Federal Court Cour fédérale

Date: 20200908

Docket: IMM-5833-19

Citation: 2020 FC 886

[ENGLISH TRANSLATION]

Ottawa, Ontario, September 8, 2020

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

BALDWIN AOSTE CILIUS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by the Refugee Appeal Division [RAD] dated September 4, 2019. The application for judicial review is brought pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

I. Facts

[2] The facts of this case are straightforward. The applicant arrived in Canada on January 31, 2017, and claimed refugee protection on February 7, 2017. He had previously obtained a visitor visa from the Canadian Embassy in Haiti on August 5, 2016. The sole incident leading the applicant to seek refugee protection in Canada occurred during the night of April 30 to May 1, 2016, when the family home was broken into. The applicant and his parents took refuge behind a barricaded door and had no contact with the intruders.

[3] As will be seen, there are very few details regarding this break-in. It was therefore not argued that the refugee claim could be based on section 96 of the Act because that provision requires specific reasons establishing a well-founded fear of persecution. Rather, it is section 97 of the Act that is relied upon. It reads as follows:

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 habitual residence, would subject them personally:	**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 elle avait sa résidence habituelle, exposée :
(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	**a)** soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
(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 :
(i) the person is unable or,	**(i)** elle ne peut ou, de ce fait,

because of that risk, unwilling to avail themself of the protection of that country,	ne veut se réclamer de la protection de ce pays,
(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,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	**(iii)** la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	**(iv)** la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

II. The decision for which judicial review is sought

[4] In essence, the applicant, a Haitian citizen, sought to appeal the decision of the Refugee Protection Division [RPD] that rejected his claim for refugee protection because his allegations had not been credibly proven. The applicant alleged that his life was at risk as a result of the April 30, 2016 incident. Indeed, he claims to fear being abducted or killed because his father is a deputy public prosecutor at the court of Croix-des-Bouquets.

[5] The applicant alleges that the April 30 attack was perpetrated by criminals who had been prosecuted by his father. Revenge may have been what motivated these individuals. But both the RPD and the RAD found evidence of these allegations to be sorely lacking.

[6] The RAD appears to endorse the RPD's reasons for rejecting the applicant's claim. The following appears at paragraph 8 of the RAD decision:

> [8] The decision rejecting the refugee protection claim is based on the following factors, among others:
>
> - The appellant gave vague testimony about the break-in at the family home. In addition, he did not establish that this incident is at all related to his father's work.
> - The appellant's statements relating to the break in being an act of vengeance are speculative. According to the RPD, this assumption is based on anecdotal evidence about similar incidents as well as a press clipping (Exhibit P-7).
> - The appellant testified that after this incident, neither he nor his family have had any problems. His father continues to live in his home, and he continues to go about his professional activities. The appellant's mother comes and goes between the United States and Haiti.
> - The fact that the appellant waited to leave Haiti is not consistent with the behaviour of someone who fears for his or her safety.

[7] The RAD noted from the outset that the applicant was required establish that the risk to which he would be exposed, if he were to return, was different from the generalized risk faced by all Haitians. The evidence presented by the applicant was such that the RPD's decision was appropriate. The RAD found that the RPD was correct in finding that the applicant had failed to establish conclusively that the criminals who tried to break into his house had acted out of vengeance. In fact, the applicant's narrative as to the reasons for the home invasion was based on speculation.

[8] Indeed, despite the incident of April 30, 2016, the family continued to reside at the same address and to go about their usual business. It also appears that the family members did not

encounter any further problems of this nature. As a result, the evidence does not indicate that this was anything other than an isolated incident. As the RAD concluded:

> [24] For these reasons, I conclude that the appellant failed to establish that the incident in April 2016 is related to his father's job. He failed to establish that it is more likely than not that he would be subjected to a risk different than the generalized risk to which other Haitians are subjected due to the lack of safety that prevails in the country.

III. Arguments and analysis

[9] It has been established that the standard of review is reasonableness. The case law with respect to RAD decisions is consistent, and the Supreme Court's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] does not change that. In fact, that case confirmed that the analytical framework "begins with a presumption that reasonableness is the applicable standard in all cases. Reviewing courts should derogate from this presumption only where required by a clear indication of legislative intent or by the rule of law" (para 10).

[10] There is still an obligation on reviewing courts to exercise judicial restraint. As stated at paragraph 75 of the decision, reviewing courts should exercise judicial restraint and demonstrate respect for the distinct role of administrative decision makers (see also paragraphs 13 and 14 in particular). The hallmarks of reasonableness continue to be justification, transparency and intelligibility, and whether the decision is justified in light of the relevant factual and legal constraints that bear on it (*Vavilov*, para 99). As such, not every flaw will give rise to a decision by a reviewing court. Not only is the burden on the applicant, but he must convince the court that the impugned decision contains serious flaws. I quote here paragraph 100 of *Vavilov*:

> [100] The burden is on the party challenging the decision to show that it is unreasonable. Before a decision can be set aside on this basis, the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision. It would be improper for a reviewing court to overturn an administrative decision simply because its reasoning exhibits a minor misstep. Instead, the court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable.

A lack of internal rationality, or an inconsistency, may vitiate the reasoning. The same will be true of an untenable decision. This is therefore the burden the applicant is called upon to bear.

[11] The applicant’s argument is brief. It is based on assumptions that are not supported by any independent evidence. Other than the applicant’s statements, there is nothing to suggest vengeance as the motivation for the break-in. Nor is there any evidence that the applicant, rather than his father, would be the target of such vengeance, if indeed there was any in this case. In his factum, the applicant indicated that the *modus operandi* of the intruders (factum, para 16) was retaliation. We do not know why. It is not enough to state something. The unreasonableness of the decision must be convincingly demonstrated. In this case, there is nothing to support the applicant’s contention that the attack on his father’s home on April 30, 2016, was due to his father’s work as a deputy public prosecutor. While it is possible that threats may have been made against the applicant’s father in the past, the latter did not take them seriously and was not the victim of any other such attack before or after April 30, 2016. As both the RPD and the RAD indicated, we are in the realm of speculation.

[12] At best, the applicant argues that [TRANSLATION] "it is not unlikely that revenge will be taken against those in the justice system who obstruct the illegal activities of certain persons" (factum, para 22). Speculation will not suffice.

[13] The applicant adds to his working hypothesis [TRANSLATION] "the strong possibility that the bandits are contract killers, hired by his father's enemies . . ." (factum, para 24). It is hard to see how the fact that the RAD did not act on the applicant's claims was unreasonable given that those claims were founded on assumption and speculation.

[14] The applicant is also seeking to challenge the RAD's findings regarding his behaviour and that of his family following the incident. For example, he claimed to have lived away from the family home after May 1, 2016, while his father was driven by a chauffeur in an official vehicle with tinted windows and his mother spent time in the United States. Finally, he did not leave his country of origin until January 2017, some nine months after the April 30 incident, because he needed a visa and his father had to subsidize his plane ticket to Montreal.

[15] The applicant's arguments do not reflect certain realities that can be gleaned from the evidence. For example, since 2016, the applicant's mother appears to have simply continued her trips between the United States and Haiti that began in 2007. The applicant's testimony was equivocal and there is no evidence on the record regarding his mother. As a result, little is known about these trips or the mother's status in the United States. These trips did not appear to be a result of the April 2016 incident, but rather a continuation of what was already occurring.

[16] As for the applicant's time away from the family home, this was nothing new. It is clear from his immigration form that the arrangement that had him commuting between two cities had been in place since April 2015. In fact, his intention in volunteering in the city outside Port-au-Prince was to eventually obtain a contract. As for the use of tinted windows for cars, the applicant himself mentioned before the RPD that people who work for the state in Haiti have cars with tinted windows. Finally, the nine-month wait can of course be partially explained by the time required to obtain a visitor's visa for Canada. But it is hard to understand the justification put forward by the applicant that he had to be subsidized by his father when the latter had nearly a million dollars in savings. Put another way, the impression given that the applicant's father had to raise the money to pay for an airline ticket is not accurate.

[17] Thus, the picture that emerged for the RAD was one in which the testimony regarding the April 30, 2016, incident was merely speculation and assumptions as to the reasons for the break-in, because the applicant could not provide details about what was said or done, as he himself acknowledged that he had not seen anything. The RAD's decision is essentially based on the finding that the appellant "failed to establish conclusively that the criminals who tried to break into his house acted out of vengeance" (RAD decision, para 19). The fact that family members continued to go about their usual business after the incident (RAD decision, para 21) is not insignificant. In essence, the RAD did not believe in the vengeance theory.

[18] This is in no way intended to minimize the fear that would be felt by the victim of a home invasion. What is important, however, is to establish a prospective risk. A single incident with insufficient detail, with no evidence of subsequent consequences, leaves little room for the

administrative decision maker to be satisfied that an applicant has met the requirements of section 97 of the Act.

[19] The fact that after April 30, 2016, the applicant evidently continued to pursue the same activities as he had since April 2015 does not support a different conclusion.

[20] As a result, the burden that was on the applicant was not discharged before this Court. The applicant had to convince the reviewing court that the decision was unreasonable. Such was not the case. The application for judicial review is therefore dismissed. The parties agree and the Court concurs that there is no serious question of general importance in this case that requires certification.

JUDGMENT in IMM-5833-19

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. No serious question of general importance is certified.

"Yvan Roy"
Judge

Certified true translation
This 17th day of September 2020

Sebastian Desbarats, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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