

Federal Court



Cour fédérale

Date: 20201214

Docket: IMM-6339-19

Citation: 2020 FC 1152

[ENGLISH TRANSLATION]

Ottawa, Ontario, December 14, 2020

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

**KERVENS CLERVOIX
GINIA FLEURIMONT
JANNESON FLEURIMONT
KERBI JERRY CLERVOIX
ISAIAH JAY CLERVOIX**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, Mr. Kervens Clervoix and his spouse Ginia Fleurimont, are citizens of Haiti. The minor applicants, Janneson Fleurimont, Kerbi Jerry Clervoix and Isaiah Jay Clervoix, are their children and are citizens of the United States.

[2] The Refugee Protection Division [RPD] rejected the applicants' claims for refugee protection, finding that Mr. Clervoix was not credible. The Refugee Appeal Division [RAD] dismissed their appeal and confirmed the RPD's decision.

[3] The applicants are seeking judicial review of the RAD's decision under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. They submit that the RAD's decision is unreasonable.

[4] For the reasons below, having carefully reviewed the record and both parties' submissions, I conclude that this application should be dismissed.

II. Background

[5] Mr. Clervoix claims that he fears for his life and for the lives of his family members should he return to Haiti, by reason of the political allegiance of his father, a former member of the Lavalas political party. The applicants fear being killed by members of the Democratic Convergence Party, a rival political party to the Lavalas Party. Mr. Clervoix's father has allegedly been a member of the Lavalas Party since 1992.

[6] Mr. Clervoix stated that his father was murdered by members of the Democratic Convergence Party in 1999, when Mr. Clervoix was aged 13. The day after the murder, Mr. Clervoix and some members of his immediate family left Haiti for the Dominican Republic, where they stayed for approximately two years. They then went to the Bahamas, where they lived for four years.

[7] In 2005, Mr. Clervoix left the Bahamas for the United States, where he stayed for slightly more than 12 years. While in the United States, Mr. Clervoix filed an asylum claim with the American authorities and was granted the temporary protective status for Haitian nationals as well as a temporary work permit for several years.

[8] In August 2017, Mr. Clervoix and his family travelled to Canada, claiming refugee protection on the day they arrived. The RPD rejected their claims for refugee protection, finding that Mr. Clervoix was not credible. The RAD confirmed the RPD's decision, also determining that the principal claimant was not credible.

III. Decision under review

[9] In confirming the RPD's decision to reject the refugee protection claims of Mr. Clervoix and his family, the RAD found that Mr. Clervoix was not credible and that the evidence was inconsistent with a subjective fear of being removed to Haiti.

[10] The RAD pointed out inconsistencies in Mr. Clervoix's Basis of Claim Form [BOC Form] and in his oral testimony regarding the date and time of his father's murder. The

RAD also pointed out Mr. Clervoix's failure to disclose the name of the alleged murderer in his BOC Form, a name that Mr. Clervoix knew and provided during his testimony before the RPD. The RAD noted inconsistencies in evidence central to the claim and concluded that those inconsistencies undermined Mr. Clervoix's credibility.

[11] The RAD also reviewed the death certificate stating the date and time of death of Mr. Clervoix's father. The information on the certificate was inconsistent with the various dates and times of death stated by Mr. Clervoix. Because of this inconsistency, the RAD gave no weight to the death certificate.

[12] The RAD reviewed the RPD's conclusion that Mr. Clervoix's failure to inquire into his legal status in the United States between 2006 and 2010 was inconsistent with his fear of deportation. The RAD concluded that his responses to the RPD's questions regarding his status in the United States were evasive, inconsistent or simply not responsive to the questions asked. The RAD found that the RPD had not erred as to the inconsistency between Mr. Clervoix's failure to inquire about his status in the United States and his stated fear of returning to Haiti.

[13] The RAD also agreed that the lack of evidence from the family members who had fled Haiti with Mr. Clervoix in 1999, and with whom he claimed to have been in regular contact, was also inconsistent and that these circumstances did not reflect his subjective fear of returning to Haiti.

IV. Issues and standard of review

[14] There is only one issue to be dealt with in this application: whether the RAD made a reasonable determination that the applicants should be excluded from refugee protection.

[15] The applicable standard of review is reasonableness (*Celestin v Canada (Citizenship and Immigration)*, 2020 FC 97 at paras 31–32, *Petit Homme v Canada (Citizenship and Immigration)*, 2020 FC 276 at para 9). To be reasonable, a decision must be based on internally coherent reasoning and be justified in light of the relevant legal and factual constraints (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 101 [*Vavilov*]). The challenging party must satisfy this Court “that any shortcomings or flaws . . . are sufficiently central or significant to render the decision unreasonable” (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 33 citing *Vavilov* at para 100).

V. Analysis

[16] Mr. Clervoix submits that the following are unreasonable: (1) the RAD’s assessment of the weight to be given to a death certificate establishing the date and time of his father’s death; (2) the RAD’s finding that Mr. Clervoix’s failure to disclose the name of the alleged murderer in his BOC Form undermined his credibility; and (3) the RAD’s determination that his conduct was inconsistent with that of a person fearing to be removed to Haiti. He argues, on the basis of *Kaur v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1710 [*Kaur*], that it was unreasonable for the RAD to conclude that the inconsistencies undermined his credibility

without taking his circumstances into account, including his limited education and sociocultural differences, his age when the events occurred in 1999, and the passage of time.

A. *Reasonable for RAD to conclude death certificate should be given little weight*

[17] The basis of the applicant's fear is the murder of his father in 1999. It was in response to his father's murder that the applicant and his family left Haiti.

[18] Mr. Clervoix acknowledges that his testimony regarding the date and time of his father's death is inconsistent. However, he submits that it was unreasonable for the RAD to find that his account was not credible in light of a death certificate corroborating his father's death. He submits that the RAD erred in giving little weight to that documentary evidence.

[19] At the hearing before the RPD, Mr. Clervoix filed the death certificate stating that his father died on July 24, 1999, at 6 a.m. His BOC Form states that his father was murdered on the night of July 15 to 16, 1999, at approximately 10 p.m. When the RPD confronted him with this contradiction, Mr. Clervoix responded that the date in the BOC Form was wrong and that he should have corrected it before the hearing. He then stated that his father was in fact murdered on the afternoon of July 24, 1999, explaining that, in Haiti, [TRANSLATION] "afternoon" and "10 p.m." had the same meaning. The RPD pointed out that the death certificate showed his father's time of death as being 6 a.m. on July 24, 1999, to which the applicant replied that the death occurred in the afternoon, without giving an explanation. Mr. Clervoix's responses were described as "evasive" and "confusing".

[20] In *Kaur*, there was a similar lack of consistency with respect to the central elements of the claim that prompted the RPD to find that the claimant was not credible. However, a psychotherapist's report had been filed with the RPD that provided an explanation for the claimant's confusing and inconsistent evidence; the Court found that the RPD had not given this report "all the weight it deserve[d]" (at para 21). In that context, the Court also found that, in the absence of authenticity concerns, the decision maker should exercise caution in disregarding documentary evidence corroborating a claimant's account on the ground that the claimant is not credible. *Kaur* clearly differs from the circumstances in this case.

[21] In this case, Mr. Clervoix argued that his profile—according to his memorandum, he is a simple man with little education—explains the inconsistencies in his testimony. This falls well short of the circumstances in *Kaur*, where evidence was presented to the decision maker that dealt with the claimant's medical condition and specifically noted the likelihood that the claimant's testimony could be confused and inconsistent.

[22] The RAD considered Mr. Clervoix's testimony regarding the date and time of his father's death. Mr. Clervoix had the opportunity to clarify the inconsistencies before the RPD. He did not dispute the RAD's characterization of his testimony as evasive and confused. In the absence of specific evidence that might explain the inconsistencies, I cannot find fault with the RAD's failure to expressly address the argument that Mr. Clervoix's profile explains his inconsistent testimony on a central element of the claim for refugee protection.

[23] As for the analysis of the death certificate, the certificate corroborates the reported death of Mr. Clervoix's father. However, it does not corroborate any of the circumstances of his death. These are the details underlying the refugee protection claim. Not only does the death certificate fail to corroborate the circumstances of the death, but it is inconsistent with all the times of death given by Mr. Clervoix in his written and oral testimony. When asked why the death certificate indicated that his father had died at 6 a.m. and not in the afternoon or at 10 p.m. as he had testified, Mr. Clervoix provided no explanation.

[24] The SAR raised credibility issues not because it was not satisfied that Mr. Clervoix's father had died, but rather because the date and time of death were inconsistent. The death certificate did not resolve these inconsistencies but instead exacerbated them and, when Mr. Clervoix was asked to provide an explanation, he did not do so. On the contrary, he insisted that the death occurred in the afternoon and, by implication, disputed the accuracy of the death certificate.

[25] In the circumstances, it was not unreasonable for the RAD to give little weight to the document.

B. *Reasonable for RAD to find omission of murderer's name from BOC Form undermined Mr. Clervoix's credibility*

[26] The omission of key elements from a claimant's account may lead to a negative credibility finding (*Tovar v Canada (Citizenship and Immigration)*, 2016 FC 598 at para 19).

[27] In this case, it was reasonable for the RAD to consider the identity of the murderer of Mr. Clervoix's father to be significant, and the failure to provide it was considered by the RAD in light of other inconsistencies in the evidence. It did not err in finding that the omission undermined Mr. Clervoix's credibility.

C. *RAD's subjective fear findings justified*

[28] The RAD found that Mr. Clervoix's failure to (1) inquire into the status of his asylum claim in the United States between 2006 and 2010 and (2) obtain evidence from family members to corroborate his account was inconsistent with his alleged fear of being removed to Haiti. This, in turn, undermined his credibility.

[29] Mr. Clervoix submits that it was unreasonable for the RAD to conclude that his failure to follow up on his legal status in the United States between 2006 and 2010 undermined his credibility. He argues that the RAD erred in concluding that his asylum claim in the United States had been rejected. He submits that the documentary evidence shows that an initial denial of his claim was not "a denial of [his] asylum application" and that his testimony at the RPD hearing showed that he had not been removed from the United States between 2006 and 2010 when he was granted temporary protected status. He also submits that it was unreasonable for the RAD to conclude that the lack of corroborating evidence from his family members undermined his credibility. He argues that evidence corroborating a claimant's account is not determinative of credibility.

[30] I am not persuaded. In *Kayode v Canada (Citizenship and Immigration)*, 2019 FC 495 [Kayode], Justice Norris concluded that a genuinely fearful claimant can be expected to seek protection at the first opportunity and that a failure to do so may undermine their subjective fear (at para 29). I am of the opinion that a failure to seek information or clarification regarding one's status following an initial negative decision may also be considered inconsistent with a claimant having a genuine fear. In both cases, "[t]he governing question is: Did the claimant act in a way that is consistent with the fear of persecution he or she claims to have?" (Kayode at para 29).

[31] In this case, the record indicates that his asylum claim was initially denied and that a proceeding before a judge was subsequently scheduled. Despite these circumstances, Mr. Clervoix testified that he was unaware of his status between 2006 and 2010 and that he had made no inquiries to determine his status. In the circumstances, it was not unreasonable for the RAD to conclude that his conduct was inconsistent with his fear of persecution should he be removed to Haiti.

[32] I agree with Mr. Clervoix that the RAD appears to have erroneously accepted the RPD's characterization of the letter of May 1, 2006, from American immigration officials as a final denial of the claimant's American asylum claim. However, I do not believe that this error undermines the RAD's finding as to Mr. Clervoix's subjective fear so as to make the finding unreasonable. The RAD did not misunderstand the effect of the letter of May 2006—the letter states that Mr. Clervoix's asylum claim in the United States was not granted initially. Moreover, the error does not call into question the logic on which the SAR based its decision, a series of negative credibility findings that cumulatively indicate a lack of credibility on the part of

Mr. Clervoix. A peripheral error such as this is not sufficient to make the decision unreasonable (*Vavilov* at para 100).

[33] With respect to the lack of corroborating evidence, it is established case law that, if there is already reason to doubt a claimant's credibility, a lack of corroborating evidence may further undermine the claimant's credibility:

It is well established that a panel cannot make negative inferences solely from the fact that a refugee claimant failed to produce any extrinsic documents to corroborate a claim. But where there are valid reasons to doubt a claimant's credibility, a failure to provide corroborating documentation is a proper consideration for a panel if the Board does not accept the applicant's explanation for failing to produce that evidence (*Amarapala v Canada (Minister of Citizenship and Immigration)*, 2004 FC 12 at para 10 citing *Singh v Canada (Minister of Citizenship and Immigration)*, 2003 FC 556 at para 9).

[34] The RAD properly considered Mr. Clervoix's conduct with respect to his status in the United States between 2006 and 2010 and the lack of corroborating evidence in this case.

VI. Conclusion

[35] The application for judicial review is dismissed. There is no question of general importance to be certified.

JUDGMENT in IMM-6339-19

THIS COURT'S JUDGMENT is as follows:

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

“Patrick Gleeson”

Judge

Certified true translation
Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6339-19

STYLE OF CAUSE: KERVENS CLERVOIX, GINIA FLEURIMONT,
JANNESON FLEURIMONT, KERBI JERRY
CLERVOIX, ISAIAH JAY CLERVOIX v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MATTER HEARD BY ZOOM VIDEO CONFERENCE
FROM MONTRÉAL, QUEBEC

DATE OF HEARING: DECEMBER 4, 2020

JUDGMENT AND REASONS: GLEESON J.

DATED: DECEMBER 14, 2020

APPEARANCES:

Claudette Menghile FOR THE APPLICANTS

Chantal Chatmajian FOR THE RESPONDENT

SOLICITORS OF RECORD:

Claudette Menghile FOR THE APPLICANTS
Montréal, Quebec

Attorney General of Canada FOR THE RESPONDENT
Montréal, Quebec