

Federal Court



Cour fédérale

Date: 20200309

Docket: IMM-4078-19

Citation: 2020 FC 351

Toronto, Ontario, March 9, 2020

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

**CERALUS SIFFORT
LOUDWIN GEDEON
DWYNE RALLY SIFFORT**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ceralus Siffort, his wife Loudwin Gedeon and their minor son, Dwyne Rally Siffort [Applicants] seek judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board [IRB]. The RAD confirmed the decision of the Refugee Protection Division [RPD] of the IRB that the Applicants are neither Convention refugees nor

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

[2] Mr. Siffort and Ms. Gedeon are citizens of Haiti. Their son is a citizen of the United States of America, where he was born.

[3] Mr. Siffort's father was a member of "Organisation Politique Lavalas", a political group aligned with the Fanmi Lavalas [Lavalas]. Lavalas is a political party in Haiti that was once led by former President Jean-Bertrand Aristide. In 2007, Mr. Siffort joined a group called "Parler pour Changer" which was critical of all political parties, including Lavalas. He claims to fear persecution from both left-wing and right-wing activists in Haiti.

[4] Ms. Gedeon left Haiti when she was 15 years old. Her family supported Lavalas, and Ms. Gedeon claims to fear persecution in Haiti on this basis. She also claims to fear gender-based violence.

[5] The Applicants' refugee claims were heard by a panel of three members of the RPD. Two members found Mr. Siffort was not a refugee or a person in need of protection, while the third dissented and would have granted Mr. Siffort protection. All three members found that Ms. Gedeon was not a refugee or a person in need of protection.

[6] The RAD upheld the RPD's majority decision on June 3, 2019. The RAD found that "Parler pour Changer" no longer exists, and there was no evidence that political activists would

now seek to harm either Mr. Siffort or Ms. Gedeon. The RAD also found that Ms. Gedeon's gender did not, in itself, put her at risk.

[7] The RAD misconstrued the affidavit of Ms. Gedeon's uncle, and unreasonably refused to admit it as new evidence. A number of the RAD's factual findings were also unreasonable. The application for judicial review is allowed.

II. Background

[8] Mr. Siffort was born in 1979. He left Haiti for the United States in 2008, after he was threatened by Lavalas supporters. He returned to Haiti in 2016 when his mother was attacked in her home. His mother's assailants allegedly told a friend of Mr. Siffort that they would do worse to him than they had done to his mother. Mr. Siffort returned to the United States.

[9] Ms. Gedeon left Haiti with her family in 2000. She claimed refugee status in the United States in 2002 based upon her family's past persecution in Haiti, but her claim was refused.

[10] Mr. Siffort and Ms. Gedeon met in the United States. They were married in 2014. Their son was born in the United States that same year.

[11] Mr. Siffort says that he heard the United States might eliminate temporary protected status for Haitians. The Applicants crossed the border into Canada on August 8, 2017.

III. Decision under Review

[12] The RAD rejected two affidavits offered by the Applicants as new evidence. The affidavit of Ms. Gedeon's uncle was found not to be credible, and the new affidavit of Mr. Siffort was found to comprise a mixture of evidence already before the RPD and his opinions on current events. The RAD admitted seven news articles as evidence of current country conditions in Haiti.

[13] The RAD confirmed the finding of the majority of the RPD that Mr. Siffort did not face a forward-looking risk in Haiti. The RAD found it was unclear whether the alleged attack on Mr. Siffort's mother and the threats against him were perpetrated by Lavalas supporters. The RAD agreed with the RPD that it was not plausible that Mr. Siffort would neglect to ask his friend for a description of the men who attacked his mother and threatened him in his absence. The RAD also found it implausible that Mr. Siffort was able to make a police report by telephone. In addition, the RAD found that "Parler pour Changer" no longer exists, and there was no evidence that Mr. Siffort was still at risk of political persecution after so many years.

[14] The RAD confirmed the RPD's finding that Ms. Gedeon did not face a forward-looking risk in Haiti. Ms. Gedeon could not demonstrate why anyone would be interested in finding out her political opinions solely because her parents were once Lavalas supporters. The RAD also found that Ms. Gedeon did not fit the profile of a woman who faced more than a mere possibility of sexual violence in Haiti.

[15] Finally, the RAD found that the new country condition evidence, including a report of 21 men who were killed while protesting against current President Jovenel Moïse, did not give rise to more than a possibility that the Applicants would face persecution in Haiti. The RAD noted that thousands of people were protesting in a country of 10 million, and the protests were a rallying cry that resounded throughout the land.

IV. Issues

[16] This application for judicial review raises the following issues:

- A. What is the standard of review?
- B. Did the RAD reasonably reject the new evidence of the Applicants?
- C. Was the RAD's decision procedurally fair?
- D. Was the RAD's decision reasonable?

V. Analysis

- A. *What is the standard of review?*

[17] The RAD's decision, including its assessment of whether new evidence is admissible, is subject to review by this Court against the standard of reasonableness (*Minister of Citizenship*

and Immigration) v Vavilov, 2019 SCC 65 [*Vavilov*] at para 10). The Court will intervene only if it is satisfied “there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100). These criteria are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[18] Procedural fairness is a matter for the Court to determine. The standard for determining whether the decision-maker complied with the duty of procedural fairness is generally said to be correctness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 34, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79). The ultimate question is whether the applicant knew the case to meet, and had a full and fair chance to respond.

B. Did the RAD reasonably reject the new evidence of the Applicants?

[19] The RAD reasonably rejected the new affidavit of Mr. Siffort on the grounds that it comprised restatements of evidence that was before the RPD and his opinions regarding current events. The RAD properly admitted the Applicants’ new evidence of current country conditions.

[20] The grounds upon which the RAD rejected the affidavit of Ms. Gedeon’s uncle are troublesome. The RAD summarized the affidavit of Ms. Gedeon’s uncle as follows:

The Affidavit of Francius Gedeon meets the test in 110(4) of the IRPA as it discusses events which took place on December 28,

2018 and the RPD decision was rendered on December 21, 2018. However, I find the affidavit not to be credible, it is therefore not admissible. The affidavit is written by the associated Appellant's uncle. It states that on December 28, 2018, a Mr. Louis Jodel Chamblain along with a group of armed men burst into his home, slapped him and interrogated him. He states that Mr. Chamblain told him that his brother, Saincius (the associated Appellant's father), his brother's wife and their two children (one of whom is the associated Appellant) provide financial support to opposition demonstrations in order to overthrow the [Haitian Tèt Kale (PHTK)] government. The affiant's allegations continue that Mr. Chamblain went on to tell him that his brother, his brother's wife and their two children are Lavalas supporters and that it was regrettable that they weren't killed while they lived in Haiti. Finally, the affiant affirms that Mr. Chamblain stated that he was aware that the affiant's niece, Loudwin Gedeon (the associated Appellant), is in Canada – hiding among the diaspora.

[21] The RAD found the timing of the events described in the affidavit to be suspiciously convenient: just one week after the RPD rejected the Applicants' refugee claims. However, it appears that the RAD misconstrued the uncle's evidence regarding Mr. Chamblain's connection to Ms. Gedeon's family:

This Mr. Chamblain is ostensibly at the root of the associate Appellant's family's persecution some 19 years ago, yet is a man the associated Appellant had apparently never heard of before. That he should visit the associated Appellant's uncle just days after the RPD decision was rendered and specifically mention her, is not only suspicious, it is beyond belief.

[22] But Ms. Gedeon's uncle did not say that Mr. Chamblain had threatened her family in the past. He said that Mr. Chamblain was a leader in repressing critics of the PHTK, and believed that Ms. Gedeon and her family were sending money to protestors. According to Ms. Gedeon's uncle, Mr. Chamblain said he knew her parents had supported Lavalas, that they were currently

supporting the anti-PHTK movement, and it would be better if they had been killed when they still lived in Haiti. He did not claim to know Ms. Gedeon personally.

[23] The RAD's mistaken assumption that Mr. Chamblain was the person responsible for the historical persecution of Ms. Gedeon's parents was central to its finding that the uncle's affidavit was unworthy of belief. The RAD's decision not to admit the affidavit, which otherwise met the requirements of s 110(4) of the IRPA, was therefore unreasonable. While the RAD's scepticism regarding the timing of the events described in the uncle's affidavit is understandable, the RAD should have admitted the evidence and then assessed its credibility, convening an oral hearing if necessary.

[24] This is sufficient to grant the application for judicial review. I will nevertheless comment briefly on the other issues raised.

C. Was the RAD's decision procedurally fair?

[25] The RAD found it implausible that Mr. Siffort was able to make a police report regarding the threats made against him by telephone, because his identification card and birth date could not be verified without his personal attendance at a police station. The majority of the RPD doubted the veracity of the events recounted in the police report, but did not find that the report could not have been made by telephone.

[26] The Applicants rely on *Husian v Canada (Minister of Citizenship and Immigration)*, 2015 FC 684 at paragraph 10, where Justice Roger Hughes stated: "...if the RAD chooses to take

a frolic and venture into the record to make further substantive findings, it should give some sort of notice to the parties and give them an opportunity to make submissions”.

[27] This case is distinguishable from *Husian*. As Justice Keith Boswell ruled in *Bebri v Canada (Citizenship and Immigration)*, 2018 FC 726, none of the issues raised by the RAD diverged in any substantial or material way from the RPD’s findings, or from the Applicants’ submissions to the RAD. It was not a violation of procedural fairness for the RAD to reconsider issues that arose from the Applicants’ own documentary evidence.

D. Was the RAD’s decision reasonable?

[28] The RAD accepted that Mr. Siffort was a member of a group that had criticized the political establishment. Nevertheless, the RAD expressed the view that Mr. Siffort could freely express his political opinions in Haiti. The RAD continued:

Thousands are said to have taken to the streets to protest the incumbent president’s decisions and demand his resignation. I do not accept that these protests would heighten the risk the principal Appellant would face. Rather, such rallying cries resound across the country.

[29] The Applicants say this is nonsensical, given Mr. Siffort’s unique profile and the current political climate in Haiti. The fact that others may be able to protest without fear of reprisal says nothing about Mr. Siffort’s circumstances. I agree with the Applicants that the RAD did not reasonably assess the particular risk faced by Mr. Siffort as someone who has organized independent political activity in Haiti in the past.

[30] The RAD's implausibility findings are also vulnerable to criticism. Findings of implausibility should be made only where it can be reasonably determined that an action "could not possibly have happened" (*Divsalar v Canada (Minister of Citizenship & Immigration)*, 2002 FCT 653 at para 24). Without evidence, it was not reasonably open to the RAD to find that Mr. Siffort could not have made a police report by telephone. Although perhaps unlikely, it is not inconceivable that Mr. Siffort would neglect to ask his friend for a description of those who attacked his mother and threatened him in his absence. Mr. Siffort said he hoped the police would investigate, and his friend would provide a description at that time.

[31] Finally, the RAD found that Ms. Gedeon would not be singled out for sexual violence because she is married. The RAD also surmised that she would eventually learn to speak Creole fluently, and would no longer stand out as someone who had lived all of her adult life in the United States. The RAD did not consider Ms. Gedeon's risk when she is away from her husband, or before she is able to blend in with the majority of the Haitian population. More generally, the RAD stated that a report authored by Nicole Phillips contained no "blanket statements regarding a risk experienced by all women simply stemming from their gender alone". However, the report does indicate more than a mere possibility of sexual violence against Haitian women, including urban and working women. Ms. Gedeon's risk profile as a returnee who has lived all of her adult life in the United States should have been assessed in this context.

VI. Conclusion

[32] The application for judicial review is allowed, and the matter is remitted to a different member of the RAD for redetermination. None of the parties proposed that a question be certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed,
and the matter is remitted to a different member of the RAD for redetermination.

“Simon Fothergill”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4078-19

STYLE OF CAUSE: CERALUS SIFFORT, LOUDWIN GEDEON, AND
DWYNE RALLY SIFFORT v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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