

Federal Court



Cour fédérale

Date: 20090731

Docket: IMM-5507-08

Citation: 2009 FC 770

Montréal, Quebec, July 31, 2009

PRESENT: The Honourable Maurice E. Lagacé

BETWEEN:

MURIELLE LOZANDIER

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] The applicant is seeking, under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), judicial review of the decision dated November 19, 2008, by the Refugee Protection Division (RPD) of the Immigration and Refugee Board, refusing to recognize her as a “refugee” or a “person in need of protection” in accordance with sections 96 and 97 of the IRPA, and consequently denying her refugee claim because it was not based on any Convention grounds and because her fear was not founded on gender but rather on a generalized risk in Haiti.

II. Facts

[2] A citizen of Haiti, the applicant allegedly sewed a garment for a client in July 2001. After having requested her money several times, the applicant allegedly went to her client's home, in September 2001, to again demand the amount owing to her, but her client purportedly threatened her and stated: [TRANSLATION] "If you talk to me like that, I'll send you someone to pay you". That same evening, the applicant was attacked at home by two individuals, one of whom was her client's husband.

[3] Following this attack, and fearing the situation of general insecurity in Haiti and the crime that is rampant there, the applicant left in October 2001 for the United States, where she filed a claim for asylum, which was finally rejected on appeal in June 2005.

[4] The applicant entered Canada on August 9, 2007, and claimed refugee status that same day, alleging that she feared those who persecuted her in the past.

III. Impugned decision

[5] In its decision, the RPD dismissed the applicant's allegations:

[8] . . . that [she] fears persecution, under section 96 of the IRPA, based on her membership in a particular social group—women—because she has been [translation] "attacked and raped" in the past.

[6] It also emphasized the following:

[9] Although our jurisprudence has recognized women as a particular social group a number of times, the panel cannot agree that

the claimant's fear of persecution is based on her gender in the present case. The primary source of the claimant's fear is not the fact that the claimant is a woman, but the insecurity that is rampant in Haiti, which is caused by endemic crime throughout the country.

[10] This conclusion on the part of the panel is based on all of the documentary evidence on record showing that criminal offences in Haiti do not exclusively affect women; men and children are actually just as likely as women to become victims of criminal gangs in Haiti. This means that, in Haiti, where crime assumes a number of forms, everyone living in the country, whether citizen or foreigner, is liable to be a potential victim. Regardless of the gender or origin of their victims, criminals steal, kidnap, kill and traffic in anything that might be lucrative. Their sole goal is to make money.
[Reference omitted.]

[7] The RPD found that the applicant's "initial source of the fear" is crime in Haiti and the fact that she had been attacked by criminals in the past and, consequently,

[27] . . . as there is no evidence on record in this case showing that the claimant could be personally subjected to a risk to her life due to special circumstances other than the fact that she could be more easily identifiable as a member of the diaspora, [the RPD] concludes that the risk alleged by the claimant that she might fall victim to crime is a random risk faced indiscriminately by everybody living in the country. This risk affecting the claimant is not a personal or particular risk, and it is not solely limited to people who, as is the claimant's case, return to live in Haiti after spending time abroad. This case is therefore covered by the exception stipulated in subparagraph 97(1)(b)(ii) of the IRPA. The claimant is not a person in need of protection.

IV. Issue

[8] In the case at bar, the Court is called upon to respond only to the following question:

Did the RPD commit an unreasonable error in finding that the applicant was not a "person in need of protection" under the IRPA?

V. Analysis

A. *Standard of review*

[9] The issue addresses the interpretation of the IRPA and its application to the facts. This is therefore a question of mixed fact and law; the standard of review that applies is thus reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9). Considerable deference is required.

B. *Social group as defined in the Convention*

[10] In her memorandum, the applicant maintains that in Haiti [TRANSLATION] “the situation of criminal insecurity, which is said to be at the root of the rape [that she] experienced . . . , does not eliminate . . . the rape in itself as a fear of persecution”. Furthermore, she maintains [TRANSLATION] “that this uncontradicted evidence was improperly assessed”, since the RPD [TRANSLATION] “should have considered . . . that the applicant was part of the social group of raped . . . Haitian women.”

[11] According to the applicant, the fact that the RPD connected her fear to the situation of general crime prevalent in Haiti constitutes an error that warrants the intervention of this Court. However, since the applicant herself alleged, in support of her refugee claim, that she fears crime and the people who allegedly attacked her so that she would not demand the amount owed to her, this is an approach that the RPD could legitimately take, even if it is unfavourable for the applicant. It is the RPD’s responsibility to determine whether the applicant’s claim for protection is in any way connected to the definition of Convention refugee; it is not the Court’s role to make such a determination, as the applicant is asking it to do.

[12] The RPD properly analyzed and understood the applicant's allegations on this aspect of her claim even if, in this case, it was not able to find that the applicant's fear of persecution was a result of her gender. The primary source of the applicant's alleged fear is not the fact that she is a woman but rather the situation of insecurity that prevails in Haiti: crime is rampant across the country.

[13] In Haiti, women are not the only ones who are the subject of criminal acts. On the contrary, in this country where crime is rampant, both women and men are susceptible to being victims of crime.

[14] The applicant's fear of violence is a result of generalized criminal activity in Haiti: women in particular are not targeted. All of this has no connection to the definition of refugee in the Convention. The risk to which the population of a country in general is exposed has to be distinguished from an individual's situation-specific risk.

[15] The case law is clear: victims of crimes are not a social group as defined in the Convention (see *Rizkallah v. Canada (Minister of Employment and Immigration)* (1992), 156 N.R. 1 (F.C.A.)).

[16] The applicant is alleging that the RPD committed an error in finding that her fear was not a result of her status as a woman because she had been raped. However, the applicant clearly stated that she fears the individuals who attacked her, not because she is a woman, but rather in retaliation for the fact that she demanded the money owed to her for her services as a seamstress.

[17] The question of the existence of a connection between the alleged persecution and one of the Convention grounds is mostly a question of fact that therefore falls within the RPD's expertise (*Rizkallah*, above; *Pour-Shariati v. Canada (Minister of Employment and Immigration)* (1997), 215 N.R. 174 (F.C.A.)). Consequently, the RPD was entitled to find that the applicant's fear was not a result of her gender but a result of the fact that she had been the victim of a crime, and it was therefore entitled to deny her claim under section 96 of the IRPA.

C. Fear according to section 97 of the IRPA

[18] The RPD found it improbable that the individuals who attacked the applicant would threaten her again. The RPD could reasonably make such a finding because more than 8 years had elapsed since the reported events, not to mention that no one in the applicant's immediate circle has allegedly been bothered since.

[19] Moreover, the applicant did not challenge this finding as such. She even stated that she does not know where her assailants are, or what would happen if she saw them again. The applicant had to demonstrate a personal fear, and not simply allege a fear resulting from the general situation in Haiti (*Ahmad v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 995 (F.C.) (QL); *Rahim v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 18).

D. General situation in Haiti

[20] The applicant indicated that she fears the general situation in Haiti because she is claiming that she is part of the Haitian diaspora and would be perceived as being more fortunate than the majority of Haitians. The independent documentary evidence consulted by the RPD clearly indicates that the diaspora does not constitute a group that is more at risk than others. Not only does the applicant not dispute this finding, but the RPD was entitled to refer to this documentary evidence and give more weight to it than to the applicant's allegations to the contrary (*Zhou v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 1087 (F.C.A.)(QL); *Adu v. Canada (Minister of Employment and Immigration)*, [1995] F.C.J. No. 114 (F.C.A.) (QL)).

[21] In short, the risk that the applicant is alleging is a random risk faced generally and indiscriminately by everybody living in her country; it does not target the applicant personally or specifically. The situation that the applicant fears being exposed to does not differ from that of other people living in her country; she is therefore not a person in need of protection, as defined in subparagraph 97(1)(b)(ii) of the IRPA.

[22] Such a situation does not give rise to a personal risk justifying the protection sought by the applicant. The RPD found that the alleged harm was criminal in nature without any connection to the definition of Convention refugee, and this was a finding that it could legitimately make (*Jeudy v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1124; *Cius v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1).

[23] The Court, after analyzing the facts and the impugned decision, finds that the RPD was correct in deciding that the applicant did not establish that she was a person in need of protection under sections 96 and 97 of the IRPA, when this burden of proof was hers to discharge. The Court must therefore respect the RPD's decision.

VI. Conclusion

[24] Consequently, the impugned decision was justified with respect to both the facts and the applicable law; it was therefore reasonable. The application for judicial review must be dismissed.

[25] No question of general importance was proposed or merits being proposed; consequently, no question will be certified.

JUDGMENT

FOR THESE REASONS, THE COURT:

DISMISSES the application for judicial review.

“Maurice E. Lagacé”

Deputy Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5507-08

STYLE OF CAUSE: MURIELLE LOZANDIER v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: July 8, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** LAGACÉ D.J.

DATED: July 31, 2009

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