

Federal Court



Cour fédérale

**Date: 20191031**

**Docket: IMM-1784-19**

**Citation: 2019 FC 1369**

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

**Montréal, Quebec, October 31, 2019**

**PRESENT: The Honourable Madam Justice St-Louis**

**BETWEEN:**

**Louinet LAINÉ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. INTRODUCTION**

[1] Louinet Lainé is applying for judicial review of a decision made by the Refugee Appeal Division [RAD] on February 26, 2019, dismissing her appeal, confirming the decision of the Refugee Protection Division [RPD] and determining that he is not a Convention refugee or a

person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

## II. BACKGROUND

[2] Mr. Lainé is a citizen of Haiti. On May 11, 2017, he left Haiti for the United States and on July 15, 2017, he arrived in Canada and claimed refugee protection. Mr. Lainé based his claim on the fact that he was targeted by criminals because he was successful in his business and his trade, and because he was travelling to the United States.

[3] On August 2, 2017, Mr. Lainé signed the Basis of Claim Form [BOC Form] in which he alleges, essentially, that (1) on March 23, 2017, he was attacked in his store in Pétion-Ville by three criminals with firearms; (2) [TRANSLATION] “after that” he filed a complaint with the police station; (3) he was threatened again two or three days later; and (4) approximately one and a half months later, his family was threatened.

[4] On April 23, 2018, the RPD found that Mr. Lainé had not established that there was a serious possibility of persecution on a Convention ground, or that, on a balance of probabilities, he would be personally subjected to a danger of torture, a risk to his life or a risk of cruel and unusual treatment or punishment if he returns to Haiti, primarily because it did not believe his risk history.

[5] The RPD is satisfied with Mr. Lainé's proof of identity, but raises credibility issues. It notes that Mr. Lainé's children go out in public and go to school without any problems in Haiti, but it does not draw any negative conclusions about Mr. Lainé's credibility. Ultimately, the RPD considers that being targeted by the criminals because he is doing well in business is a generalized risk that is no different from the risk faced by other Haitians in the country, and consequently, the RPD rejects Mr. Lainé's refugee protection claim. The RPD does not give any probative value to the complaint document submitted by Mr. Lainé and draws negative conclusions about Mr. Lainé's credibility due to omissions and contradictions between his testimony and the information contained in his BOC Form.

### III. THE RAD'S DECISION

[6] The RAD conducted its own analysis of the record by applying the standard of correctness. The determinative issue is Mr. Lainé's credibility.

[7] The RAD found that the RPD erred in finding that Mr. Lainé lacked credibility based on the contradiction in the date of his work stoppage, and confirmed that the RPD did not otherwise draw any negative inference from the fact that the children would leave the house in Haiti. However, the RAD considered that the RPD did not err on the other points, namely (1) the fact that the complaint to the police station is dated March 24, 2018, and it was recorded as being received at 1:00 p.m. rather than in the evening, which taints the reliability of the document and does not constitute a minor contradiction; (2) the irregularities in the identification number recorded in the complaint, and the fact that the document is limited to

repeating the statements without verification or investigation also taints the reliability of the document and its probative value; and (3) the one-and-a-half-month delay in Mr. Lainé's departure from his home constitutes an inconsistency in the face of the alleged fear and undermines the credibility of the threats; and (4) the fact that the identity of the person who knocked on the door of Mr. Lainé's house after his departure is not known fails to establish, on a balance of probabilities, that his life was threatened. Finally, the RAD confirmed that the RPD did not err in stating that the risk Mr. Lainé claims is generalized and no different from that of Haitians in the same professional situation.

[8] The RAD therefore confirmed the RPD's decision and found that Mr. Lainé failed to establish, on a balance of probabilities, that he would be subjected to a risk to his life or a risk of cruel and unusual treatment or punishment if he must return to Haiti.

#### IV. POSITIONS OF THE PARTIES

##### A. *Mr. Lainé's position*

[9] Mr. Lainé submits to the Court that the RAD (1) erred in fact and in law since the reasons given are unreasonable and not based on the evidence; (2) relied on evidence that is irrelevant and not determinative of the outcome of the claimed rights; (3) drew negative inferences on non-determinative and irrelevant evidence; (4) does not seem to clearly establish which elements are relevant and what evidentiary weight to give them, especially since it acknowledged the

serious situation in Haiti; and (5) has not clearly established how it concluded that there is a generalized risk and that there are no personalized risks.

[10] More specifically, Mr. Lainé submits that his testimony does not contradict crucial facts that are the basis of his refugee protection claim. He adds that his explanations are plausible and realistic, and that there is no accumulation of contradictions. Mr. Lainé adds that the RAD should not have rejected an entire swath of the evidence solely on the basis of a lack of credibility. In his view, the consistency of the account and the preponderance of evidence of the alleged facts must prevail over facts that are irrelevant and not determinative of the outcome of the claimed right (*Canada (Minister of Employment and Immigration) v Dan-Ash*, [1988] FCJ No. 571 (CA)).

[11] Citing *Kulasekaram v Canada*, 2013 FC 388, Mr. Lainé also criticizes the RAD for focusing exclusively on minor inconsistencies and failing to take into account relevant issues, such as the objective situation in Haiti. Finally, Mr. Lainé adds that the elements of his account that are not contested are sufficient to establish a personalized risk based on the documentary evidence.

[12] Lastly, Mr. Lainé submits that the RAD's decision is unintelligible and unreasonable (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

B. *Minister's position*

[13] The Minister responds that the RAD's decision is well founded in fact and in law and contains no error that would justify judicial intervention. The RAD came to a reasonable conclusion by pointing out an inconsistency in Mr. Lainé's conduct and by not giving any probative value to the complaint, given the irregularities it contains. The Minister adds that all elements relating to the refugee protection claim have been considered. He also adds that the RPD did raise the issues in Mr. Lainé's account during the hearing and gave him the opportunity to provide explanations. Finally, the Minister states that the possibility that Mr. Lainé may have been a victim of a criminal act in Haiti does not constitute a personalized risk.

[14] In conclusion, the Minister submits that the RAD's decision is reasonable and that it is not for this Court to substitute its opinion for the RAD's.

## V. ANALYSIS

[15] The Court agrees with the parties that the RAD's decision should be assessed against the standard of reasonableness (*Dunsmuir v New-Brunswick*, 2008 SCC 9 [*Dunsmuir*]; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 [*Khosa*]). The Court's task is to assess the justification, transparency and intelligibility of the decision-making process, as well as to determine whether the decision falls within "the range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at para 47). Thus, if the process and decision in question are consistent with the principles of justification, transparency and intelligibility, the reviewing court cannot substitute it with a decision that it considers preferable. It is also not the reviewing court's role to reassess the evidence (*Khosa* at para 59).

[16] I do not agree with Mr. Lainé's position, and I am satisfied that it was reasonable for the RAD, given the evidence before it to (1) conclude that Mr. Lainé's testimony presents contradictions on crucial facts that undermine the basis of his claim for refugee protection; (2) not give probative force to the complaint given the irregularities it presents; (3) conclude that the explanations that Mr. Lainé provided for these inconsistencies and contradictions are insufficient; and (4) conclude that the inconsistencies addressed by the RAD are not minor, but are central to the refugee protection claim.

[17] Moreover, there is no indication that the RAD has failed to take into account relevant issues, such as the objective situation in Haiti. Mr. Lainé did not convince me that the risk he claims, based on his status as a business owner who travels to the United States and since his allegations have been undermined by the findings on his credibility, is not a generalized risk and that the RAD's conclusion in this regard is unreasonable.

[18] Mr. Lainé expresses his disagreement with the RAD's conclusions, but he has failed to demonstrate that they are unreasonable with regard to the facts and law and that they are not among the possible outcomes in light of the record.

**JUDGMENT in IMM-1784-19**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed and no question of general importance is certified.

“Martine St-Louis”

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Judge

Certified true translation  
This 14th day of November, 2019.

Michael Palles, Reviser



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1784-19

**STYLE OF CAUSE:** LOUINET LAINE v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** OCTOBER 23, 2019

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