

Federal Court



Cour fédérale

Date: 20090423

Docket: IMM-3888-08

Citation: 2009 FC 396

Ottawa, Ontario, April 23, 2009

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

**Killic THEODOR
Bonithe THEODOR-ELYSEE
Herlens K E THEODOR
Wonda Edwina THEODOR**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act), of a decision by the Immigration and Refugee Board, Refugee Protection Division (the panel) dated August 5, 2008, determining that the applicants are neither refugees nor persons in need of protection as defined in the Act.

Issues

[2] Did the panel err in assessing the credibility of the principal applicant?

[3] For the following reasons the application for judicial review will be dismissed.

Factual background

[4] The principal applicant, Killic Theodor, his spouse, Bonithe Theodor-Elysee, and their minor children, Herlens K.E. Theodor and Wonda Edwina Theodor, are citizens of Haiti. Wonda Edwina, born in the United States, also has U.S. citizenship. On March 14, 2007, the panel named the principal applicant as the designated representative of his two minor children.

[5] The applicants claim refugee status under section 96 of the Act because of the political opinions of the principal applicant, because of the family's membership in a particular social group in the case of the other applicants and in accordance with paragraph 97(1)(b) of the Act.

Analysis

[6] When the issue is credibility and assessment of evidence, it is well established under paragraph 18.1(4)(d) of the *Federal Courts Act*, R.C.S. 1985, c. F-7, that the Court will intervene only if the panel based its decision on an erroneous finding of fact made in a perverse or capricious manner or if it delivered its decision without regard for the material before it.

[7] Assessing credibility and weighing the evidence fall within the jurisdiction of the administrative tribunal called upon to assess the allegation of a subjective fear by a claimant (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35 (F.C.T.D.), 83 A.C.W.S. (3d) 264 at paragraph 14).

[8] The Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, determined that the findings of a panel with regard to the credibility of an applicant are subject to the reasonableness standard of review (paragraphs 55, 57, 62 and 64).

[9] The applicants maintain that the panel did not give any reasons to support its finding. They submit that the panel concluded that there was a lack of credibility on peripheral issues without weighing the evidence that formed the basis of their claim.

[10] Nevertheless, the panel clearly and unequivocally addressed the topic of the truthfulness of the allegations and the credibility of the principal applicant. The panel raised several important facts that were not mentioned in the Personal Information Form (PIF), in particular regarding the telephone threats and the visit from the Chimères.

[11] In *Basseghi v. Canada (Minister of Citizenship and Immigration)* (1994), 52 A.C.W.S. (3d) 165, [1994] F.C.J. No. 1867 (F.C.T.D.) (QL), Justice Teitelbaum mentioned that all of the important facts of a claim should appear in a PIF. In *Grinevich v. Canada (Minister of Citizenship and Immigration)* (1997), 70 A.C.W.S. (3d) 1059, [1997] F.C.J. No. 444 (F.C.T.D.) (QL), the Court specified that the failure to report important facts in a PIF could lead to a finding of a lack of credibility.

[12] It is not for the Court to substitute its own judgment for the findings of fact made by the panel regarding the evidentiary value of the police certificates of March 10 and 22, 2004 (D-6), the medical certificate (D-12) as well as its determination with respect to the delay on the part of the principal applicant in securing his situation when he was in the United States (*Singh v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 181, 146 A.C.W.S. (3d) 325 at paragraph 36; *Mavi v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 1 (F.C.T.D.) (QL)).

[13] The panel's decision cannot be characterized as unreasonable. It constitutes a rational solution that is acceptable considering the evidence submitted (*Dunsmuir*, above at paragraph 47).

[14] No question for certification was proposed and this application does not give rise to any.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed. No question is certified.

"Michel Beaudry"

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3888-08

STYLE OF CAUSE: **KILLIC THEODOR
BONITHE THEODORE-ELYSEE
HERLENS K E THEODOR
WONDA EDWINA THEODOR
v. THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: April 8, 2009

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

DATED: April 23, 2009

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