

Federal Court



Cour fédérale

**Date: 20200504**

**Docket: IMM-4000-19**

**Citation: 2020 FC 585**

[REVISED ENGLISH TRANSLATION]

**Ottawa, Ontario, May 4, 2020**

**PRESENT: The Honourable Mr. Justice Pamel**

**BETWEEN:**

**DAVID ROYCE FORVIL  
DARLINE FORVIL DEVILUS  
HOLLY JOYCE FORVIL FORVIL**

**Applicants**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] This is an application for judicial review of a decision by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada, dated June 5, 2019, which dismissed the applicants' appeal and confirmed the finding of the Refugee Protection Division [RPD] that

the applicants are neither refugees under the *United Nations Convention relating to the Status of Refugees*, 28 July 1951, 189 UNTS 137 [Convention], nor persons in need of protection within the meaning of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] For the following reasons, the application for judicial review is dismissed.

## II. Facts

[3] The principal male applicant and his wife, the principal female applicant, are Haitian citizens. Their minor daughter, the minor applicant, is a Dominican citizen.

[4] The principal applicant alleges that he fears for his life in Haiti because of jealousy and the perception that his family is wealthy. His parents had good jobs and his family enjoys a high standard of living.

[5] In August 2003, the principal applicant was allegedly threatened by a group of bandits, including their neighbour, when he returned from a vacation with his mother in the United States. The day after the incident, the principal applicant and his mother moved to the Dominican Republic.

[6] In May 2009, the principal applicant decided to return to Haiti to visit his ailing father. During this visit, the same bandits entered his house to vandalize it. Fearing for his safety, he returned to the Dominican Republic the following day.

[7] According to the principal applicant, this was not the last incident with the bandits. Indeed, he alleges that in August 2017, the bandits went to his home in the Dominican Republic to threaten him. It appears that only his wife was home at the time. The principal applicant reportedly filed a complaint with the police, but the police did not do anything about it.

[8] As a result of this incident, the principal applicant and his wife decided to leave the Dominican Republic for the United States, with the intention of living with his mother, who was already in Chicago.

[9] The principal female applicant claims that she fears the spouse of her former boss, with whom she had a romantic relationship in 2009, as well as a gang leader from her neighbourhood who was obsessed with her. For these reasons, she moved to the Dominican Republic in May 2010, where she met her husband. According to the applicant, she was attacked by the same gang leader while she was on vacation in Haiti in December 2012.

[10] The applicants arrived in Canada on August 9, 2017, and claimed refugee protection the following day.

[11] Eight days before the hearing of their claim (May 3, 2018), the principal female applicant filed a new Basis of Claim Form [BOC Form], in which she made her allegations regarding her relationship with her former boss and the gang leader.

[12] The RPD denied the applicants' claim for refugee protection. The RPD found that the applicants had not met their burden of demonstrating that the risk they face in Haiti differs from the generalized risk faced by the Haitian population at large. The RPD found that the applicants' behaviour was inconsistent with their alleged subjective fear because they had not claimed asylum in the United States, despite the principal male applicant's extensive travel to that country.

[13] As for the principal female applicant, the RPD found that her two return trips to Haiti and the delayed submission of her own allegations undermined her credibility. The RPD found that her situation distinguished her from that of vulnerable women in general. The RPD decided not to give any probative value to the documents filed by the applicants in light of the credibility issues with their stories.

[14] The applicants filed an appeal with the RAD. They claimed that the RPD's decision was unreasonable because its analysis was flawed and because it failed to analyze their file in accordance with section 96 of the IRPA. The applicants did not submit any new evidence in support of their appeal.

### III. RAD decision

[15] In a decision dated June 5, 2019, the RAD upheld the RPD's decision and dismissed the applicants' appeal. The RAD found that the applicants had not met their burden of establishing a serious possibility of persecution based on a Convention ground, or that, on a balance of

probabilities, they would be personally subjected to a danger of torture or a risk to their life or to a risk of cruel and unusual treatment or punishment.

[16] With respect to the principal male applicant, the RAD concluded that he had not demonstrated that he would be exposed to a risk other than the generalized risk to which all or a segment of the Haitian population is exposed.

[17] With respect to the principal female applicant, the RAD found that the RPD had conducted an analysis pursuant to section 96 of the IRPA and correctly concluded that her circumstances distinguish her from women who are alone, vulnerable and without resources. Furthermore, the RAD found that the RPD did not err in concluding that her numerous return trips to Haiti and the delayed filing of her amended narrative undermined her credibility.

[18] The RAD also found that the principal male applicant's behaviour was inconsistent with that of a person who feared for his life. It noted that he had been living in the Dominican Republic since 2003 and still did not have permanent residence in that country, and had not made a claim for asylum in the United States.

#### IV. Issues

[19] There is only one issue in this case: is the decision of the RAD reasonable?

V. Standard of review

[20] There is no disagreement between the parties that the reasonableness standard is applicable in this case. In the absence of any information to the contrary, this Court will therefore apply that standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 17, 23 [*Vavilov*]). A reasonable decision must be based on an internally coherent reasoning and justified in light of the relevant legal and factual constraints that bear on it (*Vavilov* at paras 99–101).

VI. Discussion

[21] The applicants allege that the RAD decision contains four flaws:

- A. the RAD did not perform an independent analysis of the case and relied strictly on the RPD's discussion of the matter;
- B. there is insufficient evidence to support a finding that the applicants are not credible;
- C. the RAD did not consider all of the allegations relevant to the claim for refugee protection; and
- D. in light of all of the above, the decision is unfair and inequitable.

[22] The applicants' memorandum does not cite any case law.

[23] The respondent submits that the applicants simply did not meet the burden of proof: they did not show that the RPD erred in fact, in law, or in mixed fact and law in rejecting their claim.

- A. *Generalized risk and jealousy*

[24] With respect to the principal male applicant, the applicants argue that paragraph 6 of the decision does not reflect the extent of his allegations. According to the applicants, the RAD did not mention the following facts: the principal applicant's brother was beaten; the principal applicant was the victim of attempted forcible confinement; the principal applicant's father was contacted by individuals seeking information about the principal applicant's mother; and the principal applicant provided testimony to the effect that an agent of persecution harboured strong jealousy toward him.

[25] In addition, the applicants argue that the RAD accorded little weight to the evidence regarding the employment of the principal male applicant's mother at the Haitian Consulate in Chicago. According to the applicants, this evidence indicates that the principal applicant's family situation represents a significant source of risk.

[26] The respondent submits that the RAD considered all the evidence on the record and that the applicants did not demonstrate the existence of a personalized, current, and foreseeable risk if they were to return to Haiti.

[27] Paragraph 6 of the decision summarizes the allegations concerning the principal male applicant:

The principal appellant, David Royce Forvil, fears returning to Haiti because he and his family allegedly received threats due to their neighbours' perception of their quality of life and the good jobs held by his parents. They were also allegedly victims of an attack by a group of criminals that included their neighbour. After being threatened in August 2003, the principal appellant and his mother left Haiti for good and moved to the Dominican Republic. The principal appellant alleges that he returned to Haiti only once,

on May 4, 2009, to visit his ailing father. At that time, the same criminals allegedly vandalized his home. The principal appellant returned to the Dominican Republic the next day and never returned to Haiti.

[28] The applicants complain that the RAD did not mention certain events set out in the principal male applicant's BOC Form. The first event was the kidnapping of the principal applicant's brother in 2001.

[29] The second event was characterized as an attempt to forcibly confine the principal male applicant in 2003. In the BOC form, the principal applicant mentioned an incident involving a [TRANSLATION] "white van with tinted windows" that [TRANSLATION] "stopped in front of him". The passenger on the right told him to [TRANSLATION] "get in the car". The principal applicant twice [TRANSLATION] "refused" to get in, and the car drove away. The applicant's account does not identify the people in the car or explain their motives.

[30] The third event concerns the individuals who questioned the principal male applicant's father in 2015 in order to obtain information regarding the mother of the principal male applicant.

[31] However, only one of these three incidents was mentioned in their appeal memorandum, namely, the kidnapping of the principal applicant's brother in 2001.

[32] Although the RAD decision does not mention these events, I do not see how these minor omissions warrant this Court's intervention (*Vavilov* at para 100). Rather, the events recounted



by the principal male applicant serve to clarify the context of his allegations and the nature of the generalized risk in Haiti.

[33] In its decision, the RAD acknowledged that there are certain generalized risks to the Haitian population, but found that the principal male applicant had failed to demonstrate how the risk to him differed from this generalized risk. The principal male applicant did not provide any further details as to how these events, including the alleged attempt at kidnapping in 2003, call into question the findings of the RAD or the RPD.

[34] In this regard, it should be borne in mind that the RAD is not required to discuss every piece of evidence in its decision: it is sufficient that it explain its findings (*Vavilov* at paras 126–128; *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at paras 78, 98, 103; *Rozas del Solar v Canada (Citizenship and Immigration)*, 2018 FC 1145 at paras 122–125; *Kreishan v Canada (Citizenship and Immigration)*, 2019 FCA 223 at paras 41–42).

[35] Finally, I should also note that, in their own written submissions, the applicants describe themselves as [TRANSLATION] “wealthy”. While it may be true that they are part of the Haitian diaspora and could be targeted because they appear to be well-off, I do not see which of the grounds listed in section 96 of the IRPA would be relevant.

[36] I see no reason to believe that the RPD or the RAD did not take into account the criteria enshrined in paragraph 97(1)(b) of the IRPA.

[37] The principal male applicant concedes that taken separately, the elements of his claim do not necessarily call for a more favourable decision by the RAD, but he argues that taken together, they establish a clear pattern of persecution.

[38] For my part, I see nothing unreasonable in the manner in which the RAD rendered its decision.

B. *Analysis under section 96 of the IRPA*

[39] With respect to the principal female applicant, the applicants argue that the RAD did not conduct an analysis of her fear using the criteria in section 96 of the IRPA. The applicants argue that the RAD downplayed the fact that the principal female applicant is among the women of the Haitian diaspora and that she was persecuted by a bandit leader.

[40] I reject the applicants' contention.

[41] In its decision, the RPD found that the applicants "are neither 'refugees' as defined in section 96 of the IRPA, nor 'persons in need of protection' pursuant to section 97 of the IRPA". With regard to the principal female applicant, the RPD found that her circumstances "distinguish her from women who are alone, vulnerable and without resources". Specifically, the principal female applicant is married, has made numerous trips to Haiti, will be accompanied by her husband and daughter should she return to Haiti, and has family in Haiti.

[42] On appeal to the RAD, the applicants argued that the RPD did not conduct an adequate analysis of the file under section 96 of the IRPA as it did not take into account the principal female applicant's fear of gender-related persecution in Haiti. The RAD noted that the applicants had "offered no other argument or explanation in their memorandum" relative to that fear.

[43] The RAD rejected this argument and concluded that the RPD did not err in its analysis pursuant to section 96 of the IRPA. The RAD noted first of all the RPD's finding that the specific circumstances of the principal female applicant distinguish her from women who are alone, vulnerable and without resources.

[44] The RAD analyzed the principal female applicant's fear of persecution based on her fair skin and found that it would not have changed the RPD's conclusion. The RAD found that the RPD was correct in its finding of non-credibility regarding the bandit leader's attack in December 2012 because of the principal female applicant's inconsistent behaviour after the incident, namely the numerous return trips to Haiti.

[45] My reading of the RAD's decision suggests that the RAD conducted an analysis of the principal female applicant's fears regarding the colour of her skin, her gender, and her family situation. Its analysis therefore clearly falls within the scope of section 96 of the IRPA.

C. *Delayed submission of principal female applicant's allegations*

[46] The applicants further argue that the RAD ignored the principal female applicant's explanations for the delayed submission of her own allegations.

[47] I reject the applicants' contention. I am of the view that it was reasonable to draw an adverse inference from the fact that the principal female applicant made entirely new allegations of her own only days before the hearing.

[48] The RPD pointed out a significant omission in her original BOC Form (signed on September 9, 2017), as the principal female applicant had based her refugee claim on her husband's, and then submitted a new story only days (May 3, 2018) before the May 11, 2018, hearing, which had been scheduled since October 2017.

[49] At the hearing, the RPD questioned the principal female applicant about this omission. She explained that they had been in a hurry, that a volunteer from her former counsel had misinformed her and that she believed that only her husband should submit his account.

[50] In the final analysis, neither the RPD nor the RAD accepted the applicant's explanations. The RAD found that she could have reported her own allegations, despite the short amount of time to do so. In addition, the RAD noted that the principal female applicant would have had an opportunity to present her own story, since her allegations related to events that occurred before she met her husband.

[51] I see nothing unreasonable in the RAD's analysis on this point, particularly in light of the jurisprudence of this Court, which teaches that late changes to BOC forms without proper explanation can undermine applicants' credibility (*Amiryar v Canada (Citizenship and Immigration)*, 2016 FC 1023 at para 18; *Zeferino v Canada (Citizenship and Immigration)*, 2011

FC 456 at paras 31–32; *Sibanda v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1400 at para 19).

D. *Incompatible behaviour*

[52] Finally, according to the applicants, the RAD was severe and close-minded in its judgment of the principal male applicant's behaviour. The applicants argue that the RAD did not consider their explanations regarding their intention to settle in the Dominican Republic when it drew an adverse inference from the fact that the principal male applicant had not claimed refugee protection in the United States.

[53] The respondent submits that the applicants' extensive travel to the United States without claiming asylum belies a subjective fear.

[54] I reject the applicants' contention.

[55] Like the RPD, the RAD found that the applicants' behaviour negated their allegations of risk.

[56] The RAD observed that the principal female applicant had returned to Haiti twice in September 2013, despite the principal applicant's statement to the effect that she had never returned to Haiti after the attack she allegedly suffered in December 2012. The principal female applicant also went back to visit her family and celebrate the New Year in December 2012.

[57] With respect to the principal male applicant, the RAD found that the RPD did not err in finding that he had engaged in conduct that belied the alleged risk. The RAD made a finding of non-credibility based on the fact that the principal male applicant had lived in the Dominican Republic for six years (2003–2009) without obtaining permanent status in that country. The RAD also made a finding of non-credibility based on the fact that the principal applicant did not claim asylum in the United States, and had not inquired about the procedures for doing so.

[58] I see nothing unreasonable in these findings.

[59] It has been well established that voluntary return to the country of risk and failure to make a refugee claim are relevant factors that the panel may consider in assessing a claimant's credibility in respect of his or her statements and actions (*Sainnéus v Canada (Citizenship and Immigration)*, 2007 FC 249 at para 12; *Houssou v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1375 at para 3; *Huerta v Canada (Minister of Employment & Immigration)*, 157 NR 225 at para 4, 1993 CarswellNat 297 (FCA)).

## VII. Conclusion

[60] For these reasons, I find that the RAD's decision is reasonable. The application for judicial review is dismissed.

**JUDGMENT in IMM-4000-19**

**THE COURT'S JUDGMENT is as follows:**

1. The application for judicial review is dismissed.
2. There is no question to certify.

“Peter G. Pamel”

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Judge

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

**DOCKET:** IMM-4000-19

**STYLE OF CAUSE:** DAVID ROYCE FORVIL, DARLINE FORVIL  
DEVILUS, HOLLY JOYCE FORVIL FORVIL v  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** March 4, 2020

**JUDGMENT AND REASONS:** PAMEL J.

**DATED:** May 4, 2020

**APEARANCES:**

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