

Federal Court



Cour fédérale

Date: 20180309

Docket: IMM-3636-17

Citation: 2018 FC 285

Ottawa, Ontario, March 9, 2018

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

EMMANUEL JEAN-BAPTISTE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant, a citizen of Haiti, challenges the decision of the Refugee Protection Division (RPD) dated May 22, 2017. The RPD found that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to s 96 and s 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA or the Act).

[2] For the reasons that follow, the application is dismissed.

II. Background

[3] The Applicant was a member and spokesperson for an organization that helped individuals cultivate their land and that promoted children's education. While the organization was not a political group, it supported a presidential candidate in the 2010-2011 elections. The members of another organization supported a different candidate. There was conflict between the two groups.

[4] On December 10, 2010, the Applicant says, three men destroyed his house. The Applicant was away from his home and was not injured. He immediately left the neighbourhood and went to hide in the city of Gonaives. The Applicant did not call the police since he alleges that they are not effective and do not intervene in these cases. He says that the aggressors looked for him in Gonaives in June 2011.

[5] The Applicant left Haiti on September 13, 2012 having obtained a work visa in Dominica. He did not seek asylum there since he did not know that Dominica offered asylum. The Applicant then moved to the US Virgin Islands and from there to Florida.

[6] Four years after the 2010 incident, the Applicant claimed asylum in the United States. As part of that process, he had two appearances before a judge. He was scheduled to attend a third interview in April 2017, which was postponed until August 9, 2017.

[7] The Applicant then decided to seek protection in Canada. He crossed the border and made a claim on May 9, 2017.

[8] On July 5, 2017, in a decision rendered from the bench, the RPD found that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to s 96 and s 97 of the IRPA. The RPD accepted, for the purposes of its assessment that the incidents in December 2010 occurred but found that the Applicant does not face a risk of being persecuted if he was to return to Haiti in 2017. The RPD noted that there were subsequent elections in 2015-2016 and that the political tension between the two former presidential candidates no longer existed.

[9] The RPD found that the Applicant lacked credibility. The Applicant had not mentioned the alleged threats between June 2011 and September 2012 in his Basis of Claim. When asked about threats or problems after the December 2010 incident, the Applicant told the RPD that he hadn't encountered any. Later, when questioned by his counsel, he said that people were still looking for him and provided answers which the RPD considered to be vague and inconsistent. In addition, the RPD took issue with the lack of any documents filed in support of the claim, including the Applicant's passport.

III. Issues

[10] The only issue for consideration is whether the RPD's assessment of the objective evidence was reasonable. The Applicant did not seriously challenge the RPD's credibility findings in his submissions.

IV. Standard of review

[11] The standard of review for the assessment of evidence in cases similar to the present matter has been satisfactorily established by the jurisprudence as reasonableness: *Jung v Canada (MCI)*, 2014 FC 275 at paras 18-19; *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47 and 51, [2008] 1 S.C.R. 190; *Canada (MCI) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 22, [2011] 3 SCR 708. There are no issues where the correctness standard would apply: *Alberta (Information & Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61, at para 30.

V. Analysis

[12] The Applicant submits that the RPD's assessment of the evidence was unreasonable in that the National Documentary Package for Haiti confirms that there is a widespread culture of revenge and that perpetrators of acts of revenge may belong to armed political groups. Revenge acts may be committed even 10 years after the source of the event.

[13] This evidence runs contrary to the RPD's findings on a central issue, the Applicant argues: *Garcia v Canada (MCI)*, 2005 FC 807 at paras 11-17; see also *Meneses v Canada (MCI)*, 2007 FC 179 at para 22. The lack of any mention of it in the reasons delivered from the bench supports an inference that it was overlooked by the RPD.

[14] There is no question that there was a heated election campaign in Haiti in 2010 and that the violence continued into 2011 over disputes about the results. But the Applicant remained in Haiti until September 2012. Indeed he was married there in October 2011 before applying for the Dominican work visa in June 2012. During that time, there was no credible evidence that anyone was searching for the Applicant. And it appears from the record that the Applicant's mother, wife and siblings continue to live in Haiti without problems.

[15] To establish a fear of persecution, an applicant must meet both requirements of the bipartite test; a subjective and objective fear of persecution: *Ahoua v Canada (MCI)*, 2007 FC 1239 at para 16; *Canada (MCI) v Sellen*, 2008 FCA 381 at paras 2-3. I agree with the Respondent that the Applicant has failed to meet this test.

[16] In particular, the Applicant failed to demonstrate that the political tension and other problems faced in 2010-2011 continue to pose a risk to him in 2017 or at any time after June 2011. The claim that people were still looking for him was simply not credible.

[17] The National Document Package consists of 21 pages listing many documents. The Applicant has pointed to one document and argues that the tribunal ignored that evidence. The record is incomplete in that the transcript of the hearing does not include counsel's submissions at the conclusion. So it is unknown whether any reference was made in counsel's submissions to this evidence. However, the Applicant's affidavit in this proceeding contains no assertion that his counsel drew the document to the tribunal's attention and that it was ignored.

[18] The document in question is focused on gang violence and indicates that the culture of revenge encompasses family members and loved ones of the target when the target has fled. The examples provided do not relate particularly to political violence. As noted, the Applicant's family members remain in Haiti. This includes a brother who witnessed the 2010 violence.

[19] As the Respondent argued, the RPD was not obliged to comb through every document listed in the National Document Package in the hope of finding passages that may support the Applicant's claim and specifically address why they do not, in fact, support the Applicant.

[20] The failure of the RPD to mention all of the evidence before it is not unreasonable. The RPD is not required to mention every document in evidence: *Kaur v Canada (MCI)*, 2012 FC 1379 at paras 31-34; *Quebrada Batero v Canada (MCI)*, 2017 FC 988 at para 13. The Applicant has failed to establish that the general country conditions described in the National Documentary Package apply to his particular circumstance: *Ranganathan v Canada (MCI)*, [2001] 2 FCR 164 at paras 10-12, 15-16; *Assaf v Canada (MCI)*, 2016 FC 660 at para 18.

[21] For these reasons, the application is dismissed. No questions were proposed for certification.

JUDGMENT IN IMM-3636-17

THIS COURT'S JUDGMENT is that the application is dismissed. No questions are certified.

“Richard G. Mosley”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-3636-17

STYLE OF CAUSE: EMMANUEL JEAN-BAPTISTE V THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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