Federal Court  Cour fédérale

Date: 20190712

Docket: IMM-5217-18

Citation: 2019 FC 936

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, July 12, 2019

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

MARC SAINT-FÉLIX

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Marc Saint-Félix, is a citizen of Haiti. This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], with respect to an unfavourable decision issued on December 18, 2013, by a pre-removal risk assessment [PRRA] officer.

[2] Mr. Saint-Félix submits that the officer erred in his assessment and understanding of the facts, breached his duty of procedural fairness by consulting extrinsic and outdated evidence, and erred in his analysis of the risk of persecution and lynching.

[3] The respondent contends that the decision was reasonable and that the officer did not breach his duty of procedural fairness.

[4] I am satisfied that the officer breached his duty of procedural fairness by consulting extrinsic and obsolete evidence. For the reasons that follow, the application is allowed.

II. Background

[5] Mr. Saint-Félix came to Canada as a permanent resident in 1997 with his father and siblings. The applicant has two Canadian children, aged 7 and 4 years. He is engaged to a Canadian citizen.

[6] In May 2013, Mr. Saint-Félix was convicted of several offences. In October 2013, a report was issued pursuant to subsection 44(1) of the IRPA, finding him inadmissible on grounds of serious criminality under paragraph 36(1)(b) of the IRPA.

[7] The Immigration Division confirmed the inadmissibility, and Mr. Saint-Félix filed a PRRA application in February 2018. The application was refused, and that refusal is the subject of this application for judicial review.

III. Decision under review

[8] The officer identified the risks invoked by Mr. Saint-Félix: (1) he would be considered a wealthy person because of his family members, who are Canadian, and his long stay abroad; (2) he would be persecuted by reason of his membership in a particular social group, [TRANSLATION] "criminals deported from North America" and could be detained and [TRANSLATION] "lynched"; (3) he would be forced to live in insecurity with his two sons since he would have no financial support in Haiti; and (4) following the earthquake, there is uncertainty and economic problems in Haiti.

[9] In his detailed examination of the documents produced by Mr. Saint-Félix, the officer noted that, according to the evidence, deported persons with criminal records were detained in Haiti and the conditions in the detention centers were inhumane. The documentation also indicated that Haitian criminals deported from the United States had been lynched, faced language and cultural barriers, suffered from hunger and lacked access to adequate medical care. The officer also noted Mr. Saint-Félix's comment that people returning to Haiti from Canada or the United States would have money extorted from them and that the authorities would not protect them.

[10] However, the officer preferred to rely on a U.S. State Department report dating from 2013, as it was objective, publicly available and more recent than the report produced by Mr. Saint-Félix. According to this report, deportees have not been detained since the end of 2012. The officer noted that Mr. Saint-Félix had not submitted any documentation indicating that detentions had resumed since 2012. In addition, a document dated 2017 provided by Mr. Saint-

Félix made no mention of persons detained as a result of their deportation. The officer concluded that the applicant had not demonstrated that he would be detained upon his return.

IV. Issues

[11] The applicant raises several issues. However, the issue of procedural fairness makes it possible to decide this application for judicial review, and that is the only question I need to consider.

V. Standard of review

[12] In *Canadian Pacific Railway Limited v Canada (Attorney General)*, 2018 FCA 69 [*Canadian Pacific Railway Limited*], the Federal Court of Appeal recently ruled that in cases where there is a question of procedural fairness, the reviewing court is asked to consider whether the procedure was "fair having regard to all of the circumstances" and that "the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond". The Court of Appeal acknowledged that there is an awkwardness in using standard-of-review terminology when addressing questions of procedural fairness and found that "strictly speaking, no standard of review is being applied", but it concluded that the standard of correctness best reflects the Court's role (*Canadian Pacific Railway Limited* at paras 52–56).

VI. Analysis

[13] Mr. Saint-Félix submits that the officer consulted extrinsic evidence and that all of this evidence dates from 2008 to 2013, whereas the organizations that published certain reports have

since produced more recent versions. He submits that the officer chose to base his findings on a 2012 document, whereas the most recent version of this document, which was included in the current National Documentation Package [NDP], dated back to 2017.

[14] Mr. Saint-Félix acknowledges that the onus is on the applicant to provide all the necessary evidence to the officer and that the officer may consult public extrinsic evidence without informing the applicant. However, he submits that this rule applies only to evidence of the current situation.

[15] The respondent submits that the evidence consulted by the officer was not extrinsic and did not invalidate the officer's findings and that the applicant's assertions of breach of procedural fairness are unfounded. I disagree.

[16] The officer concluded that deported individuals have not been systematically detained since the end of 2012. To reach this conclusion, the officer referred to two previous State Department reports prepared for the years 2011 and 2012. The report for the year 2012 is dated April 19, 2013. This report was replaced by the report for the year 2013 in the NDP, dated March 14, 2014. State Department reports have continued to be updated in the NDP, and the NDP that was in effect at the time of the PRRA decision contained the 2017 version of the report.

[17] The officer took into consideration the applicant's document regarding the detention of deported individuals, which was a Response to Information Request from the Immigration and Refugee Board dated May 29, 2012. The document states:

> Sources indicate that the United States deports Haitian citizens with criminal records . . . . Deportees are reportedly detained upon arrival if they are considered to be "serious" criminals by the Haitian authorities . . . . The Executive Director of Alternative Chance explained that crimes deemed to be "serious" may include drug-related offences and assault (17 May 2012). According to the Florida Center for Investigative Reporting (FCIR), . . . approximately half of all deportees are detained upon arrival and the decision to hold them is "largely arbitrary" . . . .

[18] The officer discussed this article in detail and accepted the content. However, he concluded that State Department reports for 2011 and 2012 showed that the situation of deported individuals with criminal records had changed. The report for 2011 said that there were still detentions, although fewer than before, and the report for the year 2012 said that by the end of 2012, deportees were no longer reporting that they had been detained.

[19] These reports can support the contention that the officer's decision was reasonable. The problem is that the officer did not submit these reports to the applicant, and I am not satisfied, based on the facts before me, that Mr. Saint-Félix had an obligation to consult outdated sources in this case. As a result, Mr. Saint-Félix was not able to present documents that could have shown that the situation was different from what is described in the reports for the years 2011 and 2012.

[20] In *Roy v Canada (Citizenship and Immigration)*, 2013 FC 768 [*Roy*], Justice Scott had to consider a similar situation. The Refugee Protection Division [RPD] had relied on a 2009

document to conclude that there was an internal flight alternative. This document was not in the NDP, but was included in the 2010 version of the same document, which had replaced the 2009 version. Each document presented different information about the possibility of relocating within the country to escape religious violence. The Court found that the RPD had breached its duty of procedural fairness in relying on the 2009 document without giving the applicant an opportunity to respond. In particular, Justice Scott noted at paragraph 43:

> [T]he Court finds that that Board's reliance on the non-disclosed 2009 UK Operational Guidance Note constituted a breach of procedural fairness. Furthermore**,** the Applicant had a right to expect the Board to limit its analysis to the more recent UK Operational Guidance Note. The Applicant should not have expected the Board to reference an older, outdated version of the Note.
>
> [Emphasis added.]

[21] *Zheng v Canada (Citizenship and Immigration)*, 2011 FC 1359 [*Zheng*], dealt with a similar situation. Justice Mosley also found that the RPD had breached its duty of procedural fairness (at paras 12-13).

[22] As in *Roy* and *Zheng*, Mr. Saint-Félix was not obliged to consult old versions of documents when the NDP contained the newer version of the same document. The version of the State Department report that appeared in the NDP in force at the time of the decision did not mention the situation of deported individuals with criminal records. Had the officer informed Mr. Saint-Félix that he had consulted earlier versions of this report, Mr. Saint-Félix could have produced other evidence to contradict them. This breach of the duty of procedural fairness is significant since the officer relied on those documents to conclude that there was no risk of detention.

VII. Conclusion

[23] The application is allowed.

[24] By letter dated July 2, 2019, counsel for Mr. Saint-Félix requested that I not rule on this application for judicial review until August 25, 2019. She explained that she would be out of the country between July 25, and August 25. By letter dated July 3, 2019, the respondent objected to the request. Given that the application for judicial review is allowed, it appears that counsel's request is of no consequence. In any case, I would not be prepared to accede to this request. I agree with the respondent's argument that the request is premature.

[25] The parties have not proposed a serious question of general importance for certification, and none arises.

JUDGMENT IN IMM-5217-18

THE COURT'S JUDGMENT is that:

1. The application is allowed;

2. The matter is referred back for reconsideration and redetermination by a different officer;

3. No question is certified.

"Patrick Gleeson"
Judge

Certified true translation
This 31st day of July, 2019.

Michael Palles, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5217-18
STYLE OF CAUSE:	MARC SAINT-FÉLIX v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	JUNE 26, 2019
JUDGMENT AND REASONS:	GLEESON J.
DATED:	JULY 12, 2019

APPEARANCES:

Coline Bellefleur	FOR THE APPLICANT
Renalda Ponari	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Coline Bellefleur Counsel Montréal, Quebec	FOR THE APPLICANT
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT