

Federal Court



Cour fédérale

Date: 20191125

Docket: IMM-2257-19

Citation: 2019 FC 1497

Ottawa, Ontario, November 25, 2019

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

Maja SCIPION

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Ms. Maja Scipion seeks the judicial review of the decision rendered by the Refugee Appeal Division (RAD) on February 15, 2019, rejecting her appeal and confirming the determination by the Refugee Protection Decision (RPD) that she is not a Convention refugee nor a person in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

[2] For reasons set out below, this judicial review will be dismissed.

II. Context

[3] On April 26, 2017, Ms. Scipion, citizen of Haiti, arrived in Canada, and on June 4, 2017, she sought refugee protection based on her fear of criminals who had attacked her and her mother at their home in Haiti, in August 2016. Her mother still lives in Haiti, and there is no indication that she was subject to any further violence.

[4] The RPD found Ms. Scipion credible, but determined, essentially, that the risks she raised were generalised and not personalised. After examining all evidence, the RPD concluded that there were no serious possibilities that Ms. Scipion would be persecuted upon return in her country, or that she would be subject, on the balance of probabilities, to a risk of torture, threat to life, or risk to cruel and unusual punishments.

[5] The RAD, after reviewing the evidence, confirmed the RPD's decision, although it did not agree with the RPD on all accounts. The RAD found that the RPD did not err in its conclusion that Ms. Scipion had not establish that she faced a personalised risk. In particular, the RAD found that (1) nothing in the evidence supports the conclusion that Ms. Scipion and her mother were targeted because they were women; (2) nothing in the evidence supports the conclusion hat Ms. Scipion and her mother were targeted for a specific reason, or that the criminals would return; (3) in the Haitian social context, with serious criminality issues, a break and enter into her home is not an indication, absent other evidence, of a personalised risk; (4) Ms. Scipion did not have any problems once she moved in with her uncle; (5) Haitian women do

constitute a particular social group within the meaning of section 96 of the Act although this is not determinative; and (6) although women and children face a greater risk of being victims of crime as they are more vulnerable, Ms. Scipion does not have the profile of a woman without foundation, without connections, without a home and without a male presence.

III. The parties' arguments

[6] Ms. Scipion submits that the RAD erred because (1) not knowing one's assailants does not mean that she was not targeted by assailants or that the assailants did not know her; (2) the fact that the assailants wore masks does not mean that they would not have an interest or reason to attack her mother or her; (3) the fact that she was attacked at her home means she was targeted; (4) a generalized risk and a personalized risk are not mutually exclusive; (5) having a home, connections and a male presence in Haiti does not guarantee effective assistance or protection to those in need; and (6) the RAD seems to contradict itself in paragraph 52 where it wrote that the applicant faces more than mere possibility of being persecuted and in paragraph 53 where it wrote that the applicant did not establish a well-founded fear of persecution by reason of her gender.

[7] Ms. Scipion cites *Dieujuste-Phanor v Canada (Minister of Citizenship and Immigration)*, 2011 FC 186 and *Gilles v Canada (Citizenship and Immigration)*, 2010 FC 159 for the proposition that her fear is personalized.

[8] The Minister responds that the decision is reasonable. In particular, the Minister argues that the RAD reasonably concluded that there was no evidence establishing on a balance of

probabilities that Ms. Scipion and her mother were targeted because they were women. The Minister adds that the lure of quick and illegal gain is not a reason to target any particular individual but is rather a reason to commit crimes against anyone indiscriminately, and does not support a conclusion of personalised risk.

[9] The Minister submits that, read in the context of the decision, the RAD obviously made a mistake, as it meant that Ms. Scipion faced *no* more than a mere possibility of being persecuted, and thus failed to demonstrate a serious possibility of persecution.

[10] The Minister also submits that the decisions to which Ms. Scipion refers are distinguishable. In the first decision, evidence pertaining to personalized risk was ignored, while in Ms. Scipion's case, the RAD had no such evidence. In the second decision, gang members appeared to know the applicant by name, and there were multiple incidents of threats and violence, while Ms. Scipion's story only involves a single incident, with no evidence that her assailants knew her.

[11] As such, the Minister argues, there is no arguable ground raised by the application that justifies intervention by the Court.

IV. Discussion

[12] The applicable standard of review in this case is that of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*]). The task of the Court centers on inquiring about "the existence of justification, transparency and intelligibility within the decision-making process"

and to examine whether the decision falls “within a range of possible, acceptable outcomes which are defensible in respect of the fact and law” (*Dunsmuir* at para 47).

[13] The Courts agrees with the Minister in that it appears quite clear the RAD made a clerical error and omitted the word “no” at paragraph 52 of its decision; this is in line with the rest of the decision.

[14] Ms. Scipion bore the burden of proving all elements of her claim, which included the demonstration that she faces more than a mere possibility of persecution because she is a Haitian woman, and demonstration, on the balance of probabilities, that she faces a personalized risk upon return in Haiti. In *Luc v Canada (Citizenship and Immigration)*, 2010 FC 826, Justice Boivin recognized, at paragraph 25, that “a finding of generality does not prohibit a finding of persecution on the basis of one of the Convention grounds”, but nevertheless held in the case before him, at paragraph 28, that the refugee claimant failed to present sufficient evidence in support of her alleged fear of persecution. Generalised and personalised risk are not mutually exclusive, but the evidence Ms. Scipion adduced in support of her claim leads only to a conclusion of generalised risk, which is insufficient.

[15] The record shows that (1) Ms. Scipion did not know her attackers, and nothing was adduced to suggest they knew her; (2) there is no evidence as to who attacked her and her mother nor as to why they were attacked;(3) Ms. Scipion suffered no other incident before she left Haiti in April 2017; (4) she suffered no incidents while she lived with her uncle; and (5) her mother, still in Haiti, suffered no incidents since August 2016. The events of August 2016 are highly

regrettable indeed, but it was reasonable for the RAD to conclude they do not establish a personalised risk and they cannot be the basis of a claim for protection. The intervention of the Court is therefore not warranted. The RAD conclusion is within a range of acceptable outcomes given the law and the facts of the case.

JUDGMENT

THIS COURT'S JUDGMENT IS THAT:

- 1) The judicial review is dismissed;
- 2) No question is certified.

"Martine St-Louis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2257-19

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