

Federal Court



Cour fédérale

Date: 20200324

Docket: IMM-3073-19

Citation: 2020 FC 410

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, March 24, 2020

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

KEDJERLY ELVERNA

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] The applicant is a citizen of Haiti. He claimed refugee protection in Canada under section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. On April 23, 2019, the Refugee Appeal Division [RAD] rejected his refugee protection claim, thereby confirming the decision of the Refugee Protection Division [RPD]. The RAD concluded that the

risk to which the applicant feared being subjected should he return to Haiti is a generalized risk. Therefore, the applicant was neither a Convention refugee nor a person in need of protection. This case concerns an application for judicial review under subsection 72(1) of the IRPA of the RAD's decision. For the reasons that follow, I dismiss the application for judicial review.

II. **Relevant facts**

[2] The applicant's father owns land in Haiti, which made him an object of hatred in the eyes of his neighbours because they thought that his family was rich. His family was therefore threatened several times. On October 10, 2008, two robbers entered his parents' home, stole all their money and threatened to kill them. After this incident, the applicant and his parents moved to another town. People continued to make life difficult for them. The applicant complained to the police, but they could not protect them. In 2009, the applicant therefore left for Venezuela. He left Venezuela on July 7, 2016, for economic reasons. He travelled to the United States, where he stayed for 11 months before arriving in Canada in June 2017.

III. **Decisions under judicial review**

[3] The RPD rejected the applicant's claim on the basis that he had not discharged his burden of proving that the risk he faced in Haiti was different from that of other Haitians, in accordance with subparagraph 97(1)(b)(ii) of the IRPA. He appealed that decision to the RAD.

[4] Applying *Correa v Canada (Citizenship and Immigration)*, 2014 FC 252, 23 Imm LR (4th) 193 [*Correa*], and *Guerrero v Canada (Citizenship and Immigration)*, 2011 FC 1210, 5

Imm LR (4th) 74 [*Guerrero*], the RAD concluded that the applicant had not established that he was personally targeted in the incidents he had faced. The RAD noted that he could not identify the criminals who had threatened him and his family. Furthermore, there was nothing in the evidence showing that it was the same criminals who, on two separate occasions, had threatened the applicant and his family. Finally, according to the applicant's testimony, his parents remained in the same house where they had been threatened in 2008. They had not had any problems since then, except that, from time to time, people would come knocking at their door, asking for money.

[5] Second, the RAD concluded that the applicant had not established, on a balance of probabilities, that his personal situation would subject him to a risk any different from the one faced by other Haitians, should he return to Haiti. Although the applicant submitted that he and his family are targeted because they are perceived as being rich, the RAD found that, according to the documentary evidence, violence is endemic in that country. It affects a large segment of the population and appears to be indiscriminate, targeting rich and poor alike: National Documentation Package (NDP), July 20, 2018, Tab 7.1, *The security situation, including crime and kidnappings; measures taken by the government and other stakeholders to fight crime (2014–June 2018)*; Tab 14.1, *Haiti: Whether Haitians who have lived abroad for a long time are at risk if they return to their homeland; the kinds of risks they might face; whether their return could represent a threat to members of their families and, if so, what kind of threat their families would face and from whom (2010–2012)*; *Prophète v Canada (Citizenship and Immigration)*, 2008 FC 331, 70 Imm LR (3d) 128 [*Prophète*], *aff'd* 2009 FCA 31, 78 Imm LR (3d) 163. The applicant also submitted that, should he return to Haiti, he would be targeted as a member of the

diaspora. The RAD rejected this hypothesis. The RAD concluded that this too would not subject him to a risk different from that faced by other Haitians. On this point, the RAD made two observations: the risk faced by members of the diaspora depends on the neighbourhoods they frequent, and it is not just members of the diaspora or rich people who fall victim to crime. The RAD cited the National Documentation Package (NDP), July 20, 2018, Tab 14.1, *Haiti: Whether Haitians who have lived abroad for a long time are at risk if they return to their homeland; the kinds of risks they might face; whether their return could represent a threat to members of their families and, if so, what kind of threat their families would face and from whom (2010–2012)*.

[6] For these reasons, the RAD confirmed the RPD's conclusion that the risk the applicant feared he would face should he return to Haiti is a generalized one, and therefore rejected his refugee protection claim.

IV. **Relevant provision**

[7] The only relevant provision is subparagraph 97(1)(b)(ii) of the IRPA, which reads as follows:

Immigration and Refugee Protection Act, SC 2001, c 27

Person in need of protection

97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former

Loi sur l'immigration et la protection des réfugiés, LC 2001, ch 27

Personne à protéger

97 (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel

habitual residence, would
subject them personally

elle avait sa résidence
habituelle, exposée :

(b) to a risk to their life or
to a risk of cruel and
unusual treatment or
punishment if

b) soit à une menace à sa
vie ou au risque de
traitements ou peines
cruels et inusités dans le
cas suivant :

(ii) the risk would be
faced by the person in
every part of that
country and is not faced
generally by other
individuals in or from
that country,

(ii) elle y est exposée en
tout lieu de ce pays alors
que d'autres personnes
originaires de ce pays ou
qui s'y trouvent ne le
sont généralement pas,

V. **Issue**

[8] This case raises the following issue: Is the RAD's conclusion that the applicant faces a generalized, non-personal risk unreasonable?

VI. **Positions of the parties**

[9] The parties agree that the reasonableness standard of review applies in this case, citing *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10, 441 DLR (4th) 1 [Vavilov]; *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 53–56, [2008] 1 SCR190; *Newfoundland and Labrador (Treasury Board) v NLNU*, 2009 NLCA 60 at paras 13–16, 290 Nfld & PEIR 353.

[10] Essentially, the applicant raises the same arguments he made before the RAD, except for one submission. He correctly notes that the RAD concluded that it was his parents who had

reported the incident to the police, even though he was the one who had reported it. In his view, this is a significant error that may have affected the outcome. I do not agree. The applicant claims that he and his parents are affected by violence because of their wealth. The applicant is conflating his circumstances with those of his parents. In my opinion, the identity of the family member who reported the incident is of no consequence, particularly in view of the dates of the incidents.

[11] The applicant states that he has discharged his burden of proving that he personally faces a risk meeting the four criteria set out in *Guerrero* at para 28. He submits that he faces a higher risk than the average risk faced by the public in Haiti because his family is rich and owns land and businesses. His residence is a recurring target, and his parents have experienced numerous attempts at extortion, even after moving to another town. What is more, he would be an even more tempting target as a member of the diaspora should he return to Haiti. According to the applicant, the RAD did not consider all the objective evidence regarding his situation in Haiti.

[12] Similarly, the respondent makes essentially the same arguments as those the RAD relied on in rejecting the claim. The respondent submits that the word “generally” must be interpreted as meaning “prevalent” or “widespread”. Accordingly, a situation that is prevalent throughout the country and that affects the entire population or a large number of individuals represents a generalized risk; in support he cites *Prophète* at paras 18–23 and *Flores Romero v Canada (Citizenship and Immigration)*, 2011 FC 772 at paras 14, 16 and 19. The respondent submits that it was reasonable for the RAD to conclude that the risk facing the applicant is a general one, for the following reasons: it has been more than 10 years since the extortion attempts that took place

in 2008; the applicant testified that his neighbours were also burgled frequently; the applicant was unable to identify the criminals, so it was mere speculation that the same criminals targeted him and his family after they moved to another town; and his family has continued to live in this other town since 2008 without any major difficulties. Moreover, the RAD's conclusion that the risk of falling victim to a criminal act is not limited to rich people is supported by the documentary evidence. It is therefore a risk that all Haitians must live with. The same holds true for the applicant's argument regarding his status as a member of the diaspora.

[13] Finally, although the applicant states that the RAD did not properly assess the evidence, which in his view shows that his risk is higher than that of other Haitians, the respondent submits that the role of this Court is not to reweigh all the evidence to arrive at a different outcome. The evidence supports the RAD's conclusions. The applicant is simply expressing his disagreement with the RAD's assessment of the evidence and wants to reargue what he had already argued before the RAD.

VII. Analysis

A. *What is the standard of review?*

[14] I agree with the parties that the reasonableness standard applies in this case (*Correa* at para 19; *Vavilov* at para 10). When a court reviews a decision on the reasonableness standard, it "must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified" (*Vavilov* at para 15).

B. *Is the RAD's conclusion that the applicant faces a generalized, non-personal risk unreasonable?*

[15] First, it is clear that the RAD concluded that the applicant faced a risk to his life. According to its reasons, it did not doubt the applicant's account. However, the RAD concluded that the applicant must also show that the risk is not faced by the public in general (*Correa* at paras 74–75; *Guerrero* at paras 26–28). I agree with the RAD.

[16] It was reasonable for the RAD to conclude that the applicant had not discharged this burden. The documents in the National Documentation Package cited by the RAD show that the crime rate in Haiti is high, that almost all segments of society are affected, and that theft and other crimes motivated by money are commonplace. The RAD based its conclusion on the documentary evidence.

[17] In this case, although the applicant submits, in his supplementary memorandum, that he is exceptionally vulnerable for reasons other than his family's financial situation, I do not find that this is supported by the evidence that was before the RAD. There is nothing on the record showing that the risk which he and his family face goes beyond economic interests. First, the applicant's account in his Basis of Claim Form and his testimony before the RPD only mention a risk because of his family's wealth. The threats made against the applicant and his family were motivated by money. I find that the RAD's decision that the applicant faces the same risk as the general public is reasonable.

[18] As for the applicant's argument that he will be targeted as a member of the diaspora, according to my review, there is evidence on the record showing that the risk of falling victim to crime is not limited to members of the diaspora. Regardless of whether one is a member of the diaspora, people are targeted in Haiti if they appear to be rich. Consequently, I am of the opinion that the RAD's conclusion is reasonable. The risk to the applicant is generalized, not personalized.

VIII. Conclusion

[19] The application for judicial review is dismissed. Neither of the parties has suggested a question to be certified for consideration by the Federal Court of Appeal, and no such question arises on the basis of the facts and the law in this case.

JUDGMENT in IMM-3073-19

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed, without costs. No question is certified for consideration by the Federal Court of Appeal.

"B. Richard Bell"

Judge

Certified true translation
This 7th day of April 2020.

Johanna Kratz, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3073-19

STYLE OF CAUSE: KEDJERLY ELVERNA v MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

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**REASONS FOR JUDGMENT
AND JUDGMENT:** BELL J.

DATED: MARCH 24, 2020

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