

Federal Court



Cour fédérale

**Date: 20190925**

**Docket: IMM-1337-19**

**Citation: 2019 FC 1231**

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

**Ottawa, Ontario, September 25, 2019**

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

**BETWEEN:**

**MONCIANNE FEQUIERE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Nature of the matter

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a decision of the Refugee Protection Division

[RPD] dated February 15, 2019, in which the RPD rejected the applicant's refugee protection claim on the ground that her allegations lacked credibility.

II. Facts

[2] Moncianne Féquière is a citizen of Haiti, who is 67 years old and lives in Port-au-Prince.

[3] The applicant has at least four children: two daughters, Syndie Sylvestre and Mirlène Féquière, and two sons, Vladimir Sylvestre and Jean Gardy Victor. Her daughter Mirlène Féquière was a police officer in Haiti. In 2009, Mirlène was forced to leave the country because of political persecution. Vladimir Sylvestre lives in the Dominican Republic.

Jean Gardy Victor lives in Canada and has been a Canadian citizen since December 11, 2013.

Syndie Sylvestre has settled in Canada and was granted refugee protection on February 7, 2018.

[4] Following the 2010 earthquake, the applicant legally entered Canada. Having difficulty handling the cold and wanting to help her mother, she left the country in November 2011 to return to Petit Trou de Nippes, a place in southern Haiti where she was born.

[5] After her mother's death, the applicant returned to Port-au-Prince, where she lived with her daughter Syndie Sylvestre and her husband Randolph Maître.

[6] In 2016, her daughter Syndie was assaulted by two motorcycle-riding individuals. A few months later, the applicant's son-in-law, Randolph Maître, died [TRANSLATION] "in suspicious circumstances".

[7] On March 8, 2017, after a stay in the United States, the applicant returned to Haiti. The applicant alleges that her son's friend and her nephew met her at the airport. While they were driving her home, two thugs threatened them with a firearm. Seeing the danger, her son's friend, who was driving, turned around and drove the applicant to the home of a niece, Yvrose Joseph. Her nephew then told her that those people often prowled around her house. Two days later, fearing for her life, the applicant joined her son Vladimir in Santiago, Dominican Republic.

[8] It should be noted that, based on the notes of the Canada Border Services Agency [CBSA] officer at the time of the refugee protection claim, the applicant had actually said that she had been attacked on March 9, 2017.

[9] Following these events, Jean Gardy Victor, the applicant's other son, who lives in Canada, applied for a super visa for the applicant. That application was denied because the documents did not establish the applicant's immigration status in the United States and the immigration officer was not satisfied that the applicant would leave Canada at the end of her stay.

[10] In all, the applicant applied for a super visa three times: the first time in December 2014, the time mentioned above in May 2017, and the last time in July 2017. In the last application, Mr. Victor stated that the applicant had no interest in staying in Canada long-term.

[11] The applicant alleges that, at the same time, she learned from her nephew that an individual had asked him in a threatening way where the applicant was. The applicant then

decided to flee to Canada, entering at the Fort Erie port of entry and claiming refugee protection on August 31, 2017.

[12] In her statement at the port of entry, the applicant responded as follows:

[TRANSLATION]

Q. Why are you claiming refugee protection in Canada?

A. I am here to take my pension. I have no pension. I came to live with my children. I need the money that Canada will give me. When I was in the USA, they did not give me money. I was in the USA in December at the home of my niece, Didinne MAITRE. She is 53 years old. She came in December to claim refugee protection. She is American. (CHANGE OF ANSWER). It is my daughter, Sandy SYLVESTRE, who came here to claim refugee protection. Her father is Larie SYLVESTRE. Sandy was born on May 8, 1987.

### III. RPD decision

[13] At a hearing held on January 11, 2019, the RPD concluded that the applicant was not credible and that it did not believe the allegations of a fear for her life related to serious criminality that are at the basis of the applicant's refugee protection claim.

[14] Given the applicant's comments to the CBSA officer during the entry interview, the RPD found that the applicant lacked credibility. In fact, the CBSA officer reported that the applicant had told him that she came to Canada to retire and that she needed money from Canada. In addition, the applicant never mentioned that she feared for her life when the officer asked her whether she was persecuted in Haiti. Based on the officer's notes, the applicant told him that her son had told her to claim refugee protection after her last visa was denied. Finally, on her

immigration form IMM 0008, the applicant wrote in the education/occupation section [TRANSLATION] “Retirement, need Canada to pay pension”.

[15] Regarding the events at the basis of her refugee protection claim, the applicant testified that her two sons-in-law were killed in Haiti, while only one is mentioned in the story of her Basis of Claim Form [BOC Form]. Confronted with that omission, the applicant specified that her son helped her fill out the form and that he must have forgotten. Given that her son is aware of the facts and educated, the RPD did not believe this explanation.

[16] The RPD also considered the applicant’s profile (her age, her education, her ties to Haiti, etc.) in order to assess whether she faced a serious possibility of persecution because of her status as a woman in Haiti.

[17] Because of the applicant’s social and family network in Haiti, the land that she allegedly owns there and the continued help from her children living in Canada, the RPD concluded that there was no serious possibility of persecution because of her profile.

#### IV. Issues

[18] The issues raised by the applicant may be reworded as follows: Did the RPD err in concluding that the refugee protection claim had no basis with respect to the applicant’s situation in Haiti?

#### V. Relevant provisions

[19] The following provisions of the IRPA are relevant:

**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 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

**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 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) 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

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

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

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 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.

(2) A également qualifié de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

## VI. Analysis

### A. *The applicant's credibility*

[20] The applicant's credibility should be assessed on the reasonableness standard (*Liang v Canada (Citizenship and Immigration)*, 2017 FC 1020 at para 7).

[21] In this case, the RPD could reasonably find that the applicant lacked credibility. The RPD relied heavily on the port-of-entry interview notes, where the applicant stated that she came to Canada [TRANSLATION] “to take [her] pension” because she needed “the money that Canada [would] give [her]”. The RPD could reasonably conclude that the immigration officer had no interest in falsifying the interview notes.

[22] However, the interview notes are not determinative in themselves; they are not a transcript of the exchange, and it must be noted that some statements made were subsequently emphasized by the immigration officer. Thus, the RPD did not have to be bound by the immigration officer’s conclusions.

[23] That being said, even if we admit that the immigration officer may have unduly relied on some of the applicant’s statements or that the applicant may have been confused or tired during the interview, these comments must be taken for what they are: a spontaneous statement of baffling sincerity. Thus, it appears from the evidence that the applicant’s refugee protection claim is also motivated by economic interests.

[24] The applicant alleges that the RPD did not analyze the entire document. In fact, the evidence reveals that it is false to claim that the applicant did not state her fear at the port of entry: the officer’s notes clearly state that the applicant put forward such a fear. However, notwithstanding this factual error, the RPD’s decision remains reasonable: in view of the conclusions regarding the applicant’s credibility, the RPD could reasonably conclude that the applicant’s refugee protection claim was unfounded.



[25] The applicant alleges that the RPD acted unreasonably in basing its analysis almost exclusively on the applicant's comments at the interview. However, in this case, those statements are such that it is completely normal for the RPD to base a large part of its analysis on them. In addition, the RPD took into consideration the narrative at the heart of the applicant's refugee protection claim and identified another contradiction between her BOC Form and her testimony regarding her second son-in-law killed in Haiti.

[26] Given the applicant's family ties in the country, her past visa applications and her lack of credibility, the RPD's conclusion seems not only reasonable but also rigorously fair: there are other reasons that motivated the applicant to claim refugee protection in Canada, and these reasons have nothing to do with a fear of persecution or a risk to her life.

B. *Claim for protection based on the applicant's profile as a Haitian woman*

[27] The RPD concluded its analysis by considering whether the applicant's profile as a Haitian woman would expose her to a serious possibility of persecution. When the RPD asked her whether she feared anything other than the individuals who had allegedly attacked her, the applicant said no. The RPD concluded that it did not believe the applicant's statement that she did not know where her brother was in Haiti; it also concluded that she has at least one parcel of land where she could live and that her family in Canada could always help her financially. Accordingly, the applicant is not a person in need of protection within the meaning of the Act.

[28] Given that she would be alone in Haiti, the applicant alleges that it was unreasonable for the RPD to conclude that she would not be in danger. Indeed, the applicant alleges that her brother cannot be located.

[29] Given the RPD's general findings regarding the applicant's credibility, it was completely reasonable not to accept that her brother cannot be located. However, even if it was accepted that the applicant's brother could not be located, the applicant would still not be helpless. The applicant appears to have several family members in Haiti with whom she is still in contact, like her nephew and her son's friend who came to pick her up at the airport, or her sister who lives in Haiti according to her BOC Form. In addition, the applicant does not live in a camp and owns some land. Finally, the applicant appears to have the financial support of her family in Canada. Thus, it was reasonable to conclude that she was not a vulnerable person in need of protection under the IRPA.

[30] The applicant's evidence must establish more than a mere possibility that she would be a victim of assault because of her profile (*Dezameau v Canada (Citizenship and Immigration)*, 2010 FC 559 at paras 29 and 36 to 39). In this case, it was reasonable to conclude that the applicant did not discharge this burden of proof.

## VII. Conclusion

[31] This Court found no error in the RPD's decision-making process and, accordingly, dismisses the application for judicial review.

**JUDGMENT in Docket IMM-1337-19**

**THIS COURT’S JUDGMENT IS that** the application for judicial review is dismissed.

There is no question of general importance to be certified.

**OBITER**

That said, this Court wishes to point out the clear fragility of the applicant as an older woman most of whose family is outside the country. In doing so, this Court is of the view that the applicant should be considered for family reunification on humanitarian and compassionate grounds and suggests to decision-makers to act on this in due course.

“Michel M.J. Shore”

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Judge

Certified true translation  
This 17th day of October 2019

Johanna Kratz, Reviser

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

**DOCKET:** IMM-1337-19

**STYLE OF CAUSE:** MONCIANNE FEQUIERE v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** SEPTEMBER 18, 2019

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