

Federal Court



Cour fédérale

**Date: 20190116**

**Docket: IMM-2995-18**

**Citation: 2019 FC 64**

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

**Montreal, Quebec, January 16, 2019**

**PRESENT: The Honourable Mr. Justice LeBlanc**

**BETWEEN:**

**WILLIAM VALENTIN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicant is appealing from the Refugee Appeal Division [RAD] decision dated May 30, 2018. The RAD had confirmed the Refugee Protection Division [RPD] decision dismissing the applicant's refugee claim on the ground that the basis of the application was not credible.

[2] The applicant is a Haitian national. He arrived at the Canadian border to seek refugee protection on July 9, 2017, after having lived in the United States for nearly a year. He alleges that he fled Haiti because he fears the members of the political party PHTK in his town who were out to get him because he allegedly supported the candidate from another political party during the legislative elections in Haiti on October 25, 2015, and after the defeat of that candidate, he refused to support their candidate from the PHTK party. The applicant submits that further to this refusal, these individuals threatened him and the threats became reality when they went to his home with weapons. After noting that the applicant was absent at the time, they nonetheless allegedly beat the mother of his child.

[3] According to the narrative in support of his refugee claim, the applicant allegedly filed a complaint with the police the day after this incident, which allegedly further angered these individuals who then conducted ambushes. These new incidents allegedly incited the applicant to hide and go to the Dominican Republic before making his way to the United States.

[4] The RPD did not believe the applicant's story. Five contradictions or omissions in the story convinced it to dismiss the applicant's refugee claim, namely:

- a. The applicant could not give the exact date of the legislative elections in which he alleges he participated;

- b. He wrote “nil” in response to the question on the refugee protection claim form asking him to indicate which organizations, political or otherwise, he had been a member of, was affiliated with or supported;
- c. He contradicted himself about when his problems allegedly began. During his testimony, he stated that nothing had happened prior to the attack at his home on November 20, 2015, whereas in his narrative, he stated that he had received threats before that date;
- d. He also contradicted himself by testifying that it was his brother who filed the complaint with the police further to the attack at his home, whereas in his narrative, he indicated that it was him; and
- e. He did not produce a copy of this complaint to support his allegations.

[5] After conducting its own examination of the evidence presented to the RPD, the RAD found that there was no reason to intervene.

[6] The applicant alleges that the Court must intervene on the ground that the RAD did not consider his limited education, a necessary step in his opinion, before assessing his credibility. He also alleges that it analyzed his testimony from a Canadian perspective, in particular with regard to his memory of the date of the legislative elections, and for having focused on the peripheral and secondary elements of his story when assessing his credibility. Lastly, the

applicant alleges that the RAD did not consider the circumstances under which he completed his refugee protection claim form when he arrived at the border.

[7] With respect, I cannot agree with the applicant's recriminations against the RAD decision.

[8] I would note that the validity of the foundation of RAD decisions must be reviewed in accordance with the reasonableness standard (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35; *Paye v Canada (Citizenship and Immigration)*, 2017 FC 685 at para 3). A decision is reasonable if the findings of fact, of law or mixed fact and law underlying it, the validity of which is being challenged, are within the range of "possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*]). This is a deferential standard. It has been well established in similar cases that the Court's role is not to conduct a reassessment of the case and to substitute its own findings for that of the administrative decision-maker (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 54). The window for intervention is more limited, as stated in *Dunsmuir*.

[9] First, I cannot agree with the argument based on the fact the applicant only had 10 years of education and that his intellectual faculties were therefore not as sharp as they might have been had his level of education been higher. I do not see the link between level of education and the ability to recall events or important dates, when these events or dates are at the heart of the proceedings to obtain refugee status. The date of the elections in which the applicant participated

as a supporter of one of the candidates is mentioned in his narrative. The RAD, which heard the recording of the hearing before the RPD, noted that the RPD had given the applicant several opportunities to provide the date of these elections, which undermines the applicant's argument that he was required to give a spontaneous answer. It notes that the RPD's questions [TRANSLATION] "were perfectly clear and precise", which again, undermines the applicant's argument that he did not understand these questions in particular.

[10] Before me, the applicant also stated, as an explanation for his memory lapse, that it was stressful to appear before the RPD. Without denying that this may be true for the majority of refugee claimants, this would not, on its own, justify material contradictions, especially when, as in the present case, the opportunity was given to the claimant more than once to provide the information requested and the claimant was assisted by counsel. Lastly, I cannot grant weight to the argument that the RAD erred by reviewing the applicant's appeal with a "Canadian perspective". Such an argument cannot be considered without a more comprehensive explanation.

[11] In my opinion, the RAD's findings on the first point of contention meet the requirements of the reasonableness standard.

[12] The applicant next alleges that it was unreasonable for the RAD to conclude that his negative answer to the question on the refugee protection claim form regarding his membership in political organizations undermined his credibility. He alleges that the RAD should have considered the context of his arrival in Canada; he did not cross the border at a port of entry. He

alleges that in such a context, omissions are possible and that the RPD must show leniency. However, the record shows that he received assistance from a lawyer when completing the forms required for his refugee claim. When questioned about what might have motivated him to give this answer on the form, the applicant indicated that he did not know.

[13] In the circumstances and considering the importance of the answer to this question in light of the main basis of the applicant's refugee claim, tied to his political activities, the RAD was entitled, in my opinion, to draw a negative inference with regard to the applicant's credibility. At least, it was not unreasonable for it to do so. I note that the question on the form is clear and is not limited to being a "member" of a political organization. It also covers instances where the refugee claimant is simply a "supporter" of that organization. According to the evidence before the RPD, the applicant was clearly a supporter of the party of the candidate he supported in the October 2015 elections. This was also the observation the RAD made. The fact the applicant replied to this question in this manner without knowing why, in the circumstances, raises many more questions than it answers.

[14] Once again, I cannot intervene with regard to the RAD findings on this second point of contention.

[15] Thirdly and lastly, the applicant alleges that the RAD did not adequately assess his intellectual level when it noted a contradiction between the applicant's narrative and his testimony about the time he started receiving threats from his agents of persecution. I would note that during his testimony, the applicant stated that he had not received threats from his agents of

persecution before the attack at his home on November 20, 2015, while in his narrative he stated the following:

[TRANSLATION]

... These criminal acts began after the results of the October 25, 2015, elections for that commune's representative were announced. It started as pressure, and then it became threats. Then, on November 20, 2015, a group of people armed with semi-automatic weapons invaded my home...

[16] I feel that it was reasonable for the RAD to identify a contradiction because the narrative indicates a progression of the threat that culminated on November 20, 2015. Later, in his testimony, for him to say that nothing happened before that date is problematic and cannot be explained, in my opinion, by arguing level of education in itself. It seems very unlikely that an attack that was as major as the November 20, 2015, attack, as alleged by the applicant, was not preceded by some type of prior threat. This contradiction is not insignificant and I see nothing that would justify my intervention.

[17] There is also the contradiction related to the fact that in his narrative, the applicant stated that he was the one who filed a complaint with the police, while in his testimony, he stated that it was his brother. The applicant stated that the RAD was overzealous when it noted this contradiction. However, as the RAD noted, he could not provide any explanation to the RPD when questioned on this contradiction. As the defendant, I feel that the RAD was entitled to draw a negative inference from this.

[18] Lastly, the RAD also considered the fact that the applicant did not provide a copy of this complaint and did not ask his brother, or anyone else, to get one for him. When questioned on

this, he stated that [TRANSLATION] “he was not in the frame of mind for that”. The RAD felt that this explanation was not reasonable considering the time that had passed since he left Haiti. This issue was not addressed by the applicant before this Court. However, I feel that it is important, considering the other contradictions the RAD, and the RPD before it, had noted. This certainly does not help the applicant’s cause.

[19] Despite the commendable efforts of counsel for the applicant, Mr. Koudiatou, this application for judicial review will be dismissed. Neither party proposed a question for certification for appeal. I also do not feel it is relevant to do so under the circumstances of this case.



**JUDGMENT in docket IMM-2995-18**

**THIS COURT ORDERS AND ADJUDGES that:**

1. The application for judicial review is dismissed;
2. There is no question for certification.

“René LeBlanc”

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Judge

Certified true translation  
this 29<sup>th</sup> day of January 2019.

Elizabeth Tan, Translator

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2995-18

**STYLE OF CAUSE:** WILLIAM VALENTIN v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTREAL

**DATE OF HEARING:** JANUARY 14, 2019

**JUDGMENT AND REASONS:** LEBLANC J.

**DATE OF REASONS:** JANUARY 16, 2019

**APPEARANCES:**

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