

Federal Court



Cour fédérale

**Date: 20160812**

**Docket: IMM-313-16**

**Citation: 2016 FC 923**

[ENGLISH TRANSLATION]

Montréal, Quebec, August 12, 2016

**PRESENT: The Honourable Mr. Justice Locke**

**BETWEEN:**

**DÉLY LOUIS**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Introduction

[1] This is an application for judicial review made under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) of a decision made by the Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada (IRB) on December 30, 2015,

affirming a decision rendered by the Refugee Protection Division (RPD) concluding that the applicant was not a Convention refugee nor a person in need of protection.

[2] I am of the opinion that the RAD's decision was reasonable and that this application for judicial review should be dismissed.

## II. Facts

[3] The applicant, Dély Louis, is a Haitian merchant and entrepreneur who normally lived in Port-au-Prince. Before coming to Canada, he had a business where he sold various merchandise and also worked in construction. The applicant arrived in Canada in July 2014. At that time, he had the intention of returning to Haiti at the end of February 2015, after having observed how certain businesses and construction projects functioned in Canada.

[4] On February 9, 2015, he made a "sur place" claim for refugee protection, after receiving death threats from unknown individuals who allegedly considered him to be a competitor. His fear was based on the following allegations:

- A. On the night of January 24-25, 2015, four armed individuals allegedly robbed the applicant's business; they allegedly stated that they knew he was abroad and that it would be wise for him to stay there if he wanted to live because he was an embarrassing competitor, in both his business and his construction work;
- B. On January 30, 2015, the applicant allegedly learned from his brother that the storage facility where he kept his construction materials and tools had been looted; his brother

had allegedly heard the news when he received a call from an individual threatening the applicant and his brother with death if the applicant ever returned to Haiti;

- C. Following the two robberies, the applicant's brother allegedly continued to receive calls stating that nothing would happen to him as long as his brother didn't return to Haiti; these calls allegedly continued until at least March 22, 2015.

[5] After a hearing on April 10, 2015, the RPD decided, on May 29, 2015, that the applicant was neither a Convention refugee nor a person in need of protection. The RPD made the following determinations:

- A. *Identity*: The applicant proved his identity;
- B. *Credibility*: He was a credible witness, in all of his allegations;
- C. *Section 96 of the IRPA*: He is not a Convention refugee because his fear is not based on any of the grounds set out in the Convention; neither "victims of criminality" nor "entrepreneurs" are recognized social groups within the meaning of *Canada (Attorney General) v. Ward*, [1993] 2 SCR 689;
- D. *Subsection 97(1) of the IRPA*: The applicant established that he was a "person in need of protection" following the numerous death threats against him; since the applicant had been targeted by individuals who viewed him as a competitor, this is not a generalized risk faced by the population as a whole;
- E. *Internal flight alternative*: The applicant nevertheless has an internal flight alternative (IFA) in Cap-Haïtien, where he would be safe and to where it would be reasonable for him to move; the RPD rejected the applicant's arguments that (1) he would not be safe in Cap-Haïtien because there are bandits everywhere and he could be found

there and (2) it would be unreasonable for him to move there because he did not know anyone there and it would therefore be difficult for him to resume his business activities; the RPD concluded that he would be safe in Cap-Haïtien because it is a large city located 150 km from Port-au-Prince and because he would no longer be in competition with the individuals who had threatened him; the RPD then concluded that it would be reasonable for him to move there because the applicant is competent in several trades; the RPD highlighted the fact that the right to work does not include the right to ply the trade of one's choice and that there were therefore grounds to reject the applicant's arguments claiming that he would not be able to work as a construction contractor or as a merchant.

### III. Decision

[6] The RAD affirmed the RPD's determination that the applicant is neither a Convention refugee nor a person in need of protection. It was of the opinion that he had an IFA in Cap-Haïtien.

[7] First, the RAD rejected the applicant's argument, according to which the documentary evidence showed that there could not be an IFA in Haiti. It is of the opinion that the documentary evidence cited by the applicant, namely document 1.8 of the National Documentation Package for Haiti, dated June 27, 2014, entitled *Haiti: Summary of observations on the security and violence in Haiti made in 2008 and updated in 2013 by Cécile Marotte, Associate Researcher at the Knowledge and Freedom Foundation (Fondation connaissance et liberté, FOKAL/OSI) from 2008 to 2012, clinical psychologist since 2013 at the Victoria Institute in Montréal* (the Marotte report), as a whole, offers a more nuanced version of the facts than the applicant proposes.

[8] According to the RAD, the Marotte report upholds the applicant's allegations only in part. It is hard for someone who is being threatened in Port-au-Prince to find a safe haven elsewhere in the country. Gangs can move throughout the country and communicate among themselves, and the institutions in Haiti that are responsible for access to justice and applying the law are weak. However, the RAD noted that the Marotte report also indicates that it is possible for victims of a gang that controls an area to relocate elsewhere and that Haitian authorities, supported by UN forces, are becoming more and more effective at breaking up armed gangs and kidnapping rings.

[9] Second, the RAD affirmed that it was not an error of law to determine that an IFA could exist in a small country like Haiti. It is possible to determine that an IFA exists, as long as the two prongs of the IFA test are met. To do this, the evidence must be assessed as a whole. The applicant bears the burden of showing that no IFA exists (*Osvaldo v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 460, at paragraph 22).

[10] For the first prong of the test, the RAD determined that the applicant had not established, on the balance of probabilities, that he faced a serious possibility of being persecuted or of having his life threatened in Cap-Haïtien. The applicant's evidence reveals that the identities of the individuals who threatened him are unknown, that they know he is abroad and that the applicant is an embarrassing competitor for them. It is therefore not possible to conclude that the bandits have the necessary resources to know when the applicant will return to Haiti, or for the applicant to know how they operate. The documentary evidence, for its part, reveals that Haitians

have freedom of movement within the country. There is therefore no evidence that the applicant will have to fill out a form notifying the authorities if he moves to Cap-Haïtien.

[11] For the second prong of the test, the RAD found that it is not objectively unreasonable or too severe to expect the applicant to move to Cap-Haïtien. The fact of not being able to find an appropriate job within one's professional field can invalidate an IFA (*Mchedlishvili v. Canada (Citizenship and Immigration)*, 2010 FC 630, at paragraph 16). Yet, the fact that the applicant obtained several diplomas allowing him to work in various trades suggests that he will be able to earn a living in Cap-Haïtien and that it is not unreasonable for him to move there.

#### IV. Issues in dispute

[12] Did the RAD err in affirming the RPD's decision that the applicant had an IFA in Cap-Haïtien?

#### V. Standard of review

[13] Although the applicant presents no arguments regarding the standard of review applicable to the RAD's decision, the respondent argues that the applicable standard of review is that of reasonableness. I agree. The parties are in agreement that the RAD's decision mainly concerns the question of whether an IFA exists. This Court acknowledged that this was a question of fact and it is for this reason that the standard of reasonableness applies (see *Verma v. Canada (Citizenship and Immigration)*, 2016 FC 404, at paragraph 14; *Momodu v. Canada (Citizenship and Immigration)*, 2015 FC 1365, at paragraph 6).

VI. Analysis

[14] Regarding the first prong of the IFA test, I am of the opinion that the RAD was correct in finding that the applicant had failed to establish, based on the balance of probabilities, that the individuals who had threatened him had the desire and the ability to find him in Cap-Haïtien. This determination is supported by the fact that the applicant could not identify them. The fact that the applicant's testimony was credible did not obligate the RAD to accept everything he had to say regarding these individuals.

[15] For the same reason, and despite his statements to the contrary, the applicant was also unable to establish that the individuals who threatened him would be able to learn the date and time of his arrival in Port-au-Prince (before he moved to Cap-Haïtien) in order to do him harm even before his arrival in Cap-Haïtien.

[16] Regarding the second prong of the IFA test, I am of the opinion that the RAD was correct in determining that the applicant would be able to earn his living without being in competition with the individuals who had threatened him. The evidence does not support a fear that these individuals would have an interest in following him to Cap-Haïtien in the circumstances.

[17] Furthermore, I agree with the RAD that the Marotte report is nuanced enough to allow for the conclusion to be drawn that an IFA can exist in Haiti.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. This application is dismissed.
2. No serious questions of general importance were certified.

“George R. Locke”

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-313-16

**STYLE OF CAUSE:** DÉLY LOUIS v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** JULY 6, 2016

**JUDGMENT AND REASONS:** LOCKE J.

**DATED:** AUGUST 12, 2016

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