Federal Court  Cour fédérale

Date: 20190329

Docket: IMM-4443-18

Citation: 2019 FC 390

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, March 29, 2019

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

KERLANGE DOUILLARD
PRINCE OLIVER JAY DOUILLARD

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, Kerlange Douillard, is, on behalf of herself and her minor son, Prince Oliver Jay Douillard, appealing a decision of the Refugee Protection Division [RPD], which, on August 21, 2018, rejected their refugee protection claim, in the case of the applicant, on the ground that it was not credible, and in the case of the minor child, on the ground that it was unfounded. The RPD also concluded in both cases that there was no credible basis for the

refugee protection claim under subsection 107(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act].

[2] The relevant facts in this case can be summarized as follows. The applicant, who is of Haitian origin, arrived in Canada with her U.S.-born son in August 2017. She had spent almost a year in the United States after fleeing Haiti in September 2016. The applicant reported that two events, which occurred in August 2016, prompted her to leave Haiti.

[3] The first incident related to threats allegedly made by a group of armed individuals to the members of the Association des jeunes de Carrefour [AJC] present at a meeting she was chairing—as the AJC's president—who accused them of being against the government. Her younger brother, present at the meeting, was allegedly beaten by the hoodlums on that occasion. Following this incident, the applicant sought refuge with a friend. The second incident involved the applicant's ex-spouse who, after learning that she was pregnant with the co-applicant, allegedly threatened her with death if she did not have an abortion.

[4] On September 6, 2016, the applicant left Haiti for the United States. The applicant states that, should she have to return to Haiti, she fears these armed men as well as the members of the AJC, who are allegedly jealous that she inherited the presidency of the organization. She also mentioned in her "Basis of Claim Form" [BOC Form] that she fears her ex-spouse. As for her son, she submits that refugee protection should be granted to him since a child must be with his parents, even if she does not fear for him should he have to return to the United States, of which he is a citizen.

[5] The RPD simply did not believe the applicant's story. On the one hand, it judged that her testimony was often confusing, that she said one thing and then another and that she seemed completely disinterested by her case. On the other hand, the testimony about her fear of her former spouse was, according to the RPD, fraught with contradictions and omissions, particularly as to when she received the alleged threats, as to whether she was also beaten by her former spouse and as to whether he had approached members of her family after she had left Haiti. In addition, the applicant ended by saying that she would not have left Haiti merely because her former spouse had threatened her, which, according to the RPD, affects her credibility.

[6] As to the fear of being a member of the AJC, the applicant could not, in the words of the RPD, express it clearly, claiming first to fear the members of the group who were jealous of her having become the president before saying that she was not afraid, even admitting to having mentioned this by mistake in her BOC Form. The RPD also did not find credible the applicant's answers to questions about the status of the AJC. According to her, the group still exists, but the members have allegedly all gone [TRANSLATION] "under cover" to protect themselves. In the same breath, according to the applicant, the AJC members were still engaged in the collection of waste, which, in the eyes of the RPD, is an irreconcilable contradiction.

[7] Finally, the RPD criticized the applicant for her delay in claiming refugee protection, given that she had spent some ten months in the United States before coming to Canada.

[8] As for the applicant's young son, the RPD held that there were no grounds for granting him Convention refugee or person in need of protection status within the meaning of sections 96 and 97 of the Act, since the applicant was not afraid for him if he were to return to the United States and she had not brought any proof that that country would have neither the will nor the capacity to protect him. With respect to the argument that refugee protection should be granted to the co-applicant because a child must be with his or her parents, the RPD stated that it did not have jurisdiction to consider reasons based on humanitarian and compassionate grounds or on family reunification.

[9] The applicant criticizes the RPD for finding, regardless of the evidence, no credible basis for her refugee protection claim and for failing, in the case of her young son, to conduct a proper analysis of his refugee protection claim and the "no credible basis" issue.

[10] It is well-established that the Court's review of the RPD's rulings on the merits of a refugee protection claim is based on the standard of reasonableness. The same is true of no credible basis findings (*Toussaint c Canada (Citoyenneté et Immigration)*, 2019 CF 267 at para 5 [*Toussaint*]; *Rahman v Canada (Citizenship and Immigration)*, 2019 FC 71 at para 18; *Joseph v Canada (Citizenship and Immigration)*, 2018 FC 638 at para 11 [J*oseph*]; *Eze v Canada (Citizenship and Immigration)*, 2016 FC 601 at paras 11–12 [*Eze*]).

[11] In order to intervene, the Court must be satisfied that the RPD's findings of fact, or of mixed fact and law, fall outside the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[12] At the outset, the applicant did not persuade me that there is a need to intervene with respect to the RPD's findings that concern her. On the one hand, she claimed that the RPD misapplied section 107.1 of the Act, which gives the RPD the power to state in its reasons for a decision that a refugee protection claim "is manifestly unfounded" if it is of the opinion that the claim "is clearly fraudulent".

[13] However, it is not this provision that the RPD relied on to conclude that there was no credible basis for the refugee protection claim in this case. It was on subsection 107(2). Under this provision, there is no credible basis if the record does not disclose any trustworthy or credible evidence that could support a recognition of the refugee protection claim (*Rahaman v Canada (Minister of Citizenship and Immigration Canada)*, 2002 FCA 89 at para 51; *Ramón Levario v Canada (Citizenship and Immigration)*, 2012 FC 314 at para 19).

[14] It is true that a refugee protection claimant's lack of credibility does not necessarily mean there being no credible basis for his or her claim (*Baradji v Canada (Citizenship and Immigration)*, 2017 FC 589 at para 21) and that the threshold for arriving at a no credible basis finding is high since it will deprive the applicant of a right of appeal to the Refugee Appeal Division (*Wu v Canada (Citizenship and Immigration)*, 2016 FC 516 at para 12, paragraph 110(2)(c) of the Act; *Eze* at para 26; *Joseph* at para 13; *Toussaint* at para 22).

[15] Here, I am of the opinion that, even if the RPD's reasons are quite brief, its conclusion that there is no credible basis for the applicant's claim is reasonable. I note that although I am not allowed to substitute my own reasons, I may look to the record to assess the reasonableness of

the outcome, in this case that there was no credible or trustworthy evidence on which the RPD could have made a favorable decision (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 15 [*Newfoundland Nurses*]).

[16] In this case, the reading of the transcript of the RPD hearing reveals a testimony that is in many respects baffling, confusing and rife with contradictions and omissions, as noted by the RPD. The latter, moreover, was best placed to judge the credibility of the applicant. Deference is required (*Quintero Sanchez v Canada (Citizenship and Immigration)*, 2011 FC 491 at para 12; *Soorasingam v Canada (Citizenship and Immigration)*, 2016 FC 691 at para 16; *Ruszo v Canada (Citizenship and Immigration)*, 2018 FC 943 at para 18).

[17] Do the documents that the applicant submitted in support of her claim (a copy of her AJC membership card, a photo of her and her ex-spouse, photos of her younger brother, her national identification card, and government and NGO reports on the situation in Haiti) affect the no credible basis finding? I do not think so. None of her exhibits, taken individually or collectively, provide credible and trustworthy evidence upon which a favorable decision could have been based. This leaves the letter, dated June 2018, written by the friend who allegedly housed the applicant before her departure from Haiti in early September 2016, and which refers to the incident that occurred at the meeting of AJC members that was interrupted by a group of armed individuals. The letter reveals that the friend in question did not witness the incident, but that she is merely recounting, two years after the fact, what the applicant told her. It is well established that the RPD is entitled to give no weight to this type of evidence when the facts it purports to

corroborate were found to be otherwise not credible (*Jele v Canada (Immigration, Refugees and Citizenship)* 2017 FC 24 at para 50).

[18] Although the RPD did not explicitly review each document, this is not fatal to its decision. Indeed, there is a presumption that it considered all of the evidence before it. Nor did it have to refer in its decision to all the documents forming part of this evidence, except those which contradict its conclusions (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (QL); *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 157 FTR 35 at para 17, [1998] FCJ No 1425 (QL); *Newfoundland Nurses* at para 16).

[19] Now, as I have just said, there is nothing of that here. The RPD's reasons must be read "together with the outcome" and serve the purpose of "showing whether the result falls within a range of possible outcomes" (*Newfoundland Nurses* at para 14). I am satisfied that, even though, as I have mentioned before, they are rather succinct on the no credible basis finding, they meet this requirement in the circumstances of this case and that the outcome is reasonable.

[20] What now about the decision on the applicant's young son's refugee protection claim, which she claims the RPD did not properly analyze, both in terms of its merits and with respect to it having no credible basis?

[21] Here again, the applicant's recriminations cannot be accepted. I note that the applicant told the RPD that she did not fear for her son should he have to return to the United States. The

only reason given in support of the refugee protection claim made on behalf of the co-applicant is that it is in the best interests of a child to be with his or her parents, which, of course, is not disputed by anyone, and that a child so separated from his or her parents may feel this separation as a form of persecution. The applicant, citing *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paragraphs 37-37, submits that the principle of the best interests of the child must be a primary consideration in all decisions by public authorities that concern a child.

[22] The RPD found that this allegation did not allow it to conclude that there was a reasonable possibility of persecution on any of the grounds set out in the Refugee Convention or a risk of the nature of those enumerated in section 97 of the Act. It also noted that the applicant had failed to demonstrate that the United States could or would not protect the co-applicant should he have to return to that country. Finally, it stated that it had no jurisdiction to consider humanitarian and compassionate grounds or issues to do with family reunification when deciding on a refugee protection claim.

[23] In my opinion, the RPD did not err in concluding this.

[24] While the best interests of the child are an indispensable criterion for decisions made under section 25 of the Act, which are based on humanitarian and compassionate considerations, they are not determinative in granting Convention refugee or person in need of protection status. In the context of a risk assessment prior to removal, the Federal Court of Appeal provided the following explanation:

> Neither the Charter nor the *Convention on the Rights of the Child* requires that the interests of affected children be considered under every provision of *IRPA*: *de Guzman v. Canada (Minister of Citizenship and Immigration)*, [2006] 3 FCR 655**,** 2005 FCA 436, at para. 105. If a statutory scheme provides an effective opportunity for considering the interests of any affected children, including those born in Canada, such as is provided by subsection 25(1), they do not also have to be considered before the making of every decision which may adversely affect them. Hence, it was an error for the Applications Judge to read into the statutory provisions defining the scope of the PRRA officer's task a duty also to consider the interests of the adult respondents' Canadian-born children.
>
> (*Varga v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 394 at para 13)

[25] The jurisprudence of this Court has endorsed the same principle in the context of refugee protection claims (*Kim v Canada (Citizenship and Immigration)*, 2010 FC 149 at paras 6, 64 [*Kim*]; *Hernandez v Canada (Citizenship and Immigration)*, 2011 FC 703 at para 43; *Aissa v Canada (Citizenship and Immigration)*, 2014 FC 1156 at para 79; *Asim v Canada (Citizenship and Immigration)*, 2017 FC 415 at paras 28-29).

[26] In *Kim*, for example, Justice Shore stated as follows:

> [76] The Canadian immigration system provides for several methods by which to gain entry into Canada, one of which is to be a refugee under section 96. Section 96 provides a strict definition that is either met or not by the claimant in question. If the definition is met, then the claimant may be able to enter Canada as a refugee. If, on the other hand, the definition is not met, then the claimant may not enter Canada pursuant to that section and other options become available to him or her. One remaining option is pursuant to section 25, wherein the Minister in his discretion may grant an exemption "from any applicable criteria or obligation of" the IRPA. It is under section 25 that a substantive and thorough analysis of the best interests of the child is performed. At the stage of a section 96 application, it is sufficient that the best interests of the child are taken into account procedurally, as directed by the

> Guidelines. The Court must reiterate that the best interests of the child cannot shoehorn a refugee claimant into the section 96 definition if the child's claim would otherwise be rejected, but it can influence the process which leads to that decision.
>
> [Emphasis in original]

[27] As noted by Justice Shore, the best interests of the child play a role in the review of a review protection claim when determining the process and assessing the evidence where, as evidenced by the *Chairperson Guideline 3: Child Refugee Claimants: Procedural and Evidentiary Issues* of the Immigration and Refugee Board of Canada [Guideline]. This Guideline provides for special rules for the representation of minors, the processing of refugee protection claims for unaccompanied minors and the obtaining and assessing of evidence.

[28] With respect to the obtaining of evidence, the Guideline reiterates the right of the child to be heard in regard to his or her refugee protection claim, and invites the RPD to be sensitive to the fact that, in general, children are not able to present evidence with the same degree of precision as adults with respect to context, timing, importance and details. If children are able to testify, the Guideline provide that the procedure must be explained to them, that their testimony must be collected in an informal setting and that they must be questioned with sensitivity.

[29] With respect to the assessment of the evidence, the decision-maker, following the Guideline, may consider the testimony of another person, such as a family member of the child, a member of the child's community or a health and social services workers, when assessing a child's refugee protection claim. The same Guideline states that when a child testifies, the weight of his or her testimony must be weighed against the context unique to the child. For example, if

the child's testimony contains gaps about the subjective fear of persecution, increased consideration of objective evidence becomes necessary.

[30] In this case, none of this is relevant: the co-applicant is not an unaccompanied minor; he was represented by his mother who, although she did so in a minimalist fashion, testified on his behalf; and he put forth no evidence himself, although it must be said that he was barely one year old at the time of the RPD hearing. Moreover, as I have already mentioned, the jurisprudence of this Court recognizes that the Guideline cannot affect the substance of a refugee protection claim (*Kim* at paras 7, 76).

[31] The case law of the Court also recognizes that family reunification is not a governing factor in the consideration of a refugee protection claim under sections 96 and 97 of the Act. In fact, where the criteria for protection set out in those provisions are not met, the purposes of the Act set out in section 3 of the Act, including that of family reunification, cannot, on their own, confer Convention refugee or person in need of protection status (*Akinfolajimi v Canada (Citizenship and Immigration)*, 2018 FC 722 at para 5).

[32] Here, there is no evidence that the rejection of the applicants' refugee protection claim will necessarily lead to their separation. All that was said about the co-applicant before the RPD is that a child must be with his or her parents, nothing more. This argument was not developed, even though the applicant was represented by counsel. In such a context, I understand why the RPD was brief in its reasons and I also understand very well why it concluded that there is no credible basis for the claim, in general.

[33] This application for judicial review will therefore be dismissed. Neither party proposed a question for certification for appeal.

JUDGMENT in IMM-4443-18

THE COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and

2. No question is certified.

"René LeBlanc"
Judge

Certified true translation
This 10th day of April, 2019.

Johanna Kratz, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4443-18
SYTLE OF CAUSE:	KERLANGE DOUILLARD, PRINCE OLIVER JAY DOUILLARD v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	MARCH 7, 2019
REASONS FOR JUDGMENT AND JUDGMENT:	LEBLANC J.
DATED:	MARCH 29, 2019

APPEARANCES:

Sandra Palmieri	FOR THE APPLICANTS
Amélia Couture, articling student	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Sandra Palmieri Barrister and Solicitor Montréal, Quebec	FOR THE APPLICANTS
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT