

Federal Court



Cour fédérale

Date: 20231026

**Dockets: IMM-13024-22
IMM-13025-22**

Citation: 2023 FC 1420

Ottawa, Ontario, October 26, 2023

PRESENT: The Honourable Madam Justice Turley

Docket: IMM-13024-22

BETWEEN:

RUEL CHRISTOPHER WHYTE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

Docket: IMM-13025-22

AND BETWEEN:

RUEL CHRISTOPHER WHYTE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS FOR JUDGMENT

I. Overview

[1] The Applicant seeks judicial review of two decisions made by the same immigration officer [Officer]. The first decision is a pre-removal risk assessment [PRRA] made under sections 112 and 113 of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]* determining that the Applicant would not be subject to risk of persecution, torture, risk to life, or risk of cruel and unusual treatment or punishment if he returned to Jamaica. This is the subject of the application in IMM-13024-22.

[2] The second decision is the Officer's refusal to reconsider the PRRA decision. This is the subject of IMM-13025-22. Pursuant to the Order of Justice McDonald dated August 16, 2023, the applications were consolidated and heard together.

[3] For the reasons that follow, I am allowing the judicial review of the PRRA decision because the Officer's analysis of state protection is unreasonable. The Officer failed to assess the operational adequacy of state protection efforts to address police corruption. This error alone vitiates the decision. However, I also find that the Officer conducted a selective analysis of the evidence and overlooked relevant evidence regarding the effectiveness of these efforts in assessing the adequacy and availability of state protection in Jamaica. I need not consider the application for judicial review of the Officer's decision on the Applicant's reconsideration request.

II. Background

A. The Applicant's PRRA application

[4] The Applicant first entered Canada in May 2020 on a work permit under the Seasonal Agricultural Worker Program, which was valid until December 15, 2020. He returned to Jamaica in November 2020.

[5] In April 2021, the Applicant was issued another work permit under the same program, this time valid until December 18, 2021. Thereafter, the Applicant remained in Canada without the required authorization.

[6] A removal order was issued against the Applicant and he was given an opportunity to request refugee protection under a PRRA.

[7] In his PRRA application dated May 12, 2022, the Applicant claimed that he was at risk in Jamaica for fear of violence and/or reprisals at the hands of criminals or gangs. He alleged that he had experienced extortion, abuse, and violence by gang members. According to the Applicant, he feared reporting these incidents to the police because police officers collude with gangs in Jamaica.

[8] The Applicant further claimed that he was ordered to pay an extortion fee to the gang and was told that they would harm and kill him and his family members if he did not comply. The

Applicant paid the fee out of fear. When he returned to Jamaica in November 2020, he was forced to pay a lump sum payment for all the weekly payments he had missed.

B. *The PRRA decision*

[9] By letter dated November 21, 2022, the Officer rejected the Applicant's PRRA application.

[10] The Officer determined that the Applicant failed to establish that he was a Convention refugee because he did not establish a nexus to any of the five grounds of the definition in section 96 of the *IRPA*. Rather, the Officer found that "what the applicant fears could be defined as a form of revenge or personal vendetta": Officer's Notes to File dated November 21, 2022 [Officer's Notes], Certified Tribunal Record, p 9 [CTR].

[11] The Officer further found that the agents of persecution are criminals and gang members, not the state. There was insufficient objective evidence that state actors participated in the harassment or extortion of the Applicant. On that basis, the Officer determined that the Applicant did not meet the definition of a person in need of protection and likely to be in danger of torture if he were returned to Jamaica, in accordance with section 97(1)(a) of the *IRPA*.

[12] Having found that the Applicant did not satisfy sections 96 or 97(1)(a), the Officer considered whether the Applicant met section 97(1)(b) of the *IRPA*. The Officer thus assessed whether state protection was available to the Applicant in Jamaica.

[13] The Officer concluded that the Applicant failed to provide sufficient objective evidence to substantiate his allegations of risk. Furthermore, the Officer held that the Applicant provided insufficient objective evidence that he attempted and was denied state protection.

[14] According to the Officer's Notes, the Officer conducted their "own independent research on country conditions": Officer's Notes, CTR, p 6. The only source consulted was the 2021 US Department of State Country Reports on Human Rights Practices – Jamaica [2021 US Report]: Officer's Notes, CTR, pp 7, 9.

[15] Based on a review of the 2021 US Report, the Officer acknowledged the existence of police corruption and that state protection in Jamaica is "not perfect". However, they determined that the "preponderance of the objective evidence" suggests the government is taking steps to address criminality and corruption. The Officer found that the evidence reveals that "the government took some steps to investigate and prosecute officials who committed human rights abuses": Officer's Notes, CTR, p 7.

[16] The Officer further found that it was not unreasonable to expect the Applicant to seek protection in Jamaica before seeking international protection: Officer's Notes, CTR, p 8.

[17] The Officer acknowledged the Applicant's assertion that "once you go to the police, someone from the police station informs the gang leader that someone made a report". However, the Officer found that there was insufficient objective evidence to support this statement. The

Officer relied once again on the 2021 US Report, stating that it supports that “the government of Jamaica protects its citizens from criminal violence”: Officer’s Notes, CTR, p 8.

[18] Ultimately, the Officer found that state protection is available to the Applicant in Jamaica and that, as a result, he does not meet the definition of a person in need of protection in accordance with section 97(1)(b) of the *IRPA*.

III. Issues and Standard of Review

[19] In my view, the dispositive issue is the Officer’s failure to apply the test of operational adequacy in their analysis of state protection. Nevertheless, I have also considered the Applicant’s arguments that the Officer ignored relevant evidence in determining that there is adequate and available state protection to the Applicant in Jamaica.

[20] The applicable standard of review is reasonableness in accordance with the Supreme Court’s decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]. A reasonable decision is “one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker”: *Vavilov* at para 85; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8 [Mason]. A decision should only be set aside if there are “sufficiently serious shortcomings” such that it does not exhibit the requisite attributes of “justification, intelligibility and transparency”: *Vavilov* at para 100; *Mason* at paras 59-61. Furthermore, the reviewing 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”: *Vavilov* at para 100.

IV. Analysis

A. *The Officer failed to consider and assess the operational effectiveness of state measures*

[21] It is well established that the adequacy of state protection depends on its operational effectiveness. A focus on state efforts without an assessment of the effectiveness of those efforts is a reviewable error: *Munzembo v Canada (Citizenship and Immigration)*, 2021 FC 1159 at para 27; *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at paras 73-75 [*Magonza*]; *Lakatos v Canada (Citizenship and Immigration)*, 2018 FC 367 at para 21 [*Lakatos*]; *Mata v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 1007 at paras 13-15; *Kulla v Canada (Citizenship and Immigration)*, 2017 FC 737 at para 26.

[22] Here, the Applicant alleges that, as a victim of gang violence, he could not seek protection from the police because of police collusion with gangs. The Officer acknowledged that there was police corruption in Jamaica, but found that efforts were being made by the government to address the issue:

The preponderance of the objective evidence regarding current country conditions suggests that, although not perfect, there is adequate state protection in Jamaica for victims of crime, that Jamaica is making efforts to address the problem of criminality, and that the police are both willing and able to protect victims. Police corruption and deficiencies, although existing and noted, are not systemic. I am of the view, in canvassing the documentary evidence, that, as a whole, the issues of corruption and deficiencies are being addressed by the state of Jamaica. In fact, the documentary evidence reveals that the government took some steps to investigate and prosecute officials who committed human rights abuses. The government had procedures for investigating complaints of unlawful behavior by security forces, including investigations by INDECOM and the Jamaica Constabulary

Force's Inspectorate and Professional Standards Oversight Bureau:
Officer's Notes, CTR, p 7.

[Emphasis added]

[23] While the Officer refers to the state efforts to address police corruption, what is missing is any analysis of their operational effectiveness. Finding that the state has taken “some steps to investigate and prosecute officials” and that it “had procedures for investigating complaints” does not pass muster.

[24] It was incumbent on the Officer to assess whether the procedures adopted for investigating complaints actually translate into operationally effective measures: *Dafku v Canada (Citizenship and Immigration)*, 2021 FC 1181 at para 19; *AB v Canada (Citizenship and Immigration)*, 2018 FC 237 at para 17 [AB]; *Ruszo v Canada (Citizenship and Immigration)*, 2013 FC 1004 at para 27. As Justice Diner has stated, “lip service does not suffice. The protection must be real, and it must be adequate”: *Lakatos* at para 21.

[25] Significantly, as discussed below, there is evidence in the 2021 US Report addressing the availability and effectiveness of the state measures. The Officer should have considered that evidence and assessed the operational effectiveness of the measures, rather than simply describing the efforts the state is making. On this basis alone, the Officer's decision is unreasonable.

B. *The Officer erred in selectively reading the objective evidence*

[26] The Court has determined that a finding of state protection based on a selective reading of country condition evidence renders a decision unreasonable: *Matthias v Canada (Citizenship and Immigration)*, 2023 FC 619 at para 25 [*Matthias*]; *Magonza* at para 93; *AB* at para 31.

[27] Here, the Officer relied exclusively on the 2021 US Report to find that: (i) there is adequate state protection in Jamaica; and (ii) state protection is available to the Applicant in Jamaica. However, in making these findings, the Officer engaged in a very selective analysis of the evidence in that report and ignored critical evidence therein.

(1) Adequacy of state protection

[28] In finding that the evidence demonstrates that the government in Jamaica is making efforts to address police corruption, the Officer quotes verbatim a portion of a sentence from the 2021 US Report about the government's process for investigating complaints. Notably, however, the Officer omits the preceding sentence, and the remainder of the sentence itself. The omitted information from the report, underlined in the passage below, is highly relevant as it speaks to the operational effectiveness of the state measures:

There were reports of unlawful arrests for which officers were not punished or disciplined. The government had procedures for investigating complaints of unlawful behavior by security forces, including investigations by INDECOM and the Jamaica Constabulary Force's Inspectorate and Professional Standards Oversight Bureau, but the government did not always use these procedures: 2021 US Report, Applicant's Record, p 61.

[Emphasis added]

[29] As the Applicant points out, that same report contains further evidence, not referenced by the Officer, that is relevant to assessing whether the government's measures are actually effective: Applicant's Further Memorandum of Argument at para 24. The following passages from the 2021 US Report suggest that while the government had adopted laws on corruption, they were not effectively implemented:

- The government took some steps to investigate and prosecute officials who committed human rights abuses. Nonetheless, there were credible reports that some officials alleged to have committed human rights abuses were not subject to full and swift accountability. The government did not effectively implement the law on corruption. There were numerous credible allegations of government corruption, and there were officials who sometimes engaged in corrupt practices with impunity: 2021 US Report, Applicant's Record, pp 59-60.

[Emphasis added]

- The law provides criminal penalties for corruption by officials, but the government generally did not implement the law effectively. There were numerous reports of government corruption during the year, and corruption was a significant problem of public concern. Media and civil society organizations criticized the government for being slow and at times reluctant to prosecute corruption cases: 2021 US Report, Applicant's Record, p 68.

[Emphasis added]

[30] The Respondent urges the Court to find that the Officer's conclusion on the adequacy of state protection is reasonable because the evidence is "mixed". However, it is not for this Court to weigh and assess the evidence: *Vavilov* at para 125. The fundamental flaw in the Officer's decision is the failure to assess the operational adequacy of state protection and consider the totality of the evidence on the effectiveness of state efforts. On reconsideration, the new officer

will have to engage with all of the evidence and consider the operational effectiveness of the state measures aimed at combatting police corruption.

[31] The Applicant also argues that the Officer ignored other evidence in the National Documentation Package [NDP] that calls into question the adequacy of state protection in Jamaica: Applicant's Further Memorandum of Argument at paras 26-27. The Applicant did not refer to these reports in his PRRA application.

[32] This Court has found that, in certain circumstances, PRRA officers may have a duty to consider documents beyond those relied upon by claimants: *Azzam v Canada (Citizenship and Immigration)*, 2019 FC 549 at para 16; *Magonza* at para 79; *Canada (Citizenship and Immigration) v Kaur*, 2013 FC 189 at para 30.

[33] Indeed, it is common practice for officers to rely on documents in the NDP, even when a claimant does not refer to them: *Magonza* at para 79. Here, the Officer did just that, choosing to consult a single document from the NDP – the 2021 US Report. As Justice Mosely determined, officers are not “obliged to comb through every document listed in the National Document Package in the hope of finding passages that may support the Applicant’s claim and specifically address why they do not, in fact, support the Applicant”: *Jean-Baptiste v Canada (Citizenship and Immigration)*, 2018 FC 285 at para 19.

[34] Based on my other findings, I need not determine whether the Officer erred in failing to consider other evidence in the NDP. However, I am troubled by the Officer’s conclusion that

“the preponderance of the objective evidence regarding current country conditions” suggests that there is adequate state protection in Jamaica. The Officer only consulted one source, the 2021 US Report, and as discussed above, their analysis of that report was highly selective. In my view, in light of the limited evidence the Officer consulted and relied upon, referring to the “preponderance” of evidence is an overstatement.

(2) Availability of state protection

[35] A claimant’s failure to seek state protection will not automatically defeat their claim. The relevant inquiry is whether it was objectively reasonable for the claimant not to have sought the protection of their home authorities: *Canada (Attorney General) v Ward*, 1993 CanLII 105 (SCC), [1993] 2 SCR 689 at 724; *Da Souza v Canada (Citizenship and Immigration)*, 2010 FC 1279 at para 18.

[36] The Officer acknowledged the Applicant’s assertion that he never reported the gang violence and sought police protection because his life would have been in danger due to police collusion with gangs. The Officer found, however, that the Applicant failed to provide sufficient objective evidence to support his assertion.

[37] Relying on the 2021 US Report, the Officer concluded that it was reasonable to expect the Applicant to seek state protection in Jamaica. The Officer found that state protection is available to the Applicant:

- Furthermore, I prefer to rely on the objective documentary material researched above that indicates that the

government of Jamaica protects its citizens from criminal violence: Officer's Notes, CTR, p 8.

- The government of Jamaica is willing to provide, through its legal system, a reasonable level of protection against ill-treatment of its citizens who fear criminal acts: Officer's Notes, CTR, p 8.

[38] However, the Officer erred in failing to engage with the totality of the evidence. As noted above, there is evidence in the 2021 US Report that the Jamaican government's measures to combat police corruption are not particularly effective. The Officer overlooked that evidence and instead engaged in a selective reading of the report: *Matthias* at para 25; *Magonza* at para 93; *AB* at para 31. Before finding that the Applicant's failure to seek state protection was objectively unreasonable, the Officer should have considered the evidence in the 2021 US Report in its entirety.

V. Conclusion

[39] Based on the foregoing, the Officer's decision is unreasonable. The fundamental flaw in the Officer's decision is the failure to assess the operational effectiveness of state efforts to address police corruption. Furthermore, the Officer selectively read the objective evidence in considering the adequacy and availability of state protection in Jamaica. I am allowing the application and remitting the matter for determination by another officer to consider the Applicant's PRRA application afresh.

[40] The parties did not raise a question for certification and none arises in this case.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review in IMM-13024-22 is allowed, and the matter is returned to another officer for reconsideration.
2. It is unnecessary to decide the application for judicial review in IMM-13025-22.
3. A copy of this decision will be placed on file in both IMM-13024-22 and IMM-13025-22.
4. No question is certified for appeal.

“Anne M. Turley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKETS: IMM-13024-22 AND IMM-13025-22

DOCKET: IMM-13024-22

STYLE OF CAUSE: RUEL CHRISTOPHER WHYTE v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

AND DOCKET: IMM-13025-22

STYLE OF CAUSE: RUEL CHRISTOPHER WHYTE v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HALIFAX, NOVA SCOTIA

DATE OF HEARING: SEPTEMBER 14, 2023

**JUDGMENT AND REASONS
FOR JUDGMENT:** TURLEY J.

DATED: OCTOBER 26, 2023

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