

Federal Court



Cour fédérale

**Date: 20200819**

**Docket: IMM-5365-19**

**Citation: 2020 FC 839**

[ENGLISH TRANSLATION, REVISED BY THE AUTHOR]

**Ottawa, Ontario, August 19, 2020**

**PRESENT: Mr. Justice Grammond**

**BETWEEN:**

**JOANNE JOSEPH  
MENOVE KERVINS**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**(Oral judgment delivered by videoconference on August 19, 2020)**

[1] Ms. Joseph is seeking judicial review of the denial of her claim for refugee protection. I am dismissing her application because the Refugee Appeal Division [RAD] reasonably found that Ms. Joseph was excluded under Article 1E of the *United Nations Convention Relating to the*

*Status of Refugees* [the Convention] and section 98 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act ].

[2] Ms. Joseph is a citizen of Haiti. On March 3, 2014, after being assaulted and threatened by a former spouse, she left Haiti for Brazil. Ms. Joseph became a permanent resident of Brazil, held a job there until May 2016, and had housing there. During her stay, while she was pregnant, she was assaulted and had her cell phone and purse stolen.

[3] In November 2016, Ms. Joseph left Brazil for the United States. On August 8, 2017, she entered Canada and claimed refugee protection. The Refugee Protection Division [RPD] rejected Ms. Joseph's refugee claim. Ms. Joseph appealed this decision to the RAD. The RAD rejected Ms. Joseph's appeal and found that she was caught by the exclusion provided for in Article 1E of the Convention and section 98 of the Act, since on the day of her hearing before the RPD, although a Haitian citizen, she was also a permanent resident of Brazil and enjoyed essentially the same rights and obligations as Brazilian citizens. The RAD concluded that Ms. Joseph had not established a serious possibility of persecution or a likelihood that she would face any of the risks described in Article 97 of the Act should she return to Brazil.

[4] In my view, the RAD's decision was reasonable. After reviewing the documentary evidence, the RAD concluded that Ms. Joseph's allegations about the difficulty of obtaining employment and the crime she experienced were insufficient to give rise to a well-founded fear of persecution in Brazil. This Court has repeatedly held that similar conclusions were reasonable (*Celestin v Canada (Citizenship and Immigration)*, 2020 FC 97, at paragraph 62 [*Celestin*]; *Morissaint v Canada (Citizenship and Immigration)*, 2020 FC 413, at paragraph 19; *Noel v*

*Canada (Citizenship and Immigration)*, 2018 FC 1062, at paragraphs 28–30; *Simolia v Canada (Citizenship and Immigration)*, 2019 FC 1336, at paragraphs 26–27; *Jean-Pierre v Canada (Citizenship and Immigration)*, 2020 FC 136, at paragraphs 31–34 [*Jean-Pierre*]).

[5] Ms. Joseph also argues that the RAD should assess the prospective risk in Haiti, given Ms. Joseph’s alleged loss of permanent resident status in Brazil. I cannot agree with this argument. The exclusion under Article 1E of the Convention must be assessed on the basis of the situation prevailing on the day of the hearing before the RPD: *Canada (Citizenship and Immigration) v Zeng*, 2010 FCA 118 at paragraph 28, [2011] 4 FCR 3; *Majebi v Canada (Citizenship and Immigration)*, 2016 FCA 274 at paragraph 7. As of the date of her hearing before the RPD, Ms. Joseph was a permanent resident of Brazil. The Article 1E exclusion continues to apply despite the fact that Ms. Joseph allowed her permanent residence status to expire after her claim for refugee protection (*Jean-Pierre*, at paragraph 24). As the RAD had reasonably determined that Ms. Joseph could avail herself of adequate state protection from Brazil, it did not need to analyze the risk she would allegedly face if she were to return to Haiti (*Augustin v Canada (Citizenship and Immigration)*, 2019 FC 1232, at paragraph 34).

[6] In *Celestin*, the Federal Court of Appeal will be called upon to determine whether the RAD must consider the risk raised by a refugee protection claimant in his or her country of residence before applying the exclusion under Article 1E of the Convention. However, I am of the view that this issue does not arise in Ms. Joseph’s case, given that the RAD did, in fact, conduct such an analysis, even though it may not have been required to do so.

[7] Accordingly, the application for judicial review is dismissed.

**JUDGMENT in IMM-5365-19**

**THIS COURT'S JUDGMENT** is as follows:

1. The application for judicial review is dismissed.
2. No question is certified.

“Sébastien Grammond”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5365-19

**STYLE OF CAUSE:** JOANNE JOSEPH MENOVE KERVINS v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MATTER HEARD BY VIDEOCONFERENCE  
BETWEEN OTTAWA, ONTARIO, AND MONTRÉAL,  
QUEBEC

**DATE OF HEARING:** AUGUST 19, 2019

**JUDGMENT AND REASONS:** GRAMMOND J.

**DATED:** AUGUST 19, 2020

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