

Federal Court



Cour fédérale

Date: 20180511

Docket: IMM-4393-17

Citation: 2018 FC 501

[ENGLISH TRANSLATION REVISED BY THE AUTHOR]

Toronto, Ontario, May 11, 2018

Present: Mr. Justice Grammond

BETWEEN:

JONAS LAVILETTE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant, Jonas Lavilette, is seeking judicial review of a decision rendered by the Refugee Protection Division of the Immigration and Refugee Board of Canada, rejecting his claim for refugee protection. I am dismissing this application, because I find the Board's decision to be reasonable in light of the evidence, and that the Board did not breach its duty of procedural fairness.

[2] Mr. Lavilette left Haiti, his country of birth, in June 2016, for the United States. He filed a claim for refugee protection there. Before that claim was processed, he came to Canada in July 2017 and filed a claim for refugee protection. He based that claim on two assaults he allegedly faced in Haiti because of his political opinions, one in October 2015 in Léogâne, and the other in May 2016 in Petit-Trou-de-Nippes.

[3] On September 18, 2017, the Board rejected Mr. Lavilette's claim for refugee protection. The Board found that Mr. Lavilette was not credible and that the alleged assaults had likely not occurred. The Board based these findings on several contradictions between Mr. Lavilette's testimony at the hearing, his Basis of Claim (BOC) Form and the documentary evidence he submitted. The Board also noted that Mr. Lavilette had been unable to provide satisfactory details about the alleged incidents. Lastly, it noted that Mr. Lavilette had changed his testimony about an important element, that is, the date on which he had left Léogâne to settle in Petit-Trou-de-Nippes. The Board concluded that Mr. Lavilette had likely falsified the documents he presented to support his claim for refugee protection.

[4] This Court reviews decisions of the Board on a standard of reasonableness (*Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93, [2016] 4 FCR 157, at paras 30 to 35). I must ensure that the Board's decision is based on a defensible interpretation of the applicable legal principles and a reasonable assessment of the evidence. More specifically, my role is not to assess the credibility of the witnesses myself or to reweigh the evidence.

[5] In this case, Mr. Lavilette's challenge to the Board's decision focuses on the assessment of credibility. In this regard, it is important to keep in mind that the Board was not required to make an explicit finding on each argument or piece of evidence (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 SCR 708). After examining Mr. Lavilette's claims, his testimony and the documents submitted before the Board, I find that the Board's decision was entirely reasonable.

[6] The Board's finding that Mr. Lavilette had fabricated evidence may appear harsh. However, this is a perfectly defensible finding. I will simply underscore that the transcript of the Léogâne Peace Court, dated November 9, 2015, describes not only the events that occurred in Léogâne in October 2015, but also those that occurred in Petit-Trou-de-Nippes in May 2016. It is difficult to understand how such a document, if it was truly written on the date indicated, could describe events that occurred after that date.

[7] Mr. Lavilette argues that the Board breached its duty of procedural fairness in the manner it heard and decided on the case. That argument is unfounded.

[8] Firstly, as a whole, Mr. Lavilette's procedural fairness arguments are a disguised attack on the reasonableness of the Board's findings with respect to the evidence and credibility assessment. An applicant cannot characterize his or her arguments in such a way in order to avoid the application of the reasonableness standard.

[9] Secondly, Mr. Lavilette bases his argument on an excerpt from the Board's decision in which it notes an inconsistency between the BOC Form and the documentary evidence. The Board states the following (at para 16):

[TRANSLATION] The panel did not ask the claimant to explain these inconsistencies, and therefore has no answer to the questions it may have. However, the panel notes that these inconsistencies cast an additional shadow of doubt on the claimant's credibility when he claims to have been threatened by partisans of Jean-Charles Moïse.

[10] It is unfortunate that the Board made such comments and did not ask Mr. Lavilette to explain the inconsistency. However, I do not consider this error to have affected the outcome in any way. The Board states that the inconsistency in question casts an [TRANSLATION] "additional shadow" on Mr. Lavilette's credibility. From this, I deduce that his credibility was already in question. A summary review of the evidence confirms this. This is therefore a case where, even if there were a breach of procedural fairness, there is no need to set aside the impugned decision, since the outcome inevitably would have been the same: *Mobil Oil Canada Ltd. v. Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 SCR 202 at 228-229.

[11] I conclude that the Board's decision was reasonable and that the Board did not breach its duty of procedural fairness. The application for judicial review is therefore dismissed.

JUDGMENT IN IMM-4393-17

THIS COURT'S JUDGMENT is that:

1. The style of cause is corrected to read "Jonas Lavilette";
2. The application for judicial review is dismissed;
3. No question is certified.

"Sébastien Grammond"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4393-17

STYLE OF CAUSE: JONAS LAVIETTE v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 10, 2018

JUDGMENT AND REASONS: GRAMMOND J.

DATED: MAY 11, 2018

APPEARANCES:

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