Federal Court  Cour fédérale

Date: 20200514

Docket: IMM-2387-19

Citation: 2020 FC 619

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, May 14, 2020

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

ED ST-SULNE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision of the Refugee Protection Division (RPD) dated March 21. The RPD determined that the applicant, Ed St-Sulne, was not a Convention refugee or a person in need of protection as defined in sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The applicant worked for the United Nations Stabilization Mission in Haiti (MINUSTAH). This work took him outside the capital, but he spent a great deal of time at his brother's home in Port-au-Prince. His brother's house was burglarized in 2015 and 2017, and a number of items were stolen. Shortly after the second burglary, the house next door was broken into and a man died. As well, the applicant's brother received death threats from Mr. Trouillot, a powerful businessman whom he had exposed for corruption.

[3] On July 3, 2017, the applicant left Haiti for the United States, to join his brother. He arrived there with his brother's wife and two children. On September 12, 2017, the applicant entered Canada and made a claim for refugee protection.

[4] The RPD rejected his claim for refugee protection. The RPD concluded that the applicant had not established a nexus between the risks he feared and one of the five Convention grounds. As well, the RPD did not agree that the applicant would be personally subjected to a prospective risk if he were to return to Haiti. The two thefts from his brother's home were not related to his socio-economic status, and he did not show a connection between the threats against his brother and the break-ins. The RPD noted other deficiencies undermining the applicant's credibility, including the fact that he held an American tourist visa and had visited the country in 2016, before returning to Haiti. The RPD rejected his claim for refugee protection. The applicant is seeking judicial review of that decision.

[5] There is only one issue: was the RPD's decision reasonable? This question encompasses the applicant's two main arguments, namely (a) did the panel err in its assessment of the source of the risk and the particular profile of the applicant; and (b) did the panel err in disregarding the evidence filed by the applicant?

[6] The applicable standard of review is reasonableness (*Galeas v Canada (Citizenship and Immigration)*, 2015 FC 667 at paras 37–38). The recent Supreme Court decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] does not change this conclusion. In the circumstances of this case, and having regard to paragraph 144 of that decision, it is not necessary to request submissions from the parties on the standard of review or its application. With regard to applying the *Vavilov* framework in this case, as in the Supreme Court's decision in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 24, "No unfairness arises . . . as the applicable standard of review and the result would have been the same under the Dunsmuir framework".

[7] On judicial review on the deferential standard of reasonableness, a key concern is whether the process and decision indicate that the decision-maker truly "engaged" with the evidence, applying the appropriate legal test, and whether the analysis in the decision "[is] based on both rational and logical reasoning" (*Vavilov* at para 102).

[8] The applicant admits that he did not receive any direct threats. Rather, his refugee protection claim is related to his fear of being targeted by criminals because of his socio-economic status and to the fact that he and his family feel more at risk because they have worked for international humanitarian organizations. He also claims that these risks are different from those affecting the rest of the Haitian population.

[9] The applicant alleges that the RPD erred by limiting its risk analysis to his work for MINUSTAH and disregarding his entire profile. I disagree. The RPD's decision considered the alleged risks in light of the evidence submitted, and the analysis was transparent and intelligible, as required by the standard of reasonableness (*Vavilov* at para 99).

[10] The RPD noted that "the principal risk identified is that of being targeted by criminals in Haiti" (at para 17). The RPD analyzed this risk based on the applicant's claims, considering his status as a MINUSTAH employee, the thefts at his brother's home and the murder of a neighbour. The RPD stated, "In the absence of any targeting, . . . [the applicant's] personal prospective risk to life is indirect, dated and over four years later, is driven by speculation" (at para 38).

[11] The applicant alleges that the RPD erred in assessing the evidence, especially in disregarding the testimony of the applicant's brother regarding the risk they faced as a result of Mr. Trouillot's threats. Moreover, the RPD erred in concluding that the letters of support filed by the applicant lacked credibility because they did not refer to Mr. Trouillot's threats or to the murder of the brother's neighbour. The applicant submits that there is a presumption that his testimony is true, and it is unreasonable to give the letters no weight because of what they do not say, instead of assessing them for what they do contain.

[12] I disagree. The assessment of credibility and evidence in general is at the core of the RPD's mandate and expertise (see *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319).

[13] Even though I do not agree with all of the RPD's comments regarding the evidence, this in itself does not make the decision unreasonable. The key question of what makes a decision unreasonable on judicial review is summarized in *Vavilov* at paragraph 101:

> [101] What makes a decision unreasonable? We find it conceptually useful here to consider two types of fundamental flaws. The first is a failure of rationality internal to the reasoning process. The second arises when a decision is in some respect untenable in light of the relevant factual and legal constraints that

> bear on it. There is however, no need for reviewing courts to categorize failures of reasonableness as belonging to one type or the other. Rather, we use these descriptions simply as a convenient way to discuss the types of issues that may show a decision to be unreasonable.

[14] As I stated in *Oladihinde v Canada (Citizenship and Immigration)*, 2019 FC 1246 at paragraph 16:

> [16] To put it another way, on judicial review on the deferential standard of reasonableness, a key concern is whether the process and decision indicate that the decision-maker truly "engaged" with the evidence, applying the appropriate legal test. The standard is not perfection. It must be recalled that Parliament assigned the task of conducting the initial inquiry into the facts to the officer. Deference is due to a decision-maker in particular in a context where the inquiry is primarily factual, and it is within the decision-maker's area of expertise, in a situation where greater exposure to the nuances of evidence or a greater awareness of the policy context may provide an advantage. If the chain of reasoning of the decision-maker can be understood, and if it shows that this type of engagement occurred, the decision will generally be found to be reasonable: see *Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431.

[15] That is exactly what the RPD did in this case. It was not unreasonable for the RPD to have assessed the testimony, as well as the letters, in the overall context of the evidence before it. The fact that the letters do not refer to the facts at the root of the applicant's fear was relevant, and in the absence of evidence in the letters linking the threats or the neighbour's murder to the applicant, it was not unreasonable for the RPD to have given them little weight. This case is unlike the situation in *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at para 49, because the letters do not corroborate the substance of the applicant's claim for refugee protection.

[16] Moreover, it was not wrong for the RPD to take into account omissions in the applicant's statements, either at the border or in the forms that he completed. These were omissions of detail that were central to the claim. The law is clear that contradictions and omissions in a refugee protection claimant's evidence may reasonably lead to negative credibility findings if they are material and not collateral to the claim (see *Avrelus v Canada (Citizenship and Immigration)*, 2019 FC 357 at para 14; and *Pooya v Canada (Citizenship and Immigration)*, 2018 FC 1019 at para 18).

[17] The burden of proof rests with the applicant, and the duty of disclosure is a fundamental aspect of the immigration system. In *Sidhu v Canada (Citizenship and Immigration)*, 2019 FCA 169, the Federal Court of Appeal describes the applicant's duty of candour as an "overriding principle of the [IRPA] . . ." (at para 17).

[18] Finally, it was reasonable for the RPD to have considered the applicant's behaviour, including the fact that he held an American tourist visa and travelled there in April 2016, after the events that he alleges are the basis of his claim. Moreover, the RPD noted that the applicant's brother left Haiti in April 2017 because he believed that his life was in danger, but the applicant remained in the same house as his brother's wife and children until they left the country in July 2017. The RPD was correct in finding that this behaviour was inconsistent with the threat to which the applicant alleges he was subjected, and that it further undermined the applicant's credibility.

[19] The RPD demonstrated that it dealt with the evidence, taking into account the applicant's allegations and the circumstances of the claim. Having completed the analysis, the RPD determined that the applicant was neither a refugee nor a person in need of protection.

[20] In short, it is not the role of the reviewing court to make its own assessment of the evidence (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339; *Vavilov* at para 125). I agree that, in this case, the decision is "based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85).

[21] The RPD's decision should not be set aside. For all these reasons, the application for judicial review is dismissed.

[22] There is no question of general importance to be certified.

JUDGMENT in IMM-2387-19

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. There is no question of general importance to be certified.

"William F. Pentney"
Judge

Certified true translation
This 25th day of May 2020

Sebastian Desbarats, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2387-19
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