Federal Court  Cour fédérale

Date: 20191113

Docket: IMM-1338-19

Citation: 2019 FC 1425

[UNREVISED ENGLISH TRANSLATION]

Montréal, Quebec, November 13, 2019

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

MILORGE MERCREDI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

Delivered from the bench at Montréal, Quebec, on November 13, 2019
(Syntax and grammar were corrected and case citations were incorporated)

[1] The applicant, Milorge Mercredi, is seeking judicial review of a decision rendered on February 11, 2019, by the Refugee Appeal Division [RAD]. In its decision, the RAD confirmed the decision by the Refugee Protection Division [RPD] 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].

[2] The applicant is a citizen of Haiti. In his refugee protection claim, he alleged that he was invited by the commune chief to join the political party Tèt Kale in January 2013. When he refused, the commune chief told him to leave the region. A few months later, the applicant was beaten by three young boys at the request of the commune chief. The applicant filed a complaint with the police but there was no follow-up. In July 2013, the commune chief again asked him to join the party. When the applicant refused, he was threatened with death. Then on July 24, 2013, the applicant was again beaten by bandits. He lost consciousness and received an injury to his forehead. He filed a complaint with the police and left his residence to go live with his uncle in Port-au-Prince. He left Haiti on September 6, 2013, for the Dominican Republic and then Brazil, where he worked for three years until he was the victim of racial discrimination. In December 2016, he went to the United States but did not file a refugee protection claim. In July 2017, he left the United States for Canada because of new immigration policies.

[3] On May 28, 2018, the RPD dismissed his refugee protection claim. It found that the applicant was not credible and did not show that his alleged persecutor would have any interest in him should he return to Haiti.

[4] The applicant appealed this decision before the RAD, which found that the RPD erred with regard to the applicant's credibility. It considered that the applicant did not fully understand the questions the RPD was asking and that his explanation as to why he did not file a refugee claim in the United States was reasonable. However, the RAD found that the applicant did not demonstrate that he would personally be exposed to a prospective risk should he return to Haiti.

[5] It reached this conclusion relying on the answers provided by the applicant that he was not aware of the activities of the commune chief and that he could not confirm if he was still in Haiti. It also noted that the election for which the commune chief was campaigning in 2013 was over and that since 2017, a new president had been elected. Moreover, according to the applicant's testimony, his family had not had any problems since he left Haiti and when the applicant took refuge at his uncle's in Port-au-Prince in August 2013, the commune chief and his associates did not cause him any problems, despite the fact they knew the applicant's uncle well. Lastly, it considered that the applicant did not present any evidence that he was still a person of interest for his alleged persecutor five years after the events.

[6] The applicant alleges that the burden imposed by the RAD was too great, requiring proof his persecutor is not dead today. He also alleges that it was unreasonable for the RAD to conclude that he no longer faces any prospective danger by relying on the fact the applicant did not have any problems when he took shelter at his uncle's.

[7] The standard of review that applies to RAD decisions involving the assessment of evidence is reasonableness (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35).

[8] When 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". If "the process and the outcome fit comfortably with the principles

of justification, transparency and intelligibility", then this Court cannot substitute its own view of a preferable outcome (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59 [*Khosa*]).

[9] Moreover, it is important to note the Supreme Court of Canada directives according to which a judicial review is not a line-by-line treasure hunt for error. On the contrary, the decision must be considered as a whole, in its entirety and in the context of the record (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54; *Construction Labour Relations v Driver Iron Inc.*, 2012 SCC 65 at para 3; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 14).

[10] After reviewing the record, the Court cannot support the applicant's arguments.

[11] First, the RAD did not require the applicant to produce evidence that his persecutor is not dead today. Rather, the RAD found that the applicant did not show or present any evidence that he is still, five years after the events, a person of interest for his persecutor. At no time did it require the applicant to show that his persecutor was still alive to support his refugee protection claim. The applicant erroneously relied on a question he was asked during his testimony before the RPD to support his argument. However, the transcript of his testimony before the RPD shows that the RPD member was seeking to clarify why the applicant still feared this person today in order to assess the risk he would face should he return to Haiti. The Court is of the opinion that it

was open to the RAD to note, from the applicant's own testimony, that he was not aware of his persecutor's activities today and that he could not confirm whether he was still in Haiti. The applicant had the burden of showing there was a prospective threat. The RAD could reasonably conclude, in light of the record, that there was a lack of evidence that the applicant would still be a person of interest to his persecutor.

[12] The Court also considers the applicant's argument that it was unreasonable for the RAD to rely on the fact he did not have any problems with his persecutor when he was hiding at his uncle's in August 2013 to be without merit. During his testimony, the applicant stated that he had no problems when he took shelter at his uncle's. He then stated that if he were to return to Haiti, his persecutor and his associates would know he was back since they know his uncle well. The applicant did not explain how this connection would cause him problems five years later when this was not the case in 2013. The applicant also stated in his testimony that his family had not had any problems with the applicant's persecutor. In light of this evidence, it was reasonable for the RAD to conclude that the applicant had not established a prospective risk if he were to return to Haiti.

[13] After reviewing the entire record, the Court is not satisfied that the applicant showed that the RAD's findings were unreasonable in light of the case. Although the applicant does not agree with the RAD's findings, it is not this Court's duty to reassess and re-weigh the evidence to come to a finding in favour of the applicant (*Khosa* at para 59).

[14] In conclusion, the Court finds that the RAD decision is reasonable because it "falls within a range of acceptable outcomes that are defensible in respect of the facts and law" and there is justification, transparency and intelligibility within the decision-making process (*Dunsmuir* at para 47).

[15] The application for judicial review is therefore dismissed. No question of general importance is certified.

JUDGMENT in Docket IMM-1338-19

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

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Claude Whalen	FOR THE APPLICANT
Michèle Plamondon	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Claude Whalen Counsel Montréal, Quebec	FOR THE APPLICANT
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT