Federal Court  Cour fédérale

Date: 20211103

Docket: IMM-5210-20

Citation: 2021 FC 1176

[ENGLISH TRANSLATION]

Ottawa, Ontario, November 3, 2021

PRESENT: The Honourable Associate Chief Justice Gagné

BETWEEN:

JOHN HERVERY ALADIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] John Hervery Aladin, a 22-year-old Haitian, is seeking judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board. In a decision rendered on September 14, 2020, the RAD dismissed his appeal and confirmed the decision of

the Refugee Protection Board [RPB] to reject his claim for refugee protection on the ground that he failed to demonstrate that he would face a prospective risk if he were to return to Haiti.

[2] Mr. Aladin argues that the RAD erred in failing to take into account his testimony, which it found credible, and the documents filed in support of his claim. He also criticizes the RAD for basing its decision on the situation of his parents in Haiti, rather than on his personal situation.

II. Facts

[3] The applicant alleges that he and his older brother were kidnapped by members of a criminal group in December 2009. They were held and tortured over a period of seven days before they were eventually released after their parents paid a ransom.

[4] Despite the threats from members of the group, the applicant's father reported the incident to the Haitian police in January 2010.

[5] In March 2010, the applicant's family travelled to the United States. The applicant and his older brother stayed in the United States and received the temporary protection granted by the United States to victims of the January 2010 earthquake. The parents returned to Haiti with their youngest son and placed him in the care of a family friend.

[6] The applicant's parents operate a business in Haiti to support the family. Since the events of 2009, the applicant's father has been travelling regularly between Haiti and the United States to visit his sons.

[7] In August 2017, the temporary protection offered to the applicant by the United States was revoked, so he decided to come to Canada to claim refugee protection. That claim was rejected by the RPD, a decision that was subsequently confirmed by the RAD.

III. Impugned decision

[8] At the outset, the RAD indicated that it had applied the correctness standard and had performed an independent review of the record, including listening to the recording of the hearing before the RPD.

[9] The RAD found that while the RPD remained vague in its assessment of the risk of reprisal to the applicant, it nevertheless concluded that the RPD did consider that argument. This is evidenced by the RPD's reference to the objective documentation to support its findings in this regard.

[10] The RAD was of the view, however, that there was no evidence to conclude that the group members who participated in the applicant's kidnapping in 2009, when he was 10 years old, would still pose a threat to him today. The RAD acknowledged that the objective evidence demonstrates a certain revenge culture when a crime is reported to police authorities in Haiti. Nonetheless, it concluded that this risk, which fundamentally was primarily that of the applicant's father, was diminishing with the passage of time.

[11] Like the RPD, the RAD concluded that the evidence before it did support a finding that the applicant may have been targeted in 2009, but that there was no evidence that he or his family had been targeted since.

[12] As for the document indicating that the applicant's younger brother had been taken in charge by a family friend in July 2010, the RAD took this into consideration but added that there was no indication in the document that the "Prise en Charge" was motivated by security concerns, or that it is still in force today. In short, the document does not confirm any prospective risk the applicant would face today.

[13] Despite the allegation that the applicant's parents had been living in hiding in Haiti for the past 10 years, the RAD noted that they continued to operate their business, that the applicant's father regularly travelled to the United States and that the applicant was still in contact with him. In fact, he sent him certain documents to be produced before the RPD.

[14] As for the risk of being perceived as an individual who is affluent and of being persecuted on that ground upon his return to Haiti, the RAD noted that it was a generalized risk that did not apply to the applicant specifically.

[15] Although the applicant left Haiti at age 10, he still speaks Creole and could receive help from his parents in readapting to Haitian culture.

[16] The RAD therefore concluded that the applicant had not established that he would face a serious possibility of persecution, or a personal risk to his life or a risk of cruel and unusual treatment or punishment, or a danger of torture, if he were to return to Haiti. Based on this finding, the RAD found it unnecessary to consider the issue of possible state protection and that of an internal flight alternative.

IV. Issues and standard of review

[17] This application for judicial review raises the following issues:

A. *Did the RAD err in its assessment of the evidence?*

B. *Was the RAD required to conduct a state protection and/or internal flight alternative analysis?*

[18] The presumption of reasonableness review, as set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, applies in this case. Although this presumption can be rebutted where the rule of law requires that the standard of correctness be applied or where the legislature explicitly prescribes a specific standard of review or statutory appeal mechanism, neither exception applies in this case (*Vavilov* at paras 16–17, 23–25). The RAD's decision will therefore be reviewed on the reasonableness standard (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at paras 30–35).

V. Analysis

A. *Did the RAD err in its assessment of the evidence?*

[19] The fear alleged by the applicant lies in the fact that despite the warnings and threats received from the applicant's kidnappers, his father filed a complaint with the police in 2010. He alleges that as a result of this he would be personally subjected to revenge by his kidnappers.

[20] The applicant submits that in its assessment of the risk, the RAD only took into account a portion of the national documentation package on Haiti, ignoring excerpts where it is indicated that there is a revenge culture in that country and that victims who report criminals to the police are particularly targeted. The documentary evidence also corroborates that authorities are unable to offer adequate state protection for persons who, like him, are faced with such a threat.

[21] According to the applicant, the RAD placed too much emphasis on his parents' situation, without actually addressing his personal situation. In that regard, he submits that the RAD erred in taking into account the fact that his parents could have filed for asylum in the United States, choosing instead to return to Haiti and the fact that his father continued to travel to the United States over the past 10 years to conclude that the applicant and his family are not in danger in Haiti.

[22] Contrary to the RAD's findings, the applicant submits that he would face challenges if he were to return to Haiti, as he would depend on his parents, who live in hiding, for support, that he is not perfectly fluent in Creole and French, that he does not know the country very well and that he has not been back since he was 10 years old.

[23] With respect, I am of the view that each of the applicant's arguments is tantamount to asking the Court to reassess the evidence submitted and to substitute its own analysis for that of the RAD.

[24] However, a reviewing court owes considerable deference to the findings of an administrative decision maker where the applicable standard of review is reasonableness. The Court should only intervene where the decision under review as a whole is not "based on an internally coherent and rational chain of analysis" and is not "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85).

[25] The onus rests on refugee claimants to establish, on a balance of probabilities, that removal to their country of origin would subject them to a risk to their life or to a risk of cruel and unusual treatment or punishment. The risk must therefore be personalized, which means that said risk is not faced generally by other individuals in or from a refugee claimant's country of origin (*Prophète v Canada (Citizenship and Immigration)*, 2009 FCA 31 at para 3).

[26] The applicant is essentially arguing that the RAD erred in concluding that his removal to Haiti would not subject him to the threat of the criminal group that kidnapped him for ransom in 2009.

[27] First, contrary to what the applicant argues, the RAD did analyze the applicant's personal situation. Nevertheless, given the facts of this case, the RAD could not ignore the situation of the applicant's parents, particularly that of his father, who had paid a ransom and who had reported

the kidnappers to the police (although, as noted by the RAD, the applicant's father did not sign the report). The fact that the applicant's father continued to live in Haiti over the course of the 11 years following the report, continued to operate his business and regularly travelled between Haiti and the United States are certainly relevant factors in the analysis of the risk the applicant might face should he return to his country. In all those years, the applicant was either in the United States or in Canada. Unlike his parents, he was not exposed to the threat of his 2009 kidnappers. It was therefore not possible to analyze the effect of the passage of time—otherwise relevant—as far as he personally was concerned.

[28] It is also erroneous to contend that the RAD failed to take into account the documentary evidence concerning the revenge culture that exists in Haiti. The RAD took it into account in light of the evidence before it. It therefore concluded that the applicant failed to establish that he would face a serious possibility of persecution should he return to his country. It neither required definitive proof of the risk nor did it impose too high a burden on the applicant.

[29] I am therefore of the view that the Court's intervention is not required. The RAD's decision has proper reasons and the qualities that make a decision reasonable.

B. *Was the RAD required to conduct a state protection and/or internal flight alternative analysis?*

[30] The applicant argues that because it did not question his credibility, the RAD was required to assess the state protection that was offered to him and/or the possibility for him to find refuge in his own country.

[31] I disagree. Insofor as the applicant did not discharge his burden of demonstrating that he will face a prospective risk, the RAD was not required to perform that analysis. Its conclusion that the applicant is neither a Convention refugee nor a person in need of protection was therefore determinative of the applicant's claim (*Omoruan v Canada (Citizenship and Immigration)*, 2021 FC 153 at paras 26–28).

VI. Conclusion

[32] For these reasons, I am of the view that the RAD's decision is reasonable, and I dismiss the applicant's application for judicial review. The parties did not propose any question of general importance for certification, and no such question arises from the facts of this case.

JUDGMENT in IMM-5210-20

THIS COURT ORDERS AS FOLLOWS:

1. The application for judicial review is dismissed;

2. No question of general importance is certified.

"Jocelyne Gagné"
A.C.J.

Certified true translation
Johanna Kratz

FEDERAL COURT

SOLICITORS OF RECORD

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