H2Y 2Z9	FOR THE APPLICANTS
Morris Rosenberg Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT