

Federal Court



Cour fédérale

**Date: 20190710**

**Docket: IMM-6117-18**

**Citation: 2019 FC 906**

**Ottawa, Ontario, July 10, 2019**

**PRESENT: Mr. Justice Shore**

**BETWEEN:**

**FARAH LOUIS**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision rendered by a member of the Refugee Appeal Division [RAD], who confirmed the decision of the Refugee Protection Division [RPD] which found that the Applicant is neither a Convention refugee under section 96 of the IRPA, nor a person in need of protection under subsection 97(1) of the IRPA.

II. Background

[2] The Applicant is a 30-year-old woman who is a citizen of Haiti.

[3] The Applicant came to Canada on July 21, 2017, and made a refugee claim on September 8, 2017. In her Basis of Claim [BOC] Form, she identified two grounds for her fear of persecution in Haiti.

[4] The first claim relates to a land dispute that turned into violence. According to the Applicant, a man, who claimed rights to the land where she lived, appeared at her residence accompanied by legal authorities, the police and “bandits”. The “bandits” destroyed the property and made threats of further violence should the occupants refuse to vacate the land. The intruders allegedly returned on three more occasions and continued to destroy the buildings and their contents.

[5] The second claim is based on gender-related persecution. The Applicant claims that she was a victim of an attempted rape; and, had identified her persecutors to the police.

[6] The Applicant later claimed that she had received death threats from the individuals to the land dispute. This incident was omitted from her BOC Form.

[7] The RAD determined that the Applicant lacked credibility in respect of these alleged grounds.

### III. Impugned Decision

[8] On November 14, 2018, the RAD affirmed the RPD's decision dated January 25, 2018, which concluded that the Applicant is not a Convention refugee or a person in need of protection; and, thus refused her refugee claim.

[9] The Applicant's claim that she feared for her life due to a land dispute was found by the RAD to be non-credible due to omissions and contradictions in the Applicant's story, including confusion, surrounding significant dates to the narrative and due to her weekly return to sleep in the home that was the source of the dispute and the location where the said peril had occurred. The RAD further noted that the Applicant did not originally mention a death threat that she had later included as part of her fears, should she have to return to Haiti.

[10] As for the circumstances surrounding the alleged attempted rape, the RAD did not believe that this event took place; otherwise, the Applicant would have specified it to the Justice of the Peace when she reported the destruction of property, considering that the claim of attempted rape allegedly took place during one of the times when the "bandits" visited and destroyed the property. The RAD also concluded that, should the event have occurred as described by the Applicant, she would also have included a reference to the attempted rape in her response to the RPD when asked about her fears, should she return to Haiti.

### IV. Issues and Standard of Review

[11] This Court must answer only one question: Is the RAD's decision reasonable?

[12] A decision of the RAD that assesses the Applicant’s credibility points to the reasonable standard of review. As such, the Court will only intervene if the decision lacks “justification, transparency and intelligibility” and does not fall into the range of possible, acceptable outcomes (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 and *Jalal v Canada (Citizenship and Immigration)*, 2019 FC 438 at para 13).

## V. Relevant Dispositions

[13] The following dispositions of the IRPA are relevant in this case:

### **Application for judicial review**

**72** (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is, subject to section 86.1, commenced by making an application for leave to the Court.

### **Convention refugee**

**96** A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of

### **Demande d’autorisation**

**72** (1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est, sous réserve de l’article 86.1, subordonné au dépôt d’une demande d’autorisation.

### **Définition de réfugié**

**96** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces

each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

**Person in need of protection**

**97** (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

**Personne à protéger**

**97** (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

## VI. Analysis

[14] The Applicant would like this Court to conclude that the RAD's credibility finding was unreasonable. The Applicant further submitted that the RAD wrongly concluded as to the Applicant's fear of gender-related persecution in respect of the peril of being a rape victim in Haiti.

[15] With regard to the credibility finding, the Applicant submits that the RAD omitted to examine the evidence as a whole and instead, chose excerpts that supported its finding. The Applicant reminds this Court that such conduct constitutes a reviewable error (*Hamdar v Canada (Citizenship and Immigration)*, 2011 FC 382 at para 58). In this case, the RAD's finding that the Applicant was not credible was based on a number of ample examples of omissions and contradictions in regard to the fundamental aspects of her refugee claim. As such, the Court finds that it was open to the RAD to conclude that the Applicant is not credible.

[16] The Applicant has also stated that she fears a return to Haiti because she was the victim of an attempted rape. Regarding that specific claim, the RAD acknowledged that a panel must be sensitive that applicants might not be forthcoming in respect of such traumatic events, but again concluded as to the lack of credibility on this ground for the following reasons. Firstly, the

Applicant did not hesitate to discuss another traumatic event of a similar nature at the very beginning of the hearing. Secondly, when the Applicant went to the police after this alleged attempted rape, she did not report the event. Instead, she reported the material destruction to buildings and furniture.

[17] The RAD, thus, concluded that the Applicant's fear of the "bandits" culminated in violence due to the land claim, and not to the alleged attempted rape. This conclusion was also open to the RAD. Having found that the Applicant was not credible in her claim that the "bandits" had caused property destruction, the RAD, also, found a lack of credibility as to the rape in the Applicant's case. The RAD determined that the Applicant's risk of being raped in Haiti was a general risk faced by women in Haiti and not a personalized risk (*Prophète v Canada (Citizenship and Immigration)*, 2009 FCA 31 at para 3).

[18] The decision falls within the range of outcomes that are defensible in terms of facts and law. Consequently, there is no need for this Court to intervene; and, the judicial review is dismissed.

**JUDGMENT in IMM-6117-18**

**THIS COURT'S JUDGMENT is that** the application for judicial review be dismissed.

There is no serious question of general importance to be certified.

"Michel M.J. Shore"

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Judge



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

**DOCKET:** IMM-6117-18

**STYLE OF CAUSE:** FARAH LOUIS v MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** JUNE 27, 2019

**JUDGMENT AND REASONS:** SHORE J.

**DATED:** JULY 10, 2019

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