

Federal Court



Cour fédérale

**Date: 20120322**

**Docket: IMM-3178-11**

**Citation: 2012 FC 341**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Montréal, Quebec, March 22, 2012**

**PRESENT: The Honourable Mr. Justice Simon Noël**

**BETWEEN:**

**EMMANUEL DUROSEAU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA) of a decision by the Refugee Protection Division (RPD) with respect to inclusion, dated April 21, 2011, which determined that the applicant was neither a refugee within the meaning of section 96 of the IRPA, nor a person in need of protection within the meaning of section 97 of the IRPA.

**I. Facts**

[2] The applicant, Emmanuel Duroseau, is an 80-year-old Haitian citizen. He arrived in Canada from the United States on March 28, 2009, and submitted a claim for refugee protection that same day.

[3] According to his Personal Information Form (PIF), Mr. Duroseau had allegedly been a member of the Volontaires de la sécurité nationale (VSN) (also known as the Tontons Macoutes) from 1968 to 1985. He purportedly left the group because he did not like the way its members behaved, that is to say, the way they arrested, beat and imprisoned those who opposed the Duvalier regime. Mr. Duroseau claims that he was subsequently arrested and detained for a day for failing to report for duty. He then apparently left Haiti by boat in 1987 and applied for asylum in the United States. However, due to an error, his application was apparently never completed and he was at risk of being deported back to Haiti. It was at that point that he came to Canada to claim refugee protection.

[4] In his PIF, M. Duroseau states that if he were to return to Haiti, he fears that members of the VSN would pursue him for having betrayed them or that those who opposed the VSN would pursue him for having been part of that group.

[5] In a Notice of Intervention, the Minister of Public Safety and Emergency Preparedness indicated that if Mr. Duroseau had been a member of the VSN, a group whose human rights violations are well documented, there would be serious grounds for believing that he had participated in or had been complicit in the commission of crimes against humanity or acts contrary

to the purposes or principles of the United Nations within the meaning of the *United Nations Convention on the Status of Refugees*. If such were the case, under section 98 of the IRPA, he cannot be a refugee or a person in need of protection.

[6] Mr. Duroseau subsequently sent a response to the Immigration and Refugee Board in which he explained that his daughter-in-law had written his initial narrative and that he now realized that she had misinterpreted his statements. He contends that he had not been a member of the VSN, but was simply a tailor. The local VSN leader was one of his clients and had allegedly offered him a VSN card in order to protect himself and his family. However, when that leader died, his replacement insisted that those who had VSN cards had to put in a few hours of work at the office. Mr. Duroseau objected and was then beaten and incarcerated for a day. Fearing persecution, he fled the country by boat to the Bahamas in 1985 before finally arriving in the United States in 1987.

## **II. Impugned decision**

[7] The hearing to review Mr. Duroseau's refugee protection claim was held on March 30, 2011. In its reasons, the RPD explains that it had invited Mr. Duroseau to specify what he feared if he were to return to Haiti. He first stated that he feared Duvalier, the Tontons Macoutes and their supporters. He then explained that he did not fear all of the Tontons Macoutes, but rather Fritz Philippe, the one who had replaced the former VSN leader and the one with whom he had had problems at the time. Questioned as to whether Fritz Philippe was still in a position of power, the applicant stated that he was not, but that he was still in Haiti.

[8] The RPD noted that the applicant gave no oral testimony nor did he submit documentary evidence that would establish that he was still sought by Fritz Philippe or other former VSN members. It further noted that the documentary evidence regarding country conditions does not in itself establish the existence of a well-founded fear of persecution or a personalized risk and that refugee claimants must demonstrate that there is a nexus between that evidence and their personal situation. In this case, the RPD determined that Mr. Duroseau had not established that there was a serious possibility or reasonable chance that he would be persecuted on the basis of his political opinion, nor had he established that he would likely face a risk to his life or a risk of torture if he were to have to return to live in Haiti. Mr. Duroseau is therefore not a refugee or a person in need of protection under section 97 of the IRPA.

### **III. Issue**

- a. Did the RPD err in finding that the applicant was neither a refugee nor person in need of protection under section 97 of the IRPA?

### **IV. Applicable standard of review**

[9] Given that the RPD's findings with regard to Mr. Duroseau's refugee protection claim raise questions of mixed fact and law, the Court is obliged to apply a reasonableness standard (*Soimin v Canada (Minister of Citizenship and Immigration)*, 2009 FC 218, [2009] FCJ No 246).

Consequently, the Court will only intervene if the decision does not fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New-Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190).

## V. Analysis

[10] The applicant notes that the RPD had remarked that he had not submitted documentary evidence establishing that he would be persecuted. The applicant is of the view that it would be very difficult to obtain documents to support his story and that he did not even know the kinds of documents he was supposed to submit. However, the RPD had already noted that Mr. Duroseau had not given any oral testimony establishing that he was still being sought to this day, over a quarter century after the alleged incidents occurred, by either Fritz Philippe or by other former VSN members. Without such evidence, it was reasonable for the RPD to find that he had failed to discharge his burden of establishing that his claim met the criteria (*Kante v Canada (Minister of Employment and Immigration)* (1994) 47 ACWS (3d) 798 at para 8, [1994] FCJ No 525 (*Kante*)).

[11] The applicant emphasizes the fact that the RPD found his testimony to be credible, but that it did not believe he would be at risk of persecution. The applicant feels that if the RPD found him to be credible, it should have accepted the fact that he would be persecuted if he were to return to Haiti and that there was no reason to doubt that part of his testimony. That statement is completely inadequate for meeting the criteria. The simple fact that the applicant claims that he does not want to return to Haiti because of incidents that occurred over a quarter century ago is insufficient in itself. The applicant must provide objective evidence of such a fear (*Kante, supra*, and *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, [1993] SCJ 74). If the applicant fails to demonstrate a personalized risk, he has not discharged his burden of proof. Therefore, the RPD decision finding that Mr. Duroseau is neither a refugee within the meaning of section 96 of the IRPA nor a person in need of protection within the meaning of section 97 of the IRPA is not unreasonable and the Court's intervention is not warranted.

[12] The parties were invited to submit a question for certification, but none was submitted.

**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES that** the application for judicial review with respect to inclusion is dismissed. No question will be certified.

“Simon Noël”

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Judge

Certified true translation

Sebastian Desbarats, Translator

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3178-11

**STYLE OF CAUSE:** EMMANUEL DUROSEAU and MCI

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** March 20, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT:** SIMON NOËL J.

**DATED:** March 22, 2012

**APPEARANCES:**

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