Federal Court  Cour fédérale

Date: 20100218

Docket: IMM-3910-09

Citation: 2010 FC 178

Toronto, Ontario, February 18, 2010

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

ROBINSON SAINT HILAIRE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) of a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada dated July 2, 2009, wherein it was determined that the applicant was not a Convention refugee and not a person in need of protection. These are my reasons for dismissing the application.

Background

[2] Mr. Robinson Saint-Hilaire, the applicant, is a citizen of Haiti. As a successful business man, perceived to be part of the Haitian Diaspora, the applicant alleges that he fears persecution in Haiti at the hands of people belonging to the resistance group known as the "Lavalas." His problems with them began in the early 1990s when he owned a transportation service in Port-au-Prince which included buses and a food distribution centre. He claims that he was harassed and threatened and victimized by extortion which forced him first to relocate within Haiti and then to leave in 1996 for the United States leaving his wife and children behind.

[3] Shortly after his arrival in the United States, the applicant met and married a woman who was an American citizen, thinking that she would sponsor him. The marriage broke down and the applicant and his wife divorced in March 2001. At that point, the applicant says that he believed that too much time had passed since his arrival in the United States to qualify for refugee status and to make a claim for political asylum. He sought refugee protection on arrival in Canada from the United States on March 26, 2007.

[4] The applicant believes that, since he was abroad for many years, he will be identified and targeted by the Lavalas as soon as he arrives at the airport. Mr. Saint-Hilaire fears a return to Haiti as he says that he will be perceived as someone who has accumulated wealth or has access to wealth because he would be returning from the United States and Canada.

Decision Under Review

Section 96 Claim

[5] The panel determined that the applicant did not demonstrate that he was a person who had a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular group or political opinion. Being a successful business man who is perceived to be rich by members of the Lavalas group who want his money, does not constitute political opinion nor membership in a particular social group as defined in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, [1993] S.C.J. No. 74. Accordingly, no Convention grounds were applicable in this case.

Section 97 Claim

[6] The panel concluded that the applicant was subject to the same generalized risk as the rest of the Haitian population, considering the high rate of criminality in that country and the reality that criminal gangs target all classes of Haitians and not only the rich or those perceived to be rich individuals.

[7] The panel based its finding of generalised risk on Justice Danièle Tremblay-Lamer's decision in *Prophète v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 331, [2008] F.C.J. No. 415, and in particular, her comments at paragraph 23:

> **23** … The risk of all forms of criminality is general and felt by all Haitians. While a specific number of individuals may be targeted more frequently because of their wealth, all Haitians are at risk of becoming the victims of violence.

[8] The panel also based its findings on other Federal Court decisions which have held that rich individuals in Haiti do not face a higher risk of persecution than other Haitians: *Étienne v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 64, [2007] F.C.J. No. 99; *Cius v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1, [2008] F.C.J. No. 9. Accordingly, the panel rejected Mr. Saint-Hilaire's claim under paragraph 97(1)(b) of the IRPA. Paragraph 97(1)(a) was not in issue as there was no allegation of persecution by the state or its agents.

Issues

[9] The sole issue is whether the panel erred in finding that the applicant was not a person in need of protection.

[10] The applicant takes issue with (1) the panel's assessment of the evidence; (2) the panel's reasons; and (3) the panel's interpretation of the relevant case law.

Analysis

[11] In *Prophète*, above, Justice Tremblay-Lamer held that under section 97 the applicant must demonstrate a "personal" risk of persecution. This was confirmed by the Federal Court of Appeal in *Prophète v. Canada (Minister of Citizenship and Immigration)*, 2009 FCA 31, [2009] F.C.J. No. 143.

[12] At paragraph 10 of his reasons in *Gabriel v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1170, [2009] F.C.J. No. 1545, Justice Yvon Pinard described the appropriate standard of review of a section 97 analysis in these terms, which I adopt:

> **10** In *Prophète v. Minister of Citizenship and Immigration*, 2008 FC 331, this Court, at paragraph 11, held that interpretation of section 97 of the Act is a pure question of law, reviewable on the standard of correctness. However, the question certified in that decision was declined by the Federal Court of Appeal on the basis that "[t]he examination of a claim under subsection 97(1) of the Act necessitates an individualized inquiry" (*Prophète v. Minister of Citizenship and Immigration*, 2009 FCA 31, at paragraph 7). This reason has since been interpreted by my colleague Justice Johanne Gauthier as "clearly" indicative that the inquiry under 97 is not one of pure law (*Acosta v. Minister of Citizenship and Immigration*, 2009 FC 213). Accordingly, the appropriate standard of review is reasonableness because the issue is one of mixed fact and law (*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, at paragraph 53). Thus, if the decision falls within a range of possible, acceptable outcomes that are defensible in respect of the facts and law it is reasonable (*Dunsmuir*, at paragraph 47). [My Emphasis]

[13] In the case of Mr. Saint-Hilaire, the documentary evidence available to the panel indicated that any heightened risk that a person will be targeted for crime is related not solely to their perceived wealth but also to their political activity. The record does not indicate that Mr. Saint-Hilaire took part in political activities. Rather, Mr. Saint-Hilaire is part of the very large group of wealthy or perceived to be wealthy Haitians who could be the target of crime like all other Haitians.

[14] I disagree with the applicant that the panel's reliance on *Cius v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1, [2008] F.C.J. No. 9, was misplaced. As in *Cius*, at paras. 23 and 25, the evidence before the panel in the present case did not establish that the applicant faces

a particularized risk upon his return to Haiti but rather that the risk faced by the applicant is generalized.

[15] I accept the respondent's submission that the applicant speaks Creole fluently, as he requested an interpreter who spoke Creole for the purpose of the hearing. As a result, I am not persuaded that the applicant established that he would be more readily targeted as a member of the Diaspora by reason of his language, after several years in the U.S. and Canada.

[16] If Mr. Saint-Hilaire is an individual who may have a personalized risk of being targeted by the Lavalas, it is a risk that is borne by a large segment of the Haitian population: *Prophète,* above, at para. 18.

[17] I find that the harm feared by the applicant in this case is criminal in nature. The panel was justified in concluding that the applicant's wealth (or perceived wealth) associated with his past successful business ventures in the transportation sector and food distribution does not constitute membership in a particular social group or the expression of a political opinion: *Étienne v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 64, [2007] F.C.J. No. 99, at para. 15.

[18] In my view, the panel also provided sufficient reasons for its conclusions that the application failed to show a connection to a refugee ground and demonstrated only a generalized rather than personalized risk in clear and unmistakable terms: *VIA Rail Canada Inc. v. National Transportation*

Agency (C.A.), [2001] 2 F.C. 25, [2000] F.C.J. No. 1685, at para. 21; *Lake v. Canada (Minister of Justice)*, 2008 SCC 23, [2008] S.C.J. No. 23, at para. 46.

[19] I am unable to find that the panel misconstrued or ignored evidence in this case. The panel accepted that Mr. Saint-Hilaire might be perceived as being wealthy by criminal elements in Haiti as a member of the Diaspora. The panel did not specifically mention all of the documentary evidence supporting its conclusion but nor is it required to do so. There is a presumption that the panel has considered all the evidence: *Gabriel*, above, at para. 25; citing *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, (1998), 157 F.T.R. 35, [1998] F.C.J. No. 1425.

[20] It was reasonable and within the range of possible, acceptable outcomes for the panel to conclude in this case that (1) Mr. Saint-Hilaire fears criminals in Haiti who are driven by financial gain; (2) the risk is generalized and not only for persons with money or who are perceived as such; (3) the principle that a section 97 risk must be personalized was established by Justice Tremblay-Lamer in *Prophète*, above, and confirmed by the Federal Court of Appeal; and that (4) the jurisprudence has confirmed that wealthy people in Haiti do not face a heightened risk as compared to other Haitians: *Prophète* (2008 FC 331), above, at para. 23; *Prophète* (2009 FCA 31), above, at para. 10; *Dunsmuir*, above, at para. 47.

[21] I also find that the process adopted by the panel and its outcome fits comfortably with the principles of justification, transparency and intelligibility. Accordingly, it is not open to this Court

to substitute its own view of a preferable outcome: *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] S.C.J. No. 12, at para. 59.

[22] Neither party proposed questions for certification.

JUDGMENT

IT IS THE JUDGMENT OF THIS COURT that the application is dismissed. There are no questions to certify.

"Richard G. Mosley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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