Federal Court  Cour fédérale

Date: 20190221

Docket: IMM-3123-18

Citation: 2019 FC 213

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, February 21, 2019

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

EDELINE ELOI

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

[1] The applicant is a Haitian national who has not lived in Haiti since December 2003 and who has been living in Canada with her two sons, both of whom were born in the United States, since July 21, 2017. She is contesting a decision rendered by the Refugee Protection Division [RPD], dated May 31, 2018, rejecting her claim for refugee protection on the ground that there was no credible basis for the claim. The RPD's decision also applied to her two sons, but they

availed themselves of their right to appeal to the Refugee Appeal Division, a right that was not available to their mother. Consequently, this application for judicial review concerns only the applicant.

[2] According to the allegations made in support of the applicant's claim for refugee protection, the events that precipitated her departure from Haiti occurred in the fall of 2003. Everything started with the disappearance of her brother in September, after which her family received death threats. In light of these threats, the applicant, who was a teacher and the treasurer at a primary school, fled to the United States for a few weeks. She returned to Haiti on November 2. The next day, a child was found dead in front of the school where she worked. The perpetrator of the crime could not be identified. A few days later, while she was at work, a group of criminals broke into the building where she worked and demanded, threateningly, that she give them the contents of the cash box holding the school's funds. On November 29, criminals again broke into the school where the applicant worked. This time, they demanded that the school be shut down, while also making death threats against all those at the school. Three days later, the school was set on fire.

[3] The above incidents were followed by two other incidents, on December 10 and 15 (2003), during which the applicant was attacked by bandits. After the second incident, she was informed that gunshots had been fired at her home. The applicant and her family then decided to seek refuge with friends. On December 20, the applicant left for the United States, where she applied for asylum. She lived there until July 21, 2017. In the meantime, she lost everything that she had left in Haiti during the 2010 earthquake, including almost all of her family.

[4] The RPD deemed the applicant's testimony to be "shifting and evasive". The RPD found that she adjusted her answers as she was being questioned, which, according to the RPD, gave rise to contradictions and omissions that undermined her credibility. These contradictions and omissions concerned the following:

a. the number of times that the applicant went to the hospital after the two attacks that she allegedly suffered;

b. the number of times that she filed complaints with the police after these incidents, and the absence, in any event, of any reference to these complaints in the narrative that she provided in support of her claim for refugee protection; and

c. the fact that the applicant asserted, in her testimony, that she was afraid to return to Haiti, partly because she no longer has any family there, even though she stated in her refugee protection claim forms that her mother still lived there, while claiming in the same breath that one of her half-sisters also still lives in Haiti.

[5] The RPD also reproached the applicant for failing to mention the school principal in her refugee protection claim form, as someone who had experienced a situation similar to her own, and for failing to enquire about his situation when she spoke to him in 2014.

[6] Lastly, the RPD ascribed little weight to two documents that the applicant filed into evidence to corroborate her story, a letter from the school principal signed on the very day that the applicant left Haiti for the United States, that is, December 20, 2003, which mentions the school fire and the two attacks allegedly suffered by the applicant, and a certificate issued by the

Haitian national police dated October 2, 2017, confirming the filing of complaints in relation to the alleged assaults, on the ground that they were [TRANSLATION] “not considered sufficient, on their own, to lend credence to testimony that was basically, not credible” (RPD Decision, Certified Tribunal Record [CTR] at p 8, at para 29).

[7] The applicant submits that the RPD erred in assessing her credibility, either because it focussed on omissions or contradictions that were not fatal, or because it disregarded documentary evidence, even though this evidence corroborated the essential elements of her story, specifically, the school fire, the two attacks she allegedly suffered shortly after this fire, the fact that these two attacks had required her to be hospitalized and the two complaints that she filed with the police in relation to these two incidents.

[8] The issue here is whether, in deciding as it did, the RPD committed an error that would warrant the intervention of the Court under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7. It is well-established that a review of the merits of the RPD’s decisions must be based on the standard of reasonableness, which means that in order to be able to intervene, the Court must be satisfied that the RPD’s findings of facts, or of mixed fact and law, fall outside a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[9] In making this determination, the Court must avoid substituting the RPD’s assessment of the facts with its own assessment and show deference to the RPD’s findings, especially when they concern an assessment of the testimony and credibility of a refugee protection claimant,

since this assessment exercise lies at the heart of the RPD's mandate and expertise (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 89; *Quintero Sanchez v Canada (Citizenship and Immigration)*, 2011 FC 491 at para 12 [*Quintero Sanchez*]; *Touileb Ousmer v Canada (Citizenship and Immigration)*, 2012 FC 222 at para 15; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 at para 14 (QL)).

[10] The respondent acknowledges that the RPD's criticisms concerning the applicant's failure to mention the school principal in her refugee protection claim form or to subsequently enquire about his situation are not fatal. However, the respondent believes that the accumulation of the other contradictions and omissions attributed to the applicant provided a reasonable basis for the RPD's decision.

[11] Even though this is a borderline case, I agree with the respondent.

[12] First, I believe that the contradictions concerning the number of times that the applicant had to go to hospital after the attacks that she allegedly suffered are serious. The applicant submits that these contradictions are not fatal because she quickly corrected them in her testimony. However, this is not what the transcript of the hearing reveals. The transcript of the hearing actually reveals that the applicant did not change her position until the very end of the hearing (Transcript of the hearing before the RPD, CTR at p 275), after she had already spontaneously stated several times that she had only gone to the hospital once, after the second attack (Transcript of the hearing before the RPD, CTR at pp 260–261). In her testimony, she also stated that after the first attack, she had received first aid from ambulance paramedics and that

she had therefore not needed to go to the hospital (Transcript of the hearing before the RPD, CTR at p 260). However, later on in her testimony, she stated that she had gone to hospital after the first attack but had not stayed.

[13] I note that in his letter, the school principal wrote, in connection with the first of the two attacks, that after the police report was made, the applicant was taken to hospital [TRANSLATION] "where she spent several days". However, nothing of the sort emerges from the applicant's testimony. I also note that in the declaration she provided upon entering the country (CTR at p 162), the applicant made no mention of the fact that she had been physically attacked, even though she stated that a gun had been pointed at her on two occasions and that she had then been robbed of everything she had on her.

[14] I understand why, at least with respect to this part of the applicant's testimony, the RPD found the applicant's testimony to be "shifting and evasive". As I have already mentioned, I do not share the point of view that the applicant quickly clarified the contradictions that affected her testimony on this aspect of her refugee protection claim. On the contrary, she added to the confusion by conjuring up other scenarios. The accumulation of all these contradictions is not a trivial matter.

[15] I also do not share the point of view that the RPD should have given the applicant the benefit of the doubt with regards to the contradiction between her testimony, where she states that she filed a complaint with the police after each attack, and the second document that she produced in support of her refugee protection claim, namely, the police certificate dated

October 2017, which indicates that only one complaint was filed in connection with the two attacks. The applicant claims that she did not express herself clearly. However, the questions that she was asked in this regard were clear, as were her answers.

[16] In any case, the fact remains that the applicant once again contradicted her own documentary evidence, which, ultimately, was quite meagre and, in the case of the police certificate, obtained 14 years after the fact and only a few months before the applicant's testimony before the RPD. It is also important to point out that this contradiction arose in a context where neither the applicant's narrative nor the refugee protection claim form she submitted made any mention of complaints being filed with the police in connection with the attacks on December 10 and 15, 2003. In my opinion, it was therefore not unreasonable, under those circumstances, for the RPD to view this as yet another indication of the lack of credibility affecting the merits of the applicant's story and to consequently ascribe little weight to the police certificate.

[17] I will now address the fact that the applicant's refugee protection claim form states that her mother is still living in Haiti, when she had not lived there since 2009, and the fact that the applicant's list of family members does not include the name of her half-sister who provided the applicant with their mother's place of residence, yet the applicant alleges that she cannot return to her country of origin because she no longer has any family there.

[18] The applicant submits that these are insignificant snags, especially since she explained to the RPD that she was not raised by her mother and that therefore, she was not always aware of

her mother's comings and goings. Nevertheless, according to her testimony, she was aware, well before filing her refugee protection claim, that her mother was no longer living in Haiti; she had also been in touch with her half-sister well before she filed this claim.

[19] The RPD therefore concluded that it could not rely on the applicant's answers to the questions in the refugee protection claim form. In other contexts, one might very well question the reasonableness of this finding, but in the circumstances of this case, which involve numerous contradictions and omissions, there is no reason to do so.

[20] I would also add that throughout the transcript of the hearing before the RPD, one can sense the RPD's exasperation with other aspects of the applicant's testimony. For example, the RPD found it difficult to understand why the applicant was unable to clarify the reasons for the rejection of the asylum application that she filed in the United States, or why she had not made any effort to obtain the report on the fire at the school where she had worked in Haiti. In my opinion, this only lends further weight to the RPD's finding on the general quality of the applicant's testimony.

[21] It goes without saying that the RPD is best placed to assess the quality of testimony, since it is the RPD that hears the testimony (*Cerra Gomez v Canada (Citizenship and Immigration)*, 2018 FC 1233 at para 37; *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 22; *Soorasingam v Canada (Citizenship and Immigration)*, 2016 FC 691 at para 23; *Jin v Canada (Citizenship and Immigration)*, 2012 FC 595 at para 10), and that deference is appropriate when the Court is required to determine the reasonableness of an assessment by the

RPD (*Jiang v Canada (Citizenship and Immigration)*, 2019 FC 57 at para 15; *Zuniga v Canada (Citizenship and Immigration)*, 2018 FC 634 at para 13; *Quintero Sanchez*, above, at para 12; *Profète v Canada (Citizenship and Immigration)*, 2010 FC 1165 at para 11). It is also a well-established fact that an accumulation of omissions and contradictions in a narrative intended to support a refugee protection claim may legitimately serve as the basis for a negative finding regarding the refugee protection claimant's credibility; depending on the circumstances of each case, it can also legitimately justify the documentary evidence intended to corroborate a narrative being given little weight (*Quintero Cienfuegos v Canada (Citizenship and Immigration)*, 2009 FC 1262 at para 1; *Lawal v Canada (Citizenship and Immigration)*, 2010 FC 558 at para 25; *Obinna v Canada (Citizenship and Immigration)*, 2018 FC 1152 at para 31).

[22] The Court is faced with this type of situation here, and I see no reason to interfere with the RPD's overall finding concerning the applicant's lack of credibility. My role is not to reconsider the evidence and substitute my own findings for those of the RPD should such a reconsideration lead me to a different outcome. My role is to determine whether the RPD's finding falls within a range of possible, acceptable outcomes in respect of the facts and law. I have concluded that this is the case.

[23] This application for judicial review will therefore be dismissed. Neither party has proposed that a question of general importance be certified for the purposes of an appeal.

JUDGMENT in IMM-3123-18

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is dismissed;

2. No question is certified.

"René LeBlanc"
Judge

Certified true translation
This 14th day of May 2019.

Johanna Kratz, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3123-18
STYLE OF CAUSE:	EDELINE ELOI v THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	January 16, 2019
JUDGMENT AND REASONS:	LEBLANC J.
DATED:	February 21, 2019

APPEARANCES:

Claudette Menghile	FOR THE APPLICANT
Sherry Rafai-Far Amélia Couture (Student-at-Law)	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Claudette Menghile Counsel Montréal, Quebec	FOR THE APPLICANT
Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT