

Federal Court



Cour fédérale

**Date: 20100225**

**Docket: IMM-3772-09**

**Citation: 2010 FC 220**

**Ottawa, Ontario, February 25, 2010**

**PRESENT: The Honourable Mr. Justice Boivin**

**BETWEEN:**

**EVENS FREDERIC**

**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, c. 27 (the Act), of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated June 18, 2009, wherein the Board determined the applicant was not a Convention refugee or a person in need of protection.

### Factual Background

[2] The applicant, Evens Frederic, is a citizen of Haiti who left Haiti for financial reasons on June 6, 1998. The applicant travelled to the United States, where he applied for asylum. His request was denied.

[3] The applicant then married an American citizen who sponsored him. The applicant was told he would have to return to Haiti to obtain an immigration visa from the American consulate in Port-au-Prince, which he refused to do out of fear.

[4] The applicant arrived in Canada in June 2007 and claimed refugee protection upon arrival. He stated that he had been poorly advised on what to say to the immigration office and he falsely declared that he had problems in Haiti owing to his political involvement.

[5] The applicant eventually claimed he was fearful of the chimeras or armed groups, who would assume that he had accumulated considerable wealth because he lived in North America for many years. The applicant feared being kidnapped or otherwise targeted by these groups.

### Impugned Decision

[6] The Board found the applicant failed to establish a nexus to a Convention ground. The Board found the evidence did not demonstrate that the applicant would be exposed to a danger of

torture under Article 1 of the *Convention Against Torture*, as stipulated in paragraph 97(1)(a) of the Act.

[7] The Board determined that the applicant feared a generalized risk and not a personalized risk. The Board also determined the evidence established that the applicant might be a victim of crime instead of persecution. The Board noted in *Karpounin v. Canada (Minister of Employment and Immigration)*, (1995), 92 F.T.R. 219, 54 A.C.W.S. (3d) 139, that victims of crime do not belong to a particular social group.

[8] The Board held that the applicant also failed to establish that he faced any greater likelihood of being a victim of crime than the rest of the population. The Board recognized that the violence in Haiti was, unfortunately, widespread.

[9] Before the Board, the applicant argued he feared returning to Haiti because he was afraid of being kidnapped or otherwise targeted by the chimeras or armed groups, who would assume he was rich because he lived in North America for many years. The applicant noted not everyone in Haiti has money, and those who have lived in North America are automatically perceived to be wealthy. Consequently, he would be at a greater risk of being targeted by criminal groups.

[10] The Board rejected the applicant's statement since the documentary evidence (particularly the National Documentation Package on Haiti, March 16, 2009, HTI103017.FE and other documents) indicates that kidnappings are endemic in Haiti, regardless of a person's social class.

[11] Furthermore, the Board noted that Tab 1.8 of the National Documentation Package states that individuals from the middle or business class are targeted by criminals, while those who have lived abroad are not systematically targeted. The Board thus held that nothing in the evidence submitted would demonstrate that the applicant would be exposed to a risk that is any different from that faced by the country's entire population. Also, the Board found that nothing in the evidence submitted demonstrates that the applicant or a member of his family has been specifically targeted, owing to the fact that the applicant has been living abroad for several years and that he could be perceived as being wealthy.

[12] The Board added that, according to the jurisprudence, the perception of a person's wealth, which could increase the likelihood of that person being a victim of crime such as theft or kidnapping for ransom, constitutes a generalized risk if the evidence proves that the entire population generally faces the same risk. Accordingly, the Board concluded that the applicant would face a generalized risk as opposed to a personalized one.

### Issues

[13] The applicant raises the following issues:

1. Did the Board err in fact and in law in rejecting the applicant's claim for refugee protection as a "person in need of protection" when it concluded that the applicant would face a generalized, and not a personalized, risk if returned to Haiti?
2. Did the Board member err by failing to address the finding of another Board member on the same issue?

Analysis

[14] The examination of a claim under subsection 97(1) of the Act necessitates an individualized inquiry (*Prophète v. Canada (Minister of Citizenship and Immigration)*, 2009 FCA 31, 387 N.R. 149 at par. 7 (*Prophète* (FCA))). Accordingly, the appropriate standard of review of this issue of mixed fact and law is reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; *Gabriel* at par. 10; *Parada v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 845, [2009] F.C.J. No. 1021 at par. 19).

[15] The applicant's allegation that the Board erred in determining his claim provided no nexus to a Convention ground as required under section 96 of the Act is unfounded. On the basis of the jurisprudence, the Board was justified in concluding that gaining wealth or living in a wealthy country does not constitute membership in a particular social group (*Étienne v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 64, 308 F.T.R. 76; *Prophète v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 331, 167 A.C.W.S. (3d) 151 (*Prophète* (FC))); *Moali de Sanchez v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 183, 107 A.C.W.S. (3d) 848).

[16] The Court also finds that the Board was justified in concluding that wealthy people do not have a greater risk of persecution. The Board did not err in concluding that the applicant had not

demonstrated he would face a serious possibility to a risk to his life or to a risk of torture or cruel and unusual treatment or punishment were he to return to Haiti.

[17] Subsection 97(1)(b) of the Act requires that the risk be one the applicant faces “personally”, but not one that is faced “generally” by other persons in that country. The Court finds that the evidence demonstrates that 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.

[18] The applicant also raised that the *Surajnarain v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1165, 336 F.T.R. case was applied in another decision of the Board on another Haitian refugee claimant (TA7-06842), which had been entered into evidence at the applicant’s hearing. In that specific decision, the Board found that the risks of Haitian returnees being kidnapped or killed by armed criminal gangs is not a generalized risk, but is particularized in the case of Haitians who have lived abroad for a number of years.

[19] As noted by the respondent, and the Court agrees, the factual context of the other Board decision relied upon by the applicant (TA7-06842) is different from the one in the case at bar. The claimant in TA7-06842 had previously been a victim of crime in Haiti and he had additional reasons for fearing a return to his country. On the facts of this case, the applicant was not previously a victim of crime and hence, the same reasoning cannot apply. As noted in the National Documentation Package: Tab 1.8: HTI103017.F (p. 39 of the Tribunal Record):

Question 10: est-il raisonnable de déduire de votre exposé qu'un demandeur d'asile débouté qui retourne en Haïti après trois ou quatre ans, ayant épuisé tous ses recours, serait ou sera ciblé à son retour en Haïti ?

Les personnes qui ont séjourné à l'étranger peuvent être ciblées, mais elles ne le sont pas de façon systématique. Les personnes qui ont quitté Haïti parce qu'elles étaient précisément persécutées seront attendues à leur retour.

[Translation]

Question 10: Is it reasonable to infer, from your arguments, that an unsuccessful refugee status claimant who returns to Haiti after three or four years, having exhausted all of his remedies, might be or would be targeted upon his return in Haiti ?

Individuals who have lived abroad may be targeted, but not in a systematic way. Individuals who have left Haiti precisely because they were being persecuted will be spotted upon their return.

[Emphasis added]

[20] As such, the Board's decision not to rely on that decision in the applicant's case was reasonable.

[21] Furthermore, the approach taken in *Surajnarain* is a departure from the dominant interpretation of section 97 of the Act. This Court has recently reiterated that according to the appropriate approach, the risk must be particularized to the personal circumstances of the applicant (*Gabriel* at par. 23).

[22] A review of the transcript of the hearing before the Board indicates that the applicant did not fear any particular persecutors (pp. 156-157 of the Tribunal Record). The applicant was unable to identify the particular risk he faces in returning to Haiti:

Q: If you have to return to Haiti, sir, who do you fear?

A: I am afraid of armed groups, Shimaz (ph), kidnappers, people that are killing people in Haiti.

Q: Do you fear anyone in particular, sir?

A: No.

Q: Once again please speak loud. You might think you speak loud but honestly we don't hear very loud here, okay? And what do you think can happen to you if you have to return?

A: After President Aristeed (ph) have left the country in February '04 there are groups of armed gangs, Shimaz, people that are killing people until today. Especially people that were living in North American that are going back to Haiti.

So the gangs, the kidnappers and the Shimaz in Haiti they know that those people return to Haiti, have money and they are rich.

Q: You are perceived as being rich, is this what you mean?

A: Anyone that is returning to Haiti is perceived as having money and is perceived as being rich.

Q: So what do you think that can happen to you, sir, do you mean that you fear to be killed or kidnapped, is that what you mean?

A: Yes. If I go back to Haiti those groups, those kidnappers, gangs, they will kidnap me and they could kill me and that's why I don't want to go back to Haiti nowadays.

Q: Do you fear to return to your country, sir, for any other reason that you just mentioned?

A: No.



[23] The Court notes that the documentary evidence, particularly the National Documentation Package, HTI102506.F (p. 61 of the Tribunal Record), explains that the applicant is not at greater risk of violence of kidnapping because of his perceived wealth or the fact he was outside the country for a length of time:

Groupes ciblés par les kidnappeurs

Des sources soulignent que les auteurs d'enlèvements contre rançon en Haïti agissent généralement par opportunisme. Toute personne qui semble être riche risque d'être victime d'un enlèvement contre rançon. Toutefois, bien qu'en 2004, toutes les victimes d'enlèvement contre rançon signalées par les *Country Reports on Human Rights Practices for 2004* étaient des personnes riches, les victimes d'enlèvement contre rançon venaient de toutes les couches de la société en 2005 et en 2006. Selon le *Washington Post*, la menace d'enlèvement plane aussi sur les marchands ambulants.

[Translation]

Groups targeted by kidnappers

According to some sources, criminals who engage in kidnapping for a ransom in Haiti generally do so for opportunistic motives. Any person who appears to be rich runs the risk of being kidnapped for a ransom. In the year 2004, all persons kidnapped for a ransom mentioned in *Country Reports on Human Rights Practices for 2004* were rich; however, in the years 2005 and 2006, all persons kidnapped for a ransom belonged to all economic classes of society. According to the *Washington Post*, the threat of kidnapping is also looming for street vendors.

[Footnotes omitted.]

[Emphasis added]

In *Michaud v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 886, [2009] F.C.J. No. 1112 (QL) this Court also found that Haitian returnees face the same risk of violence and crime as other Haitians perceived to be wealthy. As such, the Board's decision was reasonable.

[24] For these reasons, the application for judicial review is thus dismissed. The Court's intervention is not warranted in this case. This case does not raise a serious question of general importance which ought to be certified.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** the application for judicial review is dismissed. No question is certified.

“Richard Boivin”

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3772-09

**STYLE OF CAUSE:** Evens Frederic v.  
The Minister of Citizenship and Immigration

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** February 9, 2010

**REASONS FOR JUDGMENT:** BOIVIN J.

**DATED:** February 25, 2010

**APPEARANCES:**

Micheal Crane FOR THE APPLICANT

Leila Jawando FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Anthony Kako FOR THE APPLICANT  
Toronto, Ontario

John H. Sims, Q.C. FOR THE RESPONDENT  
Deputy Attorney General of Canada