

Federal Court



Cour fédérale

Date: 20190529

Docket: IMM-5525-18

Citation: 2019 FC 755

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, May 29, 2019

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

MARIO DAVID

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review filed under section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [the Act].

[2] Mr. David is a 27-year-old citizen of Haiti. He was a taxi driver in his country of origin. He stated that in 2015, he was assaulted by thugs who, according to him, worked for “high-

ranking government officials” (Refugee Appeal Division [RAD] Decision, para 5). He allegedly reported these “thugs” in August 2015 and was the target of a home invasion on the evening of August 24, 2015. He was not home at the time and the thugs attacked his cousins. On August 25, the applicant and one of his cousins filed a written complaint with the Haitian National Police, at the police station in Croix-des-Bouquets. This complaint, entitled [TRANSLATION] “the deposition”, does not make any reference whatsoever to the home invasion that allegedly occurred on August 24.

[3] The applicant claims that one of his cousins was subsequently abducted and has allegedly not been seen since. The account of difficulties faced in Haiti lacked precision.

[4] Mr. David’s immigration history can be summed up in a few words. Following the incident on August 24, 2015, and after filing a complaint at the local police station, on August 25, 2015, Mr. David fled to the United States. He told the Court that he had [TRANSLATION] “secretly” boarded an aircraft heading to Miami, but in possession of his Haitian passport. When he arrived in the United States, he was detained for 12 days and then released. Thereafter, he allegedly obtained two work permits in the United States. Less than two years later, he entered Canada at a point other than a border crossing (Roxham Road) and claimed refugee protection in Canada.

[5] The refugee protection claim was rejected on September 15, 2017, at the conclusion of the hearing. The written version was produced and issued on December 28, 2017. Essentially, the applicant was not believed. It appears that the Refugee Protection Division [RPD] found the

explanation concerning the events that occurred on August 24 and 25, 2015, confusing.

Moreover, the fact that he remained in the United States for a period of two years without making any effort to regularize his status was not viewed as a sign of subjective fear. In fact, the applicant's brother continues to drive a taxi in Haiti. With respect to the risks that he would face if he were to return to Haiti, the RPD found that a fear of banditry is a matter of generalized risk.

[6] On appeal before the RAD, the member reached the same conclusions. By applying the standard of review of correctness, which was appropriate, the member noted, in particular, that the complaint filed at the police station on August 25, 2015, made no mention of the home invasion and the assault of the appellant's cousins, even though this had all allegedly happened the evening before. The RAD also noted the vague contents of the complaint, which the RPD had asked the applicant to explain. Noting that the appellant did not name anyone in his complaint of August 25, 2015, the RPD had asked him why the thugs would want to seek vengeance against him. The appellant had simply answered that the thugs were everywhere. The RAD's response was "that does not explain why they would go after him" (RAD Decision, para 15). The applicant was no more convincing when his lawyer asked him about the writing of the complaint. Mr. David simply stated that he had described the situation in his town, as well as the way in which his life was being threatened. The complaint presented before the RPD and the RAD made no mention of the serious incident that allegedly precipitated his departure from Haiti, in light of such an invasion.

[7] The RAD found that on its own, the almost two-year stay in the United States did not justify rejecting the refugee protection claim. However, the RAD agreed that his credibility

suffered as a result. The risk that he claimed to fear in Haiti should normally have motivated the applicant to try to regularize his situation in the United States, presumably to avoid a forced return if his fears were real.

[8] In fact, the RAD did not consider the account of the August 24, 2015, incident, the event that triggered his fear of a personalized risk under section 97 of the Act, to be credible. As the applicant alleged, it is certainly possible that “thugs” were trying to obtain free transportation by forcing him to drive them in his taxi. However, the RAD held that “[t]here is no other evidence or credible allegation on the record to support a conclusion that the appellant would be personally targeted by thugs if he returned to Haiti” (RAD Decision, para 19).

[9] In the context of the judicial review of a RAD Decision, the applicable standard of review for this Court is that of reasonableness (*Mavangou v Canada (Citizenship and Immigration)*, 2019 FC 177; *Arafa v Canada (Citizenship and Immigration)*, 2019 FC 6; *Cheema v Canada (Citizenship and Immigration)*, 2015 FC 441).

[10] As everyone knows, this standard calls for deference to the decision rendered, and the Court must refrain from substituting its own opinion for that of the decision maker, provided that the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law, and there was justification, transparency and intelligibility within the decision-making process. In my opinion, the RAD Decision fully satisfies the reasonableness criteria recognized in our judicial system.

[11] Essentially, Mr. David claims that the evidence was misinterpreted because it did not take Haitian specificities into account. Moreover, he argues that the grounds provided by the RAD are not compelling and that the inconsistencies raised are not significant enough to justify the negative credibility finding. Furthermore, the fact that he stayed in the United States should not have had such an influence on the determination of the applicant's credibility. In my opinion, the applicant is, at best, expressing his disagreement with the conclusions reached by the RAD. He should have demonstrated that these conclusions were not reasonable, which he did not do.

[12] In this case, the RAD Decision cannot be criticized as suffering from a lack of independent analysis. In fact, the RAD noted an inconsistency in the decision rendered by the RPD and, applying the standard of correctness, rectified it. If the RAD's reasons are not particularly detailed, it is because there was not much to say. Indeed, the RPD rendered its decision from the bench.

[13] The only explanation offered before this Court concerning the complaint filed on August 25, 2015, which was not consistent with the serious allegation of a home invasion, proved fatal, because the home invasion allegation lies at the heart of the claim filed under sections 96 and 97 of the Act. Without it, very little remains. The complaint filed at the police station reads as follows:

[TRANSLATION]

They declare that every day, certain individuals are disturbing the population of Croix-des-Bouquets and the neighbouring districts; people have gone missing or have even fled to save their skins, because they cannot withstand [illegible] the thugs [illegible].

The applicant never provided an explanation of an obvious omission: where is the report of the home invasion that allegedly occurred the evening before? The complaint filed at the police station did not make any reference whatsoever to the trigger incident, the incident that would explain the need to leave the country. On the contrary, this complaint suggests that the story was fabricated after the fact.

[14] One can easily agree that a minor inconsistency does not undermine a person's credibility (*Kanagarasa v Canada (Citizenship and Immigration)*, 2015 FC 145, para 13) and that it is not always necessary to make much of a delay in regularizing an immigration situation or claiming refugee protection. However, in my view, it is a relevant consideration that cannot be ignored completely. The home invasion, if it occurred, was a serious situation that would perhaps explain a sudden departure to seek protection. However, if this extraordinary event did not occur, what justification would there be to invoke sections 96 and 97 of the Act?

[15] One month after he was allegedly the victim of serious violence, the applicant found a smuggler in Haiti, [TRANSLATION] "secretly" boarded an airplane and arrived in Miami. He was detained there and then was granted two work permits issued in the United States. He does not appear to have taken any steps over that two-year period, before choosing to travel across the United States, south to north, in order to cross the Canadian border at a point other than a border crossing. No explanation was provided. In my opinion, the RAD was not wrong in not insisting on the fact that the applicant chose not to seek asylum in the United States, but it was also not wrong in considering this fact. I see no reason why the RAD's finding regarding the applicant's credibility should be interfered with in this respect. What was fundamental was that the reason

for the departure was the home invasion. Once the RAD did not believe this incident, there was little left to the applicant's story. It is my view that the lack of any reference whatsoever to this event in the only police report provided by the applicant is fatal to his case.

[16] The RAD also found that Mr. David failed to establish a nexus to a Convention ground, which could have made it necessary to give further consideration to section 96 of the Act. Indeed, section 96 provides only five grounds for refugee status: race, religion, nationality, membership in a particular social group and political opinion. Without really being able to support this claim, Mr. David argued that his act of filing a complaint at the police station was a political act. The argument did not stand before the RPD, and no further explanation was provided before the RAD or even before this Court. The question is simple: how can the act of filing a complaint with the police constitute a political opinion? Without elaboration or explanation, such an allegation has no weight.

[17] The applicant's burden was not to express his disagreement with the RAD; instead, it was to establish, based on a balance of probabilities, that the RAD Decision was unreasonable. This was not done. The application for judicial review must therefore be dismissed. There is no serious question of general importance to be certified under section 74 of the Act.

JUDGMENT in IMM-5603-18

THIS COURT'S JUDGMENT IS that:

1. The application for judicial review is dismissed;
2. No serious question of general importance is certified.

“Yvan Roy”

Judge

Certified true translation
This 6th day of June 2019.

Johanna Kratz, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5525-18

STYLE OF CAUSE: MARIO DAVID v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: MAY 16, 2019

JUDGMENT AND REASONS: ROY J.

DATED: MAY 29, 2019

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