

Federal Court



Cour fédérale

**Date: 20200212**

**Docket: IMM-3540-19**

**Citation: 2020 FC 240**

**Toronto, Ontario, February 12, 2020**

**PRESENT: Mr. Justice Diner**

**BETWEEN:**

**HUBERT ALANZO GRAY**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant comes before me to challenge his refugee claim refusal. Despite concerted efforts by his counsel, I dismissed his application from the Bench and promised reasons to follow. These are the reasons.

I. Background

[2] The Applicant is a 40-year-old citizen of Jamaica who worked for the government as an entomologist. He based his refugee claim on three primary grounds and events, which give rise to his fear of persecution if returned to Jamaica, along with his Rastafarian-based fear.

[3] First, the Applicant's good friend and business partner was shot and killed on January 18, 2019. While he could not attribute the murder to any specific person or group, the Applicant argued that Jamaican gang culture prizes revenge and that if he returns to Jamaica, the person or the group responsible will murder him, assuming that he has returned to avenge the death of his friend.

[4] Second, nearly a decade ago, the Applicant's mother witnessed a gunfight between gangsters in her community. The Applicant claimed that as a result, the gangsters who were involved would want to harm the family members of any witness.

[5] Third, the Applicant fears his former boss, under whom he served for about a decade until he fled Jamaica. The Applicant described his boss as corrupt and influential, wielding significant power and influence within government, and using techniques including defamation and violence to garner loyalty. When his boss became aware of the Applicant's marital problems in 2016, he made inappropriate remarks, which became increasingly aggressive and culminated with unwelcomed and unreciprocated sexual advances by the boss, putting the Applicant's job security at risk.

[6] Finally, the Applicant alleges that he fears persecution because he identifies as a Rastafarian.

[7] With respect to all of the above-mentioned fears, the Applicant explained that he never went to the police to address his safety concerns. In particular, relating to the situation with his boss, the Applicant claims that seeking police assistance or protection would have been “career suicide,” given his boss’ power and ties. And as to whether he sought safe haven elsewhere, the Applicant states that he never tried to flee anywhere else in Jamaica because he says criminality pervades the entire country.

[8] The Refugee Protection Division [RPD or Board], in its May 15, 2019 decision [Decision], found the Applicant credible, but ruled that he lacked a nexus between risks and any Convention grounds, given that what he really fears are, in essence, general crime, corruption and vendettas. As concerns religious beliefs, the RPD Member noted that it was only after he explained the differences between a claim under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act], that the Applicant raised concerns about being a Rastafarian. Ultimately, the Board found no nexus between the Applicant’s religion and the harm he would face upon a return to Jamaica.

[9] The Board also rejected the section 97 grounds. The Board found that the Applicant’s boss was not acting as an agent of the state, and the Applicant did not demonstrate specific or personalized, as opposed to generalized, risk. Furthermore, the Board held that threats to job security and employment prospects within the Jamaican government are not the types of risk

contemplated within section 97, particularly since the Applicant no longer works for his former boss.

[10] The other fears, too, were generalized risks according to the Board and thus did not raise risks of torture or danger to his life under the Act. For instance, on the mother's witnessing of a crime in the past, the Board noted both mother and son continued to reside for many years in Jamaica without reprisal. The Board came to similar conclusions regarding speculative fear arising from the recent murder of the Applicant's friend.

[11] Ultimately, the Board found that the Applicant fears being the victim of general crime, as do others who have achieved economic success in Jamaica. And where the public is subject to a high risk of crime – whether due to living in a more dangerous area or due to perceived wealth – that general, high risk of crime, absent more, does not establish a successful claim.

## II. Analysis

[12] The only issue to be determined is whether the RPD erred in finding a (i) lack of nexus between the fears raised and section 96 of the Act, and (ii) lack of particularized risk under section 97. The parties agreed that the standard of review under *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, is reasonableness, as do I, and will thus examine the reasonability of the Board's findings first under section 96, and then under section 97.

(i) *Risk as under section 96*

[13] I find that the Board was entirely reasonable in its findings based on the three incidents raised above when it stated that victims of crime, corruption or vendettas generally fail to establish a nexus between their fear of persecution and one of the Convention grounds. First, the Applicant never faced any reprisals from the murder his mother witnessed. Second, he never suffered any violent incident at work. Third, no retribution occurred to him after his friend was murdered, and the Board appropriately held that based on the evidence, any such suggestions regarding future reprisals are also speculative. I also find it telling that the Applicant never sought – nor appeared to have any need to seek – state protection while he was in Jamaica.

[14] Regarding the claim of persecution on the basis of being a Rastafarian, the Board Member wrote:

I note that at the hearing, the claimant referenced his Rastafarian religious beliefs and suggested that these might make him an easier target for discrimination in Jamaica. However, I find that the claimant's religion is an entirely peripheral issue that only arose when I specifically mentioned to the claimant the differences between claims for protection under section 96 and section 97 of the IRPA. On the evidence before me, I find that there is no nexus between the claimant's religion and any of the harm the claimant alleges he faces in Jamaica.

[15] This conclusion was entirely reasonable, given the evidence in the record and the specific documents therein that counsel referred to during the hearing. At most, there has been some historic discrimination. Whether that continues today is an open question, but no evidence on the record suggests that it rose to the level of persecution – even in the past where there had at times been serious issues. When I asked, counsel was unable to point to any jurisprudence – whether

coming from the Board or this Court – to support the proposition that Rastafarians were a persecuted group in Jamaica. Certainly, I am unaware of any. The general jurisprudence supports the Board’s conclusions (see, for instance, *Pava v Canada (Citizenship and Immigration)*, 2019 FC 1239 at para 25).

(ii) *Risk as under section 97*

[16] The Board found nothing to suggest any concerns under a forward-looking risk. The Applicant was not able to point to any particularized evidence when asked at the hearing, at least regarding fears arising from any of the three incidents reported above. However, the Applicant focused on fears that he alleges will arise on being a returnee to Jamaica after a period of absence abroad. He pointed to news reports that discuss some violence that has arisen, and others that suggest police officers may target returnees. None of that evidence was persuasive in placing the Applicant at risk. One concerned ex-pats who had retired in Jamaica from Britain. First, what emerges from those stories is randomized violence. In addition, there was nothing to suggest that the police would target the Applicant or that gangs would leak information to them about him.

[17] I do not agree that the Board disregarded evidence regarding his risk as a returnee, whether arising from the past incidents or from being perceived as a wealthy person returning from abroad. On the first, the Board appropriately pointed out that he had no history with either the police or gangs and there was insufficient evidence to show there would be risks to change any of that should he return. Based on the evidence proffered, it was open to the RPD Member to conclude that “I cannot find that the claimant’s risk profile is elevated beyond, or distinguishable

from, many other Jamaicans,” and risks faced generally by others who have achieved some economic success.

[18] Certainly, the Board pointed out that the evidence showed that in recent years, Jamaica has experienced issues with crime, including violent and organized crime, warfare between drug gangs, police corruption, abuse of citizens’ rights, vigilantism, and ultimately certain problems with the criminal justice system and the judiciary. As concerning as that is for citizens, applicants must nonetheless demonstrate a likelihood of a personalized risk rather than simply one faced generally by other individuals in that country. The Applicant was not able to do so and the RPD justifiably arrived at its conclusion.

[19] Finally, the Applicant was unable to point to any jurisprudence that would support these particular facts regarding his risk as a returnee to Jamaica.

### III. Conclusion

[20] Having found this Decision is based on an internally coherent and rational chain of analysis, which is justified both in relation to the facts and the law before the Board, there is no basis for this Court to intervene. The application for judicial review will be dismissed.

**JUDGMENT in IMM-3540-19**

**THIS COURT'S JUDGMENT is that:**

1. This application for judicial review is dismissed.
2. No questions for certification were argued, and I agree none arise.
3. There is no award as to costs.

"Alan S. Diner"

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3540-19

**STYLE OF CAUSE:** HUBERT ALANZO GRAY V THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 30, 2020

**JUDGMENT AND REASONS:** DINER J.

**DATED:** FEBRUARY 12, 2020

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