

Federal Court



Cour fédérale

Date: 20200220

Docket: IMM-2909-19

Citation: 2020 FC 281

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, February 20, 2020

Before: The Honourable Associate Chief Justice Gagné

BETWEEN:

YAMILÉE NOËL

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] Yamilée Noël is seeking judicial review of the Refugee Appeal Division [RAD] decision confirming the refusal of the Refugee Protection Division [RPD] to grant her refugee status or status as a person in need of protection. Both tribunals concluded that the applicant's account lacked credibility.

II. Facts

[2] The account of the facts comes from the applicant's Basis of Claim Form and the evidence presented by the RPD.

[3] The applicant is a trained accountant who was living in Port-au-Prince with her mother, her brothers and sister. Her father, whom her mother visits regularly, lives in Gonaïves.

[4] She met the father of her son in February 2013 and had a relationship with him from April to December 2013. During that period, he beat her two or three times, was critical of her and insulted her mother.

[5] The applicant was already separated from him when her son was born in July 2014. He refused to acknowledge his son and had no contact with him until 2016. He returned in 2016 to resume the relationship with the applicant and take responsibility for the child. He went to the applicant's home, and when she refused to resume the relationship, he beat her and threatened to have her kidnapped and to take the child from her.

[6] On May 23, 2016, the applicant filed an application for a student visa for Canada, and a visa was issued to her on May 25, 2016.

[7] On May 26, 2016, two or three hooded individuals, accompanied by two police officers, kidnapped the applicant, telling her that they were acting on behalf of her ex-spouse. They kept

her captive until June 8, 2016, when one of the abductors released her, telling her she had to get away, as his cohorts were going to kill her. He added that nobody could know he had helped her escape, or he himself would be in danger.

[8] When she regained her freedom, she learned that her ex-spouse had kidnapped their son from her home on May 26, 2016.

[9] The applicant left Haiti on June 22, 2016, for Canada, where she claimed refugee protection on July 15, 2016. She said she feared her ex-spouse and his friends should she return to Haiti.

III. Impugned decision

[10] Like the RPD, the RAD concluded that the applicant's narrative lacked credibility. It noted certain contradictions between the facts related in her Basis of Claim Form [BOC Form] and her testimony before the RPD, even on elements that were at the heart of the refugee protection claim. The RAD noted three crucial elements.

[11] First, the applicant stated in her BOC form that her abductors had asked her for a ransom. However, when the RPD member asked her repeatedly whether the abductors had said anything else, she only replied that she was told that her ex-spouse had ordered them to kidnap her and to kill her if she refused to give him their son. She did not mention the ransom.

[12] Second, the RPD and the RAD noted that the applicant's testimony was not consistent with her BOC Form regarding the conditions of her captivity. In her BOC Form, she stated that she was kept tied up in the dark, and then during her testimony, she instead stated that she was kept in a room under surveillance and that the room was locked when the guard left.

[13] Third, both tribunals drew a negative inference from the fact the applicant returned to live at her home in Port-au-Prince from June 8, 2016, when she was released, to June 22, 2016, when she left the country. The only explanation for this was that her ex-spouse could have found her anywhere in Haiti and, at any rate, she had to go retrieve her passport at the Canadian embassy before leaving, which she did on June 9, 2016. She could therefore not have taken refuge at her father's in Gonaïves, for example.

[14] The RAD therefore confirmed the RPD decision, being of the opinion that [TRANSLATION] "the omissions in Ms. Noël's testimony, the evolving nature of important aspects of her allegations, the lack of coherence in her behaviour after she was released, result in her allegations being found not credible, on a balance of probabilities."

IV. Issue and standard of review

[15] This application for judicial review raises a single question:

Did the RPD err in its assessment of the applicant's credibility?

[16] The applicable standard of review for this analysis is reasonableness (*Canada (Department of Citizenship and Immigration) v Vavilov*, 2019 SCC 65). The Court must show

great deference to the findings of the RAD and the RPD, which are specialized administrative tribunals that have been mandated by Parliament to assess the credibility of refugee protection claims presented before them.

V. Analysis

[17] The applicant is essentially arguing that the RAD conducted a microscopic analysis of the evidence and that its decision is not justifiable, transparent or intelligible.

[18] More specifically, she alleges that the RAD erred by finding that her testimony before the RPD did not include the matter of the ransom demanded by her abductors. Although she did not specify this fact in the portion of her testimony when the RPD asked her to describe in detail the events surrounding her kidnapping, she did mention it at the start of the hearing. The RAD and the RPD drew a negative inference merely because she did not repeat it later in her testimony. She submits that this inference is unreasonable and constitutes an unfair compartmentalization of her testimony, which must be considered as a whole.

[19] I do not agree with the applicant and am indeed satisfied that the RAD's decision is well founded in fact and in law, that it is reasonable and logical, and that it does not contain any error that would justify the Court's intervention.

[20] Established case law teaches us that the quality of testimony presented at a hearing by a refugee protection claimant, their ability to provide truthful and clear answers to the questions asked, and the coherence and consistency of the responses given are relevant factors that are used

to assess their credibility. Contradictions in a claimant's evidence, and behaviour that is incompatible with the alleged fear are relevant considerations that help the decision-maker analyze the credibility of a refugee protection claimant.

[21] With regard to the first contradiction raised by the RAD, I admit the applicant did mention that she had been asked for a ransom at the start of the hearing. On page 22 of the minutes of the May 5, 2017, hearing before the RPD, when the RPD wanted to know when the applicant began to fear for her life in Haiti, she essentially provided a short summary of her narrative:

[TRANSLATION]
BY THE APPLICANT

Yes. And . . . he was able to beat me, abuse me, and even succeeded in having me kidnapped. At the time of my kidnapping, I was asked for a ransom, I said, "I don't have any money. I only have my life."

Among the kidnappers, there was one who promised me that he would release me if he released me to leave the country "because if the others knew I released you then I will also have to leave the country."

After, he released me on June 8. The father of my child had his friends that was a gang corps [sic].

[22] The RPD then chose to let the applicant continue her account, indicating that it would ask questions afterwards. It then continued its examination to discuss the applicant's life in Haiti, meeting and having a relationship with the father of her son, etc. It was only on page 52 of the minutes that the RPD asked the applicant to explain in detail the circumstances surrounding her alleged kidnapping on May 26, 2016. The applicant was very vague in her responses, and

although the RPD asked her several times whether the abductors said anything else to her, she did not add anything and, certainly did not mention the ransom.

[23] In these circumstances, I think that although it was erroneous to conclude that the applicant remained silent on the issue of the ransom in her testimony, I feel it was nonetheless reasonable for the RAD to draw a negative inference from the responses given to the specific questions about the applicant's kidnapping and her captivity.

[24] As for the fact the applicant had stated in her BOC Form that she had been kept tied up in the dark and then, in her testimony before the RPD, explained instead that she had been kept in a locked room and when she left the room, she was accompanied by one of her abductors, this is how she tried to reconcile the two versions:

[TRANSLATION]
BY THE APPLICANT

When you are in a room and it is dark, you can see you are unable to leave, you are tied up. This is being tied up if you are (inaudible)

...

Yes, that's it. That is tied up (inaudible). The fact you cannot get out, for me that is being bound.

[25] I am of the opinion that it was entirely reasonable for the RAD to not accept this as a satisfactory explanation. This element is at the heart of the applicant's refugee protection claim, and neither the RPD's questioning on this subject nor the analysis the RAD conducted of this evidence can be qualified as microscopic. The RAD considered all of the evidence, including the fact that the applicant is an educated person who worked as an accountant in Haiti for six years,

that she comes from a family whose members are all educated, and that, although the applicant testified in Creole, she confirmed that she understood French and had properly understood the content of her BOC Form. The RAD's conclusion that this significant contradiction damaged the applicant's credibility was well founded.

[26] Lastly, I am also of the opinion that it was reasonable for the RAD to conclude that the applicant's behaviour after her release is inconsistent with a genuine fear of being mistreated. The applicant pleads before the Court that such a conclusion shows the RAD was insensitive and did not respect *Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution*, which requires it to consider the vulnerability of a female refugee claimant who fears gender-related persecution. The applicant vaguely argues that these guidelines required the RAD to be more understanding of the behaviour she adopted after her release. However, the applicant's testimony was neither confused nor emotional when she confirmed that she returned directly to her home after she was released, and that she stayed there from June 8 to June 22, 2016. She justifies her behaviour by stating that she was sure that her ex-spouse would find her anywhere in Haiti and that, at any rate, she had to be at home in Port-au-Prince to retrieve her passport at the Canadian embassy, which she did on June 9, 2016. With respect, I do not see how Guidelines 4 could be applied in order to render these explanations credible and consistent with the applicant's allegations of fear. The applicant alleges she was released *in extremis* by one of her abductors and that he told her his cohorts had decided to kill her. According to the applicant's account, the instructions regarding her kidnapping came from her ex-spouse. The evidence also shows that when they were dating, she and her ex-spouse saw each other mostly at her home; it was also at her home that her ex-spouse allegedly kidnapped her son. It seems to me

that this would clearly be the first place he would look for her after learning she had escaped.

The fact she returned there contradicts her fear, and the fact she remained there with no problems for two weeks after her release contradicts her account.

[27] It was therefore logical and reasonable for the RAD to reach the conclusion it did.

VI. Conclusion

[28] Since the RAD assessed all of the evidence before it and drew reasonable conclusions, the applicant's application for judicial review is dismissed.

[29] The parties did not submit any questions of general importance for certification, and I am of the opinion that no such questions arise from the facts in this case.

JUDGMENT in IMM-2909-19

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 14th day of April 2020.
Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2909-19

STYLE OF CAUSE: YAMILÉE NOËL v MINISTER OF CITIZENSHIP
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