Federal Court  Cour fédérale

Date: 20200103

Docket: IMM-1452-19

Citation: 2020 FC 9

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, January 3, 2020

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

JILLERT AUGUSTE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Jillert Auguste is seeking judicial review of a decision by an officer rejecting his pre-removal risk assessment (PRRA) application. The applicant argues that the officer breached his duty of procedural fairness by not giving him a hearing and that the decision is unreasonable given the evidence on the record.

[2] The applicant is a citizen of Haiti. He arrived at the border between the United States and Canada on July 9, 2017, and made a claim for refugee protection. Because he was coming from the United States, his claim was determined to be ineligible. A few days later, the applicant returned to Canada via another port of entry and made a claim for refugee protection that was also determined to be ineligible. He then filed a PRRA application.

[3] In his PRRA application, the applicant stated that he was involved in the ODECHA committee, an organization for the development of the residential area of Charrier in the town of Les Cayes, where the applicant resided. During the elections of October 26, 2016, ODECHA reportedly met with a man named Tiblanc, a representative of Jean Gabriel Fortuné, a powerful man in the area. The applicant did not think that ODECHA should support Mr. Fortuné. When the latter won the election, a group contested the results, and Mr. Fortuné allegedly believed that the applicant was responsible.

[4] On May 5, 2017, men connected with Mr. Fortuné purportedly went to the applicant's house. They fired projectiles, hit the applicant and his wife and children and tore the door off the house. They stated that anybody who did not want Mr. Fortuné to be mayor would have to leave Les Cayes. The applicant filed a complaint with a justice of the peace, and his counsel filed a complaint with the police. The applicant left his house to hide in the forest. He then left Haiti for the United States.

[5] On June 23, 2017, while the applicant was in the United States, his wife called to tell him that Mr. Fortuné's group had returned to his house to kill him. She therefore told him not to return. Counsel for the applicant filed another complaint with the police, stating that a group of men had come to the applicant's house looking for him. They said that as long as Mr. Fortuné's

political group was in power, the applicant could not return to live in Les Cayes. According to the complaint, the applicant's family was forced to abandon his house.

[6] Despite the limited amount of information provided by the applicant, the PRRA officer accepted the possibility that the facts he had alleged had indeed occurred. He therefore gave the applicant the benefit of the doubt in his assessment. The officer noted that the gist of the alleged threats was that the applicant would suffer reprisals if did not leave the town of Les Cayes. The officer accepted that the applicant might be threatened in Les Cayes but determined that the applicant had failed to explain why he could not live elsewhere in Haiti. There was no evidence that Mr. Fortuné or his group could have searched the entire country for him. The officer concluded that the applicant had not demonstrated a well-founded fear of persecution or a risk to his personal safety or his life, as provided by sections 96 or 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[7] The applicant is seeking judicial review of that decision. He raises two issues: (i) whether the officer should have summoned the applicant to a hearing; and (ii) whether the decision was unreasonable with respect to its handling of the evidence.

[8] The standard of review applicable to the issues in this case is reasonableness: *A.B. v Canada (Citizenship and Immigration)*, 2019 FC 165 at paras 10–11; S*haikh v Canada (Citizenship and Immigration)*, 2012 FC 1318 at para 16. The Supreme Court's recent decision in *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] does not change this. In the circumstances of this case, and considering paragraph 144 of *Vavilov*, it is not necessary to request submissions from the parties on the appropriate standard or its application. As in the Supreme Court's decision in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC

67 at para 24, "[n]o unfairness arises from [the application of the framework established in *Vavilov* to this case] as the applicable standard of review and the result would have been the same under the *Dunsmuir* framework".

[9] The applicant argues that the officer should have summoned him to a hearing because he determined that there was an internal flight alternative (IFA). The claimant refers to the officer's conclusion: [TRANSLATION] "The applicant does not allege, and the evidence does not demonstrate, that his assailants have any interest whatsoever in tracking him down if he were to return to Haiti and settle in another city". The officer did not inform the applicant that he had questions regarding an IFA. The claimant submits that in such circumstances, the law requires the officer to hold a hearing: *Sandhu v Canada (Citizenship and Immigration)*, 2010 FC 759.

[10] I do not find this argument persuasive. Generally, a PRRA is made on the basis of written submissions: subsection 161(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations]. However, paragraph 113(b) of the IRPA provides that a hearing may be held if the officer, on the basis of prescribed factors, is of the opinion that a hearing is required. Section 167 of the Regulations sets out the three prescribed factors, including whether there is evidence that raises a serious issue of the applicant's credibility, whether the evidence is central to the decision and whether the evidence, if accepted, would justify allowing the application for protection. The three factors are cumulative: *Sallai v Canada (Citizenship and Immigration)*, 2019 FC 446, at para 46 [*Sallai*], citing *Demirovic v Canada (Citizenship and Immigration)*, 2005 FC 1284, at paras 9–10.

[11] In this case, the officer did not base his decision on issues relating to the applicant's credibility. The officer stated that he had given the applicant the benefit of the doubt. Moreover,

the decision on the IFA issue is based on the insufficiency of the applicant's evidence. The officer held that [TRANSLATION] "even if the alleged facts did occur, they are an insufficient basis for granting refugee protection to the applicant".

[12] Therefore, there is no reason to conduct a hearing pursuant to section 167 of the Regulations because the applicant's credibility is not at issue and the officer's conclusion is based on the insufficiency of the evidence: see *Sallai*, at paras 58–63, *Gul v Canada (Citizenship and Immigration)*, 2019 FC 812 at paras 23–31; *Zdraviak v Canada (Citizenship and Immigration)*, 2017 FC 305 at para 18.

[13] The applicant argues that the decision is unreasonable because the evidence does not support the officer's conclusion that the threats were limited to the town of Les Cayes. The applicant points out that he was threatened by a powerful politician in Haiti and that it is unreasonable to conclude that the threats are limited to his town of residence. The officer did not challenge his credibility and therefore his sworn statement must be accepted. The officer also erred in criticizing the applicant for not having tried to present new evidence regarding the situation of his wife and child after he fled Haiti, considering the brief period between the events and the assessment of his PRRA application.

[14] The applicant also submits that the decision is unreasonable because the officer did not take into account the documents he filed that were in Creole and gave him no opportunity to explain them.

[15] I disagree. First, it should be noted that this is a judicial review of a discretionary decision by an immigration officer. The applicable standard of review is reasonableness. Under this

standard, the Court's role is to determine whether the decision falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47). As long as "the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility," it is not open to this Court to substitute its own view of a preferable outcome (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC at para 59). I note that this approach was confirmed by the Supreme Court in *Vavilov* at paragraphs 81–87 and that the analysis in the decision at issue here adheres to the standards set out in *Vavilov*.

[16] The officer's assessment of the evidence must be afforded a degree of deference by the Court. In this case, the evidence filed indicates that a group threatened the applicant with reprisals if he continued to live in Les Cayes. To use the applicant's own words, he wrote in his complaint of May 8, 2017, that Mr. Tiblanc's men had told him that [TRANSLATION] "anybody who does not want Gabriel [Fortuné] as Magistrate must leave the Commune of Les Cayes". The officer did not doubt that the applicant had been threatened, and he based his assessment of the seriousness of the threat on the allegations in the application. The officer cannot be criticized for attributing weight to the applicant's own words.

[17] The applicant filed a few documents in Creole in support of his application without providing translations. The applicant submits that the officer should have given him an opportunity to explain them. I disagree. The Department of Immigration, Refugees and Citizenship Canada's guide to applying for a PRRA, which the applicant received according to the evidence on the record, clearly states that any documents filed must be provided in either English or French and that applicants must provide a translation of any documents in another

language. PRRA officers are not required to ask applicants to send them translations of the documents: *Joseph v Canada (Citizenship and Immigration)*, 2018 FC 1276 at para 14. Applicants have the burden of placing before the PRRA officer all the evidence necessary to support their allegations.

[18] It is not unreasonable for the officer to take into account the applicant's story regarding the threats or to attribute no weight to the untranslated documents.

[19] In conclusion, I should note that the applicant himself prepared the written documents in support of his application for judicial review but was represented by counsel at the hearing. I granted his counsel some leeway to present arguments that went somewhat beyond those presented in the written submissions. I would like to highlight the cooperation and professionalism of counsel for the applicant and for the Attorney General.

[20] The application for judicial review is dismissed. There is no question of general importance to certify.

JUDGMENT in IMM-1452-19

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. There is no question of general importance to certify.

"William F. Pentney"
Judge

Certified true translation
This 14th day of January 2020.

Michael Palles, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1452-19
STYLE OF CAUSE:	JILLERT AUGUSTE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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