Federal Court  Cour fédérale

Date: 20210323

Docket: IMM-6946-19

Citation: 2021 FC 249

Ottawa, Ontario, March 23, 2021

PRESENT: Mr. Justice McHaffie

BETWEEN:

WILDOOD MATHIEU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Wildood Mathieu left Haiti in the wake of two attacks by men wearing Parti Haïtien Tèt Kale (PHTK) political party T-shirts. He sought refugee protection in Canada, alleging the men were trying to make him surrender title to land he was taking care of for his nephew, and that they would kill him should he return to Haiti. The Refugee Appeal Division (RAD) concluded Mr. Mathieu had not established the men were associated with the PHTK or the Haitian

government, or that they had the ability or motivation to track him down anywhere in the country. It found Mr. Mathieu had an internal flight alternative (IFA) in Haiti, and was therefore not a Convention refugee or a person in need of protection under sections 96 or 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] Mr. Mathieu seeks judicial review of the RAD's decision. He argues the decision was unreasonable in three main respects. First, he contends the RAD made unsupported plausibility findings. Second, he argues the RAD imposed too high a standard of proof on him to establish the identity of his attackers. Finally, he argues the RAD's finding he had not established his attackers were members of the PHTK was based on an unreasonable assessment of the evidence, including country condition evidence and that of corroborative witnesses, and failed to consider whether the attackers may have been members of another organized criminal gang.

[3] I conclude the RAD's decision was reasonable. The RAD applied the recognized test for the existence of an IFA, and reasonably considered the evidence before it. While Mr. Mathieu argues it was plausible the attackers were with the PHTK, his onus was to satisfy the RAD that he faced a serious possibility of persecution in the identified IFA locations. The RAD reasonably concluded that the evidence the attackers wore PHTK T-shirts was insufficient to show, on a balance of probabilities, they were affiliated with that party, or that they were motivated and able to pursue him throughout Haiti. It therefore reasonably concluded that he had not established he would face a serious possibility of persecution.

[4] The application for judicial review is therefore dismissed.

II. Issue and Standard of Review

[5] The only issue raised by Mr. Mathieu is whether the RAD erred in finding that he had an IFA within Haiti.

[6] As the parties agree, the RAD's IFA finding is reviewable on the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25. In performing reasonableness review, the Court focuses on the decision made by the administrative decision maker, assessing whether that decision shows the justification, transparency, and intelligibility required of a reasonable decision: *Vavilov* at paras 83–86. Where a decision has a particularly significant personal impact, it is of heightened importance that the decision be justified from the perspective of the individual affected: *Vavilov* at paras 86, 133–135.

[7] Mr. Mathieu had originally raised an issue of procedural fairness related to the availability of the transcript of his refugee hearing before the Refugee Protection Division (RPD). However, he advised in advance of the hearing of this application that he would not be relying on that ground.

III. Analysis

A. *The Test for an Internal Flight Alternative*

[8] If a refugee claimant can seek safety in their own country, they are expected to do so rather than seek refugee protection in Canada: *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA) at pp 592–593; *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) at p 710. The absence of an IFA—a place within the claimant's country of nationality where they may safely and reasonably relocate—is thus inherent in the definition of a Convention refugee under section 96 of the *IRPA*: *Thirunavukkarasu* at pp 592–593; *Velasquez v Canada (Citizenship and Immigration)*, 2010 FC 1201 at para 15.

[9] Similarly, the definition of a person in need of protection under section 97 of the *IRPA* requires a claimant to face a risk of harm "in every part of that country": *Sanchez v Canada (Citizenship and Immigration)*, 2007 FCA 99 at para 16; *IRPA*, s 97(1)(*b*)(ii). The existence of a viable IFA is therefore determinative of a claim under either section 96 or section 97 of the *IRPA*, regardless of the merits of other aspects of the claim: *Barragan Gonzalez v Canada (Citizenship and Immigration)*, 2015 FC 502 at paras 45–46.

[10] To conclude there is a viable IFA, the RAD must be satisfied, on a balance of probabilities, that (1) the claimant will not be subject to persecution (on a "serious possibility" standard), or a section 97 danger or risk (on a "more likely than not" standard) in the proposed IFA; and (2) in all the circumstances, including circumstances particular to the claimant,

conditions in the IFA are such that it would not be unreasonable for them to seek refuge there *Thirunavukkarasu* at pp 595–97; *Hamdan v Canada (Immigration, Refugees and Citizenship),* 2017 FC 643 at paras 10–12. Both of these prongs must be satisfied to conclude a claimant has an IFA.

[11] The onus is on a refugee claimant to establish their claim, including the absence of an IFA, on a balance of probabilities. As a result, once a potential IFA has been identified, the claimant bears the burden of showing that at least one of the prongs of the IFA tests is not met: *Thirunavukkarasu* at p 594.

B. *The RAD's Findings*

[12] Mr. Mathieu's evidence was that he managed a farm owned by his nephew. In March 2017, he visited the farm to discover that a group of foreigners, accompanied by three well-armed Haitian men, were camping on the land without approval. The Haitians said the foreigners wanted to take over the land. Mr. Mathieu refused and demanded they leave. Two months later, the same group of men returned to the farm to offer him money to tell the foreigners that the Haitian men owned the land. When Mr. Mathieu again refused, he alleges the men went to his house in the evening and shot at it with machine guns.

[13] Another two months later, the same three men, two of whom were wearing PHTK T-shirts, kidnapped Mr. Mathieu, took him to the farm, and tortured and beat him. They tied him to a large tree and lit a fire, threatening to kill him if he did not give them the land title deed. When they left to seek gasoline and dry wood, a neighbour named Bony Paul rescued him. Mr. Mathieu

obtained medical care, then went into hiding before leaving for Florida and ultimately making his way to Canada, where he made a claim for refugee protection.

[14] The RAD considered whether Mr. Mathieu had a viable IFA in Cap Haitien or Les Cayes, two large cities several hours away from the island on which the attack at the nephew's farm occurred. In looking at the first prong of the IFA test, the RAD concluded Mr. Mathieu had not established the men were connected to the PHTK or the government of Haiti. The RAD found Mr. Mathieu's reliance on the men's T-shirts and the fact they were openly armed was insufficient to support his claim that the bandits were indeed members of the political party or connected to the government. It also noted that the fact that other members of Mr. Mathieu's family living on the same island had not been contacted or pursued, while not determinative, suggested that he was not being pursued by the bandits or that they were politically affiliated.

[15] As a result, the RAD concluded that even if Mr. Mathieu had established that he was the victim of a local attack, he had not established that his attackers had the ability or motivation to pursue him in Cap Haitien or Les Cayes. It therefore found Mr. Mathieu had not shown on a balance of probabilities that he faced a serious risk of persecution in those proposed IFA locations. In reaching this conclusion, the RAD considered supporting evidence filed by Mr. Mathieu's nephew and Mr. Paul. The RAD found the nephew's evidence of little help since he was in the United States during the alleged events. It concluded Mr. Paul's evidence provided no connection between the attackers and the PHTK beyond the T-shirts. It also found Mr. Paul's statement that the bandits were still asking after Mr. Mathieu implausible given Mr. Mathieu's

evidence that his family members had not been contacted and the country condition evidence that assailants principally find victims via word-of-mouth in the victim's neighbourhood.

[16] The RAD found the second prong of the IFA test was satisfied as well, as it would not be unreasonable in the circumstances for Mr. Mathieu to move to one of the identified IFA cities. None of Mr. Mathieu's arguments on this application for judicial review challenge the RAD's finding on the second prong.

C. *The RAD's Decision was Reasonable*

(1) The RAD's findings of insufficiency of evidence and implausibility were reasonable

[17] Mr. Mathieu argues the RAD's finding amounted to a conclusion it was implausible the men were affiliated with the PHTK. Citing Justice Diner's decision in *Wamahoro*, Mr. Mathieu argues this implausibility finding was unreasonable since it was not supported by the evidence and that implausibility findings should only be made in the "clearest of cases": *Wamahoro v Canada (Citizenship and Immigration)*, 2015 FC 889 at paras 23–29.

[18] I disagree that the RAD's overall finding that Mr. Mathieu had not shown the men to be affiliated with the PHTK was a plausibility finding. Rather, the RAD's conclusion was that there was insufficient evidence to connect the men with the PHTK or the government. The only evidence Mr. Mathieu relied on to establish the connection was the T-shirts worn by two of the men and the fact that they were armed with machine guns. Mr. Mathieu's evidence was that "often times in Haiti when someone is wearing a T-shirt it means that they are affiliated with the

political party." The RAD was not satisfied that this was sufficient to establish on a balance of probabilities that the men were affiliated with the PHTK or the government. This is not in my view a conclusion that it was implausible that they were affiliated with the PHTK, simply that it had not been shown on the applicable standard that they were.

[19] The RAD did make one plausibility finding in the course of assessing the evidence. Mr. Paul asserted in an October 2018 email that the bandits were continuing to search for Mr. Mathieu. The RAD found this allegation implausible given that Mr. Mathieu had testified that none of his five family members living on the island had had any problems or contact with the bandits. In my view, this plausibility finding was reasonable.

[20] This Court has confirmed that the credibility of evidence can be assessed on its plausibility. However, the decision maker must exercise caution in making plausibility findings given the potential for implicitly applying Western paradigms in such an assessment, or for finding facts implausible simply because they are unlikely. In the oft-cited case of *Valtchev*, Justice Muldoon summarized these concerns: *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at paras 6–7, citing L. Waldman, *Immigration Law and Practice*, (Markham: Butterworths Canada Ltd, 1992) at §8.22. Justice Muldoon adopted the "clearest of cases" standard referred to by Justice Diner in *Wamahoro*, outlining two situations that could meet that description:

> A tribunal may make adverse findings of credibility based on the implausibility of an applicant's story provided the inferences drawn can be reasonably said to exist. However, plausibility findings should be made only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that

> the events could not have happened in the manner asserted by the claimant. A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu.
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> [Emphasis added; *Valtchev* at para 7.]

[21] The RAD's plausibility finding pointed out the inconsistency between Mr. Paul's evidence that bandits had been actively looking for Mr. Mathieu and Mr. Mathieu's evidence that his family members had had no contact from the bandits. Mr. Paul's email to Mr. Mathieu claimed the bandits "continue to search and look for you" and were "collecting information about you, asking anyone in our locality if they are aware of your news concerning your whereabouts" [emphasis added]. The RAD effectively found this to be implausible as no inquiries at all had been made of Mr. Mathieu's family members in that locality. In my view, such a finding does not require reference to particular country condition evidence. Rather, it is in the first category described in *Valtchev*, namely facts that are "outside the realm of what could reasonably be expected." In my view, this was a reasonable conclusion given the evidence in question.

[22] I agree with the Minister that this makes the situation different from that in *Wamahoro*. There, the decision maker had relied on specialized knowledge in concluding that a militia group would not seek out a group of musicians: *Wamahoro* at paras 4–9. In this context, Justice Diner found that it was unfair to rely on specialized knowledge that was not disclosed to the applicant, and that conclusions about whom the militia group would recruit should not have been made without reference to the evidence: *Wamahoro* at paras 23–29. In the present case, the RAD

neither relied on undisclosed specialized knowledge, nor made a particular finding about the PHTK's practices. Rather, it found Mr. Paul's allegations of widespread inquiries to be inconsistent with, or implausible in light of, Mr. Mathieu's evidence that his family had not been contacted.

(2) The RAD applied the correct standard of proof

[23] Mr. Mathieu also argues the RAD put him to a higher standard of proof than is required to establish a refugee claim. He concedes that the RAD correctly stated that it must be satisfied on a balance of probabilities that there is no serious possibility of persecution: *Adjei v Canada (Minister of Employment and Immigration)*, [1989] 2 FC 680 at pp 682–683. However, Mr. Mathieu alleges the RAD actually applied a much higher standard by requiring him to conclusively prove his attackers were associated with the PHTK. I cannot agree. While the RAD pointed to the limited evidence connecting the bandits to the PHTK, there is no indication the RAD applied a higher standard than a serious possibility of persecution. To the contrary, the RAD repeatedly referenced the serious possibility standard and applied it in assessing whether Mr. Mathieu had shown that he would be at risk of persecution in Cap Haitien or Les Cayes.

[24] Contrary to Mr. Mathieu's assertion, it was not incumbent on the RAD to offer evidence of any more probable interpretation of the evidence than that the bandits were associated with the PHTK or the government. The onus remained on Mr. Mathieu to establish his refugee claim, including that he was unable to find safe refuge in Cap Haitien or Les Cayes. He sought to establish this by showing that his attackers were PHTK-affiliated or otherwise connected with the government, and that they could therefore track him down anywhere in the country. It was

open to the RAD to conclude that Mr. Mathieu had not met his burden in this regard, without making conclusions about alternative scenarios. While I appreciate there may be circumstances in which the facts or evidence may point to only one possible or reasonable inference, I do not accept that the evidence Mr. Mathieu put forward—that the men were well armed and two of them wore PHTK T-shirts—was of such a nature.

[25] Nor do I accept Mr. Mathieu's argument that the RAD's reference to his not knowing the bandits' names effectively put him to a standard of having to identify his attackers by name before his refugee claim would be accepted. There is no indication the RAD required such identification. Rather, the RAD assessed the entirety of Mr. Mathieu's evidence regarding the attackers to assess whether he had established they were motivated and able to pursue him to the proposed IFA locations. The observation that Mr. Mathieu did not know who the men were was made in the context of their means and motivation to locate him and did not put him to an inappropriate standard of proof. Mr. Mathieu did not point to any personal or local knowledge about the men, or anything that would connect them with the PHTK beyond their dress and weapons. In this regard, his evidence can be distinguished from that in *Selvarajah*, a case Mr. Mathieu relies on, where it was a matter of local knowledge that the gang that attacked the claimant was connected to the state: *Selvarajah v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 532 (CA) at paras 5, 9.

[26] In essence, Mr. Mathieu's argument is that the RAD was required to accept the men's T-shirts, machine guns, and brazen conduct as sufficient evidence to infer they were affiliated with the PHTK or the government. Such inferences are at the heart of the RAD's fact-finding

mandate, and this Court should not interfere with the RAD's assessment of the evidence absent exceptional circumstances: *Vavilov* at para 125. The RAD assessed the evidence of the men's appearance and conduct in light of the other evidence, including the evidence that other family members in the area had not been contacted, and concluded it was not satisfied that the attackers were affiliated with the party or the government. In my view, this conclusion was open to the RAD and was not unreasonable.

(3) The RAD's assessment of the evidence was reasonable

[27] Mr. Mathieu argues the RAD erred in its assessment of the evidence that supported his claim, including the corroborative evidence filed by his neighbour Mr. Paul, certain country condition evidence, and his own evidence about the men. I conclude the RAD's assessment of the evidence was reasonable and the conclusions it drew from that evidence were transparent, intelligible, and justified.

[28] At the conclusion of its assessment of Mr. Paul's evidence, the RAD noted that "the email was sent via a Gmail account with no other supportive documentation such as copies of Bony Paul's identification documents, and I give it less weight than I would accord a sworn statement or oral testimony." Mr. Mathieu argues, with reference to the decision of Justice Russell in *Paxi,* that there is no requirement that evidence be sworn and that it was unreasonable to question the reliability of the evidence on this basis: *Paxi v Canada (Citizenship and Immigration)*, 2016 FC 905 at para 52. Mr. Mathieu is correct that there is no requirement that evidence presented to the RPD or the RAD be sworn: *IRPA*, ss 170(*g*)–(*h*), 171(*a.2*)–(*a.3*). However, the RAD did not discount Mr. Paul's evidence simply because it was unsworn. Having

already concluded that the evidence was implausible and of limited assistance in linking the attackers to the PHTK, the RAD identified indicia—the email source and the lack of any identification—that led it to give the document less weight than sworn or oral testimony.

[29] I do not take *Paxi* to mean that the RAD must necessarily treat evidence given in any form with equal weight. To the contrary, the RAD has a mandate to assess whether evidence is "considered credible or trustworthy in the circumstances": *IRPA*, s 171(*a.3*). In *Paxi*, Justice Russell criticized the RPD for discounting an un-notarized letter without considering the "strong evidence of authenticity contained in the letter itself," including church letterhead and a telephone number that would have permitted the RPD to verify its authenticity: *Paxi* at para 52. In the present case, the evidence was presented in the form of an email with no contact information other than a Gmail address and no other confirmation of the witness's identity. The RAD did not simply discount it because it was not sworn or notarized. In my view, the RAD was entitled in the context to consider other indicia of the email's reliability when considering the weight to give it.

[30] Mr. Mathieu next argues that the RAD failed to assess his claim in the context of several news reports that indicate that land spoliation is a concern in Haiti, that some land theft involves connections with government officials, and that the ruling party in Haiti is corrupt. He argues that the identified association between forcible land appropriation and Members of Parliament is consistent with his allegations, and that it was unreasonable for the RAD to conclude that the evidence did not establish that the bandits were PHTK members without considering this evidentiary context. However, Mr. Mathieu did not raise these news reports in its arguments to

the RAD. The RAD considered and directly addressed the arguments and documentary evidence that Mr. Mathieu did raise before it, including identified portions of the National Documentation Package for Haiti. I cannot fault the RAD for not addressing portions of the documentary record before the RPD that were not the subject of submissions before it: *Vavilov* at paras 125–128; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC), at para 16.

[31] In any event, having reviewed the articles referenced by Mr. Mathieu, I cannot conclude that they are of material assistance to his claim. The articles include allegations of corruption and concerns about criminal records of candidates for legislative office, as well as evidence of land appropriation being connected with members of the government in official cars and with police vehicles. They do not, however, indicate that all crime related to land theft is necessarily connected with the government or with organized crime as Mr. Mathieu implies. Nor do they describe factual scenarios that parallel Mr. Mathieu's narrative. The evidentiary connections Mr. Mathieu wishes to draw based on these documents—between allegations of corruption against the PHTK, reports of government involvement in land theft, and his own allegation that the three men who attacked him are associated in some way with the PHTK—are too tenuous to ground an argument that the RAD's conclusions were unreasonable.

[32] Finally, Mr. Mathieu argues the RAD failed to consider whether the bandits were part of another criminal organization that could track him down in the proposed IFA, even if they were not with the PHTK. He argues his own evidence of the men's use of machine guns and their conduct in trying to force him to turn over a deed to the land indicates they were members of an

organized criminal gang. He makes reference to the characteristics of such a criminal organization set out in *Sittampalam v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 326 at para 39.

[33] I cannot accept this argument. I agree with the Minister that *Sittampalam*, which addressed whether a criminal enterprise fell within the definition of an organization for purposes of subsection 37(1) of the *IRPA*, has no application. What was relevant for the RAD was not whether the attackers Mr. Mathieu described were members of a criminal organization for purposes of subsection 37(1), but whether he had shown he would face a serious possibility of persecution in Cap Haitien or Les Cayes. Further, Mr. Mathieu's argument to the RPD and to the RAD was that his attackers were PHTK members who were looking for him and could find him throughout Haiti. It was not incumbent on the RAD to consider other arguments or theories that were not raised by Mr. Mathieu, such as the attackers being members of some other unidentified gang who might also have sufficient connections to locate him in the IFA locations: *Vavilov* at paras 127–128.

IV. Conclusion

[34] Mr. Mathieu has not satisfied me that the RAD's reasoning or its assessment of the evidence was unreasonable. The RAD applied the established test for the assessment of a viable IFA and concluded that Mr. Mathieu had not met his burden of showing he faces a serious possibility of persecution in the proposed IFA locations. In my view, that finding was open to the RAD. Ultimately, Mr. Mathieu's arguments amount largely to a request that this Court reassess

the evidence and reach its own conclusions. That is not the role of this Court on judicial review: *Vavilov* at para 125.

[35] The application for judicial review is therefore dismissed.

[36] The Minister proposed a question for certification related to the fairness ground that was initially raised by Mr. Mathieu. That question became moot when Mr. Mathieu withdrew that ground of argument. No other question for certification was raised, and I agree that no question for certification arises.

JUDGMENT IN IMM-6946-19

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6946-19
STYLE OF CAUSE:	WILDOOD MATHIEU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

HEARING HELD BY VIDEOCONFERENCE ON JANUARY 11, 2021 FROM OTTAWA, ONTARIO (COURT) AND TORONTO, ONTARIO (PARTIES)

JUDGMENT AND REASONS:	MCHAFFIE J.
DATED:	MARCH 23, 2021

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