

Federal Court



Cour fédérale

Date: 20210625

Docket: IMM-5513-20

Citation: 2021 FC 672

[ENGLISH TRANSLATION]

Ottawa, Ontario, June 25, 2021

Present: The Honourable Madam Justine Roussel

BETWEEN:

**RAFAELE ZAMOR
JAN GREGOR ZAMOR**

Applicants

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The principal applicant, Rafaele Zamor, and her brother Jan Gregor Zamor, the associate applicant, are citizens of Haiti. Together, they are seeking judicial review of a decision rendered on September 29, 2020, by the Refugee Appeal Decision [RAD]. The RAD dismissed their appeal and confirmed the decision by the Refugee Protection Division [RPD] rejecting their claims for refugee protection. Like the RPD, the RAD found that the applicants lacked credibility

on key elements of their claims and that the documentary evidence submitted by the applicants and the documentary evidence regarding Haiti in the National Documentation Package [NDP] did not overcome the applicants' credibility issues.

[2] The applicants first argue that the RAD erred in its analysis under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], thereby violating the principles of procedural fairness and natural justice. They criticize the RAD for finding that it was irrelevant whether the RPD reviewed their claims under section 96 or 97 of the IRPA because it found that their claims were not credible. The applicants argue that finding a claimant not to be credible does not necessarily lead to a claim for refugee protection being rejected under sections 96 and 97 of the IRPA. They argue that the objective evidence in the NDP had to be considered because it could have led the RAD or RPD to determine that the applicants were refugees or persons in need of protection, regardless of their credibility. According to the applicants, their claims should have been reviewed under both section 96 and section 97 of the IRPA since, first, their claims included Convention grounds of religion and membership in a social group, the family, and second, they alleged a risk to their lives owing to criminal groups that were persecuting them.

[3] Next, they argue that the RAD's assessment of their credibility was unreasonable. Although they concede that significant changes to the Basis of Claim (BOC) Form can affect a claimant's credibility, they argue that, given the circumstances of their claims, it was wrong to base the rejection largely on the changes to the BOC Form. They argue that both the RAD and the RPD misinterpreted their explanations justifying the changes to their stories.

[4] Finally, the applicants fault the RPD and the RAD for their assessment of the documentary evidence submitted in support of their claims.

[5] The Court cannot agree with the applicants' arguments.

[6] First, the applicants' argument regarding the RAD's obligation to consider the refugee protection claims under sections 96 and 97 of the IRPA does not raise an issue of procedural fairness. This issue, as well as issues of credibility and assessment of the evidence, must be reviewed against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16–17 [*Vavilov*]; *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35; *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (FCA) (QL) at para 4; *Abdelgadir v Canada (Citizenship and Immigration)*, 2020 FC 721 at para 8 [*Abdelgadir*]). The applicants have not demonstrated that the exceptions to the presumption of reasonableness are applicable in this case. A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker (*Vavilov* at para 85).

[7] The RAD's reasons must be considered in light of the arguments made by the applicants on appeal. Despite the RPD's finding [TRANSLATION] "that there [was] no connection between the [applicants]' claims and one of the five Convention grounds, namely [their] religious beliefs", the applicants did not argue on appeal that the RPD had erred in reaching this conclusion. Rather, they criticized the RPD for failing to consider their claims under section 97 of the IRPA. Since the applicants did not challenge the RPD's findings with respect to section 96

of the IRPA, the RAD had no reason to dwell on the RPD's assessment of that point. This is a new argument that was not before the RAD, and it would therefore be inappropriate for this Court to consider it (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 22–26; *Akintola v Canada (Citizenship and Immigration)*, 2020 FC 971 at para 21; *Khan v Canada (Citizenship and Immigration)*, 2016 FC 855 at paras 29–30).

[8] Moreover, a finding that the applicants lack credibility is sufficient to justify the rejection of a claim for refugee protection under sections 96 and 97 of the IRPA, unless there is independent and credible documentary evidence in the record to support a decision in favour of the applicants. The applicants bore the onus of demonstrating such evidence existed (*Canada (Citizenship and Immigration) v Sellan*, 2008 FCA 381 at para 3; *Qahramanloei v Canada (Citizenship and Immigration)*, 2021 FC 422 at para 28; *Ali v Canada (Citizenship and Immigration)*, 2021 FC 77 at paras 28–29).

[9] Second, the RAD's findings as to the credibility of the applicants are based on the extent of the changes to the account accompanying the BOC Form and the applicants' testimony at the hearing.

[10] In the original version, the principal applicant claimed that she feared being persecuted because of her father's military background. She stated that on June 10, 2017, a man showed up at her house while she was sitting on the porch. The man asked her if Captain Zamor's children lived there. When she replied yes, the man said [TRANSLATION] "be careful" in a threatening

voice. The next day, she found her dog dead on the stairs of the house, poisoned. She stated that the reference to her father was an innuendo and then explained her father's military past and the persecution of ex-military personnel that is rampant in Haiti.

[11] Two years later, the principal applicant changed her story, claiming instead that she was threatened by one of her mother's cousins, who is a voodoo priestess, and her followers. She reportedly had always wanted the applicants to be her [TRANSLATION] "servants for her voodoo services", but they refused because of their religious beliefs. She claimed that this cousin was responsible for the events of June 10 and 11, 2017.

[12] In its reasons, the RAD noted that at the hearing, the principal applicant testified that she was afraid only of the cousin and her followers and not the groups that are against ex-military personnel. When asked about the failure to mention the agent or ground of persecution in the original story, the principal applicant said she thought it was a minor detail. The RAD noted, however, that when the RPD pointed out to her that the changes were significant, the principal applicant testified that the cousin [TRANSLATION] "is central to the story, she is the threat". The RAD found that the revised account changed the very substance of the claim for refugee protection, as well as the perpetrator of the persecution and their motives.

[13] The RAD also considered the testimony of the associate applicant, whose claim for refugee protection was based on that of his sister. It noted that the latter testified at the beginning of the hearing that he feared both the cousin and [TRANSLATION] "extremist groups that despise former military personnel". Following his sister's testimony that she was afraid only of the

cousin, the associate applicant changed his testimony and stated that he was afraid only of the cousin, like his sister.

[14] It is well established that all material facts of a story must be included in the BOC Form and that failure to do so can be fatal to the credibility of a claim for refugee protection (*Occilus v Canada (Citizenship and Immigration)*, 2020 FC 374 at para 25). The identity of the agent of persecution is a material fact (*Garcia Hidalgo v Canada (Citizenship and Immigration)*, 2006 FC 229 at para 17).

[15] Based on the applicants' testimony that they knew upon arrival in Canada that the cousin was responsible for the incidents of June 10 and 11, 2017, and the principal applicant's testimony that the cousin was [TRANSLATION] "central to the story" and that she was not afraid of the groups that were persecuting former military personnel, the Court finds that it was entirely reasonable for the RAD to conclude that this was not a mere detail but rather the very basis of their claims. It was also reasonable for the RAD to conclude that the applicants' explanations for not mentioning the individual at the heart of their problems in Haiti and the reasons for targeting them in the original story were insufficient and that their credibility was undermined.

[16] Third, the Court finds that the applicants have not demonstrated that the RAD's weighing of the documentary evidence was unreasonable. The documents submitted by the applicants do not support their claims that the cousin was responsible for the events of June 10 and 11, 2017. As for the letter from the applicants' mother referring to the cousin's threats, the RAD noted that it finds the letter [TRANSLATION] "does not alone prove on a balance of probabilities that the

events alleged by the [applicants] occurred”. In fact, the letter merely states that the applicants were threatened by the cousin and does not provide any further details about the events that led the applicants to leave Haiti. After reviewing the documentary evidence submitted by the applicants, the Court finds that the RAD could reasonably conclude that it was not sufficient to overcome the applicants’ credibility issues. Moreover, it is well established that lack of credibility with respect to the central elements of a claim for refugee protection can extend to other elements of the claims and apply broadly to documentary evidence adduced to corroborate a version of the facts (*Abdelgadir* at para 18).

[17] As for the evidence in the NDP, the applicants had the burden of establishing the link between the objective documentary evidence and their personal circumstances. Having concluded that the applicants’ story was not credible, the RAD was not required to consider the objective documentary evidence in the NDP. This evidence alone could not establish the applicants’ allegations as to the identity and motives of the agent of persecution (*Buza v Canada (Citizenship and Immigration)*, 2021 FC 577 at para 17; *Ayikeze v Canada (Citizenship and Immigration)*, 2012 FC 1395 at para 22).

[18] It is important to recall that findings regarding a refugee protection claimant’s credibility and the assessment of the evidence command a high degree of deference from this Court. While the applicants may disagree with the findings of the RAD and the RPD, it is not for this Court to reweigh the evidence to reach a conclusion that would be favourable to the applicants (*Vavilov* at para 125; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59, 61)

[19] In conclusion, the Court considers that when the reasons of the RAD are interpreted holistically and contextually, they bear the hallmarks of a reasonable decision, i.e., justification, transparency and intelligibility (*Vavilov* at paras 97, 99). There is therefore no need for this Court to intervene in this case.

[20] For these reasons, the application for judicial review is dismissed. 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-5513-20

THIS COURT'S JUDGMENT is as follows:

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

“Sylvie E. Roussel”

Judge

Certified true translation
Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5513-20

STYLE OF CAUSE: RAFAELE ZAMOR ET AL. v MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JUNE 22, 2021

JUDGMENT AND REASONS: ROUSSEL J.

DATED: JUNE 25, 2021

APPEARANCES:

Rym Jawad FOR THE APPLICANT

Sherry Rafai Far FOR THE RESPONDENT
Maude Normand (student-at-law)

SOLICITORS OF RECORD:

Aristide Koudiatou Inc. FOR THE APPLICANT
Montréal, Quebec

Attorney General of Canada FOR THE RESPONDENT
Montréal, Quebec