

Federal Court



Cour fédérale

Date: 20110317

Docket: IMM-3165-10

Citation: 2011 FC 322

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, March 17, 2011

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

NATALIE LAMOUR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review, submitted by the applicant, Natalie Lamour, a citizen of Haiti, in accordance with subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act), of a decision by the Immigration and Refugee Board (panel) dated May 19, 2010, rejecting her refugee claim on the grounds that she is not a Convention refugee or a person in need of protection.

[2] After reviewing the file and the written and oral submissions of the parties, I have come to the conclusion that there is no reason warranting the intervention of this Court.

I. The facts

[3] Ms. Lamour was a violin teacher in Port-au-Prince and Jacmel, Haiti, and alleges having been a victim of several criminal assaults purportedly because of her status as a woman musician.

[4] At the beginning of July 2004, while travelling to Jacmel to give music lessons to underprivileged children, Ms. Lamour said that she witnessed an armed assault. She was allegedly released by one of the assailants after he purportedly found out that she was a musician.

[5] On July 17, she was apparently again a victim of an armed assault, this time by four men who were after her personally because she is an artist. After this incident, she said she occasionally received threatening telephone calls accusing her of being privileged, a musician and an intellectual. She nevertheless continued to travel to Jacmel for work until the month of August of the same year.

[6] In October 2004, she was apparently pursued by four armed men who purportedly tried to assault her. Then, in February 2005, an armed man allegedly tried to break into her home, fired shots and uttered threats against intellectuals and artists like her.

[7] Ms. Lamour was unable to identify her various assailants, whom she describes as common criminals. During the hearing, she said that she fears a group of bandits in particular, the Zinglindos, who are apparently present throughout Haiti and purportedly attack people without provocation.

This group apparently has no organizational hierarchy and there is no ideological motivation behind their actions.

[8] Fearing being kidnapped, she left Haiti on March 12, 2005, for the United States. She stayed there as a visitor, and then remained there illegally. She then claimed refugee protection in Canada on February 1, 2008.

II. Impugned decision

[9] First, the panel dismissed the applicant's claims that she fears persecution by reason of her membership in the particular social group of women and her profession. Relying on the documentary evidence, the panel concluded that all Haitians are just as likely to become victims of criminal offences and that this threat does not affect women exclusively. Similarly, the panel noted that no evidence was submitted showing that artists are more of a target for criminals. As victims of criminal acts are not part of a particular social group, the panel therefore rejected Ms. Lamour's claim in accordance with section 96 of the Act.

[10] Moreover, the panel concluded that the applicant falls under the exception of subparagraph 97(1)(b)(ii) of the Act, insofar as the risk she claimed she would face if she were to return to live in Haiti was a generalized risk of crime faced by the general population of Haiti.

[11] Furthermore, the panel believed that certain inconsistencies in the applicant's testimony with respect to her own experiences and the treatment of other musicians in Haiti called into question the credibility of her account. For example, the applicant alleged that all musicians in Haiti are victims

of persecution and assault, but admitted that the other musicians she knew had not been assaulted. Furthermore, she maintained that she had been assaulted because of her status as a musician, while in another instance, she had been released because she was a music teacher. Finally, the panel was of the view that the fact that she returned to teach music in Jacmel after being assaulted there brought her subjective fear into question.

[12] The panel therefore found that the applicant had not established, on a balance of probabilities, that she would be personally subjected to persecution or to a danger of torture, a risk to her life or a risk of cruel and unusual treatment or punishment if she were to return to Haiti.

III. Did the panel err in rejecting Ms. Lamour's refugee claim?

[13] First, it should be noted that Ms. Lamour's counsel is not calling into question the panel's findings with respect to section 96 of the Act. He is basically challenging the finding that the risk the applicant is claiming to face is generalized. In this respect, he is submitting that the numerous assaults Ms. Lamour was a victim of show that she was not a random victim but rather personally targeted because of what she represents, that is, her status as a woman musician and intellectual.

[14] It is undisputed that the assessment of the evidence and the findings by the panel with respect to the risk of persecution are issues subject to the standard of reasonableness: *Dunsmuir v. New Brunswick*, 2008 SCC 9, at para. 47.

[15] It appears to me that the applicant was correct not to call into question the panel's findings with respect to section 96 of the Act. Relying on the documentary evidence demonstrating that

criminality is rampant in Haiti and that the risk of being a victim of criminal acts does not affect a particular group of the population exclusively, the RPD found that the applicant was a victim of this criminality, not persecution within the meaning of the Convention.

[16] This finding is consistent with numerous decisions by this Court on this matter. The case law is consistent that the fear of a refugee claimant who is a victim of threats, extortion or further retaliation at the hands of criminals does not constitute persecution under one of the five grounds mentioned in the Convention: see, for example, *Hernandez v Canada (Citizenship and Immigration)*, 2003 FCT 5 (FC); *Yuen v. Minister of Employment and Immigration*, [1994] F.C.J. No. 1045 (FCA); *Lozandier v. Canada (Citizenship and Immigration)*, 2009 FC 770; *Jean v. Canada (Citizenship and Immigration)*, 2010 FC 674.

[17] It is the responsibility of the RPD to determine whether the applicant's claim for protection can be related to one of the grounds of persecution set out in the Convention. This is a question of fact that is within the panel's area of expertise, the determination of which must warrant a high degree of deference by this Court. In this case, the applicant merely expressed her disagreement and reiterated the arguments she made before the RPD; this is not sufficient to warrant the intervention of this Court.

[18] The applicant's alleged risk of being kidnapped also cannot be accepted in accordance with section 97. In order to qualify as a person in need of protection, the applicant had to demonstrate that she would "personally" face a risk and that this risk is not one the population generally faces, as specified in subparagraph 97(1)(b)(ii) of the Act:

Person in need of protection**Personne à protéger**

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

[19] In this case, the RPD did not accept the applicant's allegation that she had been targeted by her assailants, whether it was as a member of a risk group (woman, musician) or personally.

Relying on the documentary evidence addressing the situation in Haiti, the panel found that crime is a generalized problem in this country that is faced by the general population. Moreover, the respondent filed several decisions by this Court that refer to this unfortunate situation: see *Lazandier*, above; *Jean v. Canada (Citizenship and Immigration)*, 2010 FC 674; *Sermot v. Canada (Citizenship and Immigration)*, 2009 FC 1105; *Soimin v. Canada (Citizenship and Immigration)*, 2009 FC 218; *Frederic v. Canada (Citizenship and Immigration)*, 2010 FC 1100; *Cyriaque v. Canada (Citizenship and Immigration)*, 2010 FC 1077.

[20] It is well established that a generalized fear of crime, shared by the population as a whole, does not meet the criteria of section 97 of the Act. My colleague, Justice Danièle Tremblay-Lamer, wrote on this point in a decision quoted by the panel:

22. In the recent case of *Carias v Canada (Minister of Citizenship and Immigration)* . . . paras. 23 and 25, O’Keefe J. concluded that the applicants faced a generalized risk of economic crime which was experienced by many other Hondurans, including those perceived as wealthy. In that particular case, the Board accepted that the applicants had been the victims of violence, however, O’Keefe J. dismissed the application indicating, at para. 25, that “[t]he applicants are members of a large group of people who may be targeted for economic crimes in Honduras on basis of their perceived wealth.” Further, he held that “[g]iven the wording of subparagraph 97(1)(b)(ii) of the IRPA, the applicants had to satisfy the Board that they would be personally subjected to a risk that was not generally faced by others in Honduras.”

23. Based on the recent jurisprudence of this Court, I am of the view that the applicant does not face a personalized risk that is not faced generally by other individuals in or from Haiti. 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.

Prophète v. Canada (Citizenship and Immigration), 2008 FC 331, aff’d. by the Federal Court of Appeal in 2009 FCA 31.

[21] The documentary evidence is not adequate for establishing that woman musicians are more at risk than the Haitian population in general. She could very well have been perceived as privileged because she was in contact with wealthy people, and could have therefore been more susceptible to kidnapping and extortion. Again, this does not make her a person directly subject to a risk to her life or to a risk of cruel and unusual treatment or punishment.

[22] Alternatively, the applicant's counsel submitted that she was personally targeted by criminal gangs or individuals and that the assaults she was a victim of were not random. In support of his submissions, counsel relied on *Martinez Pineda v. Canada (Citizenship and Immigration)*, 2007 FC 365, in which this Court found that the RPD had erred in finding that the applicant was not subjected to a risk greater than the risk faced generally by the population of El Salvador, relying on the fact that street gangs recruited across the country and targeted all levels of society, according to the applicant's own admission.

[23] However, it should be noted that the facts underlying that case were very different from the situation in which the applicant found herself in this case. In *Pineda*, the applicant received threats for a long period of time and by the same individuals. As noted by the Court, the applicant did not claim to be subject to a risk to his life or his safety based only on the fact that he was a student, young or from a wealthy family. He had been personally targeted, and the risk that he faced was clearly greater than that faced by the population as a whole. To that end, the Court wrote the following:

15. Under these circumstances, the RPD's finding is patently unreasonable. It cannot be accepted, by implication at least, that the applicant had been threatened by a well-organized gang that was terrorizing the entire country, according to the documentary evidence, and in the same breath surmise that this same applicant would not be exposed to a personal risk if he were to return to El Salvador. It could very well be that the Maras Salvatruchas recruit from the general population; the fact remains that Mr. Pineda, if his testimony is to be believed, had been specifically targeted and was subjected to repeated threats and attacks. On that basis, he was subjected to a greater risk than the risk faced by the population in general.

[24] Given the above-mentioned reasons, I am of the opinion that it was reasonable for the RPD to find that the applicant was not likely to be personally subjected to a risk not shared by other Haitians. The fact that the applicant disagrees with this finding is not sufficient to warrant the intervention of this Court.

[25] The parties did not propose any serious question of general importance; consequently, no question will be certified.

JUDGMENT

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

“Yves de Montigny”

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3165-10

STYLE OF CAUSE: Nathalie Lamour v. MCI

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: February 2, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** de MONTIGNY J.

DATED: March 17, 2011

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