

Federal Court



Cour fédérale

Date: 20190305

Docket: IMM-463-18

Citation: 2019 FC 267

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, March 5, 2019

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

RONY TOUSSAINT

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Background

[1] The applicant, Rony Toussaint, is a citizen of Haiti. On December 9, 2016, he travelled to the United States where he filed an application for asylum. However, because he feared being returned to his country, the applicant did not wait for the outcome of his application and instead opted to enter Canada illegally on August 24, 2017, and file a claim for refugee protection.

[2] In his Basis of Claim (BOC) Form, the applicant alleges that he had experienced problems in his country since his childhood and feared for his life after receiving death threats from members of the Parti Haïtien Tèt Kale [PHTK] in October and November 2015.

[3] On December 18, 2017, the Refugee Protection Division [RPD] rejected his claim for refugee protection, finding that the applicant was not a “Convention refugee” or a “person in need of protection” under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. It also declared that there was no credible basis for the claim, in accordance with subsection 107(2) of the IRPA.

[4] The applicant is seeking a judicial review of that decision. He alleges that the RPD breached the principles of procedural fairness and erred in the analysis of his credibility. He also alleges that the RPD’s finding that there was no credible basis for the claim is unreasonable.

II. Analysis

[5] It is trite law that the applicable standard for reviewing the RPD’s findings concerning the credibility of an applicant and the lack of any credible basis for a claim is that of reasonableness (*Joseph v Canada (Citizenship and Immigration)*, 2018 FC 638 at para 11; *Mohamed v Canada (Citizenship and Immigration)*, 2017 FC 598 at para 22; *Eze v Canada (Citizenship and Immigration)*, 2016 FC 601 at para 12).

[6] Where the reasonableness standard applies, the role of the Court is to determine whether the decision falls within “a range of possible, acceptable outcomes which are defensible in

respect of the facts and law.” As long as “the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility”, it is not open to this Court to substitute its own preferred outcome (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]; (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59).

[7] Regarding the alleged breach of procedural fairness, the Federal Court of Appeal recently clarified that questions of procedural fairness do not necessarily lend themselves to a standard of review analysis. The Court’s role is rather to determine whether the procedure was fair, having regard to all of the circumstances (*Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69 at para 54; *Dunsmuir* at para 79).

[8] Upon reading the record and after considering the parties’ arguments, the Court finds that there are no grounds for intervention.

A. *Procedural fairness*

[9] The applicant maintains that the RPD breached the rules of procedural fairness. He alleges that (1) the RPD failed to analyze his fear of persecution based on his political opinions; (2) the hearing lasted for only one (1) hour; (3) the RPD was not impartial, since it treated Haitian nationals differently; and (4) the seven-day notice he was given to attend the hearing did not give him enough time to obtain the documents to support his claim for refugee protection.

[10] The applicant’s arguments are without merit.

[11] First, the applicant incorrectly claims that his fear of persecution, based on his political opinions, was not subject to analysis. On the contrary, the RPD analyzed this fear in the context of reviewing the applicant's participation in a political platform known as Pitit Dessalines. At the hearing, the RPD specifically asked him when he had joined this political platform, what he had done for the platform, and how often they had meetings. The RPD also questioned him about the threats that he allegedly received from opponents of the political platform, that is, members of the PHTK. It also asked him why he had failed to declare his political affiliation in Appendix A to his BOC Form. After hearing the applicant's testimony and reviewing the evidence on record, the RPD concluded that the applicant had never been an active member of the political platform Pitit Dessalines and that the applicant's business concern had not been burned down because of his political activities. In making this finding, the RPD pointed out that the applicant had not been able to state when he had joined the party or the number of meetings he had attended, despite the fact that the applicant's alleged political activities had supposedly occurred less than two years earlier. It also rejected the applicant's explanation that he failed to state his political affiliations in Appendix A to his BOC Form because the person who helped him complete the form did not ask him that question.

[12] In light of the foregoing, there is no doubt that the RPD did indeed take the applicant's fear of persecution based on his political opinions into account.

[13] Second, the RPD record demonstrates that the hearing lasted three hours, rather than one hour.

[14] Third, the allegations of bias raised by the applicant are not supported by any evidence.

[15] Lastly, with respect to the applicant's allegation that he was given inadequate notice to attend the hearing, the Court must point out that it is the applicant who bears the onus of proving the merit of his claim for refugee protection. He entered Canada on August 24, 2017, and the record shows that by November 14, 2017, at the very latest, the applicant knew or should have known that his hearing would be held in December 2017. Furthermore, the applicant failed to demonstrate why the notice period provided was not sufficient to allow him to obtain the documentary evidence necessary to support his allegations. In this regard, the Court notes that the applicant's affidavit is completely silent as to any evidence that he would have presented had the RPD given him longer notice. The Court also points out that there is no information on record showing that the applicant applied for a postponement of the hearing, that he expressed any objection to proceeding with the hearing or that he sought leave to file additional evidence. It was his responsibility to do so if he believed that the notice he was given to attend the hearing was prejudicial to him.

B. *Lack of credibility*

[16] The applicant argues that it was unreasonable for the RPD to conclude that he lacked credibility. The applicant alleges, among other things, that the contradictions highlighted by the RPD resulted from leading questions that he was asked during his testimony and his fear of not answering these questions properly. The applicant also contends that it is [TRANSLATION] "deplorable" that the RPD relied on the fact that he did not use the services of an interpreter during the submissions presented by his counsel to conclude that his knowledge of French was

sufficient enough to have enabled him to respond to the question asked in Appendix A to the BOC Form concerning his political affiliation.

[17] Again, the Court must disagree with the applicant.

[18] The hearing transcript demonstrates that the RPD's questions were intended to allow the applicant to explain the basis for his fears. In his BOC Form, the applicant alleges that during the week following the events of November 7, 2015, he decided to flee to Cap-Haïtien. At hearing, the applicant stated that he sought refuge there in November 2016. When the RPD asked him to explain where he lived from November 2015 to November 2016, the applicant reported that he had been living in Kenscoff. The RPD then asked him to explain why he decided to seek refuge in Cap-Haïtien in November 2016 and whether he received any threats. First, the applicant responded that he had been threatened, but later said that he had not. In light of the contradictions in the applicant's responses, the RPD asked the applicant to reconsider his answer, which he then did in an unsatisfactory manner. The questions asked by the RPD were appropriate in this case. Therefore, the RPD could reasonably conclude that the applicant was not credible with regard to a key element of his claim for refugee protection.

[19] The Court also finds that the applicant's argument that it was unreasonable for the RPD to draw negative inferences about his credibility because he allowed his legal counsel to present submissions without requiring interpretation is also without merit. As mentioned earlier, the RPD rejected the applicant's explanation that he neglected to report his political affiliation in Appendix A to his BOC Form because the person who helped him complete the document did

not ask him that question. It is in this context that the RPD pointed out that the applicant understood French well enough to be able to respond to all the questions in the BOC Form because he had not needed any translation of the submissions presented by his counsel. This inference was reasonable because the applicant confirmed, during his testimony, that he understood French or, at the very least, that he understood French well enough to forgo a translation.

[20] In closing, the Court notes that the RPD's finding that the applicant lacked credibility was also based on the applicant's conduct, which the RPD deemed to be inconsistent with his alleged fears, since the applicant made two trips to the United States in 2016 without filing an application for asylum.

[21] In light of the applicant's vague testimony and the inconsistencies, contradictions and failure to include certain key facts in his account, the RPD could reasonably conclude that the applicant lacked credibility.

C. *Finding of no credible basis for the claim for refugee protection*

[22] According to the case law, there is a very high threshold for concluding that there is no credible basis for a claim for refugee protection. This is because such a finding has the effect of depriving a refugee protection claimant of the right to appeal to the Refugee Appeal Division (*Rahaman v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89 at paras 19, 27-30, 51-52; *Mahdi v Canada (Citizenship and Immigration)*, 2016 FC 218 at para 10).

[23] The applicant submits that the RPD's assessment that there was no credible basis for his claim was unreasonable, given that he had only seven days to prepare, which ultimately meant that he was not able to produce the evidence to support his allegations.

[24] For the reasons set out above, the applicant did not demonstrate that he was unable to produce such evidence. Moreover, even though there is a presumption that the allegations contained in an affidavit are true (*Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (FCA) (QL) at para 5), the RPD reasonably found that the presumption had been rebutted in this case. In the absence of credible evidence to justify a favourable decision for a refugee protection claim, it was therefore reasonable for the RPD to conclude, in accordance with subsection 107(2) of the IRPA, that there was no credible basis for the claim.

[25] For these reasons, the Court is of the opinion that the RPD's decision was reasonable because it falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and the law." It was also justified in a manner that satisfies the criteria of transparency and intelligibility in the decision-making process (*Dunsmuir* at para 47).

[26] The application for judicial review is dismissed. No question of general importance was submitted for certification, and it is the Court's opinion that this case does not raise any.

JUDGMENT in Docket IMM-463-18

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed;
2. No question of general importance is certified.

“Sylvie E. Roussel”

Judge

Certified true translation
This 16th day of April, 2019.

Michael Palles, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-463-18

STYLE OF CAUSE: RONY TOUSSAINT v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

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JUDGMENT AND REASONS: ROUSSEL J.

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