

Federal Court



Cour fédérale

Date: 20230801

Docket: IMM-7957-21

Citation: 2023 FC 1049

[ENGLISH TRANSLATION]

Ottawa, Ontario, August 1, 2023

PRESENT: The Associate Chief Justice Gagné

BETWEEN:

NORLINX PHILEUS

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Norlinx Phileus is seeking judicial review of a decision of the Refugee Appeal Division [RAD] confirming a decision of the Refugee Protection Division [RPD] and concluding that Mr. Phileus did not sufficiently establish his identity. Although they did not have to do so in light

of this first finding, both divisions still considered the merits of the claim and concluded that it lacked credibility.

[2] Once his application for leave was granted, the applicant submitted a further memorandum, which was intended to [TRANSLATION] “complement” his original memorandum. At the hearing, the Court reminded him that a further memorandum normally replaces the memorandum filed at the application for leave stage and that it does not complete it. Counsel for the applicant therefore asked the Court to confine itself to the applicant’s original memorandum.

[3] The applicant argues that the RAD erred in refusing to admit the new evidence presented before it, and in concluding that he had not sufficiently established his identity and that his claim was not credible.

[4] Moreover, in support of his application for judicial review, the applicant filed exhibits P-2 to P-4.

[5] Since these documents were not before the RAD, the respondent has raised a preliminary objection to their admission.

II. Facts

[6] The applicant alleges that he is a Haitian citizen who left his country for the United States (via the United States Virgin Islands and quickly onward to Florida) in late 2006/early 2007 because of his alleged persecution by members of the Fanmi Lavalas party. He remained in the

United States until August 2017, when he left for Canada to claim refugee protection in October of that year.

[7] In November 2020, the RPD rejected his claim on the basis that he did not provide sufficient evidence of his identity. The evidence before the RPD consisted of a birth certificate issued in 2014, a marriage certificate from 1988, and two documents issued by the American authorities. According to the applicant's testimony, the latter documents were issued on the basis of a birth certificate that he had in his possession when he arrived in the United States in 2007, yet they postdate 2014. However, the RPD notes that it appears from the birth certificate issued in 2014 that it was issued on the basis of a declaration made by his father, who died in the 90s. Since the applicant is unable to explain this inconsistency, the RPD did not find the marriage certificate or the American documents sufficient to demonstrate his identity.

[8] Before the RAD, the applicant submitted a number of additional documents, some of which were admitted into evidence.

III. Decision under consideration

[9] Before the RAD, the applicant raised a number of arguments that are no longer in issue before the Court; it is therefore not necessary to repeat here how the RAD dealt with them.

[10] Essentially, the applicant argued that the RPD had erred in not taking into account the objective evidence in the National Documentation Package on Haiti [NDP] concerning the

issuance of birth certificates following the presidential order, and in giving no weight to the marriage certificate and the document issued by the United States authorities.

[11] Regarding the new evidence, the RAD grouped the evidence relating to the issues still in dispute before the Court (the exhibits relating to the issues raised only in the applicant's further memorandum will not be dealt with) in the following manner:

- i. A personal ID card from the United States Virgin Islands, an undated social security card from the United States, undated bank and credit cards, and two utility and financial bills (Exhibit A-1);
- ii. A three-page statement by the applicant (Exhibit A-2);
- iii. A one-page statement by Guerdy Phileus (Exhibit A-3);
- iv. A one-page statement by Mécène Phileus (Exhibit A-4);
- v. A one-page statement by Victoire Phileus (Exhibit A-5);
- vi. A document explaining the availability of Haitian documents following the 2010 earthquake (Exhibit A-8);
- vii. A document explaining the format of birth certificates issued following the presidential order of January 16, 2014 – NDP document 3.11 dated October 12, 2017 (Exhibit A-9);
- viii. Excerpts from the Haitian civil code (Exhibit A-10);
- ix. Document HTI102986.E – Haiti: The Mochrena Party (Exhibit A-11).

[12] The RAD admitted exhibits A-2, A-6 and A-7 as new evidence, since they postdate the RPD's decision, and saw exhibits A-8 to A-11 as objective documentary evidence that it is in any event obliged to consider.

[13] However, it refused to admit the other exhibits for different reasons:

- Exhibit A-1: The United States Virgin Islands identity card is undated, and the applicant did not provide the address listed in his Basis of Claim Form [BOC Form]; the United States social security card has no date or does not bear any of the information contained in the BOC Form; the bank cards, credit cards and pharmacy card do not contain any biometric data; and the same is true of the invoices from third-party companies dated June and August 2017;
- Exhibit A-3: Although the sworn statement of Guerdy Phileus, who calls himself the applicant's brother, postdates the RPD's decision, his name does not appear in the BOC Form as one of the applicant's siblings. In addition, this statement was sworn in in Montréal, whereas according to the BOC Form, the applicant's only brother residing in Montréal is Clairfond Phileus, also a refugee claimant; moreover, this statement does not provide any information that was not available at the time of the hearing before the RPD;
- Exhibits A-4 and A-5: The statements of Mécène and Victoire Phileus, respectively, postdate the RPD decision but contain information that was available before the RPD hearing; moreover, it only lists 10 of the applicant's 12 siblings, excluding Clairfond Phileus. It contradicts the information contained in the BOC Form.

[14] First, the RAD did not accept the applicant's explanation that the information appearing in the 2014 birth certificate was simply a reproduction of the contents of his original birth

certificate. According to the applicant, the information in the NDP confirms that any third party, in this case his wife's godfather, could apply for a copy of a Haitian birth certificate. But the RAD noted that a full reading of the documentary evidence led to a very different conclusion. The documentary evidence gives a clear explanation of the procedure to be followed for having authentic instruments issued after the 2010 earthquake; Haitian nationals who have never possessed a birth certificate can obtain one by filing a late declaration of birth within five years of the publication of the presidential order (dated 16 January 2014). It noted, however, that because there is no means provided to civil status officers to validate whether an individual has not previously registered, some people take advantage of the procedure to register a second time, instead of applying for a birth certificate extract to National Archives, or to create a new identity.

[15] Since the precondition for late declarations of birth is never to have held a Haitian birth certificate, the RAD concluded that either the applicant did not have a previous birth certificate and obtained the United States identity documents on the basis of the 2014 birth certificate, or he had a previous birth certificate and should have received an extract from his birth certificate in 2014 rather than a new birth certificate.

[16] Added to this was the fact that when questioned on the 2014 birth certificate, the applicant was first unable to say in which year or even in which decade his father had died. He also stated that he did not remember how he had come into possession of the 2014 birth certificate and subsequently changed his testimony a few times. Finally, he said that before he obtained the 2014 birth certificate, he had another birth certificate that he forgot in Haiti; he later changed his testimony to say that he had lost it in the United States.

[17] Given the inconsistencies and contradictions surrounding the issuance of the 2014 birth certificate, the RAD gave no weight to the documents issued by the United States authorities on the basis of this certificate. First, the identity of a refugee protection claimant can only be certified by documents from his own country. Moreover, none of the documents from the United States predated 2016. These documents therefore do not corroborate the fact that the applicant held a birth certificate before 2014 and, in all likelihood, they were issued on the basis of the 2014 birth certificate, which in itself is problematic.

[18] Finally, the RAD noted that the marriage certificate is not a primary identity document and that it is insufficient to fulfill the refugee protection claimant's obligation to demonstrate his identity.

[19] Like the RPD, the RAD went beyond this first finding and confirmed the RPD's assessment of the credibility of the claim. It concluded, in part for the reasons already given, that the applicant did not present any credible evidence in support of his refugee protection claim.

IV. Issues and standard of review

[20] In my view, the question of whether the RAD erred in its assessment of the evidence relating to the applicant's identity is the only determinative issue.

[21] The standard of review applicable to the RAD's findings regarding a refugee protection claimant's credibility, and its assessment of the evidence in general and the evidence of the claimant's identity is reasonableness (*Guerrero Jimenez v Canada (Citizenship and*

Immigration), 2021 FC 175 at para 10; *Durojaye v Canada (Citizenship and Immigration)*, 2020 FC 700 at para 6).

V. Analysis

A. *Applicant's preliminary objection*

[22] In support of his application for judicial review, the applicant submitted the following exhibits that were not before the RAD:

- i. P-2: Requirement of the Haitian Consulate in Montréal for the issuance of a passport;
- ii. P-3: Applicant's declaration of the loss of his passport, sworn on November 18, 2021; and
- iii. P-4: Receipt issued by the Consulate General of the Republic of Haiti in Montréal, issued on November 22, 2021, relating to the applicant's passport application.

[23] It is well established that judicial review of an administrative decision maker's decision must be based on the same evidence that was before the decision maker. Evidence that was not before the decision maker is admissible only in very limited circumstances, none of which apply in this case (*Lalane v Canada (Citizenship and Immigration)*, 2009 FC 5 at para 20; *Nyoka v Canada (Citizenship and Immigration)*, 2008 FC 568 at para 17; *Jakhu v Canada (Citizenship and Immigration)*, 2009 FC 159 at para 18).

[24] The respondent has therefore properly asked me to ignore this evidence.

[25] I also agree with the respondent that if the Court were to consider Exhibit P-3, it further undermines the credibility of the applicant, who stated before the RPD that he had never held a Haitian passport.

[26] Moreover, the Court questions the fact that this passport application made in November 2021 is not mentioned in the applicant's further memorandum filed on May 18, 2023. If the applicant was issued a passport in 2021 or even in 2022, would he not have attempted to produce it as an additional exhibit?

B. *Reasonableness of decision*

[27] The applicant argues that the RAD's decision to refuse to admit exhibits A-1, A-3, A-4 and A-5 is not justified since they are secondary evidence relevant to establishing his identity.

[28] However, it is not enough for the evidence to be relevant, it must be new.

[29] Subsection 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, which must be narrowly construed, permits the admissibility of new evidence in appeals to the RAD only in limited circumstances.

[30] In this case, it was open to the RAD not to admit exhibits A-1 in a bundle, A-3, A-4 and A-5 since these documents existed prior to the RPD's decision, they did not provide any information that was not available at the time of the RPD hearing and the rejection of the

applicant's refugee claim, or, if they were available, they could not reasonably have been expected in the circumstances to have been presented, at the time of the rejection.

[31] The RAD provided a detailed analysis of this evidence and rationally and intelligibly explained why it rejected it.

[32] Since the applicant has not demonstrated how this finding by the RAD is unreasonable, the Court's intervention is not warranted.

[33] Regarding the analysis of the applicant's identity, I am also of the view that the RAD's analysis is detailed and that its conclusion is reasonable.

[34] The primary document submitted by the applicant as proof of his identity raises more questions than it provides answers.

[35] Contrary to the applicant's allegations, the objective evidence tends to show that the applicant could not have obtained a new birth certificate in 2014 if he had already held one previously. Two avenues were available to Haitian nationals after the issuance of the presidential decree; if they had already held a birth certificate, they could ask for the issuance of an extract and if they had never held one, they could file a late declaration of birth and obtain their first-ever birth certificate.

[36] Unfortunately for the applicant, he is unable to explain how, if he ever held a birth certificate (whether he had forgotten it in Haiti or lost it in the United States), he could have been issued a birth certificate in 2014. Nor could he explain why the 2014 birth certificate was issued on the basis of a declaration of his father, who died in the 90s. It was open to the RPD and the RAD not to accept the explanations of the applicant, who was unable to give the date or even the decade of his father's death.

[37] The issue of identity is of paramount importance for a refugee protection claim. It remains the cornerstone of the Canadian immigration regime, since identity is the basis for issues such as admissibility to Canada, assessment of the need for protection, assessment of potential threats to public safety, and the risks of a subject evading official examination (*Bah v Canada (Citizenship and Immigration)*, 2016 FC 373 at para 7).

[38] The RAD conducted a rigorous analysis of this issue, its reasons are rational and intelligible, and its conclusion falls within a range of reasonable outcomes that are defensible in respect of the facts and law.

VI. Conclusion

[39] Since the applicant has failed to demonstrate that the RAD made an error warranting the intervention of the Court, his application for judicial review is dismissed.

[40] The parties have not proposed any questions of general importance for certification and none arise from the facts of this case.

[41] The respondent has asked the Court, pursuant to paragraph 76(a) of the *Federal Courts Rules*, SOR/98-106, that the name of the respondent in the style of cause of this case be amended to replace “The Minister of Immigration and Citizenship Canada” with “The Minister of Citizenship and Immigration”, pursuant to subsection 4(1) of the IRPA and paragraph 5(2)(b) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22. The request is allowed.

[42] In addition, it is also necessary to correct an error and replace the name of Phileus Norlinx with Norlinx Phileus.

JUDGMENT in IMM-7957-21

THIS COURT’S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. No question of general importance is certified.
3. No costs are awarded.
4. The style of cause is amended as follows:
 - i) “The Minister of Immigration and Citizenship Canada” is replaced by “The Minister of Citizenship and Immigration”.
 - ii) “Phileus Norlinx” is replaced by “Norlinx Phileus”.

“Jocelyne Gagné”

Associate Chief Justice

Certified true translation
Janna Balkwill

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7957-21

STYLE OF CAUSE: NORLIX PHILEUS v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

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