Federal Court  Cour fédérale

Date: 20190618

Docket: IMM-5919-18

Citation: 2019 FC 827

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, June 18, 2019

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

ATHALIA MICHEL-QUERETTE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Athalia Michel-Querette (the applicant) decided to leave Haiti in August 2017 and claimed refugee protection in Canada on September 3, 2017. Her protection claim was rejected by the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB) on September 13, 2018, essentially because the RPD was not satisfied that the applicant had established the existence of a serious possibility of persecution should she return to Haiti or that

she would face a danger of torture, a risk to her life or a risk of cruel and unusual treatment or punishment should she return to her country.

[2] The applicant seeks judicial review of that decision and submits that the RPD made three errors: (i) it incorrectly interpreted and applied the IRB's *Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-related Persecution* (the Guideline); (ii) it did not provide sufficient reasons for its decision regarding the Guideline; and (iii) the decision is unreasonable with respect to the determination that the applicant is not a person subjected to a personalized risk in Haiti. I agree that the first two issues are related, and I will thus analyze them together.

[3] The parties agree that the standard of review applicable in this context is that of reasonableness, and I agree with that conclusion (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93; *Kaké v Canada (Citizenship and Immigration)*, 2015 FC 852 at para 29 [*Kaké*]; *Plaisimond v Canada (Citizenship and Immigration)*, 2010 FC 998 at para 32.

[4] To summarize the case at bar: the applicant is a Haitian citizen and a woman living alone, her husband having disappeared in 1997. Following his disappearance, the applicant lived alone with her young daughter in Port au Prince. After the devastating earthquake in Haiti, with financial help from her sisters living in Canada, the applicant moved to a different area near Port au Prince. In 2015, she was assaulted with a weapon in the street. Two years later, in July 2017, five unidentified armed individuals broke into her home, and one of them tried to rape her. Another member of the group stopped him, but the men beat up the applicant in front of her daughter.

[5] The applicant hid in another town, at her uncle's home, where she was treated by traditional doctors. A few weeks later, she returned to Port au Prince, where she lived with a female friend, who was a co-worker, until she left the country. Her daughter remained in Haiti with that same friend.

[6] It is relevant to note that the applicant went on vacation to the United States in 2013, 2014 and May 2017, but that she never claimed asylum there, even though she had an American visa.

I. Application of the Guideline

[7] Paragraph 159(1)(h) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], confers on the Chairperson the power to issue guidelines. The Guideline pertains to women refugee claimants fearing gender-related persecution. The case law has established that "although Guideline 4 is not binding, the RPD must nonetheless apply the principles enshrined in Guideline 4 in a meaningful way [citations omitted]" (*Kaké*, at para 37).

[8] The applicant submits that the RPD did not apply the Guideline appropriately and that the RPD decision does not explain how the Guideline was applied to its analysis. She notes that there is only one reference to the Guideline in the decision, at paragraph 19, stating that [TRANSLATION] "the panel has considered *Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-related Persecution*". The applicant argues that, without further explanation, the RPD's reasons are not sufficiently detailed and are unreasonable.

[9] The respondent claims, on the contrary, that the decision applies the factors listed in the Guideline and that the RPD's findings are reasonable in respect of the facts and the law. The reasons for the decision are adequate, considering the facts established by the applicant's own evidence.

[10] The RPD essentially based its decision on the fact that the applicant's fear as a woman alone in Haiti is questionable. She has had no husband since 2009, but she waited eight years before fleeing Haiti and claiming refugee protection. During that period, she left Haiti for vacation in the United States three times and therefore had the opportunity to claim either asylum in the United States or refugee protection in Canada earlier. Her sisters, who live in Canada, could also have helped her come to Canada when she travelled to the United States.

[11] The RPD explained that the applicant is not a [TRANSLATION] "woman alone" in Haiti given that she has several family members there and that her history shows that she also has a strong social and professional network. The evidence on the record shows that she has the support of her family, friends, employer and co-workers, if need be, and that she trusts them.

[12] The applicant also alleges that the RPD interpreted the Guideline incorrectly and did not explain in its decision how the Guideline was applied in analyzing her file. There are no allegations related to a specific provision of the Guideline. It is rather an argument that the lack of explanations in the decision is sufficient to establish that it is unreasonable.

[13] I am not satisfied that the RPD decision is unreasonable. The RPD is not asked to cite the Guidelines section by section or to provide a specific annotation of each point. The law requires that decisions show how the RPD applied the Guideline in analyzing the facts of the case at bar

(*Kaké*, at para 37). Here, the RPD dealt with the applicant's allegations in a manner that was specific and related to the facts.

[14] Upon reading the decision and the record, it is apparent that the RPD followed the principles in the Guideline in analyzing the applicant's evidence. Although the RPD does not identify the guiding principles in the Guideline right away, its analysis of the facts and the evidence applies the analytical framework of the Guideline. The decision reflects that the RPD dealt with the relevant facts and applicable law, which is exactly what is required by *Dunsmuir v New Brunswick*, 2008 SCC 9.

[15] For these reasons, I do not accept the applicant's argument regarding the Guideline.

II. Reasonableness

[16] With respect to the second issue, I agree that the respondent's description of it is the more appropriate one, that is, the basic issue is whether the RPD's decision that the applicant has not established that she would face a personalized risk to her life or a risk of cruel and unusual treatment or punishment is unreasonable.

[17] The RPD found that the applicant was a victim of random crimes in 2015 and 2017 and that those incidents were not sufficient to establish, on a balance of probabilities, that she would face a personalized risk as required by paragraph 97(1)(b) of the IRPA. The applicant refers to *Loyo de Xicara v Canada (Citizenship and Immigration)*, 2013 FC 593. However, I find that the facts of that case are not similar to those in the applicant's case. The applicant did not allege that

the two incidents were connected, and the evidence does not support such a connection or any basis for believing that she was attacked for any motive.

[18] The case law is consistent in that the applicant has the burden of establishing a personalized risk should the applicant return to her country of origin, and that random crime indiscriminately and generally faced by everyone living in that country does not meet the standards of paragraph 97(1)(b) of the IRPA (*Soimin v Canada (Citizenship and Immigration)*, 2009 FC 218; *Josile v Canada (Citizenship and Immigration)*, 2011 FC 39).

[19] The RPD's conclusion that the applicant did not establish that she would face a personalized risk is well reasoned and supported by the evidence. I am not satisfied that the RPD decision on this issue is unreasonable.

III. Conclusion

[20] For all of these reasons, I dismiss the application for judicial review.

[21] No question was submitted for certification, and none arises.

JUDGMENT in IMM-5919-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question of general importance to be certified.

"William F. Pentney"
Judge

Certified true translation
This 1st day of August, 2019.

Michael Palles, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5919-18
STYLE OF CAUSE:	ATHALIA MICHEL-QUERETTE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	JUNE 11, 2019
JUDGMENT AND REASONS:	PENTNEY J.
DATED:	JUNE 18, 2019

APPEARANCES:

Jean Auberto Juste	FOR THE APPLICANT
Carolyn Phan	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Jean Auberto Juste Counsel Ottawa, Ontario	FOR THE APPLICANT
Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT