

Federal Court



Cour fédérale

Date: 20220413

Docket: IMM-6595-20

Citation: 2022 FC 536

Ottawa, Ontario, April 13, 2022

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

**KESLY JEAN BAPTISTE
(A.K.A. KESLEY JEAN BAPTISTE)
GUILDA JOSEPH JEAN BAPTISTE
(A.K.A. GUILDA JOSEPH JEAN
BAPTISTE)
(A.K.A. GUELDA JEAN-BAPTISTE)
AUNDRE JOHNNATHAN JEAN BAPTIST**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicants seek judicial review of a decision of the Refugee Appeal Division [RAD], confirming the Refugee Protection Division [RPD] findings that they do not qualify for

protection under section 96 or section 97 of the *Immigration and Refugee Protection Act, SC* 2001, c 27 [IRPA].

[2] At the conclusion of the hearing, I indicated that the application would be dismissed with reasons to follow.

II. **Background**

[3] The Applicants, a couple and their son, sought protection from persecution in Haiti on the grounds of Mr. Jean Baptiste's political opinion, Ms. Jean Baptiste's gender, and collectively, as returnees to Haiti. A fourth member of the family, a daughter, also sought protection which was granted on the basis of her age and gender. She is not a party to this application.

[4] The Principal Applicant claimed to be involved in political events in Haiti between 2010 and 2011 which led to attacks at their home. The family relocated to another city for safety but say they were threatened again. In 2013 the mother and daughter fled to the Bahamas. The Principal Applicant followed in 2014 and the second child, the son, was born in the Bahamas in January 2015. The Principal Applicant was deported from the Bahamas to Haiti in February 2015. The mother and children then travelled to the United States with the intention of seeking asylum.

[5] The Principal Applicant claimed to continue his political activities in Haiti from 2015 to 2016. Upon being attacked at his mother's house, he also travelled to the United States. The

Principal Applicant filed an independent claim for asylum in the United States in September 2016. The family entered Canada in August 2017 and filed for protection here in October 2017.

[6] The RPD found the Applicants to be generally non-credible and dismissed the claim on this basis. These findings were based, in part, on counsel for the Minister's written submission. The Minister intervened in the matter to argue that the Principal Applicant misrepresented the time he spent in the Bahamas. Specifically, the Minister provided evidence that the Principal Applicant was residing in the Bahamas, applying for Bahamian passports, and applying for US visas in at least 2006, 2008, 2010, and 2014.

[7] The RPD found that the Applicants lived in the Bahamas while claiming to have been resident in Haiti. Having considered the evidence including a marriage certificate that contradicted their testimony, the RPD concluded that the Applicant had spent much of the period between 2006 and 2015 in the Bahamas. The evidence of political activity in Haiti was not considered credible. Letters submitted in support of the claim were found to be vague and lacking in necessary detail.

[8] On appeal, pursuant to s.110(4) of the *IRPA*, the Applicants sought to introduce new evidence, a copy of the Principal Applicant's mother's identity card, and requested an oral hearing pursuant to s. 110(6). The Member refused to admit the new evidence on the ground that it was not relevant and declined to convene an oral hearing.

[9] The RAD confirmed each of the RPD's substantive findings. It found that the Applicants did not face a personalized risk as returnees but one common to all residents of Haiti perceived to be wealthy. The Secondary Applicant did not have a profile which would place her within the category of vulnerable women. The RAD held that the RPD had appropriately applied the Gender Guidelines in considering the Secondary Applicant's personal circumstances.

[10] On its own assessment of the evidence, including the transcript of the RPD hearing, the RAD confirmed the RPD's credibility determination.

III. Issues and Standard of Review

[11] On the record before the Court and the written and oral submissions received on behalf of the Applicants, there is no basis upon which the Court could intervene on the RAD's findings with respect to personalized risk as returnees or on the gender of the Secondary Applicant.

[12] The determinative issue before this Court on review is whether the RAD's finding that the Principal Applicant failed to establish his political opinion is reasonable.

[13] The parties agree and so do I that the applicable standard of review is reasonableness per *Canada v Vavilov*, 2019 SCC 65.

IV. Analysis

[14] The Applicants submit that the RAD erred in reaching the conclusion that the Principal Applicant spent a substantial amount of time in the Bahamas between 2006 and 2016, and

therefore, did not credibly establish his risk of persecution based on his political opinion. They contend that even if the Principal Applicant was a resident of the Bahamas in 2006 and travelled there in 2008 and 2016 to apply for passports, that does not contradict his claim that he was an active member of the political party in Haiti from 2010 to 2016.

[15] Whether the Applicants were residents of the Bahamas as the relevant times as the Minister alleged, they were not forthcoming about the amount of time that they had spent there. The RAD did not solely rely on the Principal Applicant's presence in the Bahamas in 2006, 2008, 2010 and 2016 to undermine his claim that he was living and working in Haiti from 2010 to 2011 but on inconsistencies in his evidence and the documentary evidence. In arriving at this conclusion, the RAD Member considered the documents tendered in support of the Principal Applicant's claim which did not, as argued, establish that he was targeted for his political opinion as alleged. Moreover, the RAD's finding that the Principal Applicant lacked the profile to be at risk because of his political opinion is, in my view, unassailable.

V. **Conclusion**

[16] The RAD thoroughly and coherently considered the Principal Applicant's testimony and evidence in determining whether his claim of political persecution was made out. Applying the reasonableness standard of review, there is no basis for the Court's intervention.

[17] No serious questions of general importance were proposed and none will be certified.

JUDGMENT IN IMM-6595-20

THIS COURT'S JUDGMENT is that the application is dismissed. No questions are certified.

“Richard G. Mosley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6595-20

STYLE OF CAUSE: KESLY JEAN BAPTISTE
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V THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: HEARD VIA VIDEOCONFERENCE OTTAWA-
TORONTO

DATE OF HEARING: FEBRUARY 3, 2022

JUDGMENT AND REASONS: MOSLEY J.

DATED: APRIL 13, 2022

APPEARANCES:

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