

Federal Court



Cour fédérale

Date: 20150925

Docket: IMM-1673-15

Citation: 2015 FC 1118

Ottawa, Ontario, September 25, 2015

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

VALDANO EXANTUS

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review application of a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada ([the RPD], dated March 3, 2015, dismissing the Applicant's refugee protection claim filed under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]).

I. Background

[2] The Applicant is a citizen of Haiti and business owner in Port-au-Prince. He alleges that if he returns to Haiti, his life will be at risk because he is targeted by a gang led by a person known as Gros Moïse. The Applicant alleges that as a business owner, he regularly paid money to Gros Moïse's gang in exchange for protection. He says that in mid-May 2014, Gros Moïse asked him to pay more money than usual, but he refused. From that moment, the Applicant claims he received threats from Gros Moïse and other gang members to a point where, on July 21, 2014, one member of the gang punched him in the face.

[3] The Applicant alleges that he filed a complaint with the police after that event, which led to Gros Moïse's arrest and that following the arrest, members of the gang began threatening him to have Gros Moïse released. In particular, while opening his store on September 8, 2014, he says he found a bag containing a bullet and went to the police again to file another complaint with the assistance of his lawyer in Haiti. Then, with the hope that the situation would settle and on the advice of his lawyer, the Applicant spent the month of October in the United States with an American visa that had been issued on July 14, 2014. When he got back to Haiti, the Applicant says he received death threats on his cellular phone and that his store was broken into and robbed. Following the robbery, the Applicant sought refuge at his family home in Léogane. Yet, he alleges that gang members found him there on December 15, 2014 and fired gunshots near his family's residence, killing the family dog. The Applicant alleges that a note was found near his dog stating he was next to die if Gros Moïse was not released from prison. Fearing for

his life, the Applicant fled to the United States on December 18, 2014 and claimed asylum at the Canadian border on December 22, 2014.

[4] On March 3, 2015 the RPD found that the Applicant lacked credibility and therefore failed to demonstrate, on a balance of probabilities, that he was personally targeted by Gros Moïse and his gang. The RPD arrived at this conclusion on the basis of the following inconsistencies between the Applicant's Basis of Claim [BOC] form and oral testimony:

- a. The Applicant omitted to declare certain facts in his BOC that were central to his claim. The Applicant did not describe how the gang members found him at his mother's house on December 15, 2014 and he did not mention that he received death threats on his cellular phone in November of 2014;
- b. The Applicant adjusted his answers when he explained how the gang found him on December 15, 2014. At first, he testified that he had deduced that one of his occasional employees, Kiki, must have told the gang members where he was hiding since Kiki was the only person aware of his location. When the RPD pressed him on the matter, the Applicant testified that Kiki had called him to apologize for giving up the Applicant's location to members of the gang after they threatened his life, a fact which was also omitted from his BOC;
- c. The Applicant did not provide evidence to corroborate his claims that he filed a complaint against Gros Moïse or that Gros Moïse was arrested. Since these events are central to the applicant's claims and since the RPD made a negative credibility finding, the RPD drew a negative inference from the omission of these documents, especially since the national documentation referred to by the RPD indicates that the Applicant could have reasonably acquired the complaint filed by going to a consular service to contact a relative who could have obtained a certificate of the complaint on his behalf;
- d. The RPD found that the Applicant's actions were not compatible with someone who fears for his life since the Applicant had the opportunity to claim asylum in the United States

on two previous occasions, but did not do so. The Applicant could have claimed asylum in the United States in October 2014, when he stayed with his aunt for one month and again when he arrived in the United States on December 18, 2014;

- e. The Applicant stated several times during oral testimony that members of the gang regularly collected money from him on the weekends. These statements were inconsistent with the Applicant's BOC, which states that gang members collected money from him on Fridays. When pressed, the Applicant corrected himself during oral testimony and stated gang members collected money from him on Fridays.

[5] The RPD also gave no evidentiary weight to the following corroborating documents submitted by the Applicant: the complaint filed by the Applicant's lawyer in Haiti following the September 8, 2014 incident, which vaguely states that the Applicant is being threatened by armed individuals, a police report dated November 8, 2014 describing the loss of the Applicant's wallet, and a medical report dated July 21, 2014 stating that the Applicant suffered injuries to his face and head. The RPD gave no evidentiary weight to the first two documents on the basis that the events described therein were too vague to corroborate the Applicant's version of events. The RPD questioned the medical certificate's authenticity since the form appeared to be a photocopy.

[6] Finally, the RPD found that the Applicant's oral testimony lacked spontaneity and in several instances it had to repeat questions before an answer was given by the Applicant.

[7] The Applicant claims that the RPD's credibility analysis was unreasonable on the ground that the RPD was overzealous in finding contradictions in his testimony and often seized on peripheral matters as a basis of its adverse credibility finding. The Applicant further claims the RPD unreasonably rejected his corroborative evidence.

II. Issue and Standard of Review

[8] The issue raised by this judicial review application is whether the RPD, in concluding as it did, committed a reviewable error as contemplated by section 18.1(4) of the *Federal Courts Act*, RSC, 1985, c F-7.

[9] It is well established that the standard of review applicable to the RPD's credibility and plausibility findings and weighing of evidence is that of reasonableness. These matters raise questions of fact or mixed fact and law falling within the RPD's area of expertise and as a result are owed deference (*New Brunswick (Board of Management) v Dunsmuir*, [2008] 1 RCS 190, 2008 SCC 9 [*Dunsmuir*]; *Nava Flores v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1147, at paras 25 and 26 [*Nava Flores*]; *Hidalgo Carranza v Canada (Citizenship and Immigration)*, 2010 FC 914, at para 16; *Chavarro v Canada (Citizenship and Immigration)*, 2010 FC 1119, at para 24; *Huang v Minister of Employment and Immigration*, 66 FTR 178, 42 ACWS (3d) 1051 at para 14 [*Huang*]; *Aguebor v Canada (Minister of Employment & Immigration)*, 42 ACWS (3d) 886, 160 NR 315, at para 4).

[10] Thus, the role of the Court is to review the impugned decision and only interfere if it lacks justification, transparency, intelligibility, and falls outside the range of possible, acceptable outcomes, defensible in fact and in law (*Dunsmuir*, above at para 47). In doing so, this Court must be careful not to reweigh the evidence submitted before the RPD nor substitute the RPD's decision with its own appreciation of the appropriate solution (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339, at para 59).

[11] In my view, the RPD's decision falls within a range of acceptable outcomes, defensible in fact and law, and therefore the Court should not intervene in this case.

III. Analysis

[12] As indicated previously, the Applicant claims that the RPD's credibility analysis was unreasonable because it was based on minor, peripheral inconsistencies and contradictions in his evidence. The Applicant says this was the case when the RPD concluded that his BOC failed to mention material or key allegations, namely, the threats he allegedly received on his cellular phone and how the gang found him at his family residence on December 15, 2014. The Applicant submits that these are merely elaborative peripheral details not meriting inclusion in the BOC. He further submits that the RPD should not have based its credibility analysis on his misstatement during oral testimony regarding the day of the week gang members collected money from him, stating that his corrected account is consistent with his version of events as stated in the BOC.

[13] The Applicant contends that these instances are not enough to negate the presumption of truthfulness of testimony given under oath, as explained in *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302, 1 ACWS (2d) 167 [*Maldonado*]. However, as also explained in *Maldonado*, this presumption applies as long as there are no valid reasons to doubt the Applicant's testimony.

[14] Here, the RPD's decision, when read as a whole, reasonably explains, in my view, why the RPD found that the Applicant lacked credibility.

[15] The RPD found that the Applicant was often not spontaneous with his answers and that the Board member sometimes repeated questions several times before obtaining a response. Further to a review of the transcript, it is clear that the Board member often repeated questions before obtaining a direct response from the Applicant, notably, when the Applicant was asked why he did not obtain a copy of the complaint filed on July 21, 2014, how he came to know that Gros Moïse was arrested, and when he was questioned with respect to how he knew Kiki gave up his location on December 15, 2014.

[16] It was open to the RPD to find that the Applicant adjusted his testimony with respect to how Kiki gave up his location on December 15, 2014. It is clear from a review of the transcript that the Applicant contradicted himself on this point. At first the Applicant stated that he assumed Kiki gave up the location as only Kiki knew his mother's address in Léogane. When the Board member asked the Applicant again if he thought Kiki gave up the address, the Applicant responded by stating that he knew Kiki gave up his location since sometime after the night in question, Kiki called the Applicant to apologize for giving up the Applicant's location after gang members pressured him with death threats, a fact that the Applicant did not mention in his BOC.

[17] The RPD also found that the Applicant's explanation as to why he did not claim refugee status in the United States was implausible since his actions did not correspond with someone fearing for his life. With respect to this point, I agree with the Respondent that the Applicant's behaviour is incompatible with the behaviour of someone fearing for his life since he had two prior opportunities to claim refugee status in the United States and did not do so. It was not unreasonable for the Board to come to a negative credibility finding based on these facts since in

its assessment of the facts, it is entirely open for the RPD to determine the plausibility of testimony and take into account contradictions in the Applicant's behaviour (*Aguebor*, above at para 4; *Huerta v Canada (Minister of Employment & Immigration)*, 40 ACWS (3d) 487, 157 NR 225, at para 4).

[18] Given the negative credibility finding, it was not unreasonable for the RPD to draw a negative inference based on the Applicant's omission to file evidence of Gros Moïse's arrest or the complaint filed against Gros Moïse following the alleged altercation on July 21, 2014. As explained by the RPD, the Applicant could have reasonably asked a friend or his brother to send him a copy of the complaint filed, which corroborated a central part of his claim, especially since he was able to ask a friend to send the medical certificate to Canada.

[19] Moreover, it was open to the RPD to draw negative credibility findings from the fact that the Applicant omitted to mention in his BOC that he received death threats over his cellular phone and did not mention that Kiki was pressured with threats to his life into giving up the Applicant's location. As explained by Justice Teitelbaum in *Basseghi v Canada (Minister of Citizenship & Immigration)*, [1994] FCJ No 1867, 52 ACWS (3d) 165, at para 33, it is open to the RPD to see these omissions as more than mere details or elaborations since the Applicant has an obligation to include all relevant and important factors in his BOC:

It is not incorrect to say that answers given in a PIF should be brief but it is incorrect to say that the answers should not be complete with all of the relevant facts. It is not enough for an applicant to say that what he said in oral testimony was an elaboration. All relevant and important facts should be included in one's PIF. The oral evidence should go on to explain the information contained in the PIF.

[20] The Applicant submits that the main points of his story, namely, the robbery at his store on November 25, 2014 and the shooting outside of his family residence on December 15, 2014 are not mentioned in the RPD's decision. This is incorrect. Although the RPD briefly refers to these two events in its decision, it is clear from the transcript that both events were considered by the RPD. In its decision, the RPD discusses the shooting and dismisses it because the RPD held the view that the Applicant's explanations during his testimony were confusing and contradictory with respect to the involvement of a police officer in the shooting. Moreover, it was open to the RPD not to give much weight to the Applicant's explanation as to why he did not have the death note in his possession, notably, that his grandmother threw the note down the toilet.

[21] The RPD also briefly mentions the burglary of November 25, 2014 in its decision. The Applicant alleges that it was this incident that made him move back to his family home in Léogane. It is clear from the RPD's decision that it considered this evidence as it later stated in its decision that the RPD was aware of the high rate of crime in Haiti, but that this is a generalized risk touching business owners in Haiti. In my view, it was open for the RPD to give little weight to the burglary and the shooting since the RPD reasonably found that the Applicant lacked credibility in his claims of being personally harassed by Gros Moïse or members of his gang.

[22] Further to a review of the evidence and the decision of the RPD, I am of the view that the RPD's decision falls within a range of possible, acceptable outcomes, defensible in fact and in law since the RPD found several inconsistencies central to the applicant's claim demonstrating his lack of credibility.

[23] With respect to the RPD's weighing of evidence, as stated above, the weight to be given to the evidence before the RPD "is a matter for the tribunal to assess" (*Huang*, above at para 14) and is therefore a matter within the discretion of the RPD.

[24] Moreover, it has been held by this Court in *Sahi v Canada (Minister of Citizenship & Immigration)*, 2001 FCT 527, 105 ACWS (3d), at para 13 that:

[I]f the Board does not believe the underlying facts upon which a medical report is based, it is entirely open to it not to give the medical evidence any weight. (*Danailov (Danailoff) v. Canada (Minister of Employment & Immigration)*, [1993] F.C.J. No. 1019 (Fed. T.D.))

[25] Given the foregoing, I find that the RPD's decision not to give any evidentiary value to the Applicant's corroborating evidence was not unreasonable. The complaint of September 8, 2014 and the police report of November 8, 2014 are written in vague language and do not corroborate the Applicant's version of events nor his claim of being personally targeted by a gang. The complaint dated September 8, 2014 does not mention that the applicant found a bullet on his store property, but that he was being threatened by "armed individuals," without any reference to Gros-Moise, and the police report dated November 8, 2014 states that the Applicant merely lost his wallet as opposed to having his wallet stolen at gun point. Moreover, I agree with the Respondent that the RPD was open not to give the medical report any weight since the RPD did not believe the Applicant was personally being targeted by a gang.

[26] Given the foregoing, I am satisfied that the RPD's negative credibility finding and its decision not to give any evidentiary weight to the applicant's corroborating evidence fall within a range of possible, acceptable outcomes, defensible in fact and in law.

[27] No question of general importance has been proposed by the parties. None will be certified.

ORDER

THIS COURT ORDERS that:

1. The judicial review application is dismissed;
2. No question is certified.

"René LeBlanc"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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