

Federal Court



Cour fédérale

Date: 20190828

Docket: IMM-183-19

Citation: 2019 FC 1106

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, August 28, 2019

PRESENT: The Associate Chief Justice Gagné

BETWEEN:

JEAN RENÉ JEAN BAPTISTE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Nature of the matter

[1] Jean René Jean-Baptiste is challenging a decision of the Refugee Appeal Division (RAD) confirming the refusal of the Refugee Protection Division (RPD) to grant him refugee protection in Canada. The RAD found that the determinative issue in Mr. Jean Baptiste's claim was the

existence of an internal flight alternative (IFA) in Cap-Haïtien. It therefore considered it unnecessary to review the RPD's negative findings as to Mr. Jean-Baptiste's credibility.

[2] Mr. Jean Baptiste criticizes the RAD for failing to carry out its own analysis of the record and for merely considering the reasonableness of the RPD's decision.

II. Facts

[3] Mr. Jean Baptiste is a 42-year-old Haitian citizen whose Basis of Claim Form (BOC Form) describes a number of incidents from June to August 2017.

[4] When he was working as a driver for the national blood transfusion safety program of the Ministry of Public Health, he noticed that two employees were stealing government assets, and he reported them to the program director. The individuals were fired on June 15, 2017.

[5] A week later, they went to the workplace and verbally abused him, blaming him for their dismissal. They left when the security guards intervened.

[6] A few days later, Mr. Jean Baptiste was followed by a group of armed individuals on motorcycles, and he took refuge in a police station. He was advised to limit his travel.

[7] On July 10, 2017, he received a death threat over the telephone; after he reported the call, a police officer advised him to change his telephone number.

[8] On July 16, 2017, armed individuals went to his home to abduct him. He was bound and beaten. The attackers threatened him with death if he did not arrange for the terminated employees to return to their jobs.

[9] Mr. Jean Baptiste made a statement to a justice of the peace, who issued a report of the incident on July 16, 2017. He then hid in his sister's home for two weeks before leaving the country for the United States on August 16, 2017. He stated that he did not claim asylum because of the current president's immigration policies.

[10] Mr. Jean Baptiste crossed the border at Saint-Bernard-de-Lacolle and was placed in custody for four days for having entered Canada illegally.

[11] The RPD rejected his claim for refugee protection primarily because it found that Mr. Jean-Baptiste could seek refuge in Cap-Haïtien. It also identified credibility issues in his testimony.

[12] First, he stated during the hearing before the RPD that his attackers were still working for the Ministry of Public Health, but in his BOC Form, he stated that they were fired after he reported them. When confronted with this contradiction, he clarified that they entered the grounds of the Ministry of Public Health to threaten him.

[13] Second, in both the complaint that he filed with the Port-au-Prince police station and the statement that he gave to the justice of the peace who came to record the state of his home after

the incidents on July 16, 2017, Mr. Jean-Baptiste states that [TRANSLATION] “unidentified armed men come to break into my house, saying that I have some money hidden in the house; they beat me up, tortured me and fired shots, and the criminals said they would come back to take my life.” Faced with this version of the facts, in which there is a clear contradiction as to the identity of the attackers, Mr. Jean-Baptiste stated that he did not know the individuals who went to his home and that he could not say with certainty that they were working on behalf of his dismissed former co-workers. The RPD rejected this explanation because, in his BOC Form, Mr. Jean-Baptiste stated that his attackers threatened him with death if the dismissed employees were not rehired.

[14] Despite the foregoing, the RPD found that the determinative element in its analysis was the fact that Mr. Jean-Baptiste had failed to establish that he could not relocate safely to Cap-Haïtien and that it was unreasonable to do so.

[15] The RPD rejected Mr. Jean-Baptiste’s argument that his attackers could track him down in Cap-Haïtien through a simple telephone call. In its opinion, the fact that they had not searched for him at his sister’s home, which was seven or eight minutes away from his home, before or after he left Haiti, suggests that they had no desire to search for him. As well, the RPD was not satisfied with Mr. Jean-Baptiste’s explanation that it was likely because he seldom saw his sister. The RPD therefore found that, even if they had the ability to find him, Mr. Jean Baptiste’s attackers would not have the desire to search for him in Cap-Haïtien.

[16] Lastly, the RPD rejected Mr. Jean-Baptiste's submission that, due to the high rate of unemployment in Cap-Haïtien, it would be unreasonable to require that he move there.

Mr. Jean Baptiste was employed for 10 years before leaving Haiti; therefore, it is not unreasonable to think that he could settle in Cap-Haïtien and find work there.

III. Impugned decision

[17] The RAD confirms the RPD finding that Mr. Jean Baptiste may seek refuge in Cap-Haïtien. Its analysis is relatively short and may be reproduced in full:

[10] Even accepting that there may be a culture of vengeance in Haiti and that it is easy to track people down throughout the country, the RPD did not err in concluding that the bandits who attacked the Appellant likely did not have the interest or motivation to track him down in Cap Haitien. It was not an error for the RPD to rely on the bandits' failure to seek the Appellant at his sister's place which was only 7–8 minutes away from his house to conclude that they likely did not have the motivation to track him down at a location several hours away.

[11] I also find that the RPD did not err in concluding that it would not be unreasonable for the Appellant to seek refuge in Cap Haitien. The question under the second prong of the IFA test is whether an IFA is objectively reasonable in all the circumstances not whether it is convenient or attractive to the Appellant. While the unemployment rate may be high in Cap Haitien, the National Documentation Package (NDP) indicates that all of Haiti is affected by poverty and that the country continues to recover from the 2010 earthquake that devastated Port-au-Prince. In my view, the RPD did not err in finding that it was objectively reasonable to expect the Appellant to seek safety in Cap Haitien before seeking a haven in Canada or elsewhere. (Footnotes omitted)

IV. Issues and standard of review

[18] Mr. Jean Baptiste argues essentially that the RAD did not carry out its own analysis of the record and that it erred in finding that there was an internal flight alternative for him in Cap-Haïtien.

[19] The applicable standard of review in this case is reasonableness (*Verma v Canada (Citizenship and Immigration)*, 2016 FC 404 at para 14; *Momodu v Canada (Citizenship and Immigration)*, 2015 FC 1365 at para 6).

V. Analysis

[20] To determine whether there is an IFA in the home country of a refugee protection claimant, the first question is whether “the circumstances in the part of the country to which the claimant could have fled are sufficiently secure to ensure that the appellant would be able to enjoy the basic and fundamental human rights”. The next question is whether “conditions in that part of the country [are] such that it would not be unreasonable, in all the circumstances, for the claimant to seek refuge there” (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (FCA) at paras 5–6; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (FCA)).

[21] It is the applicant, and not the respondent or the RAD, who has the onus of demonstrating that the IFA is unreasonable (*Photskhverashvili v Canada (Citizenship and Immigration)*, 2019 FC 415 at para 32; *Diaz Pena v Canada (Citizenship and Immigration)*, 2019 FC 369 at

paras 36–37). The applicant must present actual and concrete evidence of the existence of conditions that would jeopardize his life or safety if he were to attempt to relocate to that part of the country (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (FCA) at paras 15–17).

[22] Mr. Jean Baptiste argues that the RAD limited its analysis to the reasonableness of the RPD's decision and that it did not carry out its own analysis of the case.

[23] First, I believe that some clarification is required. The RAD did not apply the standard of reasonableness in its analysis of the RPD's findings. It merely confirmed that it was not unreasonable to require that Mr. Jean-Baptiste seek refuge in Cap-Haïtien before claiming refugee protection in Canada. This is in effect the second prong of an IFA analysis, and this finding tends to confirm that the RAD carried out its own analysis of the issue.

[24] As for the first prong of the analysis, the RAD and the RPD were to take into account the national documentation package, which indicates that it is possible and relatively easy to trace an individual anywhere in Haiti with few resources, even over time.

[25] However, the RAD distinguished between the possibility or ability of Mr. Jean-Baptiste's attackers to trace him in Cap-Haïtien, and their motivation or desire to do so. It found that Mr. Jean-Baptiste had not demonstrated this second aspect of the risk. It also rejected his explanation to the RPD that they did not search for him after his departure precisely because they knew he had left the country. However, apart from this vague and late explanation by Mr. Jean-

Baptiste, he provides no details as to how his attackers learned of his departure or how this information would have reached them. During the hearing, counsel for Mr. Jean-Baptiste was also unable to provide the Court with any evidence corroborating this vague allegation by Mr. Jean-Baptiste.

[26] Moreover, even if Mr. Jean-Baptiste's attackers had known that he had been abroad since his departure, they did not try to find him when he was at his sister's home, and they have not contacted his family since his departure (*Trevino Zavala v Canada (Citizenship and Immigration)*, 2009 FC 370 at para 15).

[27] In the circumstances, I am of the opinion that it was reasonable to find that Mr. Jean-Baptiste had not provided convincing evidence that his life or safety would be jeopardized if he were to relocate to Cap-Haïtien. Since his attackers made only limited efforts to trace him in Port-au-Prince, it is unlikely that they would search for him in Cap-Haïtien (*Louis v Canada (Citizenship and Immigration)*, 2016 FC 923 at paras 14–15).

[28] Moreover, the mere fact that it would be difficult to find employment in Cap-Haïtien is insufficient to conclude that it would be unreasonable to find refuge there (*Ranganathan*, above; *Thirunavukkarasu*, above). Although unemployment rates are high throughout Haiti, Mr. Jean-Baptiste managed to maintain a good job in the 10 years before he left. It cannot be assumed that he would be unable to find employment in Cap-Haïtien.

[29] The fact that the RAD agreed with the RPD's findings in no way suggests that it might not have carried out its own analysis of the evidence (*Irvbogbe v Canada (Citizenship and Immigration)*, 2016 FC 710 at para 39; *Anel v Canada (Citizenship and Immigration)*, 2016 FC 759 at paras 24–26; *Guo v Canada (Citizenship and Immigration)*, 2017 FC 317 at para 15). Rather, in my view, it confirms that the RAD applied the correctness standard in its analysis of the RPD's findings.

VI. Conclusion

[30] The RAD reasonably found that it was safe and reasonable for Mr. Jean-Baptiste to seek refuge in his own country before claiming refugee protection in Canada. For these reasons, his application for judicial review is dismissed. No question of general importance has been proposed by the parties for me to certify, and none arises in this case.

JUDGMENT

THIS COURT'S JUDGMENT is that

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

“Jocelyne Gagné”

Associate Chief Justice

Certified true translation
This 6th day of September, 2019.
Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-183-19

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CITIZENSHIP AND IMMIGRATION

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