

Federal Court



Cour fédérale

Date: 20190823

Docket: IMM-1211-19

Citation: 2019 FC 1097

[CERTIFIED ENGLISH TRANSLATION, REVISED BY THE AUTHOR]

Ottawa, Ontario, August 23, 2019

PRESENT: Mr. Justice Grammond

BETWEEN:

JEAN PATRICK RICHE

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Riche is seeking judicial review of a decision rendered by the Refugee Protection Division [RPD] of the Immigration and Refugee Board, which rejected his refugee protection claim. I am allowing his application, given that the RPD's assessment of his credibility was unreasonable.

I. Background

[2] Mr. Riche is a Haitian citizen. In 2006, he converted to the Christian Baptist faith and subsequently endeavoured to convert his fellow citizens. However, some of the individuals that Mr. Riche was able to convert turned out to be members of a street gang. Mr. Riche alleges that for this reason, the gang leader asked him to abandon his religious work and join the gang. In light of his refusal to do so, the gang leader allegedly told one of the gang members to kill Mr. Riche. This member, who knew Mr. Riche, chose to spare his life and help him escape.

[3] Mr. Riche left Haiti in October 2013 and travelled to Puerto Rico. He claims that, when he arrived, he told the American authorities that he was being persecuted in Haiti and that he wanted to apply for asylum. The authorities gave him a temporary resident card, referred to as an “I-94” card, and informed him that this card had to be renewed every year. Mr. Riche claims that he believed that he had been granted asylum by the American authorities when he was given this card. He indicated that the interpreter who had facilitated communication with the American authorities spoke a dialect of Creole that differed from his own dialect, which explained the misunderstanding. It was only when he applied to renew his “I-94” card that Mr. Riche discovered his error. However, at that time, the deadline for filing an application for asylum in the United States had elapsed.

[4] Mr. Riche remained in the United States until June 2017. He then travelled to the Canadian border and claimed refugee protection. His claim was rejected in November 2018. In its decision, the RPD ruled that Mr. Riche lacked credibility, because he contradicted himself

and his testimony had been “evolving.” The RPD also noted that Mr. Riche’s extended stay in the United States, without applying for asylum, further undermined his credibility. Lastly, the RPD held that the various letters of support filed by Mr. Riche simply reiterated allegations that were not credible and did not have any probative value.

[5] Mr. Riche is now seeking judicial review of the RPD’s decision.

II. Analysis

[6] Mr. Riche raises several arguments which, in his opinion, render the RPD’s decision unreasonable. I need only discuss two of these arguments, namely, the assessment of Mr. Riche’s credibility and the effect of his extended stay in the United States.

A. *Credibility*

[7] Assessing the credibility of witnesses lies at the heart of the RPD’s expertise. On judicial review, our Court must show considerable deference to the RPD’s credibility findings. However, we must ensure that the RPD’s findings are supported by the evidence before it.

[8] The main reason for the RPD’s negative assessment of Mr. Riche’s credibility is the allegedly “evolving” nature of his testimony. Testimony is said to be evolving when, upon being confronted with a contradiction in their testimony, claimants try to amend their account of events with a view to making it more coherent. This would obviously be a valid reason to conclude that a claimant lacks credibility.

[9] However, in this case, I read the full transcript of the hearing before the RPD, and I was unable to identify any evolution whatsoever in the testimony given. It is important to point out that Mr. Riche testified with the help of an interpreter. The RPD member who presided over the hearing asked Mr. Riche to keep his sentences short in order to facilitate the interpretation. On numerous occasions, Mr. Riche indicated that he did not understand the question that he had been asked.

[10] In this context, the RPD's criticisms of Mr. Riche are unreasonable. As evidence of the evolving nature of his testimony, the RPD cited answers to specific questions that had not been asked before. Given the manner in which the hearing unfolded, it is difficult to fault Mr. Riche for failing to reveal these details in his earlier brief answers.

[11] The RPD also criticized Mr. Riche for contradicting himself with respect to the number of individuals that he had converted. On this point, the RPD confused the number of gang members who converted and the other individuals, non-gang members, who also converted. In his testimony, Mr. Riche explained as follows:

[TRANSLATION]

Only 10 members of the gang converted. There were other people elsewhere, who were not part of the group, who also converted, about 30.

[12] With respect to the lack of detail in Mr. Riche's testimony, my reading of the transcript of the hearing satisfies me that this resulted from the fact that the RPD member asked Mr. Riche to give short answers and did not ask for further explanations.

[13] For these reasons, I find that the RPD’s decision fails to present a sufficient degree of justification, transparency and intelligibility and does not fall within the range of “possible, acceptable outcomes which are defensible in respect of the facts and law”: *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 47, [2008] 1 SCR 190.

B. *Time spent in the United States*

[14] The RPD briefly addressed Mr. Riche’s time spent in the United States. It determined that Mr. Riche’s explanations concerning his failure to claim asylum in a timely manner were [TRANSLATION] “unsatisfactory” and did not find it [TRANSLATION] “credible” that Mr. Riche had not sought to find out more.

[15] When applicants claim to fear persecution, but take their time in claiming asylum or refugee protection while they are in a safe country, it can be inferred that the alleged fear is not genuine. However, our Court has repeatedly stated that a delay in claiming asylum or refugee protection is not sufficient reason to reject a claim and that all the facts and explanations provided to justify the delay must be taken into consideration. See, for example, *Malaba v Canada (Citizenship and Immigration)*, 2013 FC 84 at paragraph 11; *Ntatoulou v Canada (Citizenship and Immigration)*, 2016 FC 173 at paragraph 14.

[16] In this case, the RPD’s brief reasons do not allow me to determine whether in fact it considered all of the explanations given by Mr. Riche. In any case, even assuming that it did, I am unable to say whether the RPD would have rejected Mr. Riche’s claim anyway as a result of

the time he spent in the United States, had its assessment of his credibility not been unreasonable. The matter therefore needs to be referred back to the RPD.

III. Conclusion

[17] Given that the RPD's assessment of Mr. Riche's credibility was unreasonable, the application for judicial review will be allowed and the matter will be referred back to another member of the RPD for redetermination.

JUDGMENT in IMM-1211-19

THIS COURT ORDERS AND ADJUDGES THAT:

1. The style of cause is amended for the name of the respondent to read “Minister of Citizenship and Immigration”;
2. The application for judicial review is allowed;
3. The matter is referred back to the Refugee Protection Division for redetermination by another member of the Division;
4. No question is certified.

“Sébastien Grammond”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1211-19

STYLE OF CAUSE: JEAN PATRICK RICHE v MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: AUGUST 21, 2019

JUDGMENT AND REASONS: GRAMMOND J.

DATED: AUGUST 23, 2019

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