Federal Court  Cour fédérale

Date: 20200114

Docket: IMM-3798-19

Citation: 2020 FC 44

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, January 14, 2020

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

RENÉ TRANCIL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision of the Refugee Appeal Division (RAD), confirming a decision of the Refugee Protection Division (RPD), concluding that the applicant cannot avail himself of Convention refugee or person in need of protection status in Canada under section 98 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. I now reproduce section 98 of the Act:

98 A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.	**98** La personne visée aux sections E ou F de l'article premier de la Convention sur les réfugiés ne peut avoir la qualité de réfugié ni de personne à protéger.

It is Article 1E of the Refugee Convention that applies in this case and it reads as follows:

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.	E. Cette Convention ne sera pas applicable à une personne considérée par les autorités compétentes du pays dans lequel cette personne a établi sa résidence comme ayant les droits et les obligations attachés à la possession de la nationalité de ce pays.

[2] The applicant claims to be seeking judicial review of the RAD's decision under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7. This is not the case. An application for judicial review in immigration matters is made under section 72 of the Act. It is on that basis that this case must be examined.

I. Facts

[3] The facts of this case are particularly straightforward. The applicant is of Haitian citizenship and allegedly left his country in May 2013 to go to Santo Domingo. From there, he travelled to Ecuador and then to Peru, where he took the bus that took him somewhere in Brazil. The record does not elaborate on this point.

[4] His decision to leave his country of citizenship stems from two episodes in which he was violently robbed of his rice crop. These two episodes occurred in October 2010 and 2012.

[5] According to his account, the applicant was wanted by the robbers after the 2012 theft. He allegedly took refuge in Port-au-Prince, leaving his family with his mother. Seven months later, he left for South America.

[6] After living in Brazil until July 2016, the applicant left Brazil by land, travelling to Peru, Ecuador, Colombia, Panama, Costa Rica, Nicaragua, Honduras, Guatemala and Mexico, and finally arriving in the United States in the fall of 2016. Here, too, the date is not especially clear.

[7] He appears to have lived in the United States for a few months, from late 2016 to July 17, 2017, when he crossed into Canada illegally. He made a refugee protection claim in the weeks that followed; this claim was heard by the RPD on April 4, 2018. It was rejected in an oral decision. The appeal before the RAD was dismissed on May 10, 2019.

II. Arguments and decision

[8] The RAD's decision upholds the RPD's decision. Essentially, the RAD agreed that the applicant was not exposed to a prospective risk in Brazil. Applying the two-step analysis recognized in the case law, the RAD confirmed that the applicant can return to a country where he will benefit from the rights of the nationals of that country, Brazil. The Minister must make a *prima facie* case at this stage. Then, the applicant has to establish why he could not enjoy his rights in that country again.

[9] In this case, there seems to be no doubt that the first part of the test was met. In fact, the applicant does not even dispute it. The RAD noted that the applicant's permanent residence gives him access to education, health, work, leisure, security, social security and assistance for those in need. The applicant argued that his right to work was made more difficult because of the unemployment in Brazil; however, the right to work does not consist of a right not to be exposed to unemployment, but rather of access to the labour market as a permanent resident. Reported restrictions are a prohibition on doing military service, a prohibition on voting and a prohibition on working in certain public offices. It is therefore clear that permanent residency in Brazil meets the conditions.

[10] The difficulty faced by the applicant in this case is that he has produced no evidence of a situation in Brazil that could amount to any level of persecution. For him, [TRANSLATION] "the main question is whether the RAD has fulfilled the mandate conferred on it by Parliament" (Applicant's Factum, para 22). This is not a question that the Court can answer. At best, the Court can consider whether the test for the application of section 98 has been applied in a reasonable manner. This is the standard of review for the vast majority of issues that are dealt with by a court under judicial review (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

[11] The applicant very honestly conceded that he did not personally experience a life-threatening situation in Brazil (Applicant's Factum, para 24). Nor does he deny having had residency in Brazil (Applicant's Factum, para 27). At most, the applicant claimed that it was his right to work that had been violated and that [TRANSLATION] "life in Brazil [had] become hell for

him because of the economic and political crisis that [had] hit the country" (Applicant's Factum, para 28). He is a collateral victim of the economic crisis and adds that native Brazilians blame the applicant and other Haitians for this crisis, at least partly. However, even if that were sufficient, there is not the slightest proof of this state of affairs. Ultimately, the applicant himself did not even prove it. In paragraph 31 of his factum, he even goes as far as complaining that [TRANSLATION] "the applicant could no longer consider a normal and peaceful life in Brazil, particularly because this hardship is a result of his ethnic origin".

[12] But where the demonstration is particularly flawed is when the applicant talks about the stigma that most Haitians in Brazil suffer. He claims that this stigma takes the form of persecution in some situations, such as that of the applicant. Not only is this a huge leap, but it is not supported by any evidence. We are therefore far from establishing that the RAD's conclusion was unreasonable. The Court further notes that no court decisions with similar facts support the applicant's claim. As noted earlier, the burden was on the applicant to establish this. His position was not supported by the evidence or the case law. Consequently, the application for judicial review must fail.

[13] The parties agree, and the Court concurs, that this case raises no question to be certified under section 74 of the Act.

JUDGMENT in IMM-3798-19

THE COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed; and

2. No serious question of general importance is certified.

"Yvan Roy"
Judge

Certified true translation
This 23rd day of January 2020.

Johanna Kratz, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

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