Federal Court Cour fédérale

Date: 20210512

Docket: IMM-4059-20

Citation: 2021 FC 437

[ENGLISH TRANSLATION]

Montréal, Quebec, May 12, 2021

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

DIEULA DUROSEAU CALIXTE

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

<u>JUDGMENT AND REASONS</u>

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a decision dated August 19, 2020, of the Refugee Appeal Division [RAD] confirming a decision of the Refugee Protection Division [RPD] dated May 10, 2019, denying the applicant's refugee protection claim.

[2] For the reasons that follow, the RAD's decision is reasonable. There is no need to intervene in this case.

I. Factual background

[3] The applicant is a citizen of Haiti. She fears that associates of the political party Fanmi Lavalas [the assailants] will attack her because in March 2002 she refused to pay them a sum of money; following this refusal, the assailants destroyed her business with a bulldozer. In May 2002, they also entered her residence to attack her. As a result, in July 2002, the applicant left her country for the United States, leaving behind her two minor children; she lived there until August 2017. That said, she briefly returned to Haiti in 2016 for a 10-day stay on the occasion of her son's wedding. She entered Canada in August 2017 and filed a refugee protection claim, which was amended to state, among other things, that the assailants had targeted her because she is a single woman, has no protection, and cannot defend herself.

II. Rejected refugee protection claim and consequent appeal

[4] The refugee protection claim is indeed directly related to two of the grounds of persecution mentioned in the Convention. It remains to be seen whether the applicant's fear of persecution is based on either her imputed political opinion, or on her membership in a particular social group (women from Haiti) because of her gender. The RPD did not question the general credibility of the applicant's account of the events of 2002. Nevertheless, the RPD determined that the applicant failed to establish that there is now a serious possibility that she would be persecuted under one of the Convention grounds (section 96 of the IRPA). She also failed to show, on a balance of probabilities, that if she were to return to Haiti, she would be personally

exposed to a danger of torture, a risk to her life, or a risk of cruel and unusual treatment or punishment (section 97 of the IRPA).

[5] Regarding imputed political opinion, the RPD found that the applicant did not demonstrate a prospective fear of persecution should she return to Haiti: it has been 15 years since the events took place; the applicant's children (now of age) have not received any threats or experienced any particular problems since her departure; the assailants do not appear to be looking for the applicant and she has offered no evidence that they are still looking for her; and finally, the Fanmi Lavalas party does not appear to have much power in Haiti at this time. The RPD, recognizing that violence against women exists and is problematic in Haiti, nonetheless determined that the applicant failed to demonstrate a reasonable fear of persecution based on her membership in the particular social group of "women in Haiti". Although it is difficult for a woman to find housing and employment without family support and protection, the applicant is not in the latter situation: she is not alone since she is surrounded by her adult children, including her son who has a home and a decent job in Haiti. Moreover, before the RPD, the applicant did not present any evidence showing that it would not be possible for the applicant to reside with her son and for him to provide for her. On the other hand, the documentary evidence suggests that it is easier for a single woman to find a job in an urban area than in a rural area. The applicant also speaks Creole and her children can offer her support in finding work. For these reasons, the panel concluded that the applicant does not have a reasonable fear of persecution because of her membership in the particular social group of women in Haiti.

[6] In turn, after analyzing the file and re-evaluating all of the evidence, the RAD concluded that there was no basis for intervention. At the outset, the RAD refused to admit the new evidence submitted by the applicant, including the letter from the applicant's son and a letter from the applicant's son's employer, as these documents are normally available and the applicant should have submitted them to the RPD. The RAD rejected the applicant's explanation that she believed her testimony was sufficient. Its role is not to provide an opportunity to supplement deficient evidence before the RPD, but rather to allow errors of fact, law or mixed fact and law to be corrected.

[7] Ruling on the merits of her appeal and refugee protection claim, the RAD found that the RPD did not err in finding that the applicant's travel to Haiti in July 2016 is inconsistent with the subjective fear and risk alleged. Based on the fact that more than fifteen years have passed since the events of 2002, that the applicant's family members have not been bothered or contacted by her assailants, and based on the documentary evidence, the RAD in turn determined that the RPD did not err in finding that the applicant's fear is not objectively well founded and that there is an absence of prospective risk. As for the existence of a reasonable fear of persecution based on her membership in the particular social group of women in Haiti, based on the reasoning of this Court in *Josile v Canada (Citizenship and Immigration)*, 2011 FC 39 [*Josile*], the RAD found that the RPD did indeed consider the applicant's personal circumstances, including her family environment, and did not err in this regard. The RAD noted that the applicant has the benefit of a family circle, consisting of her daughter and adult son, that she is an educated woman with professional training in typography and English, that she was a successful businesswoman who has managed on her own since the death of her husband in 1993, that she is very resourceful and

that she speaks French, English and Creole. The RAD therefore concluded that the applicant has not demonstrated that she would be alone and unable to support herself, and therefore, has not demonstrated that she would be at risk of persecution because of her membership in the particular social group of women in Haiti.

III. Analysis

[8] On numerous occasions since the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], this Court has applied the standard of reasonableness to RAD decisions dismissing appeals. Reasonableness must be based on an internally coherent chain of analysis that is rational and justified in light of the legal and factual constraints to which the decision maker is subject. Unless there are exceptional circumstances, this Court must not interfere with the panel's factual findings (*Vavilov* at para 125).

[9] In this case, the applicant did not challenge the findings of the RPD and the RAD on the absence of prospective risk that may arise from her imputed political opinion. The assessment errors raised by the applicant relate exclusively to the examination of her fear of persecution because of her membership in the particular social group of women in Haiti. She submitted that it was unreasonable for the RPD and the RAD to ignore her testimony and explanations, since there is no evidence in the file to show that the applicant could actually reside with her son or seek his protection. In the alternative, the applicant submitted that the RAD's application of subsection 110(4) of the IRPA—that is, the refusal to admit new documents into evidence—is unreasonable because the applicant could not normally expect the RPD to base its refusal on the

possibility that her son could accommodate her. Finally, the applicant submitted that the RPD's and the RAD's approach distorts this Court's decision in *Josile*. The applicant submitted that the RAD and the RPD erroneously considered whether there was a man in the applicant's entourage to protect her, while there was not really a rigorous examination of the applicant's personal circumstances.

[10] The applicant has not satisfied me that a reviewable and determinative error, affecting the validity of the finding of dismissal of the appeal, was made by the RAD. In this case, the decision under review is reasonable as a whole. In this regard, I accept the arguments for dismissal raised by the respondent in the written and oral submissions of its counsel. I would add the following.

[11] First, both the RPD and the RAD specifically acknowledge that violence against women is a widespread problem in Haiti and that it is difficult for a woman to find housing and employment without family support and protection. Nevertheless, this observation is not sufficient, in itself, to grant a woman, even a single woman, refugee status. A rigorous examination of a claimant's particular circumstances is also required to determine whether there is "more than a mere possibility" that the claimant is at risk of suffering the recognized harm (*Josile* at para 36). In this case, the RPD and RAD did just that. In particular, the RAD could reasonably conclude that the RPD had relied on the evidence on file and had indeed considered the applicant's personal circumstances. It is clear that in their analysis of the applicant's socio-economic situation in the event of a return to Haiti, both the RPD and RAD considered many relevant elements: the applicant's family circle (composed of her adult daughter and son

with whom she remains in regular contact); her professional training in typography and English; the fact that she is a successful businesswoman who used to own a business in her country; and her ability to take care of her children and provide for herself since the death of her husband in 1993. The RAD and RPD further noted that the applicant speaks French, English and Creole and has demonstrated great resourcefulness in the past by completing her education in the United States and working as a nurse's aide there, enabling her to support herself and her children. Although the applicant considers it inconvenient for her to go live with her son, there is no evidence that she will be left destitute and unprotected in Haiti. The RAD could therefore reasonably conclude that the evidence in the file was not sufficient to give rise to a reasonable fear of persecution because of her membership in the particular social group of women in Haiti.

[12] Second, the refusal to admit the new evidence is also reasonable. The burden was solely on the applicant to provide compelling evidence in support of her allegations before the RPD. As the Federal Court stated in *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at paragraph 54, the role of the RAD is not to provide an opportunity to supplement deficient evidence before the RPD, but rather to allow errors of fact, law or mixed fact and law to be corrected. The applicant's alternative argument must therefore also be rejected.

[13] Third, the RAD did not mischaracterize the decision of this Court in *Josile*. The RAD did not look for a male relative of the applicant to come forward and protect her; it simply concluded that the applicant's son, with whom she speaks on a daily basis, would reasonably be able to offer her protection if she needed it. Contrary to the applicant's allegation, the RAD did not rely on a stereotype. The documentary evidence shows that support for women comes primarily from

the family, the community and the diaspora, and that mutual aid and solidarity are part of the customs, which is in the domain of objective evidence. At the risk of repeating myself, I am satisfied that the RAD proceeded with a rigorous examination of the personal circumstances of the applicant. This last argument of the applicant must also be rejected by the Court.

IV. Conclusion

[14] The application for judicial review is dismissed. No question of general importance was raised by counsel, and none arise in this case.

JUDGMENT in IMM-4059-20

THE COURT'S JUDGMENT is that the application for judicial review is dismissed.

No question of general importance is certified.

"Luc Martineau"
Judge

Certified true translation
Michael Palles, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4059-20
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