

Federal Court



Cour fédérale

Date: 20190212

Docket: IMM-3153-18

Citation: 2019 FC 173

[CERTIFIED ENGLISH TRANSLATION REVISED BY THE AUTHOR]

Montréal, Quebec, February 12, 2019

PRESENT: The Honourable Mr. Justice Grammond

BETWEEN:

CLARICIA TRESALUS

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Claricia Tresalus, the applicant, is seeking judicial review of a decision dated June 6, 2018, by the Refugee Appeal Division [RAD] that upheld the rejection by the Refugee Protection Division [RPD] of her claim for refugee protection. I am dismissing her application because the RAD has reasonably concluded that the applicant is excluded under Article 1E of the

United Nations Convention Relating to the Status of Refugees [Convention] and section 98 of the *Immigration and Refugee Protection Act, SC 2001, c 27* [IRPA].

[2] Ms. Tresalus is a citizen of Haiti. On December 2, 2014, after receiving threats because of her father's political activities, she left Haiti for the Dominican Republic and then Brazil. Ms. Tresalus obtained permanent resident status in Brazil and was working and living there.

[3] In August 2016, Ms. Tresalus left Brazil for the United States. On July 18, 2017, she entered Canada and claimed refugee protection. On her Basis of Claim [BOC] Form and amended BOC Form, she made no mention of any fears with respect to Brazil.

[4] Ms. Tresalus' claim for refugee protection was heard on November 24, 2017, and was rejected. Ms. Tresalus appealed the decision to the RAD. The appeal was dismissed on June 6, 2018. In its reasons, the RAD found that Ms. Tresalus was excluded under Article 1E of the Convention and section 98 of IRPA because, on the day of her hearing before the RPD, even though she was a Haitian citizen, she was also a permanent resident of Brazil and enjoyed virtually the same rights and obligations as Brazilian citizens. The RAD also found that the RPD had not erred in concluding that Ms. Tresalus' credibility was diminished by her failure to mention in her BOC Form and amended BOC Form the events she allegedly experienced in Brazil that would illustrate the racism and discrimination against Haitians in Brazil. More generally, the RAD found that Ms. Tresalus had failed to show that the discrimination she faced as a Haitian resident of Brazil gave rise to a well-founded fear of persecution within the meaning of the Convention.

[5] In my opinion, the RAD's decision is entirely reasonable. The onus was on Ms. Tresalus to establish that the events she claims to have experienced and the overall situation of Haitians in Brazil have given rise to a well-founded fear of persecution on the basis of her race. Yet it appears that the documentary evidence reviewed by the RAD shows that the applicant enjoys the same rights and obligations as Brazilian citizens, including the right to work, study and gain access to social services (see *Noel v Canada (Citizenship and Immigration)*, 2018 FC 1062 at paragraph 30).

[6] In the alternative, Ms. Tresalus argues that her status in Brazil is conditional and that she should therefore not be excluded under Article 1E of the Convention. I cannot accept this argument. Both parties agree that the exclusion provided for in Article 1E of the Convention must be determined according to the situation on the day of the hearing before the RPD (*Canada (Citizenship and Immigration) v Zeng*, 2010 FCA 118 at paragraph 28, [2011] 4 FCR 3; *Majebi v Canada (Citizenship and Immigration)*, 2016 FCA 274 at paragraph 7). At the time of her hearing before the RPD, Ms. Tresalus still held permanent resident status in Brazil. She did not bring forward any evidence to show that she had lost or could lose her status (see *Obumuneme v Canada (Citizenship and Immigration)*, 2019 FC 59 at paragraphs 40–43).

[7] Consequently, the application for judicial review is dismissed.

JUDGMENT in IMM-3153-18

THIS COURT ORDERS that:

1. The application for judicial review is dismissed.
2. No question is certified.

“Sébastien Grammond”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3153-18

STYLE OF CAUSE: CLARICIA TRESALUS v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: FEBRUARY 11, 2019

JUDGMENT AND REASONS: GRAMMOND J.

DATED: FEBRUARY 12, 2019

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