Federal Court  Cour fédérale

Date: 20200204

Docket: IMM-1136-19

Citation: 2020 FC 192

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, February 4, 2020

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

WOUDELINE REGALA
ANN WOUBINA RAYMOND

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The principal applicant, Woudeline Regala, who is also acting as designated representative of her minor daughter, Ann Woubina Raymond, is seeking judicial review of a decision of the Refugee Protection Division (RPD) rejecting their claim for refugee protection.

The RPD determined that they were neither Convention refugees nor persons in need of protection.

[2] The principal applicant is a Haitian citizen. Her daughter is a U.S. citizen. The principal applicant is claiming refugee protection as a result of threats made against her following a workplace incident. She alleges that a colleague had proposed that she help him steal money and equipment from their employer. She refused, and her colleague was subsequently dismissed because she had reported him to their employer. Following his dismissal, the colleague reportedly threatened her in person, after which she began receiving threatening telephone calls in addition to having shots fired at her home. The principal applicant apparently filed a complaint with the police. She then moved residences, before fleeing Haiti for the United States, ultimately arriving in Canada.

[3] The RPD found that the principal applicant lacked credibility on key elements of her claim for refugee protection. It further concluded that there was a lack of prospective risk if she were to return to Haiti. Lastly, the RPD determined that there was no credible basis for the applicants' claim pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act*, SC 2011, c 27 [IRPA].

II. Issues and standard of review

[4] The issues are:

A. Were the RPD's findings as to the applicant's credibility reasonable?

B. Were the RPD's findings as to the risk upon returning to Haiti reasonable?

C. Was the RPD's determination as to the lack of credible basis reasonable?

[5] The standard of review applicable to these three issues is that of reasonableness (*Aboubeck v Canada (Citizenship and Immigration)*, 2019 FC 370 at para 9; *Kipre v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 92 at paras 20–21). The Supreme Court's recent decision in *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] does not change this conclusion. In the circumstances of the case at hand, and in light of paragraph 144 of that decision, it is not necessary to request submissions from the parties on the appropriate standard of review or its application. As with the Supreme Court's ruling in *Canada Post Corporation v Canadian Union of Postal Workers*, 2019 SCC 67 at para 24, if the framework for determining the applicable standard of review established in *Vavilov* were to be applied to this case, "[n]o unfairness [would arise] from this as the applicable standard of review and the result would have been the same under the *Dunsmuir* framework".

[6] The key question in a judicial review on the standard of reasonableness was summarized in *Vavilov* at para 101:

> [101] What makes a decision unreasonable? We find it conceptually useful here to consider two types of fundamental flaws. The first is a failure of rationality internal to the reasoning process. The second arises when a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it. There is however, no need for reviewing courts to categorize failures of reasonableness as belonging to one type or the other. Rather, we use these descriptions simply as a convenient way to discuss the types of issues that may show a decision to be unreasonable.

[7] To put it another way, on judicial review on the deferential standard of reasonableness, a key concern is whether the process and decision indicate that the decision-maker truly "engaged" with the evidence, applying the appropriate legal test, and whether the analysis of the decision was "based on reasoning that is both rational and logical" (*Vavilov*, at para 102).

[8] The standard is not perfection. It must be recalled that Parliament assigned the task of conducting the initial inquiry into the facts to the officer. Deference is due to a decision-maker, especially in a context where the inquiry is primarily factual, the subject-matter is within the decision-maker's area of expertise, and where greater exposure to the nuances of evidence or a greater awareness of the policy context may provide an advantage. If the chain of reasoning of the decision-maker can be understood, and if it shows that this type of engagement occurred, the decision will generally be found to be reasonable: see *Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431 at paras 10–11.

III. Analysis

A. *Were the RPD's findings as to the applicant's credibility reasonable?*

[9] The RPD found that the principal applicant lacked credibility because she had difficulty recalling key dates of events that were central to her refugee claim, in addition to finding contradictions between the principal applicant's testimony and the documents in the record. In particular, the RPD noted that she had difficulty recalling the date on which the threats began, the date she started her employment, and details regarding the police complaint reports in Haiti.

[10] The RPD expressed its concerns in the decision:

> The claimant's testimony was laboured and muddled. Answers had to be repeated multiple times, especially when the claimant tried to tell her story rather than answer the specific questions she had been asked. In addition, the panel noted a number of contradictions between the claimant's testimony and the documents on the record, as well as within her testimony and between the various documents, particularly with respect to the date the threats began, her employment and the complaint reports, which are central to her

> claim. These problems lead the panel to disbelieve the claimant's allegations, for the reasons that follow.

[11] The principal applicant argues that this conclusion was unreasonable. She acknowledges having had difficulty recalling certain dates, but contends that this difficulty in recalling dates was simply the result of her "confusion" and therefore should not have undermined her credibility.

[12] With respect to the date on which the threats began, the principal applicant testified at the hearing that the rape and death threats she received by telephone began on April 9, 2017. However, she also testified that the equipment had been stolen on April 14, 2017, and that she had reported her colleague to the employer on April 17, 2017. She testified that her colleague had been dismissed the same day. Therefore, the threats could not have started on April 9.

[13] After having been confronted with this contradiction in her testimony, the principal applicant changed the date: she apologized for her confusion and stated that the threats had begun on April 19, in person, the day her colleague was dismissed. Later in her testimony, the principal applicant once again changed the date on which the threats began, stating that they had started on April 25. On that occasion, she testified that she had reported her colleague to the employer on April 17, 2017, and that he had been dismissed on April 20, 2017. In another exchange with the RPD, she stated that her colleague had reportedly been dismissed the same day she had made the report, therefore, on April 17, 2017. The RPD found that this undermined the principal applicant's credibility.

[14] The principal applicant also had difficulty recalling when she had started working at Echo Med in Haiti, the employer in question. She stated that she had worked for Echo Med since

2008, but was confronted at the hearing with forms she had completed, as well as documentary evidence from her employer that she had adduced, all of which indicated that she had been employed by Echo Med since 2014 or October 2015. The principal applicant answered that these were errors, and reiterated her claim that she had started working there in 2008. Noting that the principal applicant had provided three different start dates for her employment at Echo Med, the RPD concluded that this undermined her credibility, and led it to "doubt whether the [principal applicant] was even employed at the laboratory" (at para 20).

[15] With respect to the principal applicant's allegation that her colleague had sent criminals who had fired shots at her home on two occasions, the RPD pointed out two difficulties. First, the principal applicant testified to the effect that there were two incidents that had allegedly occurred with a two-and-a-half week interval between them, and that the attacks had begun on April 17, 2017. The RPD pointed out that the two incidents could not have both occurred in April 2017, if they took place two and a half weeks apart. The principal applicant then changed her testimony, stating that the two incidents had in fact occurred in May 2017.

[16] Second, the RPD noted that the principal applicant stated that she had reported the incidents to police; however, the complaint reports make no reference to these. This further undermined her credibility.

[17] The applicants maintain that the principal applicant had difficulty recalling certain dates, but that this was not necessarily an issue of credibility, but one of comprehension. They argue that the RPD's decision was unreasonable and that she should not have been considered as not being credible.

[18] I remain unconvinced. It was reasonable for the RPD to doubt the applicant's credibility in light of the numerous contradictions that were discovered, despite the presumption that allegations of an applicant are truthful (*Maldonado v Employment and Immigration)*, [1980] 2 FC 302 at page 305). In addition, given that the RPD is well placed to make findings of credibility, having had the advantage of hearing testimony and observing the demeanour of witnesses, a certain amount of deference is afforded to it (*Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at paras 42-43 [*Rahal*]).

[19] The RPD's decision with regard to the assessment of the principal applicant's credibility is clear, and the logic of the analysis is evident. I agree that there is no basis for intervening on this point.

B. *Were the RPD's findings as to the risk upon returning to Haiti reasonable?*

[20] The applicants assert that the RPD's findings that the applicant had not shown that there was a serious possibility that she would be persecuted by reason of her membership in a particular social group, namely women, was unreasonable. The documentary evidence shows the level of violence against women in Haiti, and there is no evidence that the applicants could live with their immediate family. The documentary evidence also indicates that middle-class and wealthy Haitians, including members of the diaspora, run a greater personal risk of being victims of crime in Haiti. Haitians who have lived abroad are considered as having access to a greater number of resources and are targeted more often.

[21] I do not agree with the applicants. The RPD cited factors to be considered in accordance with the jurisprudence. As is indicated in the jurisprudence, it requires more than membership in

a specific social group, namely women (*Josile v Canada (Citizenship and Immigration)*, 2011 FC 39 at para 22; *Desir v Canada (Citizenship and Immigration)*, 2019 FC 1164 at paras 22–24). In addition, the RPD concluded that "[t]he claimant's written account and testimony indicate that this was not the basis of her claim" (at para 30, see *Ocean v Canada*, 2011 FC 796 at para 18), which does not strike me as being unreasonable.

[22] With respect to the applicant's return after having lived abroad, I do not agree with her. As the RPD indicated, it is recognized by the jurisprudence that victims of crime and wealthy individuals are not a social group as defined in the Convention, for the purposes of section 96 of the IRPA (*Lozandier v Canada (Citizenship and Immigration)*, 2009 FC 770 at para 15; *Cius v Canada (Citizenship and Immigration)*, 2008 FC 1 at paras 18-19). Under section 97, the applicant has not demonstrated that she would face a heightened risk compared to the general population. The RPD's analysis is consistent and justified in light of all of the relevant facts.

C. *Was the RPD's determination as to the lack of credible basis reasonable?*

[23] The applicants submit that the RPD erred by failing to make the important distinction between there being no credible basis and a lack of credibility, citing *Ouedraogo v Canada (Citizenship and Immigration)*, 2005 FC 21 at para 1. Given the evidence on the situation of women and members of the diaspora in the National Documentation Package (NDP) on Haiti, the RPD ought not to have concluded that there was no credible basis for the claim.

[24] I remain unconvinced. The applicants relied on the evidence in the NDP to point to the existence of credible evidence; however, the jurisprudence indicates that documentary evidence does not in itself meet this criterion (*Li v Canada (Citizenship and Immigration*), 2017 FC 740 at

paras 10–12; *Gomez Ramirez v Canada (Citizenship and Immigration)*, 2010 FC 136 at para 15; *Rahaman v Canada (Citizenship and Immigration)*, 2002 FCA 89 at paras 28–29, 51).

[25] The RPD gave "no probative value" to the two documents supporting the applicant's testimony, the certificate of employment and complaint records, nor did the applicants directly challenge this finding. The circumstances were different in *Mohammed v Canada (Citizenship and Immigration)*, 2017 FC 598, given that the RPD in that case had disregarded evidence by assigning no probative value to it before proceeding to make a "no credible basis" finding (at paras 31–34). Given that the RPD's decision stated that no probative value had been given to this evidence, and that its reasoning appears to be logical, the RPD's decision that there was no credible basis was reasonable.

IV. Conclusion

[26] For all of these reasons, the application for judicial review is dismissed. In light of the level of deference I am required to afford to the RPD's analysis of the evidence, and in particular to its assessment of the credibility of the witnesses (see *Rahal*), and given that the RPD's decision was based on "internally coherent" reasoning that complied with the "legal and factual constraints that bear on the decision" (*Vavilov*, at paras 102 and 105), no intervention is warranted.

[27] There is no question of importance to be certified.

JUDGMENT in Docket IMM-1136-19

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 12th day of February 2020.

Francie Gow, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

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