

Federal Court



Cour fédérale

Date: 20231130

Docket: IMM-7819-22

Citation: 2023 FC 1608

[ENGLISH TRANSLATION REVISED BY THE AUTHOR]

Montréal, Quebec, November 30, 2023

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

**MARIE MICHELE CHARLES
LUCINEIDE CASIMIR CHARLES**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Delivered from the bench at Montréal, Quebec, November 30, 2023)

[1] Ms. Charles, a Haitian citizen, is seeking judicial review of a decision by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board [IRB]. The RAD found that Ms. Charles was excluded under Article 1E of the *Convention Relating to the Status of Refugees* because she has permanent resident status in Brazil.

[2] The Refugee Protection Division [RPD] of the IRB had initially allowed Ms. Charles's claim on the ground that she had a well-founded fear of persecution in Brazil, in particular because she was allegedly the victim of a knife attack in that country. The RAD allowed the Minister's appeal.

[3] In its reasons, the RAD first reviewed the test for exclusion under Article 1E as defined in *Zeng v Canada (Minister of Citizenship and Immigration)*, 2010 FCA 118 at paragraph 28, [2011] 4 FCR 3. It stated that it agreed with Ms. Charles's submission that in order to avoid the application of Article 1E, it is enough to show "a good reason to leave Brazil" even if that reason does not amount to a well-founded fear of persecution.

[4] Ms. Charles bases her application for judicial review on the remainder of the RAD's reasons. The RAD mentioned both the "good reason to leave" and the well-founded fear of persecution as the applicable test. Ms. Charles submits that the RAD contradicted itself by mentioning a test that was different from the one it had found was applicable.

[5] I agree that at first blush, the RAD's reasons may lead to confusion. However, at paragraph 37, the RAD states that Ms. Charles "has not established that she has good reason to leave Brazil and that there is no serious possibility of persecution in Brazil". Moreover, at paragraph 25, the RAD reviewed the knife attack and concluded that, in and of itself, it did not justify Ms. Charles's departure, which can be linked to the "good reason to leave" test.

[6] Therefore, the RAD expressed findings regarding the two tests that could be applied. The RAD could perhaps have explained more clearly that these were alternative findings. However, the lack of clarity on this does not render the decision unreasonable.

[7] In addition, Ms. Charles states that given the evidence, the RAD should have found that she had a good reason to leave Brazil. Ms. Charles did not show that the decision was unreasonable in this regard. She is essentially asking the Court to substitute its own assessment of the facts for that of the RAD, which is not the Court's role.

[8] I must note that I do not necessarily endorse the idea that it is sufficient to show a "good reason to leave" in order to avoid exclusion under Article 1E. This issue may be addressed in another case when it is a determining factor.

[9] For these reasons, Ms. Charles's application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. No question is certified.

“Sébastien Grammond”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7819-22

STYLE OF CAUSE: MARIE MICHELE CHARLES, LUCINEIDE
CASIMIR CHARLES v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: NOVEMBER 30, 2023

JUDGMENT AND REASONS: GRAMMOND J.

DATED: NOVEMBER 30, 2023

APPEARANCES:

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