Federal Court  Cour fédérale

Date: 20161128

Docket: IMM-2357-16

Citation: 2016 FC 1315

[ENGLISH TRANSLATION]

Ottawa, Ontario, November 28, 2016

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

ROSE MYRLINE CERISIER

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS:

[1] This is an appeal of a decision by the Immigration and Refugee Board of Canada, Refugee Protection Division (RPD), which, on May 16, 2016, denied the applicant's claim for refugee protection due to lack of credibility under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act).

[2] The applicant is from Haiti. She lives in Les Cayes. On May 29, 2015, she left Haiti with a United States visa for what was supposed to be a 10-day training trip to the United States. Two days after arriving in the United States, she went to Canada where she claimed refugee protection. In support of her request, she alleged that she feared for her life following an assault on May 1, 2015, by two unknown persons while she was visiting her sister in Port-au-Prince and was alone in her sister's house.

[3] According to the applicant's Basis of Claim Form (BCF), which she signed in support of the refugee protection claim, the two assailants allegedly broke into the house, ordered her to give them all her money and then beat and raped her. Two days later, on May 3, 2015, when she was back at her home in Les Cayes, she apparently began to receive anonymous calls on her cell phone. She was allegedly told that she had to pay and die for her arrogance. On the same day, she reportedly consulted a doctor who convinced her to file a complaint with the Port-au-Prince police, which she allegedly did a few days later, on May 8. According to the BCF, the threatening calls apparently became incessant, about 20 per day, until she left for the United States on May 29, 2015. Starting on May 9, the caller was also alleged to have complained that she had filed a report with the police. The applicant apparently started hiding at a friend's house on that date. On May 20, 2015, she allegedly complained to the Les Cayes police about the calls.

[4] The applicant's husband, an agronomist, apparently did not follow the applicant to the United States and is still living in Haiti.

[5] The RPD denied the applicant's claim for refugee protection because of contradictions and omissions in the account of the events that led the applicant to flee Haiti and the general implausibility of the narrative.

[6] The issue here is whether the RPD, in deciding as it did, made an error justifying the Court's intervention pursuant to section 18.1 of the *Federal Courts Act*, R.S.C., 1985, chapter F-7. It is well-established that the RPD's decision must be reviewed on the standard of reasonableness, which means that in order to intervene, the Court must be satisfied that the findings of fact or mixed law and fact drawn by the RPD fall outside a range of possible acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, at paragraph 47). In so doing, the Court must refrain from substituting its view of the facts for that of the RPD. It must show deference to the conclusions reached by the RPD with regard to the assessment of the refugee claimant's testimony and credibility, since this assessment process is at the heart of its mandate and expertise (*Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 SCR 339, at paragraph 89; *Quintero Sanchez v. Canada (Citizenship and Immigration)*, 2011 FC 491, at paragraph 12; *Touileb Ousmer v. Canada (Citizenship and Immigration)*, 2012 FC 222, at paragraph 15; *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 (QL), 157 FTR 35, at paragraph 14).

[7] The applicant did not convince me that there is a basis for intervening in this case. As the Court pointed out in *Toma v. Canada (Citizenship and Immigration)*, 2014 FC 121, the RPD may make negative findings regarding a refugee claimant's credibility "based on inconsistencies

in testimony and perceived implausibility, so long as they are based on reasonable inferences" and thus evaluate a claim for refugee protection "on plausibility, common sense and rationality" (*Toma*, at paragraph 11).

[8] Here, the RPD identified a number of inconsistencies in the applicant's account, and I cannot say that these observations are unreasonable. On the one hand, the RPD noted a discrepancy between the BCF and the applicant's testimony at the hearing on material elements of her narrative, including the death threats to which she was allegedly subjected during her assault on May 1, 2015, and in the subsequent telephone calls. This assertion was not included in the BCF. There was also an inconsistency regarding where she reportedly sought refuge starting on May 9 to protect herself from her alleged tormentors, i.e. at a friend's place until she left for the United States, according to the BCF, and in different places every night, according to her testimony. In the first case, the applicant was unable to explain this difference between the BCF and her version of the facts at the hearing. In the second, the RPD was not satisfied with her explanation that she slept at different places every night during the entire period before departing for the United States, while leaving her belongings with that friend.

[9] The RPD also noted a considerable difference between the BCF and the applicant's testimony as to the number of phone calls that she allegedly received from her tormentors: about 20 per day according to the BCF, which works out to a total of about 500 calls from May 9 to 29 (2015), and a total of about 100 according to her testimony.

[10] In addition to these discrepancies between the BCF and the testimony given at the hearing, the applicant testified that she did not think it would be worthwhile to change her cell phone number, claiming that it would have been pointless since her tormentors would have managed to get it anyway. However, she could not say how her tormentors, complete strangers, could have done so. The RPD also did not find that the applicant provided credible testimony regarding the circumstances of her departure for the United States when she was asked why she waited until the end of May (2015) before leaving Haiti if she had been relentlessly hunted since the beginning of the month. She said she had delayed her departure in order to get ready to leave the country before travelling to the United States for training organized by her employer. However, she could not provide the RPD with a satisfactory explanation as to why the State of Iowa was the main destination of the trip, when her airline ticket, which was purchased two weeks before the departure date, made no mention of Iowa as the destination.

[11] The RPD also expressed concerns regarding the general plausibility of the applicant's narrative. Ultimately, some might wonder, as did the RPD, how a seemingly ordinary woman, living in a city other than the one where she was allegedly assaulted, could have been targeted in this way and then persecuted in her city of residence on the pretext that she was pretentious and disturbingly arrogant in the eyes of her tormentors. The applicant could not explain this and according to her counsel, it was unreasonable for the RPD to demand an explanation since that would call for speculation as to her tormentors' motives. Nevertheless, and this is how I read the RPD's decision, it was up to the RPD—in the absence of any evidence that the applicant was the sort of person likely to be subject to this type of risk—to question the plausibility of this narrative. Moreover, in addition to the applicant's allegations that she filed a complaint with the

Port-au-Prince and Les Cayes police departments, the RPD noted the absence of any corroborating evidence.

[12] In light of the above, I find that the RPD had sufficient evidence to conclude that the applicant's account and the risk she believed she was facing were inconsistent and generally lacking in credibility. Again, the Court's role is not to substitute its own view of the facts for that of the RPD but rather to measure the reasonableness of the findings of fact and mixed law and fact made by the RPD. In this respect, the RPD's decision appears, in this case, to be the result of reasonable inferences and thus satisfies the standard of reasonableness.

[13] The applicant also criticized the RPD for having breached the rules of procedural fairness by failing to provide advance notice of its intention to use its specialized knowledge in connection with the medical certificate that she submitted as evidence. Since I have already concluded that the RPD's decision was reasonable, I do not find it necessary to deal with this issue since it cannot on its own, even assuming it to be well-founded, invalidate that decision. It is well established that the fact of not providing such notice "is not sufficient to set aside the panel's decision if the other grounds raised to conclude that the applicant's account was implausible and non credible stand on their own" (*Munir v. Canada (Minister of Citizenship and Immigration)*, 2012 FC 645, at paragraph 19; see also *Toma*, at paragraph 29). This is the case here.

[14] At any rate, the applicant was represented by experienced counsel before the RPD, and no objection was raised when the RPD relied on its specialized knowledge to question

the probative value of the medical certificate. Here, I would agree with the words of Justice Yves de Montigny, now a Judge of the Federal Court of Appeal, in *Linares Morales v. Canada (Citizenship and Immigration)*, 2011 FC 1496:

> [13] I note first of all that the applicant was represented by counsel experienced in immigration law during his hearing before the panel. She did not object to the panel's use of its specialized knowledge and did not even request clarification from the panel as to the sources on which it relied in setting out what it considered to be established practices. I will not go so far as to say that the applicant is now barred from raising this issue before the Court, but the fact remains that this issue is being raised late, and this can only undermine the seriousness of this argument.

[15] The applicant's application for judicial review will therefore be dismissed.

[16] Neither party requested that a question be certified for the Federal Court of Appeal. I do not see any questions to be certified either.

JUDGMENT

THIS COURT'S JUDGMENT is that

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

"René LeBlanc"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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