Federal Court  Cour fédérale

Date: 20200128

Docket: IMM-1950-19

Citation: 2020 FC 156

[REVISED ENGLISH TRANSLATION]

Ottawa, Ontario, January 28, 2020

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

JESULA DEBEL
ALIANCE SOLIMA
SHERLIE SOLIMA
ALAIN SOLIMA
MIKE SOLIMA

Applicants

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This case concerns the reasonableness of the analysis of a fear of persecution in the country of permanent residence under Article 1E of the *United Nations Convention Relating to*

the Status of Refugees, July 28, 1951, 189 UNTS 137 [Convention], and section 98 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. In particular, the applicants are seeking judicial review of a decision of the Refugee Appeal Division [RAD] concluding that the lack of protection in their country of residence was their fault, rather than the result of a weakness in the protection afforded by the state of residence.

[2] As I will explain, the RAD analysis was reasonable. The application for judicial review is dismissed.

II. Facts

[3] The applicants, Jesula Debel [the principal female applicant], her husband Aliance Soliman [the principal male applicant] and their minor children are citizens of Haiti.

[4] The applicants argued that their lives were in danger because of conflicts with the principal male applicant's family because they never accepted his relationship with his wife. In 2001, the principal male applicant's family poisoned him. In July 2002, the applicants left for the Jacmel Valley to avoid the family disputes. They then moved to the Dominican Republic. From 2002 to 2010, the principal female applicant travelled back and forth between the Jacmel Valley and the Dominican Republic, while her husband remained in the Dominican Republic. During this time, the principal female applicant's family forcibly confined her husband's father, who subsequently died.

[5] In February 2010, the principal applicants and one of their children fled Haiti. In November 2010, the principal female applicant travelled to Ecuador. In January 2011, her husband and son left the Dominican Republic to join her in Ecuador. The two other children remained with the principal female applicant's brother. On April 18, 2011, the principal male applicant and their son arrived in Brazil. The other two minor children arrived in Brazil in November 2012 and March 2013.

[6] The applicants allege that they were victims of persecution in Brazil. Apparently, a criminal on a motorcycle attempted to kidnap one of the children, and the principal male applicant was allegedly abused by his employer.

[7] The family left Brazil on July 22, 2016. In October 2016, they arrived in the United States and remained there until they crossed the Canadian border in August 2017. The applicants claimed refugee protection under section 96 and subsection 97(1) of the IRPA in September 2017.

[8] Before the Refugee Protection Division [RPD], the Minister of Immigration, Refugees and Citizenship intervened to argue that the applicants were excluded from Canadian protection because of their permanent resident status in Brazil. The Minister's argument is based on three elements. First, the applicants were granted permanent residence in Brazil in February 2012. Second, the principal male applicant was in possession of a Brazilian identity card indicating that he has permanent resident status in that country. Third, the Minister alleges that it is reasonable to believe that the other children were granted permanent residence under the family class.

[9] This argument was confirmed by the applicants, who stated at the RPD hearing that they all have the same status in Brazil. However, at the same hearing, the principal male applicant explained that he could not return to Brazil because of events that his family experienced there.

[10] In its decision, the RPD concluded that the applicants are referred to in Article 1E of the Convention. After analyzing the documentary and testimonial evidence, the RPD tersely concluded that the applicants failed to rebut the presumption that they do have permanent resident status in Brazil.

[11] Next, the RPD analyzed the fear and risk that the applicants would face if they were to return to Brazil.

[12] In its decision, the RPD identified a number of credibility issues for the applicants. For example, the principal female applicant testified that she feared [TRANSLATION] “mystical things” such as voodoo practices. Relating to the poisoning incident, the principal male applicant testified that he was [TRANSLATION] “imprisoned by witchcraft” and that he underwent surgery that [TRANSLATION] “scratched him inside”. According to the RPD, this lack of clarity and [TRANSLATION] “equivocation” undermined the applicants’ overall credibility.

[13] According to the RPD, the applicants were no more credible about the events in Brazil. In his testimony, the principal male applicant alleged that a co-worker and one of his former employers were threatening him. According to the RPD, he confused these two individuals in his account of the incidents.

[14] The minor applicants also testified about their experiences in Brazil. The RPD noted one incident in which a young person allegedly threatened the minor applicants with a knife at school. The RPD also accepted the claim that, on a few occasions, a man on a motorcycle signalled one of the children to get on his motorcycle. However, the RPD was of the opinion that to conclude these incidents were attempted abductions was pure conjecture.

[15] While the RPD accepted that the applicants had experienced hardship in their country of residence, it concluded that they had access to adequate state protection in Brazil. The principal male applicant had not called the police after the two incidents with his employer and the other individual. He had initially stated that he had called the police twice, and then said that he only contacted the police once after the alleged kidnapping attempt. During this interaction, the police allegedly refused to assist the family because they could not provide the suspect's licence plate number. According to the RPD, this scant evidence does not justify a reversal of the presumption that the country of residence provides adequate protection. As a result, the RPD determined that the applicants are neither refugees nor persons in need of protection.

III. RAD decision

[16] Before the RAD, the applicants argued that the RPD erred in concluding that they had access to state protection in Brazil or the same rights as Brazilian citizens. The applicants also alleged that the RPD erred in refusing to hear the minor applicants' testimonies and in its

analysis of the risk they would face in Haiti. The applicants did not contest that they have permanent resident status in Brazil.

[17] In a decision dated February 18, 2019, the RAD confirmed the RPD's decision. The RAD rejected the argument that certain restrictions on rights (such as the right to vote, to hold certain public service jobs and to serve in the military) constitute grounds for not applying Article 1E to the applicants.

[18] With respect to the level of protection in Brazil, the RAD had upheld the RPD's finding that the applicants had not fulfilled their burden of proof to provide clear and convincing evidence that state authorities in Brazil were unwilling or unable to provide state protection. Although the RAD found the applicants' allegations credible, it concluded that the applicants had not produced sufficient evidence to establish that they had been targeted on racial grounds.

[19] The RAD also pointed out that the minor applicants had in fact testified at the RPD hearing. The RAD therefore confirmed the RPD's decision.

IV. Issue

[20] This case raises the following question: did the RAD commit a reviewable error in concluding that the applicants are referred to in Article 1E of the Convention?

V. Standard of review

[21] The parties agree that the standard of reasonableness plays a role in this case. In the absence of reasons to the contrary, this Court will apply the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 17, 23 [*Vavilov*]). To be reasonable, a decision must be based on inherently consistent reasoning and be justified in light of the applicable legal and factual constraints (*Vavilov* at paras 99–101).

VI. Analysis

[22] The applicants' arguments focus on three points. First, they argue that Haitians in Brazil do not have the same rights as Brazilian nationals. Second, they allege that they do not have the protection of the Brazilian state. Third, they argue that the RAD committed a reviewable error by not considering the immigration status of the applicants on the date of the hearing, which status has now expired.

[23] I note that the applicants have decided not to maintain the third argument. Accordingly, I will not discuss it further.

[24] In addition, at the hearing before this Court, the applicants admitted that they were permanent residents of Brazil at the time of the hearing before the RPD.

1) *The applicants' situation in Brazil*

[25] The applicants argue that the RAD did not consider the factors enshrined in *Canada (Citizenship and Immigration) v Zeng*, [2011] 4 FCR 3, 2010 FCA 118, with respect to exclusion under Article 1E of the Convention. In particular, the RAD allegedly did not consider the general evidence of systematic discrimination against Haitians living in Brazil or the evidence regarding the precarious situation of the safety of Haitians in Brazil, despite the documentary evidence of a generalized climate of discrimination against Haitians living in Brazil.

[26] The respondent submits that the RAD analysis was reasonable. In his view, it is reasonable to conclude that the evidence provided by the applicants is insufficient to rebut the presumption that a state is able to protect its citizens. The respondent argues that the single communication with the police does not demonstrate the absence of state protection. Furthermore, the respondent alleges that the RAD did not err in its consideration of the applicants' loss of permanent resident status in Brazil.

[27] During the hearing before this Court, I questioned the applicants about the nature of the evidence supporting their fear in Brazil. I emphasized that allegations of persecution must be supported by evidence that is specific to the applicants' situation. I then asked the applicants to focus on the specific evidence that would show that the RAD's decision was unreasonable.

[28] In response, the applicants relied on documentary evidence about the objectively lived situation of the Haitians in Brazil; then, they relied on evidence about the attempted kidnapping in Brazil, to show that Brazil is no longer a safe country for them.

[29] With respect to the first piece of evidence, I think it is reasonable to conclude that it is insufficient to establish their fear. The evidence of discrimination raised by the applicants is generalized or demographic in nature. It demonstrates that Haitians and Afro-Brazilians are often discriminated against in Brazil. Although racial discrimination is lamentable, this evidence does not demonstrate that the applicants will be personally exposed to a sustained or systematic violation of these rights. In other words, this evidence does not establish the existence of seriously prejudicial consequences for the applicants (*Celestin v Canada (Citizenship and Immigration)*, 2020 FC 97 at para 62 [*Celestin*]; *Noel v Canada (Citizenship and Immigration)*, 2018 FC 1062 at paras 18–21; *Simolia v Canada (Citizenship and Immigration)*, 2019 FC 1336 at paras 26–27).

[30] With respect to the second piece of evidence, I believe it is reasonable to conclude that the applicants have not provided any convincing evidence of lack of protection by the Brazilian state. There is no evidence that the applicants are being targeted or that they have not been adequately protected by the Brazilian state.

[31] First, the applicants produced contradictory evidence regarding their communications with the police. In their Basis of Claim Form, the applicants claim to have called the police [TRANSLATION] “several times”. However, at the hearing before the RPD, the principal applicant changed his testimony, indicating that he only contacted the police once after the alleged kidnapping attempt. According to the applicant’s account, the police did not follow up on the incident because the applicants did not provide the motorcycle driver’s licence plate number.

[32] In addition, the applicants have not provided convincing evidence that the applicants were targeted for racial or other reasons.

[33] The police refused to take action on the pretext that they lacked important information that would allow the motorcycle driver to be identified. A single communication with the police, without any further follow-up, does not constitute proof of systematic persecution or lack of state protection. This does not mean that discrimination against Afro-Brazilians is not a reality in Brazil. This state of affairs is regrettable.

[34] However, the applicants have not met the burden of proof to show how this evidence rebutted the presumption that the applicants are referred to in Article 1E. In my view, this flawed evidence does not justify overturning the presumption that the country of residence provides adequate protection to its inhabitants or that they do not have all the rights and obligations attached to the nationality of that country (*Celestin* at paras 33–38; *Shamlou v Canada (Minister of Citizenship and Immigration)* (1995), 103 FTR 241; *Canada (Minister of Citizenship and Immigration) v Choovak*, 2002 FCTD 573 (CanLII) at paras 31–34; *Omorogie v Canada (Citizenship and Immigration)*, 2015 FC 1255 at para 59). It is therefore reasonable to conclude that the applicants have not provided clear and convincing evidence that the Brazilian authorities are unable or unwilling to protect them.

[35] Consequently, I am of the opinion that the RAD's conclusions and analysis are reasonable.

VII. Conclusion

[36] For these reasons, the RAD's decision is reasonable. The application for judicial review is dismissed.

JUDGMENT in IMM-1950-19

THIS COURT ORDERS as follows:

1. The application for judicial review is dismissed.

2. No question is certified.

"Peter G. Pamel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Murhula Jugauce Mweze	FOR THE APPLICANTS
Suzon Létourneau	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Murhula Jugauce Mweze Montréal, Quebec	FOR THE APPLICANTS
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT