Federal Court  Cour fédérale

Date: 20110727

Docket: IMM-7022-10

[UNREVISED ENGLISH CERTIFIED TRANSLATION] **Citation: 2011 FC 938**

Ottawa, Ontario, July 27, 2011

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

HENRY PRÉVIL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] Mr. Prévil, a citizen of Haiti, claims to have fled to Canada because his life would be at risk following an incident in April 2008. While he was embarking on a motorcycle taxi, he was attacked, assaulted and beaten by some members of a crowd that was demonstrating against hunger. During this assault, he was robbed of $600 as well as his address book. Later, the applicant and members of his family began receiving threatening phone calls. He sought refugee protection in Canada.

[2] On November 8, 2010, the Refugee Protection Division of the Immigration and Refugee Board of Canada rejected his claim for refugee protection on the ground that the applicant's credibility [TRANSLATION] "is undermined by inconsistencies". It did not consider him to be a Convention refugee or a person in need of protection. This is the judicial review of that decision.

Issues

[3] Mr. Prévil alleges that the panel breached the principles of procedural fairness and natural justice and that its decision was unreasonable.

[4] The applicant argues that a breach of procedural fairness occurred from the fact that the panel refused to allow him an extension of time in order for him to file a certificate of employment from the U.S. Embassy. However, the panel did note that [TRANSLATION] "the evidence in the record established that [the applicant had] worked at the U.S. Embassy".

[5] It appears to the Court that there was no breach of natural justice resulting from the panel's decision. The principles of natural justice dictate that Mr. Prévil be provided with a fair opportunity to make his case. He was provided with such an opportunity and the proof of his employment was accepted.

[6] The applicant insists that the decision issued by the panel was unreasonable. However, it appears to this Court that the panel's findings were reasonably based on the evidence. For example,

if the applicant and his spouse had been receiving threatening phone calls from thieves who had obtained their cell phone numbers, then why did they not simply change their numbers?

[7] Above all, the alleged incident happened simply because the driver of the motorcycle taxi taken by Mr. Prévil failed to stop during the demonstration. It seems that the applicant was in the wrong place at the wrong time. In his police report filed three days later, he made no mention of being robbed of $600 and his address book. This contradiction with the facts put forward by the applicant provides ample justification for the panel's determination that the other facts alleged by the applicant were pure and simple fabrications.

[8] Moreover, the panel rightly found that the applicant's subjective fear of persecution was unfounded. While he was in Haiti, he had a U.S. visa in his possession. He preferred to wait until [TRANSLATION] "his papers were in order and immigrate" to Canada. His fear could not have been that crushing if he took his time choosing his country of refuge.

[9] Counsel for the applicant argues that there are errors in the panel's findings of fact. If such is the case, these errors are not central to the decision. As Justice Joyal noted in *Miranda v Canada (Minister of Employment and Immigration)*, [1993] FCJ No. 437:

> **5** It is true that artful pleaders can find any number of errors when dealing with decisions of administrative tribunals. Yet we must always remind ourselves of what the Supreme Court of Canada said on a criminal appeal where the grounds for appeal were some 12 errors in the judge's charge to the jury. In rendering judgment, the Court stated that it had found 18 errors in the judge's charge, but that in the absence of any miscarriage of justice, the appeal could not succeed.

6 This is the point I am trying to establish here. One may look at the decision of the Board, then one may balance it off against the evidence found in the transcript and the evidence of the claimant himself in trying to justify his objective as well as subjective fears of persecution.

7 On the basis of that analysis, I find that the conclusions reached by the Refugee Board are well-founded on the evidence. There can always be conflict on the evidence. There is always the possibility of an opposite decision from a differently constituted Board. Anyone might have reached a different conclusion. Different conclusions may often be reached if one perhaps subscribes to different value systems. But in spite of counsel for the applicant's thorough exposition, I have failed to grasp forcefully the kind of error in the Board's decision which would justify my intervention. The Board's decision, in my view, is fully consistent with the evidence.

ORDER

FOR THE FOREGOING REASONS;

THE COURT ORDERS that the application for judicial review be dismissed. There is no serious question of general importance to certify.

"Sean Harrington"
Judge

Certified true translation

Sebastian Desbarats, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7022-10
STYLE OF CAUSE:	PRÉVIL v MCI
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	July 12, 2011
REASONS FOR ORDER AND ORDER:	HARRINGTON J.
DATED:	July 27, 2011

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