

Federal Court



Cour fédérale

**Date: 20190903**

**Docket: IMM-836-19**

**Citation: 2019 FC 1127**

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

**Ottawa, Ontario, September 3, 2019**

**PRESENT: The Honourable Mr. Justice Mosley**

**BETWEEN:**

**ISLANDE LESTIN JEAN**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS AND JUDGMENT**

**I. Overview**

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (the Act), of a decision rendered by the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada, where it determined that neither the applicant nor her son (the applicants) were Convention refugees or

persons in need of protection. The applicants do not have access to the Refugee Appeal Division because they are in Canada under a safe third country exception (the Act, s. 110(2)(d)). The applicants are asking the Court to set aside the decision and to refer the matter back to the RPD for redetermination by another member.

## II. **Background**

[2] The principal applicant, Iceland Lestin Jean (the applicant), is a citizen of Haiti who previously lived in the United States as a refugee claimant since 2012, a claim she abandoned before coming to Canada. Evan Dave Lestin is the son of the applicant, born in, and citizen of, the United States. The applicant also has a daughter who is still in Haiti. The applicant and her husband, father of the two children, separated in the United States.

[3] The applicants crossed the Canadian border at Fort Erie on May 19, 2017, and applied for refugee status as qualified persons for a safe third country exception, as the applicant has a niece who is a Canadian citizen living in Montréal.

[4] In the narrative included with her Basis of Claim (BOC) Form, the applicant alleges that she made her refugee claim in the United States because her now-ex-husband was persecuted for his political activities. Because she still had no answer after four years, because her marriage had ended and because she could not work as a nurse in the United States as she had done in Haiti, the applicant alleges in the BOC that she was preparing to return to Haiti in 2017 when her daughter was almost kidnapped in the Grande Ravine area of Haiti.

[5] It is this incident that caused the applicant to come to Canada to seek protection for herself and her son first, and then for her daughter. The BOC, other than the narrative, does not mention the political incidents of the applicant's ex-husband; in fact, the BOC specifically notes that the applicant [TRANSLATION] "was not in the country when the events occurred".

[6] On September 28, 2018, just prior to her RPD hearing, the applicant filed a new BOC and narrative to support her refugee claim. In the new narrative, the applicant writes that she fears political violence as she is recognized as the wife of her ex-husband; domestic violence at the hands of her ex-husband; violence at the hands of another ex-wife of her husband who threatens her online and who threatened her in Haiti; and retaliation from her brother-in-law if she complained about the sexual abuse of her daughter in Haiti.

[7] During the RPD hearing, the applicant made some allegations against her former immigration consultant. Following the hearing, the RPD sought to clarify the allegations. The RPD therefore requested that the applicant send a written statement to the consultant so that he could respond to her.

[8] On October 29, 2018, the applicant sent her written statement to her former immigration consultant. Also on October 29, 2018, the former consultant sent her response directly to the RPD. The former consultant rejects the applicant's allegations, which he calls "false, untrue and unfounded".

### III. **Decision**

[9] The RPD rejected the claim on December 9, 2018. The RPD did not find the applicant credible due to significant omissions for many of the allegations that were not reasonably explained.

[10] The RPD also found it improbable that the applicant feared violence at the hands of her ex-husband's other ex-wife. The RPD found it improbable that the applicant, on the one hand, was concerned that her husband's son from another woman would denounce her if she returned to Haiti, but that, on the other hand, she remained in contact with that son.

[11] The RPD also rejected the applicant's explanation regarding the abandonment of her refugee claim in the United States. The RPD noted that the applicant's behaviour was not that of someone who feared for her life; even if the applicant thought she only had a 17% chance of being granted asylum, it is not credible that she completely gave up that chance.

[12] With respect to the allegations against her former immigration consultant, the RPD noted that the applicant gave a different explanation for the comments she alleged her consultant added at the hearing than what is in her affidavit. The RPD found the applicant's explanations not to be credible.

[13] The RPD also found the applicant's explanation to be unsatisfactory regarding the fears she had, which are not mentioned in her original BOC. The RPD noted that the applicant contradicted herself in her affidavit as to whether she had or had not discussed the political fears with her former consultant.

[14] As the applicant's credibility was tainted, the RPD did not give probative value to police complaints submitted in support of the political attacks and the attempted kidnapping. The RPD added that even if those documents were credible, they would not be sufficient to support the allegations that are deemed not to be credible. The RPD also noted that the attack on the applicant and her husband in 2011 could have occurred without proving that it was a political attack. The RPD also did not give probative value to the letter by the applicant's brother given the credibility issues surrounding the death threats.

[15] Finally, the RPD noted that the applicant does not have the profile of a woman most at risk in Haiti and that she has brothers in Haiti who can support her. As the applicant did not articulate a separate fear for her son, the RPD dismissed his claim as well.

#### IV. **Issue and standard of review**

[16] In my opinion, the only issue to be determined is whether the RPD's decision is reasonable.

[17] The standard of review is that of reasonableness as the decision reflects the discretion of the trier of fact: *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319, at paras 41-47.

#### V. **Analysis**

[18] The applicants submit that the RPD's plausibility findings are unreasonable. The applicants add that the testimony is deemed true unless there is reason to doubt it: *Maldonado v*

*Canada (Minister of Employment and Immigration)* (1979), [1980] 2 RCF 302, at para 5, 31 NR 34 (FCA); *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776, at para 6. In addition, the RPD must provide a reliable and verifiable evidentiary base against which the plausibility might be judged: *Glelaj v Canada (Citizenship and Immigration)*, 2010 FC 37, at para 4. The applicants also add that although the RPD does not have to consider all the evidence before it, it must refer to the totality of the evidence when making its findings of fact: *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35, at paras 16–17 (FC). The applicants therefore submit that the decision is unreasonable because it goes against the evidence in the record.

[19] I agree with the respondent that the applicants are asking the Court to reassess the evidence and reach its own conclusion; this is not the role of the Court: *Jia v Canada (Citizenship and Immigration)*, 2012 FC 444, at paras 17-18.

[20] In my view, it was reasonable for the RPD to question the applicant's credibility with respect to the inclusion of untruthful facts in her first BOC because she had offered various inconsistent explanations in this regard. It was also reasonable to question the applicant's credibility with respect to the new fears expressed in the second BOC because, again, she offered varying explanations.

[21] It was also reasonable for the RPD to dismiss the fear of spousal abuse as the applicant's ex-husband now lives in the United States. It was also reasonable to dismiss the fear of the other ex-wife as implausible and to reject the fear of political threats because the applicant could not

confirm the identity of the persecutors, even though her husband identified it in his refugee claim in the United States, a claim that the applicant submitted in support of her file.

[22] It was reasonable for the RPD to conclude that the applicant would not have the profile of a woman at high risk if she were to return to Haiti. Finally, the respondent submits that it was reasonable for the RPD to conclude that the applicant was unable to resolve the discrepancies with respect to her allegations against her former consultant and that the RPD reasonably decided not to give probative value to the documentary evidence given the problems in the applicant's narrative. Nor was it incumbent on the RPD to discuss all the documentary evidence that the applicants wished to.

[23] I note that a recent decision of the Court confirms that “[e]vidence is not assessed in isolation from the overall claim, and when the Applicant’s personal evidence is not credible, it is reasonable for the RAD to have credibility concerns with the supporting documentary evidence”: *Chinwuba v Canada (Citizenship and Immigration)*, 2019 FC 312, at para 26.

## VI. Representations after the hearing

[24] During the hearing, the applicants’ counsel, who was not the counsel who had prepared their written submissions, added a submission that the RPD had breached procedural fairness by tainting the applicant’s credibility pertaining to the statements in her former BOC. The respondent asked for a chance to submit written submissions in order to answer them, a request that the Court granted. On July 22, 2019, the respondent filed a letter containing its position. On July 29, 2019, the applicants filed a letter in reply.

[25] The respondent submits that the Federal Court noted that [TRANSLATION] “the RPD is entitled to review the contents of the PIF before and after its amendment and may draw negative inferences about credibility if matters it considers important were added to the PIF by an amendment later”: *Zeferino v Canada (Citizenship and Immigration)*, 2011 FC 456, at para 31. The respondent also refers the Court to paragraph 32 of *Zeferino*, where the Court goes on to find that the RPD may judge the applicant’s credibility and draw adverse inferences about disparities if the applicant [TRANSLATION] “provided no satisfactory, plausible or credible explanation”.

[26] The respondent finally notes that the Court has also noted more recently, after recalling the excerpt above, that “the RPD was correct to have considered both narratives”: *Villarroel v Canada (Citizenship and Immigration)*, 2014 FC 417, at para 17.

[27] In response, the applicants agree that the RPD may consider both versions of the BOC. Rather, relying on the old BOC version without giving weight to the reasons for the amendments would violate the principle that a decision must be based on all the evidence. The applicants add that if it is not a breach of procedural fairness, then the fact of not commenting enough on the explanations given for the amendments to the BOC Form renders the decision unreasonable.

[28] In this case, the RPD found no plausible explanation offered by the applicant for the changes. The RPD found that it was not credible for the applicant to not become aware of her ex-husband’s refugee claims application which contained the name of his agents of persecution, and the explanation of the threats by the other wife of her ex-husband was [TRANSLATION] “not credible or likely” and the explanations for the rest of the allegations that had been omitted from



the first BOC were neither sufficient nor reasonable. These conclusions are reasonable and the applicants have not submitted any reason for which the Court should intervene.

VII. **Conclusions**

[29] The applicants are asking this Court to reassess the documentary evidence and the applicant's testimony, but they have not demonstrated how the RPD's decision is unreasonable. In sum, there are no grounds upon which this Court should intervene.

[30] There are no questions for certification.

**JUDGMENT IN DOCKET IMM-836-19**

**THIS COURT ORDERS AND ADJUDGES** that the application for judicial review is dismissed. There are no questions for certification.

“Richard G. Mosley”

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Judge

Certified true translation  
This 24th day of September, 2019.

Daniela Guglietta, Translator

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

**DOCKET:** IMM-836-19

**STYLE OF CAUSE:** ISLANDE LESTIN JEAN v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** JULY 17, 2019

**REASONS AND JUDGMENT:** MOSLEY J.

**DATED:** SEPTEMBER 3, 2019

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