

Federal Court



Cour fédérale

Date: 20240612

Docket: IMM-1081-23

Citation: 2024 FC 894

Ottawa, Ontario, June 12, 2024

PRESENT: Madam Justice Pallotta

BETWEEN:

CLINTON RICARDY FONTAINE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant, Clinton Ricardy Fontaine, is a citizen of Haiti who sought refugee protection after entering Canada from the United States in October 2020. Mr. Fontaine seeks judicial review of a January 6, 2023 decision of the Refugee Protection Division (RPD) that concluded he had not established, with reliable and trustworthy evidence, that he is a Convention refugee under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] or a person in need of protection under section 97 of the *IRPA*. Mr. Fontaine was barred from

appealing the negative RPD decision to the Refugee Appeal Division because he entered Canada under an exception to the *Agreement between the Government of Canada and the Government of the United States of America for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries*, known as the Safe Third Country Agreement.

[2] Mr. Fontaine asserts that the RPD's decision is unreasonable and he did not receive a fair hearing. Specifically, Mr. Fontaine alleges that the RPD: (i) failed to assess his *sur place* claim that he would face a risk of persecution on the Convention ground of political opinion; (ii) breached his right to be heard by refusing to consider his evidence of persecution based on political opinion; (iii) relied on an unreasonable credibility assessment; and (iv) failed to consider the objective evidence in the National Documentation Package (NDP) for Haiti.

[3] Mr. Fontaine contends the RPD only addressed his risk under section 97 of the *IRPA*. In his basis of claim (BOC) narrative, Mr. Fontaine alleged that he fled Haiti after witnessing his friend's murder and that he fears retaliation from the gang members who are responsible, as they believe he has photographic proof of the murderer. The RPD found there were valid reasons to doubt Mr. Fontaine's credibility and, on a balance of probabilities, that the murder did not occur. It found that Mr. Fontaine's testimony about this central event seriously undermined his overall credibility. In addition, the RPD found that Mr. Fontaine would not face a forward-looking risk, based on his testimony that his family and friends had not received threats from gang members.

[4] Mr. Fontaine submits the RPD erred by limiting its assessment to section 97 of the *IRPA* and refusing to conduct an assessment under section 96. He states his political opinions matured

since he first arrived in Canada on his own at the age of 17, he updated his BOC narrative prior to the RPD hearing to assert a *sur place* claim, and he provided extensive testimony that he would face a risk of persecution in Haiti based on his political opinion. Mr. Fontaine submits the RPD completely ignored the political aspect of his risk profile. It did not ask him any questions about his political opinion or address any of the testimony he gave in response to his counsel's questioning about his political profile. While the RPD referred to his lack of credibility and stated that he had not established a well-founded fear of persecution under section 96 of the *IRPA*, it made no credibility findings about the testimony relevant to his political profile or *sur place* claim.

[5] The respondent submits the RPD was not required to address Mr. Fontaine's testimony about his political opinions because the evidence was not central to his claim and, in any event, it was insufficient to ground a claim under section 96 of the *IRPA*. Failing to consider a ground of persecution that is not central to the claim and appears to be an afterthought is not a fatal error: *Rendon Ocampo v Canada (Citizenship and Immigration)*, 2023 FC 80 at paras 25-29 [*Rendon Ocampo*]; *Paramanathan v Canada (Citizenship and Immigration)*, 2012 FC 338 at paras 12-19 [*Paramanathan*]; *Mersini v Canada (Citizenship and Immigration)*, 2004 FC 1088 at paras 6-10 [*Mersini*]. On review, the Court is entitled to look at the record and decide whether there was enough evidence to ground the claim: *Rendon Ocampo* at paras 25-29; *Paramanathan* at para 19; *Mersini* at para 8.

[6] Alternatively, the respondent submits the RPD's negative assessment of Mr. Fontaine's credibility would have been dispositive of his claim of persecution based on political opinion.

[7] I agree with Mr. Fontaine that the RPD's decision should be set aside.

[8] I do not accept the respondent's argument that the RPD was not required to address political risk because it was not central to Mr. Fontaine's claim. At the RPD hearing, Mr. Fontaine's counsel clearly stated that Mr. Fontaine was asserting both a section 97 risk of harm and a section 96 risk of persecution based on his political opinion. The transcript of the RPD hearing shows that the member understood Mr. Fontaine's position and acknowledged counsel's line of questioning about political risk.

[9] Furthermore, the RPD's decision did address political risk by concluding that Mr. Fontaine had not established, with reliable or trustworthy evidence, a well-founded fear of persecution related to a Convention ground. The RPD also stated, "Given the claimant's lack of credibility and the evidence he presented in support of his claim, the panel finds on a balance of probabilities that the claimant has not established a well-founded fear of persecution related to a Convention ground in Haiti...". However, the RPD's decision does not explain why the RPD reached the conclusion that it did. The RPD did not address Mr. Fontaine's testimony about political risk, refer to evidence relevant to political risk in the NDP for Haiti, or otherwise explain why Mr. Fontaine did not meet his burden.

[10] The respondent states Mr. Fontaine's evidence would have been insufficient to ground a claim under section 96 of the *IRPA*. For example, the respondent states Mr. Fontaine's testimony only established that he has political views, which is insufficient. Additionally, despite several opportunities, Mr. Fontaine did not explain his plans or establish that he would

engage in conduct that would put him at risk upon return to Haiti. The respondent also states that Mr. Fontaine's BOC and updated BOC narratives do not express a subjective fear of persecution based on political opinion, and when the RPD member asked Mr. Fontaine who he fears in Haiti, his response was that he fears gangs and the murder victim's family.

[11] As Mr. Fontaine correctly points out, the RPD did not give these reasons. The lack of reasons makes it impossible to understand why the RPD rejected Mr. Fontaine's claim under section 96 of the *IRPA*. A reviewing court may "connect the dots on the page where the lines, and the direction they are headed, may be readily drawn", but it must not speculate as to what the decision maker was thinking, supply reasons that might have been given, or make findings of fact that were not made: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 97.

[12] Furthermore, it is unclear to me that the RPD's negative assessment of Mr. Fontaine's credibility would have been dispositive of his claim of persecution based on political opinion. As Mr. Fontaine points out, the RPD did not make credibility findings about any of the testimony relevant to his political profile or *sur place* claim specifically. Indeed, at the RPD hearing the member suggested a different concern, stating, "...hopefully he will be a person who will do a lot of changes in his country of origin, [but] I don't think that at the moment of the hearing he is targeted for his political opinions". Without more, the RPD's reference to Mr. Fontaine's "lack of credibility and the evidence he presented in support of his claim" does not justify the rejection of the section 96 claim.

[13] In my view, the RPD's error is sufficiently central and significant to warrant the Court's intervention. The RPD's decision will be set aside and the matter will be remitted to a different RPD panel for redetermination.

[14] Mr. Fontaine's credibility may be reassessed on redetermination, so it is unnecessary to address the alleged errors with the RPD's credibility findings.

[15] Neither party proposed a question for certification. I find there is no question to certify.

JUDGMENT IN IMM-1083-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is allowed. The RPD's January 6, 2023 decision is set aside and the matter shall be remitted to a different RPD panel for redetermination.

2. No question of general importance is certified.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1081-23

STYLE OF CAUSE: CLINTON RICARDY FONTAINE v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HEARD BY VIDEOCONFERENCE

DATE OF HEARING: JANUARY 25, 2024

JUDGMENT AND: PALLOTTA J.

DATED: JUNE 12, 2024

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