Federal Court  Cour fédérale

Date: 20231212

Docket: IMM-10960-22
IMM-10963-22

Citation: 2023 FC 1677

Toronto, Ontario, December 12, 2023

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

Docket: IMM-10960-22

LAMARRE JEAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

AND BETWEEN:

Docket: IMM-10963-22

LAMARRE JEAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

JUDGMENT AND REASONS

I. Overview

[1] This Judgment and Reasons addresses applications for judicial review in two Court files, challenging two decisions dated October 20, 2022 by the same Senior Immigration Officer [Officer], based on materially identical reasoning [Decisions].

[2] In Court file IMM-10960-22, the Applicant challenges a decision by the Officer, which refused the Applicant's application for permanent residence from within Canada as a member of the spouse or common-law class, on the basis that the Applicant is inadmissible under subsection 35(1)(a) of the *Immigration Refugee Protection Act*, SC 2001, c 27 [IRPA] for having committed an act outside Canada that constitutes an offence referred to in sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*, SC 2000, c 24 [CAHWCA].

[3] In Court file IMM-10963-22, the Applicant challenges another decision by the Officer, which refused the Applicant's application for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds, again on the basis that the Applicant is inadmissible under subsection 35(1)(a) of the IRPA for having committed an act outside Canada that constitutes an offence referred to in sections 4 to 7 of the CAHWCA.

[4] As explained in greater detail below, these applications for judicial review are dismissed, because the Applicant's arguments do not undermine the reasonableness or procedural fairness of the Decisions.

II. **Background**

[5] In the Applicant's Memorandum of Fact and Law, he succinctly summarizes the political context to these applications as follows:

> Democratic President Jean-Bertrand Aristide was overthrown in Haiti's military coup on September 30, 1991. He was eventually restored to the presidency through the intervention of the American military on October 15, 1994. During the three years of Mr. Aristide's absence from power, Haiti's military controlled the police force and other security groups. This network of security forces repressed supporters of Mr. Aristide and his political party, Lavalas. In carrying out this repression, the military used civilians to gather information on anyone who was opposed to the military.

[6] The Applicant is a Haitian citizen who worked as a vendor of coal from 1992 to 1995 in the Cité Soleil neighbourhood of Port-au-Prince. During that period, the Applicant became an "Attaché", meaning that he worked unofficially for the government of the day controlled by General Cédras. After President Aristide returned to power, the Applicant left Haiti in 1997 and was subsequently joined by his spouse and children in the United States [US] where they made asylum claims, asserting fear of the Lavalas party based on the Applicant's previous role as an Attaché.

[7] The US asylum claims of the Applicant and his family were refused. They subsequently came to Canada in August 2007 and claimed refugee status here. The refugee claims of the

Applicant's wife and three Haitian-born children were ultimately accepted, but the Applicant's claim was refused, because in 2010 the Refugee Protection Division [RPD] found him to be excluded based on article 1(F)(a) of the *United Nations Convention Relating to the Status of Refugees*, concluding due to his role as an Attaché that there were serious reasons for considering that he had committed a crime against humanity [RPD Decision].

[8] The Applicant's spouse and children submitted an application for permanent residence, as members of the Convention refugee class, and included the Applicant as a family member in their application. Although his family members were granted permanent residence, the Applicant's application was refused in October 2012, as he was found to be inadmissible under subsection 35(1)(a) of the IRPA.

[9] In 2013, the Supreme Court of Canada released its decision in *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40 [*Ezokola*], which mandated a contribution-based approach to the analysis of complicity in the commission of war crimes and crimes against humanity. I understand it to be common ground between the parties that the RPD Decision did not conduct the complicity analysis that was later mandated by *Ezokola*. Rather, in accordance with the law of the day, the RPD found that there were serious reasons for considering that the Applicant was complicit in crimes against humanity committed by association.

[10] Subsequently, the Applicant submitted applications for permanent residence as a member of the spouse or common-law class and on H&C grounds. Concerns regarding his possible inadmissibility under section 35 of the IRPA were identified, and the Applicant was sent

procedural fairness letters informing him of his possible inadmissibility. Following the receipt of written submissions from the Applicant, the Officer performed security assessments and on that basis refused the Applicant's applications for permanent residence in the Decisions that are the subject of these applications for judicial review.

III. **Decisions under Review**

[11] Following a recitation of relevant background and legislative provisions, the Officer identified applicable jurisprudence, including the decision in *Ezokola*, and explained the manner in which the RPD Decision would influence the analysis as to whether there were reasonable grounds to believe that the Applicant was complicit in crimes against humanity. That is, the Officer would not rely on the RPD's findings as to complicity but, as required by subsection 15(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, would consider factual findings made by the RPD, which were not related to complicity, as conclusive findings of fact. (I do not understand the principles underlying that approach to be in dispute between the parties.)

[12] The Officer's analysis commenced with consideration of country condition evidence [CCE], as well as the Applicant's submissions including evidence in the form of a written declaration by Michelle Kershan, an expert on country conditions in Haiti [Kershan Declaration]. The Officer found Ms. Kershan's evidence consistent with the CCE in the use of the term "Attaché" to refer to persons who worked unofficially for the Haitian government in a number of capacities. The Officer also referred to the Applicant's own description of his role as an unpaid informant to the police to be consistent with the use of the word "Attaché" to refer to civilian

auxiliaries to the military or its police force during the period of the military government in Haiti.

[13] The Officer found the evidence showed that the purpose of the Attachés was to support the military's objective to instill fear in the population and repress civilians who supported Aristide. The Officer concluded there were reasonable grounds to believe the Attachés worked closely with the military and police from 1991 to 1994 and that they participated in the commission of widespread and systematic attacks against the Haitian population. The Officer was satisfied that the evidence showed the crimes perpetrated by the military, with the assistance of the police and paramilitary units such as the Attachés, rose to the level of crimes against humanity.

[14] The Officer then turned to analysis of the Applicant's involvement with the Attachés, based on previous declarations he had made. First, the Officer considered a document titled "Sworn personal affidavit of Lamarre Jean", signed on September 19, 1997, which had been filed in support of the Applicant's US asylum claim and was part of the evidence presented at his RPD hearing [US Document]. The US Document included statements that the Applicant was a member of an Attaché unit in support of the *de facto* government of General Cédras and that, as a member of the Attachés, he had to participate in the arrest and torture of many Aristide supporters shortly after the coup d'état of 1991.

[15] The Officer also considered the Applicant's Personal Information Form [PIF] dated August 26, 2007, which was submitted with his refugee claim in Canada, in which he described

his role as an Attaché as that of a mediator, involving reporting on Lavallas unrest, violence and crime in order that his neighbourhood could remain secure and calm. In relation to the Applicant's description of his role as that of a mediator, the Officer noted the RPD Decision's reference to the Applicant testifying that as a mediator he would call the police and report if something were happening in the area. However, the Applicant testified that, although a lot of things were happening in the neighbourhood, they did not take place near him and he therefore did not have to report anyone as there was no violence in his area. The Applicant also testified that he remained with the Attachés from 1992 to 1995.

[16] The Officer then referenced the Applicant's Schedule A Background/Declaration form [Declaration], signed on April 6, 2015, and submitted as part of his permanent resident application as a member of the family class, in which he described the refusal of his refugee claim in Canada as attributable to information in the US Document stating that he was part of a group in Haiti called the Attachés. In this Declaration, the Applicant raised concerns about the translation process that resulted in the US Document. The Applicant stated that he had no affiliation with the Attachés at all. Similarly, the Officer considered the Supplementary Information Humanitarian and Compassionate Considerations form, signed by the Applicant on April 6, 2015, in support of his H&C application, in which he stated that he was never involved with the Attachés.

[17] The Officer contrasted those statements with the Kershan Declaration in which Ms. Kershan stated that she interviewed the Applicant in July 2018 and that he declared that he served as an Attaché during the years following the coup against President Aristide. Further, the

Applicant's representative stated in August 2018 submissions that the Applicant was an Attaché insofar as he agreed to participate in information sharing with police authorities.

[18] The Officer concluded that the Applicant had made many contradictory statements regarding his involvement with the Attachés since arriving in Canada and, after analysing the statements, found that there were reasonable grounds to believe that the Applicant worked as an Attaché in the Cité Soleil neighbourhood in Haiti during the three years of the military junta from 1991 to 1993. (I note that, at the hearing of this application for judicial review, the Applicant's counsel confirmed that the Applicant does not contest this finding.)

[19] The remainder of each of the Decisions is devoted to two analyses, one of which assesses whether the Applicant was involved in the direct perpetration of crimes against humanity and another which employs the factors identified in *Ezokola* to assess the Applicant's complicity in crimes against humanity.

[20] The direct perpetration analysis focused significantly on the US Document and its treatment by the RPD. The Officer considered the Applicant's statement in a 2018 affidavit that he never arrested, tortured or participated in the ill-treatment of anyone, as well as his explanation that the statement in the US Document, that he had participated in such activities, was attributable to incorrect translation. However, the Officer took into account the RPD's statement that the Applicant testified the entire content of the US Document was correct with the exception that he participated in the arrest and torture of Aristide supporters. Further, the Applicant testified before the RPD that he sat down and spoke to the interpreter in creole and

that this person took note of what he said. The RPD found that the interpreter clearly understood the Applicant as they spoke to each other in the Applicant's language.

[21] The Officer gave significant weight to this finding of fact by the RPD and was not satisfied that the Applicant had established that the information in the US Document about his participation in the arrest and torture of Aristide supporters was incorrect because the interpreter did not understand him correctly.

[22] The Officer also considered the Applicant's counsel's submissions that the US Document is unreliable because it is "untranslated, unsworn, uncommissioned, and unnotarized." While noting that these elements can increase the reliability and credibility of a document, the Officer reasoned that they were not mandatory requirements for a document to be considered reliable and credible. The Officer also observed that, at the RPD hearing, the Applicant did not dispute the authenticity of the origin of the US Document and testified that the document was correct except for the section about him arresting and torturing Aristide supporters. Noting that the Applicant was the source of the information contained in the US Document, including many details of his narrative that were known only to him, the Officer concluded that the document was a credible source of information. The Officer also found that insufficient evidence had been presented to establish that the US Document was unreliable due to substandard translation services.

[23] Although the Applicant stated that the signature of the US Document was not his and submitted other documents showing his signature to support this submission, the Officer

observed that many of these documents did not have the printed name of the signatory and that one had the printed name of the Applicant's daughter. The Officer found that the fact that the signature on the US Document and the others submitted by the Applicant did not match was not persuasive evidence that he did not sign the US Document or that its content was inaccurate.

[24] Following consideration of letters of support submitted on behalf of the Applicant, to which the Officer afforded little weight, the Officer explained that significant weight was being given to the US Document. The Officer was not satisfied that the Applicant had demonstrated that his statements therein were inaccurate, and the Officer found those statements and the Applicant's subsequent fears when President Aristide returned to power to be consistent with the CCE. The Officer found reasonable grounds to believe that the statement in the US Document, that the Applicant participated in the arrest and torture of many Aristide supporters in Haiti, was correct. The Officer therefore found that there were reasonable grounds to believe that the Applicant directly participated in the arrest and torture of Aristide supporters and that these crimes amounted to crimes against humanity.

[25] In addition to that assessment of the Applicant's direct participation in crimes against humanity, the final portions of the Decisions set out the Officer's analysis, employing the *Ezokola* factors, as to whether the Applicant's involvement with the Attachés represented complicity in crimes against humanity. The Officer considered the size and nature of the relevant organization; the part of the organization with which the Applicant was most directly concerned; his position or rank in the organization; his duties and activities; the length of time he was in the

organization, particularly after acquiring knowledge of its crime or criminal purpose; and the method by which he was recruited and his opportunity to leave.

[26] Referencing *Ezokola*, the Officer observed that, in order to meet the legal test for complicity, an individual must have made a voluntary, significant and knowing contribution to the crime or criminal purpose of an organization. The Officer acknowledged the Applicant's counsel's submission that not all Attachés were violent and that there were nonviolent roles recruited for the provision of nothing more than information. However, the Officer found that the Applicant's role as an informant for the authorities represented a significant contribution, as the military and police relied on informants to persecute Aristide supporters and quash any expressions of political opinion in the population. The Officer noted that the repercussions of reporting someone to the authorities could be very serious, as the person reported or present at an event such as a union meeting or a demonstration, or their family members, could be beaten, arrested, imprisoned, disappeared, raped or tortured. The Officer observed that the CCE demonstrated that violent acts such as beatings and torture were not rare or unlikely events during the period the Applicant worked as an Attaché.

[27] Although the Applicant stated that he didn't report anyone to the police or military during his three years as an Attaché, because there were no troubles in his area, the Officer gave considerable weight to the RPD's conclusion that this testimony was not credible. The Officer also reasoned that the Applicant's statement that there was no trouble to report in Cité Soleil for a three year period was not consistent with the documentary evidence describing widespread violence and human rights abuses taking place in that neighbourhood during the Cédras regime.

The Officer was not satisfied that the Applicant never reported anyone to the police or military during his three years as an Attaché informant.

[28] The Officer found that the evidence supported that the Applicant was aware of the attacks against Aristide supporters by the Attachés, that he was aware that the Attachés were working for the military regime, and that he was aware that the objective of the military government was to suppress Lavalas unrest. The Officer concluded that the Applicant made a knowing contribution to the Attachés and the military in his role as an informant. Ultimately, the Officer found that the Applicant's role as an informant during the Cédras military rule represented a voluntary, knowing and significant contribution to the crimes and objectives of the Attachés, which were to support the military's repression of the Haitian population and eliminate political dissent through the use of violence and human rights abuses.

[29] Consequently, the Officer found that there were reasonable grounds to believe that the Applicant was inadmissible to Canada under subsection 35(1)(a) of the IRPA.

IV. **Issues and Standard of Review**

[30] The Applicant's submissions challenge the reasonableness and the procedural fairness of the Officer's analyses and conclusions both: (a) that the Applicant directly participated in crimes against humanity; and (b) that the Applicant was complicit in crimes against humanity.

[31] The parties agree (and I concur) that the merits of the Decisions are reviewable on the standard of reasonableness, while procedural fairness is reviewable on the standard of correctness.

V. **Analysis**

[32] Turning first to the Applicant's arguments surrounding the Officer's complicity analysis, and the requirement under *Ezokola* to show that an individual has made a voluntary, significant and knowing contribution to the crime or criminal purpose of an organization, I note that the Applicant is not challenging the Officer's conclusions surrounding the Applicant's voluntariness or knowledge. As the Applicant notes, the RPD made factual findings that he had knowledge of the violence and gross human rights violations committed by Attachés and that he freely joined the Attachés, which findings the Officer was obliged to treat as conclusive.

[33] However, in relation to whether the Applicant made a significant contribution to the crime or criminal purpose of the Attachés, he notes that the only finding made by the RPD was that he did report someone to the police for violence that occurred in his neighbourhood. He argues that the Decisions do not disclose a reasonable chain of reasoning from that factual finding to the Officer's conclusion that the Applicant's role as an informant for the authorities represented the required significant contribution.

[34] The Applicant's argument focuses significantly on the following paragraph in the Decisions:

> I find the applicant's role as an informant for the authorities represents a significant contribution. The military and police relied on informants to persecute Aristide supporters and quash any expressions of political opinions in the population. The repercussion of reporting someone or an event to the authorities could be very serious. The person reported, or present at an event, such as a union meeting or a demonstration, or their family members, could be beaten, arrested, imprisoned, disappear, raped, or tortured. The documentary evidence demonstrates these violent acts were not rare or unlikely events during the period the applicant worked as an Attaché.

[35] The Applicant argues that the reasoning in this paragraph is unintelligible, because the Officer did not make a finding that the Applicant reported on anyone attending a union meeting or demonstration. He submits that the Officer's conclusion as to the repercussions of such a report are based on the CCE and that it was not available to the Officer to rely on the CCE to speculate that the Applicant reported on a person or persons attending this sort of event. Alternatively, to the extent the reasoning in this paragraph is to be interpreted as including an implicit factual finding that the Applicant reported on attendance at a union meeting or a demonstration, he argues that this finding was made without any supporting evidence.

[36] I agree with the Respondent's submission that the above paragraph does not represent a finding that the Applicant reported on a union meeting or demonstration. Rather, the Officer's reasoning represents the use of examples, informed by the CCE, of circumstances in which informants among the Attachés caused serious and violent repercussions by reporting on the activities of Aristide supporters.

[37] Nor do I read this paragraph as demonstrating that the Officer relied solely on CCE to conclude that the Applicant was personally involved in activities that represented a significant contribution to the crimes or criminal purpose of the Attachés. In the course of considering the *Ezokola* factors and the subsequent assessment of the Applicant's contribution to the crimes and objectives of the Attachés and the military, the Officer accepted and relied on the Applicant's evidence that his role as an Attaché was to report to the authorities on Lavalas unrest, violence and crime. As the Respondent notes and the Officer observes in the Decisions, the Applicant stated this role in the PIF that he submitted in support of his Canadian refugee claim in 2007.

[38] Consistent with the Respondent's submissions, I read the Decisions as relying on the fact that the Applicant acted as an informant related to the activities of supporters of Lavalas and therefore Aristide, noting that the CCE identified the violent repercussions that could result from reporting on political dissidents, and concluding based thereon that the Applicant's role did not represent mere association with the military. Rather, by acting as an informant to the authorities, in circumstances where he was aware of the objective of the military government to suppress Lavalas unrest by violent means, he actively supported and made a knowing contribution to the Attachés and the military. I acknowledge the Applicant's argument that he has admitted only to a role that was to report on violence and crime, not a role to report on political dissent. However, the Applicant described his role as including reporting on Lavalas unrest. I find that the Officer's reasoning is intelligible, is supported by the combination of personal evidence and CCE upon which the Officer relied, and withstands reasonableness review.

[39] In arriving at this conclusion, I have considered the Applicant's reliance on *Verbanov v Canada (Minister of Public Safety and Emergency Preparedness)*, 2019 FC 324 [*Verbanov*] at paragraph 38, in which this Court found that a complicity finding by the Immigration Appeal Division amounted to guilt by association, because it failed to analyse whether there were reasonable grounds to believe that the applicant had made a knowing contribution to the crimes of the Moldavan police. The Court concluded that the IAD had relied solely on the CCE as to the Moldavan police's activities to infer such knowledge on the part of the applicant.

[40] In my view, *Verbanov* does not assist the Applicant. As explained above in these Reasons, the Officer did not rely solely on CCE in conducting the required complicity analysis. The Officer took into account the Applicant's own evidence both as to his own role as an Attaché and as to his knowledge of the Attachés' broader activities.

[41] Finally, at the hearing of this application, the Applicant's counsel explained that the Applicant was also raising a procedural fairness issue surrounding the paragraph in the Decisions in which the Officer referenced the repercussions of reporting upon someone who attended a union meeting or demonstration. The Applicant submits that, treating that paragraph as a factual finding that he informed on a person or persons who attended either a union meeting or demonstration, the Officer was obliged by the principles of procedural fairness to afford him an opportunity to respond to such an allegation before making that finding. The Applicant argues, based on the factors set out in *Baker v Canada (Minister Citizenship and Immigration)*, [1999] 2 SCR 817 [*Baker*] at paragraph 22, that he was entitled to a high level of procedural fairness.

[42] It is not necessary for the Court to engage with the Applicant's arguments based on the *Baker* factors, as I have found earlier in these Reasons that the paragraph of the Decisions upon which the Applicant relies does not represent a finding that the Applicant reported on a union meeting or demonstration. Nor does the Officer's overall complicity analysis rely on any such finding.

[43] As explained above, the Officer found based on the required complicity analysis that the Applicant's role as an informant during the period of military rule represented a voluntary, knowing and significant contribution to the crimes and objectives of the Attachés. This finding supported the Officer's conclusion that the Applicant is inadmissible to Canada under subsection 35(1)(a) of the IRPA.

[44] The Officer also conducted an analysis, based significantly on the US Document, which resulted in a finding that there were reasonable grounds to believe that the Applicant directly participated in crimes against humanity. That finding represents an alternative basis for the Officer's conclusion that the Applicant is inadmissible to Canada under subsection 35(1)(a) of the IRPA. As I have found that the Officer's complicity analysis withstands both reasonableness review and review for procedural fairness, there is no basis for the Court to interfere with the Officer's inadmissibility conclusion, these applications for judicial review must be dismissed, and it is unnecessary for the Court to consider the parties' arguments related to the direct participation analysis.

[45] My Judgment will therefore dismiss these applications for judicial review. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-10960-22 and IMM-10963-22

THIS COURT'S JUDGMENT is that these applications for judicial review are dismissed. No question is certified for appeal. A copy of these Reasons and Judgment shall be placed in Court file IMM-10960-22 and Court file IMM-10963-22.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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