Federal Court  Cour fédérale

Date: 20190322

Docket: IMM-4477-18

Citation: 2019 FC 357

[UNREVISED ENGLISH TRANSLATION]

Ottawa, Ontario, March 22, 2019

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

DIEUNER AVRELUS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The applicant, Dieuner Avrelus, is a citizen of Haiti. On May 16, 2008, he left his country to travel to the United States where he made an application for asylum. In his application, he alleges that he was targeted by members of the Lavalas political party. His application for asylum was rejected.

[2] Fearing that the government would terminate the program allowing Haitians to remain temporarily in the United States, the applicant crossed the Canada-U.S. border on July 18, 2017, where he claimed refugee protection. He was accompanied by his wife and daughter. The applicant's wife is also a citizen of Haiti, but she has not resided there for more than 25 years. The applicant's daughter is an American citizen.

[3] During his interview at the port of entry, the applicant stated to a Canada Border Services Agency [CBSA] officer that he came to Canada to improve his family's quality of life. He claimed that he was not being persecuted in Haiti or other countries, but stated that he could be abducted if he were to be returned to his country of origin. He also claimed that he did not apply for refugee status in the United States.

[4] On July 24, 2017, the applicant completed his Basis of Claim form [BOC] and again stated that he had no fear of returning to Haiti. He also indicated that he has never claimed refugee protection in Canada or any other country.

[5] Then, on August 21, 2017, the applicant changed his BOC, this time indicating that he had been persecuted by supporters of the Lavalas political party.

[6] In a decision made on August 15, 2018, the Refugee Protection Division [RPD] dismissed the applicant's refugee protection claim on the grounds that it considered him not to be credible. The RPD also concluded that if the applicant were to return to Haiti, he would be

exposed, as a Haitian who has lived abroad, to a risk of a generalized rather than a personalized nature.

[7] The RPD also rejected the refugee protection claim submitted by the applicant's minor daughter since it contains no allegation of fear of returning to the United States and since family separation is not a ground for protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. However, the RPD granted the claim filed by the applicant's wife on the basis that she is at risk as defined in the IRPA because of her perceived American citizenship. Unlike the applicant, she hardly speaks Creole (and does so with an American accent), has lived in the United States since the age of eight, has never returned to Haiti and has no family in that country.

[8] The applicant seeks judicial review of the decision rejecting his claim for refugee protection. He alleges that the RPD erred in assessing his credibility by giving too much weight to the statements he made to the CBSA officer at the port of entry. In addition, he claims that the RPD's conclusion that he would be exposed to a generalized risk is unreasonable.

[9] Although the application for leave and for judicial review was made on behalf of the applicant and his minor daughter, the applicant does not dispute the RPD's conclusion regarding his daughter. She should therefore be removed from the style of cause.

II. Analysis

[10] It is well recognized that a RPD decision based on credibility issues is highly factual and is subject to review according to the standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 53 [*Dunsmuir*]; *Doualeh v Canada (Citizenship and Immigration)*, 2018 FC 531 at para 16; *Kanziga v Canada (Citizenship and Immigration)*, 2017 FC 1014 at para 21; *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at para 22; *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ no 732 (QL) at para 4). The generalized risk assessment is also subject to review according to the standard of reasonableness (*Zuniga v Canada (Citizenship and Immigration)*, 2018 FC 634 at para 11; *Guerilus v Canada (Citizenship and Immigration)*, 2010 FC 394 at para 9; *Ventura De Parada v Canada (Citizenship and Immigration)*, 2009 FC 845 at para 19).

[11] Where the standard of reasonableness applies, the Court's role is to determine whether the decision falls within the "range of possible, acceptable outcomes which are defensible in respect of the facts and the law". If "the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility", it is not for this Court to substitute its own preferred outcome (*Dunsmuir* at para 47; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59 [*Khosa*]).

[12] The applicant argues that notes taken by an officer at the port of entry should be interpreted with caution. Refugee protection claimants often have good reasons for disclosing only part of their story at the port of entry, and this should not be a reason to automatically

question their credibility. He also argues that the RPD must accept the reasonable explanations with which it is provided in order to explain the omissions made at the port of entry.

[13] Upon reading the decision, it can be seen that the RPD relied on a set of factors to conclude that the applicant was not credible:

(a) In his amended BOC, the applicant states that at the end of February 2006, he learned that his name was on a list of names of persons who would be attacked, which was prepared by some members of the Lavalas political party. The applicant goes on to state that despite the threats, he continued to carry on with his daily activities until June 30, 2007. However, the applicant had indicated in his application for asylum in the United States that he was receiving verbal threats during this period. Since the RPD was of the opinion that the applicant's amended BOC is less specific on the issue of threats received than his application for asylum in the United States, it asked the applicant to specify at the hearing whether he had any problems with Lavalas party supporters between February 2006 and June 2007. The applicant testified that he had no problems. When asked about this contradiction, the applicant was unable to provide a reasonable explanation as to why he allegedly stated in his application for asylum in the United States that he was receiving verbal threats when this was not the case. He simply explained that the threats refer to the existence of the list. This explanation was rejected by the RPD.

(b) Although the applicant addresses the risk that he faces in Haiti in his amended BOC, he makes no mention of any threats made against him since he left Haiti. However, during his testimony, the applicant made a significant addition to his account by stating that his cousin had informed him that he would still be targeted in Haiti. This information does not appear in the applicant's application for asylum in the United States or in his amended BOC. When asked about this omission, the applicant indicated that he did not believe that this information was relevant. The RPD rejected the applicant's explanation on the basis that it was a significant allegation and that it would have been reasonable for the applicant to include it in his amended BOC, which was prepared with the assistance of a lawyer.

(c) The applicant stated twice (at the port of entry and in his first BOC) that he had never had any problems in Haiti, that he was not being persecuted and that he came to Canada so that his family could have access to better education and health care. In his amended BOC, the applicant alleges for the first time that he was persecuted twelve years earlier by Lavalas party supporters. The RPD finds the applicant's explanation unsatisfactory, being that he failed to declare at the port of entry that he had been persecuted because he was afraid of being returned to the United States or Haiti. The RPD added that the reason given by the applicant does not explain why he failed to refer to it in his first BOC, completed six days after his arrival. The RPD found that these are not minor contradictions and that it would have been reasonable for the applicant to share this information since he told the CBSA officer that he feared being abducted if he returned to

Haiti. The RPD also noted that the applicant had already made an application for asylum in the United States and was therefore familiar with the concept of making a refugee protection claim.

(d) The applicant declared to the CBSA officer that he had never made an application for asylum in the United States when he did in fact make such an application in 2009, which was rejected.

[14] The Court recognizes that the notes at the port of entry must be interpreted with caution (*Cetinkaya v Canada (Citizenship and Immigration)*, 2012 FC 8 at paras 50-51). However, it is clear from the case law that inconsistencies between an applicant's statements made at the port of entry and those made to the RPD may support a negative credibility finding (*Kusmez v Canada (Citizenship and Immigration)*, 2015 FC 948 at para 22 [*Kusmez*]; *Arokkiyanathan v Canada (Citizenship and Immigration)*, 2014 FC 289 at para 35; *Bozsolik v Canada (Citizenship and Immigration)*, 2012 FC 432 at para 20; *Navaratnam v Canada (Citizenship and Immigration)*, 2011 FC 856 at paras 14-15). In addition, although minor discrepancies between port of entry statements and oral testimony are not sufficient to determine whether an applicant is not credible, the RPD may conclude that an applicant lacks credibility if an omission concerns a central element of the refugee protection claim (*Kusmez* at para 22; *Jamil v Canada (Minister of Citizenship and Immigration)*, 2006 FC 792 at para 25).

[15] In this case, these are not merely omissions, minor discrepancies, incomplete stories or imprecise allegations at the port of entry. This is not only about declarations at the point of entry,

but also about a first BOC telling a story that is the opposite of the story told in the amended BOC. The amended BOC does not represent a correction of some minor inconsistencies, but rather a contradiction in the most fundamental aspect of any claim for refugee protection, namely whether or not there is a serious possibility of persecution or a personalized risk within the meaning of sections 96 and 97 of the IRPA. Thus, in light of the significance of the contradictions between the statements made by the applicant at the port of entry, in his first BOC, in his amended BOC and in his testimony, the RPD could reasonably conclude that the applicant was not credible.

[16] In addition, the applicant also argues that the RPD erred in determining that he would be exposed to a generalized risk rather than a personalized risk. The applicant claims that since he will be accompanied by his children who do not speak Creole, he will be at greater risk than other members of the Haitian diaspora in the country.

[17] The Court considers that the applicant has not demonstrated the validity of this argument. The RPD reasonably concluded that the applicant was not exposed to a personalized risk of abduction, as claimed, given that he had previously lived in Haiti, is fluent in Creole, has relatives in that country and the documentary evidence shows that the entire population is affected by crime in Haiti. It was therefore open to the RPD to conclude, in light of these factors, that the applicant did not differ from all Haitians affected by crime in Haiti.

[18] In short, not believing that the applicant had been threatened twelve year earlier, the RPD could reasonably conclude that the applicant had never been personally targeted and that the risk he faced constituted a generalized risk.

[19] The applicant essentially asks the Court to reassess the evidence presented to the RPD and come to a different conclusion. This is not the role of the Court on judicial review (*Khosa* at para 61).

[20] For all these reasons, the application for judicial review is dismissed. No question of general importance was submitted for certification, and the Court is of the opinion that this case does not raise any such questions.

JUDGMENT in IMM-4477-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. The style of cause is amended to remove the name of the applicant's minor daughter;

3. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4477-18
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