

Federal Court



Cour fédérale

Date: 20160810

Docket: IMM-209-16

Citation: 2016 FC 910

[ENGLISH TRANSLATION]

Montréal, Quebec, August 10, 2016

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

**JERRY BELFOND
SCHMADYNE DURANDIS**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of a decision rendered by the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB). The RPD concluded

that the principal applicant and his wife are not Convention refugees or persons in need of protection within the meaning of sections 96 and 97 of the Act.

II. Facts

[2] The principal applicant, Jerry Belfond, and his wife, Schmadyne Durandis (hereinafter “the applicant”), are citizens of Haiti. They claim to have been threatened separately, by two different groups, between July and September 2015. Prior to leaving Haiti, the applicants resided in Port-au-Prince.

[3] On July 10, 2015, when leaving his office, the principal applicant was attacked by two armed individuals who robbed him of all his valuables.

[4] On August 5, 2015, the applicant visited some land she owned outside of Port-au-Prince, to see what condition it was in and to clean it up. A group of individuals approached her to ask if it was possible to rent the land, in order to build an office there for a political party. The applicant refused.

[5] On August 8, 2015, the applicant returned to her land to continue her work. The same group of individuals was there waiting for her. When she asked them to leave the premises, these individuals threatened her.

[6] On August 16, 2015, the applicant again returned to her land, this time accompanied by her husband. They discovered that the cabin located on the land had been vandalized. Since the group of individuals who had threatened the applicant were blocking the road, the applicants sought help from the neighbours in order to leave the premises safely. They filed a complaint with the Tribunal de paix de Pétionville.

[7] Throughout the night of August 16, and into the early morning of August 17, 2015, the applicants received threats on their shared cell phone.

[8] On September 6, 2015, they were informed by a neighbour that strange people were lurking near their residence in Port-au-Prince and were asking questions about them. They therefore fled to Léogâne and hired a police officer for a week to protect them during their travels.

[9] On September 14, 2015, the principal applicant was again attacked by thieves outside of a bank. He recognized one of the thieves who had attacked him in July 2015. Seeing that he had been recognized, the thief threatened to kill the principal applicant, but was stopped by his accomplice. The thief nevertheless swore to the principal applicant that he would one day kill him.

[10] On September 29, 2015, the applicants left Haiti for the United States, having been unable to obtain a Canadian visa. They made a claim for refugee protection in Canada on October 3, 2015.

[11] Subsequently, the telephone threats about the land started again.

III. Decision

[12] The RPD concluded that the key issue in this case was the possibility of an internal flight alternative (IFA). It was satisfied as to the applicants' identities and found their testimonies to be generally credible, despite a few omissions and contradictions during the hearing.

[13] The RPD accepted the applicants' arguments that the department of Artibonite was not a suitable refuge given the cholera epidemic that was raging there. The RPD therefore proposed Jacmel as an alternative.

[14] With regard to the first prong of the IFA test, the RPD concluded that the applicants had not discharged their burden of proof to show that, based on the balance of probabilities, they would be persecuted in Jacmel. The RPD noted that it was speculative for the principal applicant to state that the thieves who had attacked him on two occasions would be able to find him in Jacmel, or to find him again during occasional visits to Port-au-Prince, other than by a chance encounter. The RPD noted that the principal applicant himself had stated that he did not know who these people worked for, or the scope of their operations.

[15] Similarly, the applicant did not succeed in establishing that the individuals who threatened her regarding her land outside of Port-au-Prince would be able to find her in Jacmel.

[16] Regarding the second prong of the IFA test, the RPD was of the view that the applicants had not established, on a balance of probabilities, any impediment to their setting up a life in Jacmel. The RPD found that the possibility of being attacked by bandits in Jacmel was speculative and applied to all residents of Jacmel. The RPD also noted that the applicants had not demonstrated that they would be unable to find work in this city despite their university degrees and their employment histories.

IV. Issues in dispute

[17] There are two (2) issues in dispute:

1. Did the RPD err in determining that an IFA existed in Jacmel?
2. Did the RPD err in failing to analyze the applicant's fear based on her membership in a particular social group (women)?

V. Analysis

A. *Standard of review*

[18] The parties do not contest that the standard of review applicable to the IFA is that of reasonableness.

B. *Did the RPD err in determining that an IFA existed in Jacmel?*

[19] The applicants accept the legal test applicable to an IFA as described by the RPD.

[20] After having considered the applicants' arguments regarding the IFA, I am not convinced that the RPD committed an error. The RPD's conclusions that there was insufficient evidence to show that (i) the thieves in Port-au-Prince, or (ii) the individuals who wanted to build on the land outside of Port-au-Prince had the desire and the ability to find the applicants in Jacmel, were reasonable.

[21] The fact that the RPD focused on the individuals at the property instead of on their political party was not erroneous; the RPD's comments regarding these individuals also apply to their political party. The telephone threats do not demonstrate the ability to find the applicants in Jacmel, either. The applicants had not changed their telephone number, so no additional searching was required to reach them by telephone.

C. *Did the RPD err in failing to analyze the applicant's fear based on her membership in a particular social group (women)?*

[22] I agree with the respondent's argument that, at the hearing, the applicant did not explicitly state that her fear was based on her membership in a particular social group (women) in Haiti. Rather, her fear was linked to the individuals who threatened her on her land outside of Port-au-Prince. This fear was analyzed in a reasonable manner by the RPD. It was the applicants' counsel who raised the issue of the social group of women in Haiti.

JUDGMENT

THE COURT ORDERS that:

1. This application is dismissed.
2. No serious questions of general importance were certified.

“George R. Locke”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-209-16

STYLE OF CAUSE: JERRY BELFOND, SCHMADYNE DURANDIS v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

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JUDGMENT AND REASONS: LOCKE J.

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