Federal Court Cour fédérale

Date: 20200514

Docket: IMM-2711-19

Citation: 2020 FC 620

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, May 14, 2020

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

MAUDERSON ST-SULNE
MARIE-YOLAINE ST-SULNE GLAUD
MARYAH ELSA ST-SULNE

Applicants

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision rendered by the Refugee Protection Division (RPD) on April 4, 2019. The RPD found that the applicants, Mauderson St-Sulne, Marie-Yolaine St-Sulne Glaud and Maryah Elsa St-Sulne, were neither refugees under the Convention refugees nor persons in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. This conclusion was

based primarily on the lack of subjective fear on the part of the applicant, the lack of a nexus to a Convention ground and the lack of a personalized rather than a generalized risk.

I. Background

[2] The applicants are citizens of Haiti. Mauderson St-Sulne, the principal applicant, worked for the World Food Programme (WFP) in Haiti from 2011 to 2015. He alleges that in November 2013, in the context of his work, he charged influential businessman Lionel Trouillot with siphoning off merchandise from his warehouse. As a result of the accusation, Mr. Trouillot lost his lucrative contract with the WFP in January 2014 and threatened to sue the applicant. A colleague of the applicant's warned him that Mr. Trouillot was a member of the Haitian bourgeoisie and that he would sue him. The applicant claims that he still fears Mr. Trouillot.

[3] The applicant also alleges that his family home was burglarized three times, on September 28, 2011, June 22, 2015, and March 19, 2017. Shortly before the last burglary, one of his neighbours was killed.

[4] The applicant claims that following the last burglary, a colleague called to tell him that the people working at SHODECOSA, Mr. Trouillot's warehouse, still held a grudge against him. His colleague added that a person similar to the applicant who worked for the WFP in 2010 and did not support corruption had been murdered. In the summer of 2017, this same colleague also told the applicant's wife that he was still being sought.

[5] On April 1, 2017, the applicant left Haiti for the United States. His wife Marie-Yolaine and daughter Maryah Elsa, who are included in this application, joined him on July 3, 2017, as

did his brother Ed St-Sulne (who is not a party to this review) and the couple's second daughter, Miryah Yolie, a U.S. citizen born in January 2017. The latter's application was denied in the same decision but is not the subject of this judicial review. It should be noted that the brother, Ed St-Sulne, has applied for judicial review of the RPD's decision denying his claim for refugee protection (Court File No.: IMM-2387-19).

[6] The applicants arrived at the Canadian border on September 7, 2017. The applicant and his wife testified at hearings before the RPD on November 7, 2018, and December 17, 2018. Following these hearings, their claim was denied in a decision dated April 4, 2019. The applicants are seeking judicial review of that decision.

II. Issues and standard of review

[7] The only issue is whether the RPD's decision is reasonable. It involves the applicant's submissions regarding the assessment of his subjective fear, and the assessment of the risk to him and his family should they return to Haiti.

[8] The standard of review applicable to the issue of a nexus to a Convention ground, the issue of generalized risk and the RPD's findings with regard to credibility is that of reasonableness (*Galeas v Canada (Citizenship and Immigration)*, 2015 FC 667 at paras 37–38).

[9] The Supreme Court's recent decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] does not change this. In the circumstances of this case, and considering paragraph 144 of *Vavilov*, it is not necessary to request submissions from the parties on the appropriate standard or its application. As in the Supreme Court's

decision in *Canada Post Corp v Canadian Union of Postal Workers,* 2019 SCC 67 at para 24, "[n]o unfairness arises from [the application of the framework established in *Vavilov* to this case] as the applicable standard of review and the result would have been the same under the *Dunsmuir* framework."

[10] The key issue in a judicial review applying the reasonableness standard 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.

[11] 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, and whether the analysis in the decision is "based on reasoning that is both rational and logical" (*Vavilov* at para 102).

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

> [16] 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 [at paras 10–11].

III. Analysis

[13] The applicants' position focuses on two main issues: (i) whether the RPD's findings as to the applicant's subjective fear are unreasonable; and (ii) whether the RPD erred in its assessment of the risk to the applicant and his family should they return to Haiti.

A. *Subjective fear*

[14] The applicants argue that the RPD's finding that the applicant's behaviour was inconsistent with that of a person fearing for his or her life is unreasonable. The applicant's explanations were clear: he did not want to leave his family alone in Haiti. In view of these explanations, it was also unreasonable to criticize the applicant for returning to Haiti after a brief stay in the United States. Although risky, an applicant's behaviour may not be considered implausible solely because it is dangerous (*Samani v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8301 (FC) at para 4 [*Samani*]), particularly when the safety of a child is at stake (*Ahanin v Canada (Citizenship and Immigration)*, 2012 FC 180 at para 89 [*Ahanin*]). The applicant returned to Haiti when his wife was pregnant with their second child. This explains his return despite the risk.

[15] The applicants further argue that the RPD's finding that the applicant left on his own in 2017, leaving his wife and eldest daughter behind, is erroneous, as they were all admitted to the United States on July 3, 2017.

[16] The applicants also maintain that the applicant did not wait until three years after Mr. Trouillot's threat to decide to leave Haiti. The decision was made, but the applicants were waiting for the required visas. Mr. Trouillot is a powerful and influential man. The applicant left the country as quickly as possible.

[17] The finding with respect to the applicant's subjective fear is therefore unreasonable, as it was significantly influenced by the conclusions regarding the return to Haiti and the wait time for visas for the entire family.

[18] I disagree.

[19] Case law has consistently confirmed that the assessment of subjective fear may be based on claimants' behaviour, including the time taken to depart the country of persecution (*Profète v Canada (Citizenship and Immigration)*, 2010 FC 1165 at para 13), a failure to claim refugee protection in a Convention country at the first opportunity, or a return to the country of persecution (*Manirakiza v Canada (Citizenship and Immigration)*, 2009 FC 1309 at para 18). All of these factors may undermine a refugee claimant's credibility with respect to subjective fear.

[20] In this case, the burglaries took place in September 2011, June 2015 and March 2017. Mr. Trouillot made threats in November 2013, and the contract ended in early 2014. The applicant and his family left Haiti permanently in April and July 2017. Meanwhile, the applicant travelled to the United States in September 2012, November 2014, and for two months in the summer of 2016. The applicant explains that in 2014-2015, he did not feel that he was in imminent danger and that despite his fear, he returned in 2016 to avoid leaving his family alone.

[21] The RPD indicates that the refugee claimant left following the robberies, particularly the one in March 2017, which is described in his Basis of Claim and his testimony. The RPD maintains that if the applicant had truly been threatened, he would have left the country sooner. In addition, the RPD states that the applicant travelled to the United States and returned there in 2016. The RPD has therefore explained its reasoning, which seems reasonable in light of the evidence and the applicant's behaviour.

[22] In this case, the RPD considered the applicant's explanation (*Tshibola Kabongo v Canada (Citizenship and Immigration)*, 2012 FC 313 at paras 8–10), and the inferences made by the decision maker were supported by the evidence and were reasonably drawn. This is what is required under the *Vavilov* reasonableness framework. There is no reason to intervene with respect to this issue.

B. *Risk of return*

[23] The applicants argue that the RPD did not assess the risks they face if they return to Haiti. The risk is not limited to a generalized risk in Haiti or a risk solely related to a perception of wealth. Rather, all the elements of the applicant's profile must be considered, including his economic status, his professional and academic background, and his desire to participate in the reconstruction of Haiti.

[24] The applicants claim that the RPD erred in failing to analyze the risks associated with the applicant being targeted by Mr. Trouillot and the men working for him. The applicants submit that these characteristics create a higher personal risk (*Portillo v Canada (Citizenship and Immigration)*, 2012 FC 678).

[25] The applicants' main argument is that the nature of the risk faced by the applicant was not properly assessed. They claim that the risk is related not to the applicant's wealth, but rather to his occupation and his desire to work toward the reconstruction of Haiti. The RPD did not analyze this risk, and the applicants argue that this failure is sufficient to make the decision unreasonable.

[26] I disagree.

[27] It is not clear how the applicant's occupation or his desire to contribute to the reconstruction of Haiti would cause him to be targeted. There is no evidence of threats against the applicant and no objective evidence on the record demonstrating such a risk. Rather, the situation is similar to that in *Prophète v Canada (Citizenship and Immigration)*, 2008 FC 331, affd by 2009 FCA 31, wherein successful businessmen were perceived to be wealthy, but the Court established that this was not a personalized risk.

[28] As to the allegation of risk associated with Mr. Trouillot's threats, the applicants argue that the decision is unreasonable because the RPD did not analyze this element of their claim. The threats made by Mr. Trouillot and his employees clearly constitute a personalized risk. If we accept that these threats were made, and that they might involve something more than legal action, it is clear that the threats would be against the applicant. However, the RPD makes no mention of Mr. Trouillot in its analysis under section 97 of the IRPA. It also ignores the comments of the applicant's colleague, who stated that the risks still exist.

[29] I recognize that there is an important distinction between the applicant's socio-economic status and the possibility of his facing a personalized risk. It is reasonable to state that the

applicant does not face a personalized risk because he is a well-to-do person. However, an affluent person who has been personally targeted may be at risk, and it is a mistake to confuse these two elements (*Komaromi v Canada (Citizenship and Immigration)*, 2018 FC 1168 at para 26).

[30] In this case, the RPD found that the applicant was not credible with respect to his fear of Mr. Trouillot and his allegations of threats by Mr. Trouillot. The RPD analyzed the evidence and applied the correct legal standards in analyzing this issue. This is a reasonable analysis. It was not necessary for the RPD to repeat the analysis in its consideration of the risk upon return under section 97 of the IRPA because the same factors apply.

[31] It should be borne in mind that the assessment of the applicant's credibility is based on all the evidence, including:

- the nature of the alleged threat – the applicant claims that Mr. Trouillot stated: [TRANSLATION] "If I lose this contract, you'll have to deal with me, and I'll sue you";
- the fact that the applicant indicated that he did not feel that he was at risk as a result of this threat;
- the fact that his refugee claim form focuses on the risks related to his socio-economic status and the burglaries and that the written account refers only once to Mr. Trouillot's threats; and
- the fact that the applicant did not flee Haiti as a result of these threats, that he did not claim refugee protection on his numerous trips to the United States and that he returned to Haiti after these trips.

[32] The applicants argue that the assessment of the applicant's credibility is unreasonable because the RPD overemphasized secondary issues in a manner contrary to the case law. For example, in *Clermont v Canada (Citizenship and Immigration)*, 2019 FC 112 at para 30 [*Clermont*], the Court stated:

> [30] Implausibility, inconsistency, omission and contradiction are all the cornerstones of adverse credibility findings that often lead to the rejection of refugee claims. However, such findings should not be based on a microscopic evaluation of issues peripheral or irrelevant to the case (*He v Canada (Citizenship and Immigration)*, 2019 FC 2 para 23). Such conclusions should be clearly justified. It is insufficient for a decision-maker to simply state a conclusion on credibility without properly explaining the reasons for it (*Gomez Florez v Canada (Citizenship and Immigration)*, 2016 FC 659 at para 23). Doing so will invariably render the conclusion to be unreasonable.

[33] In this case, the applicants argue that the RPD lent too much weight to the fact that the applicant returned to Haiti after his trips to the United States, despite the risk. They argue that this is contrary to case law (*Samani* and *Ahanin*) and that it is not reasonable to conclude a lack of credibility on the basis that parents are willing to expose themselves to danger in order to reunite with their children.

[34] In my view, the case law cited by the applicants is not applicable in this proceeding. This case can be distinguished from those cited by the applicants on the specific facts.

[35] I agree that according to case law, the fact that a parent returned to his or her country of origin to be with a child is not, in and of itself, a consideration that automatically undermines the applicant's credibility with respect to his or her fear (*Samani* and *Ahanin*), but the RPD's conclusion in this case is also based on the fact that the applicant's final departure from Haiti in 2017 preceded that of his wife and children by a few months. This fact is relevant to the

assessment of the applicant's credibility, among all the other factors in this case. This analysis, in light of the evidence, is not unreasonable.

[36] As for the assessment of credibility, there is no doubt that a finding based "on a microscopic evaluation of issues peripheral or irrelevant to the case" may render the decision unreasonable (*Clermont* at para 30). In this case, however, the RPD's analysis does not focus on secondary issues, because at the hearing before the RPD, the applicant placed a great deal of emphasis on his fear associated with the threats made by Mr. Trouillot. This is a key element of his story, and the RPD's review is based on the evidence as a whole.

[37] I agree with the applicants that the RPD's analysis is not particularly detailed with regard to all of the evidence on the record. However, that is not sufficient, in itself, to make the decision unreasonable. The analysis demonstrates that the RPD did truly "engage" with the evidence, applying the appropriate legal test, and that the analysis in the decision is "based on reasoning that is both rational and logical" (*Vavilov* at para 102).

[38] There is no reason to set aside the decision on this point.

IV. Conclusion

[39] For all these reasons, the application for judicial control is dismissed. There is no question of general importance to certify.

JUDGMENT in IMM-2711-19

THIS COURT’S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. There is no question of general importance to certify.

“William F. Pentney”
Judge

Certified true translation
This 27th day of May 2020.

Francie Gow, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2711-19
STYLE OF CAUSE:	MAUDERSON ST-SULNE, MARIE-YOLAINE ST-SULNE GLAUD, MARYAH ELSA ST-SULNE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	NOVEMBER 12, 2019
JUDGEMENT AND REASONS:	PENTNEY J.
DATED:	MAY 14, 2020

APPEARANCES:

Stewart Istvanffy Miguel Mendez	FOR THE APPLICANTS
Philippe Proulx	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Stewart Istvanffy et al Counsel Montréal, Quebec	FOR THE APPLICANTS
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT