Federal Court  Cour fédérale

Date: 20200213

Docket: IMM-3999-19

Citation: 2020 FC 243

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, February 13, 2020

PRESENT: The Honourable Associate Chief Justice Gagné

BETWEEN:

YSLANDE VILME

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Yslande Vilme is a Haitian citizen. She is challenging the decision of the Refugee Appeal Division [RAD], dismissing her appeal from an unfavourable decision of the Refugee Protection Division [RPD] and therefore her claim for refugee protection in Canada as well as that of her minor son. The RAD concluded that, since the applicant was a permanent resident of Brazil at the time of the hearing before the RPD, and since her fear of persecution in Brazil was

unfounded, she was excluded from Canada's protection under Article 1E of the *United Nations Convention Relating to the Status of Refugees*, July 28, 1951, 189 UNTS 137 [Convention], and under section 98 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IPRA].

[2] In her memorandum of fact and law, the applicant raised the sequence in which the RAD proceeded in its analysis as the only error it committed. The RAD first concluded that, since Ms. Vilme was a permanent resident of Brazil at the time of her hearing before the RPD, she was excluded from Canada's protection. It then considered her alleged fear regarding Brazil. Referring the Court to the decision rendered by Justice Martine St-Louis in *Romelus v Canada (Minister of Citizenship and Immigration)*, 2019 FC 172, the applicant argues that this is a fatal error, which would warrant that the RAD's decision be set aside and that the matter be referred back to it for new analysis. The RAD cannot conduct a risk analysis after concluding that an applicant is excluded from Canada's protection.

[3] Between the time when the applicant filed her memorandum of fact and law and the hearing in this case, Justice Peter Pamel rendered his decision in *Celestin v Canada (Minister of Citizenship and Immigration)*, 2020 FC 97, in which he found that the wording of section 98 of the IRPA simply does not allow the RAD to conduct a risk analysis based on sections 96 and 97 of the IRPA with respect to a claimant's country of permanent residence.

[4] The applicant thus changed tack at the hearing before the Court. Now relying on the Court's decision in *Celestin*, the applicant argues that the RAD made a fatal error in analyzing the risk she would face should she return to Brazil.

[5] However, without having to rule on the issue that was before Justice Pamel in *Celestin*, I am of the view that the applicant's position in this case is untenable.

[6] First, in both her written submissions filed before the RPD and her appellant's memorandum filed with the RAD, the applicant claimed that she feared persecution in Brazil because of her race and in connection with three serious assaults that she was a victim of there. The applicant even argued that she rebutted the presumption that Brazil is able to provide adequate protection to its nationals. She cannot seriously criticize the RAD for deciding an issue that she had explicitly submitted to it.

[7] Second, counsel for the applicant acknowledged in response to a question asked by the Court, that, if analyzing the fear of persecution in Brazil was an error (and I reiterate that this is a question I will not answer), at best, that error is favourable to the applicant and, at worst, it has no impact on the conclusion that the applicant is excluded from Canada's protection under Article 1E of the Convention and section 98 of the IRPA. The Court must adopt a pragmatic approach in deciding applications for judicial review in order to avoid a merry-go-round of review by the Court and the administrative tribunal (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 142). Since analyzing the risk of persecution in Brazil has no impact on the exclusion finding, which is not disputed by the applicant before this Court, it can be presumed that the RAD would come to the same conclusion if the matter was referred back to it.

[8] Finally, even if the applicant's argument was rejected and I concluded that the RAD had to analyze the risk of persecution in Brazil, this would change nothing; before the Court, the applicant raised no errors in the RAD's analysis of the documentary evidence and of the applicant's credibility in this regard.

[9] The applicant's application for judicial review is therefore dismissed.

[10] The parties proposed no question of general importance to be certified, and I am of the view that no such question arises in this case.

JUDGMENT in IMM-3999-19

THE COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Jocelyne Gagné"
Associate Chief Justice

Certified true translation
This 7th day of April 2020.

Johanna Kratz, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3999-19
STYLE OF CAUSE:	YSLANDE VILEM v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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