Federal Court

Cour fédérale

Date: 20210622

Docket: IMM-966-20

Citation: 2021 FC 651

[ENGLISH TRANSLATION]

Ottawa, Ontario, June 22, 2021

PRESENT: The Honourable madam Justice Roussel

BETWEEN:

PETUEL BENEDICT THEODORE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, Petuel Benedict Theodore, is a citizen of Haiti. He is eight years old. On August 9, 2017, accompanied by his mother and sister, he arrived in Canada and made a claim for refugee protection on the basis of his mother's claim.

[2] In her refugee protection claim, the applicant's mother alleged a fear of persecution in Haiti because of her membership in the social group of "women". She claimed that she was raped on December 20, 2015, by armed men who broke into her home and threatened to kill her and her children if she complained to the police or discussed it with her spouse. She did not want to return to Haiti because she feared being assaulted and raped again and she did not want the applicant's sister to have to go through this traumatic experience. She also did not want to put her children's lives at risk by returning to her country. She also feared that they would all be at risk because they would be perceived as wealthy people who had lived abroad.

[3] On December 17, 2018, the Refugee Protection Division [RPD] found that the applicant's mother was not credible due to contradictions and inconsistencies in the evidence and determined that her behavior was inconsistent with that of someone who feared for her life or integrity in her home country. The RPD rejected the claim and found that the applicant, his mother and sister were neither Convention refugees nor persons in need of protection. They appealed that decision.

[4] On January 15, 2020, the Refugee Appeal Division [RAD] allowed the appeal in part. It determined that *Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution* had not been properly applied by the RPD and that the RPD had erred in assessing the credibility of the applicant's mother. The RAD further stated that it had no valid reason to doubt that the applicant's mother had been a victim of the traumatic incident of December 20, 2015, and that she feared returning to Haiti. Considering the documentary evidence and the personal circumstances of the applicant's mother, the RAD found that she had

established a serious possibility of persecution in the event that she and her daughter were to return to Haiti. However, the RAD determined that it had not been established that the applicant would be at greater risk due to the fact that he had lived abroad and would therefore be perceived as being wealthy. In this regard, the RAD pointed out that being wealthy or being perceived to be wealthy does not constitute membership in a social group under section 96 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, and that the risk of being victimized by criminals was not exclusive to the diaspora. On the contrary, the documentary evidence demonstrated that in Haiti, it was not only the wealthy who were targeted by endemic violence and crime.

[5] The applicant is seeking judicial review of that decision. In particular, he criticizes the RAD for having failed to recognize that he would be persecuted because of his membership in the social group of the family, when he himself had been threatened by the same individuals who had assaulted his mother, who was recognized as a refugee.

[6] The Court finds that there is a basis for intervention in this case.

[7] The parties agree that a reasonableness standard applies here. When the applicable standard of review is reasonableness, the Court's focus "must be on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 83 [*Vavilov*]). It must ask itself "whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the

relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99). The burden is on the party challenging the decision to show that it is unreasonable (*Vavilov* at para 100).

[8] It is recognized that the fact that one family member has been persecuted does not confer refugee status on all of the other members of that family. Those claiming refugee protection who base their claim on membership in a family group must demonstrate a personal connection between themselves and the persecution alleged to have occurred on a Convention ground. The family, as a social group, must be subjected to retaliation and revenge to hope to be granted the protection of Canada. Claimants must show that they have been or will be targeted by the persecutors because they are members of that family (*Ramirez Estrada v. Canada (Citizenship and Immigration)*, 2015 FC 1019 at paras 8–10; *El Achkar v Canada (Citizenship and Immigration)*, 2013 FC 472 at paras 40–41; *Ndegwa v Canada (Minister of Citizenship and Immigration)*, 2006 FC 847 at para 9; *Granada v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1766 at paras 15–16).

[9] In this case, the applicant's mother alleges that her abusers threatened to kill her children and her husband if she complained to the police or told her spouse about the December 20, 2015, incident. Despite finding the applicant's mother credible, the RAD does not appear to have considered that the applicant himself was targeted as a family member of the primary target of persecution. Its reasons are silent on this issue. The RAD's analysis focuses only on the applicant's risk as a member of the Haitian diaspora returning to his country of origin.

[10] The respondent acknowledged at the hearing that the RAD did not make a determination on this element of risk. However, it argued that the Court should consider the decision as a whole in light of all the evidence on the record.

[11] The Court cannot agree with this argument. While a decision maker is not required to respond to every argument or piece of evidence presented by a party (*Vavilov* at para 128; *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para. 16), and while deference is owed to the decisions of the RAD, its failure to adequately consider this risk results in a decision that is not justified in light of the relevant factual and legal constraints, as required by *Vavilov*. It is not for this Court to weigh the evidence itself, to guess at what conclusion the RAD would have reached, or to fashion its own reasons in order to buttress the RAD's decision (*Vavilov* at para 96).

[12] For these reasons, the application for judicial review is allowed. The decision is set aside and the matter is returned to the RAD for reconsideration before a differently constituted panel.

[13] No question of general importance was submitted for certification, and the Court is of the opinion that this case does not raise any.

JUDGMENT in IMM-966-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The decision of the Refugee Appeal Division, dated January 15, 2020, is set aside;
3. The matter is returned to the Refugee Appeal Division for reconsideration before a differently constituted panel; and
4. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

Certified true translation
Francie Gow, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-966-20
STYLE OF CAUSE:	PETUEL BENEDICT THEODORE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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