

Date: 20070706

Docket: IMM-165-07

Citation: 2007 FC 711

Ottawa, Ontario, July 6, 2007

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

SAMUELA DESRONVILLES

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, ch. 27 (IRPA) of a decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB), dated December 19, 2006, finding that Samuela Desronvilles (Applicant) is neither a Convention refugee, pursuant to section 96 of IRPA, nor a person in need of protection, pursuant to section 97 of IRPA, as the Applicant was found to be not credible.

I. Facts

[2] The Applicant is a citizen of Haiti.

[3] The Applicant claims that in Haiti she owned and operated a hairdressing salon known as “Sami Coiffure” between August 2001 and May 2005. The Applicant claims she was persecuted in Haiti as her father was friendly with members of opposition parties in Haiti. According to the Applicant, she had contact with her father’s politically active friends as they came to her salon frequently, and thus both her and her father were seen to oppose the Haitian government.

[4] The Applicant claims that her father began to be threatened in 2002. In that year, the Applicant also states that her hair salon was vandalised. Moreover, according to the Applicant on August 21, 2002 her father got into a fight with two police officers in her salon. During the fight the police officers called the salon a “sale opposant” ([TRANSLATION] opposition salon). Four days after this dispute, the Applicant’s father was killed by unknown assailants.

[5] The Applicant was convinced that her father was killed by the police officers with whom he argued on August 21, 2002. Thus, the Applicant decided to denounce her father’s assassination and took numerous actions to do so between 2002 and 2005.

[6] In 2005, the Applicant claims her hairdressing salon was once again vandalised, as was her residence, and both were destroyed. The Applicant claims to have gone to the police to file a complaint about these attacks and that the police told her that her family deserved what they got.

[7] The Applicant also claims that she was convened by the Haitian police in May 2005. Once she arrived at the station, the Applicant claims that she was interrogated, during which time she was insulted by the police. After the interrogation, the police informed her that her licence to operate her hair salon was revoked until further notice. She was then released.

[8] Subsequently, the Applicant sought a fake French passport and left Haiti for Canada on January 31, 2006, more than 6 months after her interrogation by the Haitian police. Ms. Desronvilles applied for refugee protection in Canada on February 1, 2006.

II. Issues

- (1) What is the standard of review applicable to adverse credibility determinations made by the RPD?
- (2) Was the RPD's finding that the Applicant was not credible patently unreasonable?

III. Analysis

- (1) What is the standard of review applicable to adverse credibility determinations made by the RPD?

[9] The case law of this Court is clear; the Court will not interfere with findings of the RPD relating to credibility unless they are patently unreasonable. The Court has stated repeatedly that the

RPD is in a better position than the Court to make credibility determinations as it is a tribunal with specialized jurisdiction and it has the opportunity to observe first hand the testimony given by refugee claimants (*Aguebor v. Canada (Minister of Employment and Immigration)*, (1993), 140 N.R. 315 (FCA); *Ahortor v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 705 (T.D.); *Tekin v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 357).

(1) Was the RPD's finding that the Applicant was not credible patently unreasonable?

[10] The RPD found the Applicant's narrative and submissions not credible. The RPD took particular issue with the following contradictions :

(a) The Applicant failed to include the names of two of her "half brothers" in her Personal Information Form (PIF), even though she had previously applied in 2001 for a visitor's visa to visit one of these brothers (visitor's visa application) who resides in Canada (Tribunal Record, Transcript of RPD Hearing, pages 141- 142);

(b) In her PIF the Applicant stated she was not married, however in her visitor's visa application the Applicant had stated that she was married. When asked about this contradiction, Ms.

Desronvilles stated that she was not married but living with a man named Charles Pierre, and she claimed that their relationship ended in December 2001. This explanation was further questioned by the RPD as in her visitor's visa application the Applicant wrote that she was married to a "Joseph Ismael". To explain this contradiction, Ms. Desronvilles told the RPD that she was living with both Mr. Pierre and Mr. Ismael (Tribunal Record, Transcript of the RPD Hearing, pages 156-159);

(c) In her PIF the Applicant wrote that she had no children. However, in her visitor's visa application she wrote that she had a son named Kemuel Joseph who was born on January 14, 2001. When questioned as to this inconsistency, the Applicant told the RPD that the child was Mr. Ismael's, but that she had adopted him and therefore she felt it was unnecessary to name him in her PIF (Tribunal Record, Transcript of the RPD Hearing, pages 159-160). The RPD noted in its decision that PIFs specifically state that adopted children must be identified;

(d) In her PIF and in her testimony the Applicant stated she worked as a hairdresser in the hair salon she owned named "Coiffure Samy". In her visitor's visa application the Applicant stated that she worked as a butcher at "Samuela Boucherie Charcuterie". When questioned as to this inconsistency, she told the RPD that she never worked as a butcher, but helped her father's business (Samuela Boucherie Charcuterie) with accounting between 1997 and

December 2001 (Tribunal Record, Transcript of the RPD Hearing, pages 161-162). The Applicant also changed her PIF so that it listed her work as an accounting assistant under the “work experience” subheading;

- (e) In her visitor’s visa application she had written her name as “Joseph Samuela Desronvilles” and then in her PIF she wrote her name as “Samuela Desronvilles”. She later changed her name on the PIF to read “Samuela Joseph Desronvilles”;
- (f) The document the Applicant submitted to the RPD to prove the existence of her salon (Certificat de Patente), states that the salon’s name was “Samie Studio Beauté” although the Applicant told the RPD that her salon’s name was “Sami Coiffure”.
- (g) The Applicant stated her father was killed at 2pm but his death certificate states he was killed at 9pm (Tribunal Record, Acte de Décès M. Joseph Chanco Desronvilles, page 125). The Applicant at her hearing also testified that her father was killed while sitting in the front lawn by an unseen assassin, however in her PIF she stated that her father was with police officers when he died and was shot by one of the officers;
- (h) The Applicant’s father’s death certificate states he was 57 years of age when he died, whereas the Applicant’s PIF states he was 56 when he died;
- (i) The Applicant claimed to have received both an “avis de convocation” and a “mandat d’amener” from the Haitian police on May 3, 2005. However, the date of the “mandat d’amener” is dated May 5, 2005. When asked about this apparent contradiction, the Applicant stated that both documents were received on May 3, 2005 even though one was dated May 5, 2005 (Tribunal Record, Transcript of the RPD Hearings, pages 164-168). The RPD accorded no weight to the two documents due to the Applicant’s non-credible

testimony relating to their receipt. Thus, the RPD did not find it necessary to seek an expert opinion as to whether the documents were authentic.

[11] I do not find the Applicant's explanations of the apparent contradictions and discrepancies in her PIF, her testimony and her visitor's visa application convincing. Moreover, the Applicant's submissions that the discrepancies related to her father's death are due to translation problems are in my view not compelling. The RPD mentions in its decision that Ms. Desronvilles would answer questions before translation was completed, and that the issue of "translation problems" was only raised by the Applicant's representative when she discussed her father's death, and then only after the Applicant's representative realized that her testimony was inconsistent with her PIF. The relevant portion of the RPD hearing reads as follows:

COMMISSAIRE: Quoi?

REVENDICATRICE: Non seulement qu'ils ont écrit sur les murs du salon, ils se sont déguisés pour venir me menacer.

[...]

CONSEILLER : Je comprends un peu le créole, mais je le parle pas

[...] Elle a dit « des menaces à peine déguisées », ils se sont pas déguisés.

COMMISSAIRE : Okay, c'est des menaces qui sont déguisées.

[...]

INTERPRÈTE : C'est quoi que vous dites, Maître?

CONSEILLER : Apparemment, elle a dit des menaces?

INTERPRÈTE : Apparemment?

[...]

COMMISSAIRE : Attendez, je ... O.K., on s'arrête s'il vous plaît, s'il vous plaît. On a une interprète ici, Madame l'interprète, c'est vous l'experte. Dites-moi, est-ce qu'elle a dit que les gens sont venus déguisés ou c'étaient les menaces qui étaient déguisées?

INTERPRÈTE : Les gens sont venus déguisés.

[...]

COMMISSAIRE : C'était ça que vous avez dit, Madame?

REVENDICATRICE : Ils ont fait des menaces à peines déguisées.

COMMISSAIRE : O.K. par ce que l'interprète vient de me dire, puis j'ai pas de raison de douter de sa parole, que vous avez dit que les gens se sont déguisés

[...]

Je vais analyser ça, d'accord? Alors, vous dites...

CONSEILLER : Je m'excuse là, j'avais ... j'avais pas bien suivi la .. sa phrase, mais il me semble qu'elle a dit "menaces déguisées", mais je m'excuse, je parle pas le créole.

COMMISSAIRE : Bon. Alors, si vous parlez par le créole, Monsieur, je vous demanderais de pas intervenir parce que ça dérange l'interprète qui est là vraiment pour nous éclaircir.

[...]

Parce que c'est vrai que c'est écrit dans le texte « menaces à peine déguisées »

This being said, I note that the RPD accepted the Applicant's claim that her father had been killed but did not believe the testimony of the Applicant on the circumstances surrounding her father's death.

[12] I also note that counsel for the Applicant argued, at the hearing, that the objective evidence on Haiti was sufficient to justify the Applicant's claim. I disagree. The Applicant was not able to support her story as she was found not credible, and thus, she was unable to justify her refugee protection claim. I cannot see how the objective documentation on Haiti could have any effect on the RPD's finding that the Applicant is not credible. Objective documentation, at best, can only demonstrate that an applicant has an objective fear of persecution. The burden rests on applicants to

prove that they have a subjective fear of persecution. In this case, the Applicant's narrative and the facts supporting her claim were not believable. Consequently, the Applicant could not establish a subjective fear of persecution and thus she could not establish that she was in need of refugee protection.

[13] In my view, given the number of contradictions and discrepancies in the Applicant's narrative and testimony, and that most of these relate directly to the major elements of the Applicant's claim, the decision of the RPD is not patently unreasonable. Having looked to all the relevant evidence and having carefully read the RPD's decision, I believe that the RPD rendered a well-founded decision as to the Applicant's credibility, based on a thorough assessment of the evidence.

IV. Conclusion

[14] For the reasons stated above, this application for judicial review is dismissed.

[15] The parties were invited to submit a question for certification, but no such question was submitted.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES THAT:

- The application for judicial review is dismissed;

- No question is certified.

“Simon Noël”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:

IMM-165-07

STYLE OF CAUSE:

SAMUELA DESRONVILLES

v.

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTREAL

DATE OF HEARING: July 4th, 2007

REASONS FOR JUDGMENT : The Honourable Mr. Justice Simon Noël

DATED: **July 6th, 2007**

APPEARANCES:

Me Jeffrey Platt

FOR THE APPLICANT(S)

Me Jocelyne Murphy

FOR THE RESPONDENT(S)

SOLICITORS OF RECORD:

Me Jeffrey Platt
1410 Guy
Suite 21
Montréal (Québec)
H3H 2L6

FOR THE APPLICANT(S)

John H. Sims, c.r.

FOR THE RESPONDENT(S)