Federal Court  Cour fédérale

Date: 20210604

Docket: IMM-6078-19

Citation: 2021 FC 547

[ENGLISH TRANSLATION]

Ottawa, Ontario, June 4, 2021

Present: The Honourable Madam Justice Roussel

BETWEEN:

FRANCESCAR DAMAS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The applicant, Francesca Damas, is a citizen of Haiti. She is inadmissible on grounds of serious criminality under paragraph 36(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], having been convicted of child abduction. A deportation order was issued against her on June 4, 2019. On June 19, 2019, she filed an application for a pre-removal risk

assessment [PRRA], as her claim for refugee protection had been determined to be ineligible under paragraph 112(3)(b) of the IRPA.

[2] On August 5, 2019, a PRRA officer rejected the application on the grounds that the applicant had failed to submit any supporting evidence or allege any risk of return.

[3] On September 6, 2019, the applicant filed additional submissions and new documentation. She alleged that she feared returning to Brazil, where she lived from 2014 to 2016, because she would be persecuted by reason of her nationality. She also alleged that she feared returning to Haiti because of her membership in the particular social group of single mothers living alone. Moreover, she stated that she feared the criminals who had killed her parents for political reasons in 2009 and 2011 and who had raped her and threatened to kill her. In addition to her written submissions, the applicant produced various documents on the general conditions in Haiti and, more specifically, the situation of women living alone, as well as documentation on the status of minorities and Haitians in Brazil.

[4] After reassessing the case in light of the applicant’s new allegations and documentation, the officer upheld his decision, concluding that the applicant had failed to meet her burden of demonstrating that she would be subjected to risks set out in sections 96 and 97 of the IRPA if she were to return to Haiti. The amended decision was served on the applicant on December 5, 2019.

[5] The officer began by noting that humanitarian and compassionate considerations cannot be considered in a PRRA and that, despite a request to withdraw the plea on the child abduction offence, the applicant remained inadmissible at the time of the review. The officer then pointed out that the applicant had not provided any personalized evidence to support the allegations in her account regarding her fear of the criminals who had allegedly killed her parents and raped and threatened her. Given the lack of evidence, the officer concluded that the applicant had failed to establish her allegations of risk. As for her fear as a single mother, the agent acknowledged that conditions for women in Haiti were not perfect and that gender-based violence continued to be a problem. However, the officer was of the opinion that the applicant had failed to demonstrate that her situation was similar to that of vulnerable women and that she would be subjected to risks if she were to return to Haiti. Lastly, the officer concluded that it was not relevant to assess the risk of return to Brazil because the applicant had no status in that country.

[6] The applicant seeks judicial review of the decision. In particular, she criticizes the officer for requiring her to file personalized evidence to establish her profile as a person at risk. The applicant states that her family situation was explained to the officer and that he could not reasonably expect her to show that she had no family left in Haiti. Moreover, since she demonstrated that she is a member of the particular social group and that this group is being persecuted, the applicant submits that she has met her burden of proof. She also submits that the officer considered her application solely under section 97 of the IRPA, adding an additional degree of personalization of risk. He made a tacit determination regarding the applicant’s credibility.

II. Analysis

[7] The standard of review applicable to a PRRA officer's decision, including the officer's assessment of the evidence, is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16–17 [*Vavilov*]; *Mombeki v Canada (Citizenship and Immigration)*, 2020 FC 931 at para 8; *Ashkir v Canada (Citizenship and Immigration)*, 2020 FC 861 at para 11).

[8] When the reasonableness standard applies, the Court focuses on "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para 83). It must ask whether "the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99).

[9] The applicant's argument regarding the requirement for individualized evidence is without merit. The officer referred to the lack of personalized evidence as part of his analysis under section 97 of the IRPA. The applicant alleged that she feared criminals. She stated that she had been kidnapped and raped by criminals who threatened to kill her. It was also alleged that she had been taken to the hospital because of the injuries she sustained, and that she had filed a complaint with the police. Moreover, she stated that these criminals had killed her parents. The officer could reasonably have expected the applicant to submit evidence corroborating her account, such as her parents' death certificates, a police report, a medical report, or even an

affidavit from her grandmother who was taking care of her before she left Haiti in 2014. The applicant has not persuaded this Court that such evidence is “impossible” to obtain.

[10] Moreover, this Court cannot agree with the applicant’s argument that the analysis of her fear as a single mother is not intelligible. The officer did not analyze this fear under section 97 of the IRPA by adding, as she claims, an additional degree of personalization of risk. Rather, he analyzed this fear under section 96 of the IRPA.

[11] In his reasons, the officer acknowledged that gender-based violence continues to be a problem and that Haitian women could be victims of violence. He further stated that many of the violent crimes committed against Haitian women stem from the difficult conditions following the January 2010 earthquake. The officer noted, however, that these difficult circumstances are most prevalent in camps for internally displaced persons, as indicated by the documentary evidence. The officer was of the opinion that the applicant had failed to establish that her situation is similar to that of vulnerable women in such circumstances. In this regard, the officer noted that the applicant has family in Haiti, including relatives with whom she had lived before, and that she is adaptable, having been able to live in Brazil and travel through several countries before coming to the United States and Canada. The officer stated that the documentation submitted by the applicant indicates that single women in Haiti are able to work and find housing. He referred to documentary evidence stating that single women with children make up “the family unit in most cases”. With respect to the spousal abuse she allegedly suffered from her former spouse, the officer stated that the former spouse is reportedly in Canada and that the applicant had not raised any risk in relation to him. The officer concluded that the applicant had failed to

demonstrate that, based on her profile, she would be at risk if she were to return to Haiti. The applicant has failed to show that this conclusion is unreasonable in light of the record.

[12] Contrary to the applicant's submissions, the officer did not make a finding about her credibility. The officer rejected her application on the grounds that she failed to meet her burden under sections 96 and 97 of the IRPA.

[13] In conclusion, this Court is of the opinion that, when the PRRA officer's reasons are read holistically and contextually, they bear the hallmarks of reasonableness (*Vavilov* at paras 97, 99).

[14] For these reasons, the application for judicial review is dismissed. No question of general importance was submitted for certification, and the Court finds that this case does not raise any.

JUDGMENT in IMM-6078-19

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

Certified true translation
Michael Palles, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6078-19
STYLE OF CAUSE:	FRANCESCAR DAMAS v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	JUNE 3, 2021
JUDGMENT AND REASONS:	ROUSSEL J.
DATED:	JUNE 4, 2021

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