

Federal Court



Cour fédérale

Date: 20200128

Docket: IMM-2568-19

Citation: 2020 FC 148

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Montréal, Quebec, January 28, 2020

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

GUY-ROBERT LESTIN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

Delivered from the Bench at Montréal, Quebec, January 27, 2020
(Edited for syntax and grammar with added references to the relevant case law)

[1] The applicant, Guy-Robert Lestin, is seeking judicial review of an April 11, 2019 decision of the Refugee Appeal Division [RAD]. In its decision, the RAD confirms the decision of the Refugee Protection Division [RPD] that the applicant is neither a Convention refugee nor

a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The applicant is a citizen of Haiti. In his claim for refugee protection, the applicant alleges that he participated in a meeting of the “Platfòm Pitit Desalin” political party on December 17, 2015, where there was talk of organizing a demonstration following the death of a young activist from the party. After that meeting, he was followed by a group of supporters of the Haitian Tèt Kale Party [PHTK] to his home, where he was threatened. The applicant managed to escape and found refuge with family about 30 kilometres from the house. Still fearing for his safety, he left Haiti on February 25, 2016, to travel to the United States, where he holds a visa. Fearing the new immigration policies in the United States, the applicant entered Canada on August 14, 2017, and claimed refugee protection.

[3] On April 24, 2018, the RPD rejected the applicant’s refugee protection claim on the basis that he gave testimony that was not credible on the determinative elements of his claim.

[4] The applicant is appealing the decision before the RAD. The RAD found that the applicant had reasonable explanations for some of the contradictions identified by the RPD, but his explanations for others undermined his credibility. Despite the RPD’s errors in assessing the applicant’s credibility, the RAD was of the opinion that the applicant did not meet his burden to show that there is a serious possibility that he would be persecuted or subjected, on a balance of probabilities, to a risk to his life or a risk of cruel and unusual treatment if he returns to Haiti.

[5] The applicant alleges that the RAD applied the wrong legal test in its analysis of persecution, namely, the balance of probabilities, rather than the serious possibility of persecution test. He also argues that the RAD's decision is unreasonable on the basis that the RAD could not, on the one hand, find him to be credible and, on the other, conclude that there was insufficient objective evidence to support his subjective fear.

[6] Since the leave application was granted prior to the Supreme Court of Canada decisions in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] and *Bell Canada v Canada (Attorney General)*, 2019 SCC 66, the Court issued a direction on January 13, 2020, inviting the parties to make further submissions on the standard of review applicable to the proceeding.

[7] In *Vavilov*, the Supreme Court held that there is a presumption that the reasonableness standard applies to administrative tribunal decisions. This presumption can be rebutted in two types of situations. Neither of these situations applies in this case (*Vavilov* at paras 10, 16 and 17).

[8] Where the standard of reasonableness applies, “the burden is on the party challenging the decision to show that it is unreasonable” (*Vavilov* at para 100). The Court’s focus “must be on the decision actually made by the decision maker, including both the decision maker’s reasoning process and the outcome” (*Vavilov* at para 83) to determine whether the decision is “based on an internally coherent and rational chain of analysis and . . . is justified in relation to the facts and

law that constrain the decision maker” (*Vavilov* at para 85). Close attention must be paid to the decision maker’s written reasons, which must be read holistically and contextually (*Vavilov* at para 97). Nor is it a line-by-line treasure hunt for error (*Vavilov* at para 102). If “the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility—and [if] it is justified in relation to the relevant factual and legal constraints that bear on the decision”, it is not for this Court to substitute its preferred outcome (*Vavilov* at para 99).

[9] After reviewing the record, the Court cannot agree with the applicant’s arguments.

[10] First, the RAD’s reasons demonstrate that it clearly understood the distinction between the legal tests applicable to sections 96 and 97 of the IRPA. It refers to them twice in its decision. In paragraph 31 of its reasons, the RAD states that the applicant did not establish “that he faces a serious possibility of persecution or, on a balance of probabilities, a threat to his life or a risk of cruel and unusual punishment or treatment if he returns to Haiti”. The RAD further refers to this in paragraph 32 of its reasons. The reference to “on a balance of probabilities” is clearly related to the risk analysis under section 97 of the IRPA.

[11] The Court also finds the applicant’s argument about the reasonableness of the decision to be ill-founded. The burden was on the applicant to demonstrate the objective basis for his subjective fear, and he failed to do so. Contrary to the applicant’s claim, the RAD did not find the applicant to be credible. While the RAD found that the RPD had erred in its assessment of credibility on some points, it also found that the applicant’s credibility was “undermined” with

respect to the allegation of threats after December 17, 2015, and with respect to his stay in Jérémie. The RAD rejected the claim on the basis that the applicant did not develop or explain why he would be at risk if he returned to Haiti. In addition, the RAD found it not to be credible that supporters of the PHTK party would attack the applicant three years after the fact when he stated that he stopped being a supporter of the “Platfòm Pitit Desalin” party in December 2015. The RAD pointed out that the applicant did not demonstrate that these people have been looking for him since his departure from Haiti or that his family members in Haiti have received threats. It added that the documentary evidence also does not mention that PHTK party supporters threaten supporters of the “Platfòm Pitit Desalin” party.

[12] The applicant argued at the hearing that the RAD’s decision does not take into account Tab 7.6 of the National Documentation Package, which refers to the ability of assailants in Haiti to track down their victims. In this regard, the applicant provided the Court with a two-page excerpt to support his claims. However, this excerpt was not before the RAD, and the applicant was unable to demonstrate that this evidence had been submitted to the RAD. He also conceded that this argument had not been raised before the RAD. Therefore, the Court cannot consider it. Nevertheless, even if this evidence had been before the RAD, the Court is of the opinion that it would not have helped the applicant. The RAD found that the applicant had not established the willingness of his attackers to find him.

[13] After reviewing all of the RAD’s reasons, this Court is of the opinion that the applicant has not demonstrated that the decision was unreasonable. Although the applicant does not agree

with the RAD's conclusions, it is not for this Court to re-evaluate and weigh the evidence to reach a conclusion that would be favourable to the applicant.

[14] The application for judicial review is therefore dismissed. No question of general importance is certified.

JUDGMENT in IMM-2568-19

THIS COURT’S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

“Sylvie E. Roussel”

Judge

Certified true translation
This 14th day of February 2020.

Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2568-19

STYLE OF CAUSE: GUY-ROBERT v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JANUARY 27, 2020

JUDGMENT AND REASONS: ROUSSEL J.

DATED: JANUARY 27, 2020

APPEARANCES:

Cliford Dominique

FOR THE APPLICANT

Suzanne Trudel

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Cliford Dominique
Counsel
Montréal, Quebec

FOR THE APPLICANT

Attorney General of Canada
Montréal, Quebec

FOR THE RESPONDENT