Federal Court  Cour fédérale

**Date: 20210122**

**Docket: IMM-3692-19**

**Citation: 2021 FC 74**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, January 22, 2021**

**PRESENT: The Honourable Mr. Justice Pentney**

**BETWEEN:**

**THALES RAYMOND, HENSIE WILHELMINE MARIE MICHEL GERVAIS and THAINA NANCY RAYMOND**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## JUDGMENT AND REASONS

[1] The applicants are seeking judicial review of a May 15, 2019 decision of the Refugee Appeal Division (RAD) confirming a decision of the Refugee Protection Division (RPD) rendered on March 16, 2018, which rejected the applicants' refugee protection claim.

[2] The RPD and the RAD found that the applicants are not refugees within the meaning of the United Nations *Convention Relating to the Status of Refugees*, July 28, 1951, 189 UNTS 137 [Convention] or persons in need of protection under the *Immigration Protection Act*, SC 2001, c 27 [IRPA]. The applicants do not challenge this determination, but rather the conclusions regarding state protection and risk of persecution in Brazil.

## I. Background

[3] Thales Raymond and his spouse Hensie Wilhelmine Gervais, the applicants, are citizens of Haiti. Their daughter, Thaina Nancy Raymond, who is also part of this application, is a citizen of Brazil.

[4] Mr. Raymond suspects that his brother and two other individuals were involved in his father's murder on January 1, 1999. His brother fled to the Dominican Republic and the other two were arrested by the police. The two men allegedly escaped from prison following the 2010 earthquake in Haiti and began threatening Mr. Raymond, blaming him for their imprisonment. As a result, Mr. Raymond travelled to Brazil on June 21, 2011, where he was granted permanent residence in November 2012.

[5] In 2013, in Haiti, Ms. Gervais was threatened, kidnapped and sexually assaulted by the brother and two other men. Following these events, she joined Mr. Raymond in Brazil in May 2014.

[6] In January 2016, the threats were repeated, this time in Brazil. In March 2016, Mr. Raymond allegedly passed his brother in the street and his brother repeated the death threats

against him. In April 2016, the applicants decided to flee to the United States. Then, following the United States presidential election in November 2016, they come to Canada and filed their refugee protection claim.

[7] On March 16, 2018, the RPD determined that the applicants were referred to in Article 1E of the Convention and section 98 of the IRPA. The RPD also found that the applicants were not credible, that they had not demonstrated a lack of state protection or of an internal flight alternative and that they may have suffered discrimination but not persecution.

[8] On May 15, 2019, the RAD dismissed their appeal. Before the RAD, the applicants did not challenge their exclusion under Article 1E or section 98, but rather the RPD's findings as to their credibility, the finding of adequate state protection in Brazil, and the viability of an internal flight alternative. The RAD affirmed the RPD's findings regarding exclusion under Article 1E and state protection.

[9] The applicants seek judicial review of the RAD's decision.

## II. Issues and standard of review

[10] The only issue in dispute is whether the RAD's decision is unreasonable regarding the risk of persecution in Brazil and state protection.

[11] The standard of review that applies to the RAD decision is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–23 [*Vavilov*]).

## III. Analysis

[12] The applicants argue that the RAD erred in not considering the ethnicity of the applicants in its analysis of state protection since the documentary evidence is that there is racism, including from police officers, as well as impunity and corruption in the police, and that the courts are not able to deal with cases in a timely manner.

[13] The applicants argue that the RAD interpreted the documentary evidence to justify confirming the RPD's decision, despite the fact that the RPD found discrimination and violence against the Afro-Brazilian population. The RAD also failed to take into account the fact that two of the applicants are women, even though the evidence shows a higher risk of violence against women and that the risk is systematic and widespread. The applicants argue that the RAD did not conduct a cumulative effect analysis of discrimination as required by the case law.

[14] In summary, the applicants argue that the decision is unreasonable because the reasons do not explain the RAD's analysis of this evidence. The decision is flawed because the reasons are not sufficiently substantiated.

[15] I am not convinced.

[16] First, it is important to note the evolution of this Court's jurisprudence regarding the analysis of risk in the situation where applicants are referred to in Article 1E of the Convention and section 98 of the IRPA. In a few recent cases, the Court has concluded that the RPD or RAD analysis must stop if they find that the claimants are subject to exclusion under Article 1E and section 98 (see *Celestin v Canada (Citizenship and Immigration),* 2020 FC 97 [*Celestin*]; *Saint Paul v Canada (Citizenship and Immigration),* 2020 FC 493 [*Saint Paul*]; *Mwano v Canada*

*(Citizenship and Immigration)*, 2020 FC 792). In *Celestin* and *Saint Paul*, the Court certified a question of general importance as to whether the RPD or the RAD must conduct an analysis of the risk faced by claimants in the country of residence before determining whether they are referred to in Article 1E and section 98. The Federal Court of Appeal will therefore deal with this issue.

[17] The parties did not address this issue in this proceeding. Given the state of the case law at the time that the RPD and the RAD rendered their decisions, and considering my conclusion on the issue in dispute, I agree that it is not necessary to deal with this issue in any further detail in this proceeding (see *Joseph v Canada (Citizenship and Immigration)*, 2020 FC 839 at para 6; *Feliznor v Canada (Citizenship and Immigration)*, 2020 FC 597 at para 22).

[18] The applicants' argument focuses on two points: the fact that the RAD did not address the evidence regarding the issue of racism in Brazil against Afro-Brazilians in its analysis of state protection; and the fact that the RAD did not address all of the evidence regarding their risk of persecution upon return to Brazil. They argue that the RAD's decision is unreasonable because of these shortcomings.

[19] I do not agree.

[20] According to *Vavilov*'s framework for reasonableness analysis, the role of the reviewing court "is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints" (*Canada Post Corp. v Canadian Union of Postal Workers*, 2019 SCC 67 at para 2). The onus is on the party challenging the decision to

demonstrate unreasonableness, and it is not sufficient to establish superficial or incidental deficiencies with respect to the merits of the decision. As the majority in *Vavilov* stated in paragraph 100, "[i]nstead, the court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable".

[21] I am not persuaded that the applicants have demonstrated such a fatal error in the RAD's decision. The RAD's decision is based on one overriding fact: the applicants did not seek the assistance of the police or other Brazilian authorities. The only evidence they filed regarding the lack of state protection refers to a case where a Haitian husband allegedly beat his wife but the police did not intervene, which is far from convincing evidence rebutting the presumption of state protection (*Canada (Citizenship and Immigration) v Flores Carrillo*, 2008 FCA 94 at paras 17–21).

[22] As the RAD notes in paragraph 24 of the decision:

> Therefore, it cannot be concluded that there is no state protection for an individual who has a dispute with someone. Although it cannot be concluded that the protection is perfect, it exists, and since Brazil is governed by the rule of law, it is still available to residents. Mr. Raymond's failure to have accessed it in a timely manner does not lead to the conclusion that it does not exist.

[23] Before making this statement, the RAD analyzed the objective evidence in the National Documentation Package. While I agree with the applicants that the analysis is short, this is not, in itself, a reason to set aside the decision. The fact that the applicants did not seek state protection and did not demonstrate that state protection was not available are findings based on the facts and is well explained in the RAD decision. The applicants have not provided any

convincing evidence of lack of protection from the Brazilian state in relation to a family dispute. There is no evidence to establish that the applicants were not adequately protected by the Brazilian state (see *Debel v Canada (Immigration, Refugees and Citizenship)*, 2020 FC 156).

[24] Regarding the risk of persecution that the applicants will face if they return to Brazil, the applicants note that the RAD interpreted the documentary evidence restrictively to justify confirming the RPD's decision. They note that two of the applicants are women and argue that the documentary evidence in the National Documentation Package demonstrates that women of colour in Brazil face extreme discrimination, including the risk of sexual and domestic violence, and that the risks are chronic, systematic and widespread. The RAD did not consider the documentary evidence and this is sufficient to make the decision unreasonable.

[25] I am not persuaded.

[26] I am of the opinion that the RAD considered the facts, including objective evidence and evidence of discrimination against Haitian women and others on the basis of race and nationality. The RAD noted that no argument was raised against the RPD's decision regarding the applicants' minor daughter and therefore this argument cannot be accepted. In addition, the RAD noted that not all discriminatory acts are persecution and cited the correct Convention definition as well as the case law. The applicants did not identify an error in the RPD's analysis and the RAD agreed that the evidence does not demonstrate that discrimination amounts to persecution.

[27] I am of the opinion that the applicants' submissions on this point have not demonstrated that the RAD's analysis is unreasonable, applying the analytical framework for the reasonableness standard of review, set out in *Vavilov*.

## IV. Conclusion

[28] The RAD's decision is based on facts relevant to the analysis and the RAD clearly explained its conclusion regarding state protection and the applicants' risk of persecution in Brazil. This is all that is required by the *Vavilov* reasonableness analysis framework.

[29] For all these reasons, I see no need to intervene.

[30] The application for judicial review is dismissed.

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

**JUDGMENT in IMM-3692-19**

**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
Michael Palles, Reviser

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-3692-19 |
| **STYLE OF CAUSE:** | THALES RAYMOND, HENSIE WILHELMINE MARIE MICHEL GERVAIS and THAINA NANCY RAYMOND v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | MONTRÉAL, QUEBEC |
| **DATE OF HEARING:** | FEBRUARY 27, 2020 |
| **JUDGMENT AND REASONS:** | PENTNEY J. |
| **DATED:** | JANUARY 22, 2021 |

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