

Federal Court



Cour fédérale

Date: 20190508

Docket: IMM-4015-18

Citation: 2019 FC 620

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, May 8, 2019

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

ROSE MICHOU DEFAITE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision rendered by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada, dated July 27, 2018. The application was filed under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [IRPA]. The RAD confirmed a decision rendered by the Refugee Protection Division [RPD], which denied the applicant's claim for refugee protection on the grounds that

she was not credible and that she was not a Convention refugee or a person in need of protection under sections 96 and 97 of the IRPA respectively.

[2] The applicant is a Haitian citizen whose mother tongue is Creole. The applicant alleges that she started to receive threatening phone calls from unknown persons in December 2015. After receiving death threats via four anonymous phone calls on July 4, 2016, the applicant left her home and went to live with her aunt. On August 17, 2016, she arrived in Canada on a visitor's visa obtained in Port-au-Prince. She claimed refugee protection on October 5, 2016.

[3] The refugee protection claim was heard by the RPD on December 5, 2016. On December 21, 2016, the RPD denied the applicant's claim because it lacked credibility.

[4] On January 19, 2017, the applicant appealed the decision rendered by the RPD, citing issues with the interpretation during the hearing before the RPD. In written representations filed with the RAD, counsel for the applicant claimed that the interpreter made [TRANSLATION] "several" errors in his interpretation, that he could not read Creole and did not understand the nuances of the words used. However, the applicant did not present any evidence in support of these claims. Also according to counsel for the applicant, the RPD should have adjourned the hearing in order to allow the applicant to revise her Basis of Claim Form with the help of an interpreter.

[5] The RAD dismissed the applicant's appeal on July 27, 2018. In its decision, it acknowledged that the right to the assistance of an interpreter is guaranteed under section 14 of

the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11, and that the interpretation provided to applicants must be continuous, precise, competent, impartial and contemporaneous. After reviewing the transcript of the hearing before the RPD, the RAD noted that the RPD had made sure that the applicant understood the questions that she was being asked before she provided a response. The RAD also noted that at one point during the hearing, counsel for the applicant, who understands Creole, had intervened to indicate that a word had been misinterpreted. A little later, the interpreter had asked for a break after experiencing some difficulty in using the first person rather than the third person singular. Subsequently, the applicant had answered a question before the interpreter had finished interpreting. The RAD deemed that the RPD's decision to deny the refugee protection claim was not attributable to a misinterpretation and that the principles of natural justice and procedural fairness had not been violated.

[6] The applicant would like the court to quash the decision rendered by the RAD, refer the matter back to the RPD for redetermination of her refugee protection claim and order a new hearing with a competent French-Creole interpreter in attendance.

[7] The only issue raised in this case is whether the RAD was right to conclude that the interpreting services offered at the hearing before the RPD did not result in a breach of procedural fairness. On this point, the standard of review that the Court must apply to the decision rendered by the RAD is that of correctness (*Siddiqui v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1028 at paragraph 38).

[8] The applicant produced two affidavits in support of this application. In her personal affidavit, she states that the interpretation of her testimony during the hearing before the RPD is riddled with problems. According to the applicant, she had difficulty understanding the interpretation from French to Creole and the interpreter had difficulty understanding what she said in Creole. However she does not cite the specific errors that were allegedly committed by the interpreter.

[9] In the second affidavit, Corine Jacquet states that she is originally from Haiti and that she speaks Creole fluently. In her affidavit, she points out several examples of translations of excerpts of the transcript of the hearing before the RPD, originally in Creole, that she considers to be erroneous or to have been reformulated by the interpreter.

[10] The applicant raised several new facts before this Court that were not presented before the RAD. The applicant's complaint is based solely on her personal opinion and is substantiated by the opinion of someone who is not a qualified interpreter.

[11] The applicant does not provide any reasons to explain why she failed to raise the alleged errors or issues with the interpretation before the RPD until after her refugee protection claim was denied. The question of whether it is reasonable to expect a complaint to be filed is a question of fact, which must be determined in each case. If an interpreter has difficulty speaking the applicant's language or being understood by her, the issue must be raised at the first opportunity: *Mohammadian v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 191, [2001] 4 FC 85 at paragraph 13.

[12] Moreover, the applicant did not explain why she failed to present the evidence in Ms. Jacquet's affidavit for her appeal before the RAD. To quote the Honourable Mr. Justice Patrick Gleeson in *Ghuri v Canada (Citizenship and Immigration)*, 2016 FC 548 at paragraph 34, "appellants before the RAD that fail to specify where and how the RPD erred do so at their peril".

[13] In this case, I conclude that the quality of the interpretation and the competence of the interpreter should have been raised before the RPD because, according to the applicant, she had difficulty understanding the interpreter and the proceedings before the RPD. This is enough to demonstrate that she should have reported the issue at that time, before the RPD. Since she did not do so, her claim can neither be pursued before the RAD, nor, *a fortiori*, under judicial review.

[14] I would like to add that the applicant is asking the Court to assess the quality of the interpretation without providing context. The applicant did not provide a transcript of the hearing, nor did she indicate in her memorandum where the errors were made at the hearing. The minor translation irregularities and inconsistencies that were pointed out by the applicant do not appear to have hindered her ability to respond to questions or to have played a serious role in the assessment of her credibility. All in all, the applicant was able to answer all of the RPD's questions, including more specific ones, and was able to do so coherently.

[15] Consequently, the RAD was right to conclude that procedural fairness was not breached. The application is therefore dismissed.

[16] No question for certification was proposed and none arises.

JUDGMENT in IMM-4015-18

THIS COURT'S JUDGMENT IS that:

The application for judicial review is dismissed.

“Roger R. Lafrenière”

Judge

Certified true translation
This 3rd day of June 2019.

Johanna Kratz, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4015-18

STYLE OF CAUSE: ROSE MICHOU DEFAITE v MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: MAY 6, 2019

JUDGMENT AND REASONS: LAFRENIÈRE J.

DATED: MAY 8, 2019

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