

Federal Court



Cour fédérale

Date: 20190708

Docket: IMM-6006-18

Citation: 2019 FC 901

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, July 8, 2019

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

CHARLES GRACIA STERLING

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada, made on November 1, 2018, in which the RAD upheld the decision of the Refugee Protection Division [RPD] determining that the applicant is neither a refugee within the meaning of the *United Nations' Convention Relating to*

the Status of Refugees nor a person in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]*.

II. Facts

[2] The applicant is a 41-year-old Haitian citizen. He is claiming protection in Canada because he fears that bandits will target him since he has worked as a humanitarian worker in the past.

[3] According to the information originally provided by the applicant, he was a humanitarian worker in Haiti from 2003 to 2007 under contracts with various non-governmental organizations (NGOs).

[4] The applicant alleges that bandits associated with the Lavalas party attacked him in the past. More specifically, the applicant reported that in 2004 he was held with other employees for three or four hours by heavily armed bandits.

[5] He alleges that, in 2006, he learned from a friend that Lavalas bandits were engaged in undercover operations to locate all those who were working or had worked with social programs. These bandits monitored aid workers because they believed that they were giving information about the bandits to the authorities. According to the applicant, he decided to live in seclusion when his contract ended in 2007, until his departure from Haiti in May 2017.

[6] After leaving Haiti, the applicant first travelled to the United States. He arrived in Canada on August 11, 2017, and claimed refugee protection on September 7, 2017.

[7] At the hearing before the RPD, the applicant stated that he had accepted additional contracts with NGOs until 2010. The last contract required him to be in Port-au-Prince to help Haitians following the earthquake.

III. RPD and RAD decisions

A. *RPD decision*

[8] The RPD Member issued a negative decision against the applicant, mainly because he found that the applicant lacked credibility. The RPD Member relied on the following omission and contradictions to come to this negative assessment:

- The applicant stated that there was no reason why the bandits would hurt him in particular, which contradicted his alleged fears based on his involvement in humanitarian work.
- The applicant stated that he stopped his humanitarian work in 2007 and then lived in seclusion. However, he then admitted that he had completed one project in 2008, accepted another in 2009 and a further one in 2010.
- Concerning the last contract, when the applicant disclosed that he had worked in Port-au-Prince in 2010, he originally claimed that he had worked for Save the Children. However, the photos submitted as evidence to demonstrate his humanitarian work contradicted this information. They indicate instead that the applicant worked

for two organizations: Coordination Nationale pour la Sécurité Alimentaire and Action Against Hunger.

[9] The RPD Member therefore determined that, by resuming the work he claims resulted in retaliation from bandits, the applicant did not engage in the conduct of a person fearing persecution. The RPD Member found a lack of credibility and rejected the applicant's claim for refugee protection.

B. *RAD decision*

[10] The RAD Member upheld the RPD's decision that the applicant is not a Convention refugee or a person in need of protection. The RAD Member conducted an independent analysis of the evidence and applied the standard of correctness, including to assess the credibility of the applicant's oral evidence, unless otherwise indicated. In summary, the RAD's decision is as follows:

- With respect to the issue of procedural fairness, specifically that the applicant was not sworn in when he provided information that he subsequently contradicted, the applicant was in fact sworn in at that time and therefore this issue was unfounded.
- With respect to the applicant's allegation that the RPD asked him biased questions, the RAD first determined that the RPD could ask questions about objective documentation, but that in any event, the RPD's credibility conclusions were not based on the answers to these questions.
- The RAD agreed with the majority of the elements that led the RPD to conclude that there was a lack of credibility. However, it determined that the RPD erred in rejecting

the applicant's response when he explained why he replied that he did not believe he was personally targeted by bandits, when this is the very basis of his claim. On this point, the RAD accepted the applicant's explanation that he had not fully understood the question. The RAD confirmed the other elements of the applicant's lack of credibility.

- The RAD noted that the applicant did not act in a manner consistent with his alleged fears. In particular, the applicant agreed to work in Port-au-Prince in 2010. In addition, he obtained a passport in 2012, with which he travelled to the United States and the Dominican Republic in 2014, 2015 and 2016. Each time he returned to Haiti.
- The RAD conducted a prospective risk analysis and concluded that humanitarian workers are targeted by crime in the same way as the rest of the Haitian population.
- The RAD confirmed "that [the applicant] would not face a serious possibility of persecution, a risk to his life or a risk of cruel and unusual treatment or punishment because he worked for NGOs", dismissing the appeal and upholding the RPD's decision.

IV. Issues

[11] The issues are the following:

- 1) Was there a breach of procedural fairness?
- 2) Was the RAD Member's decision reasonable?

[12] The issue of a possible breach of procedural fairness will be reviewed according to the standard of correctness (*Canada (Citizenship and Immigration) v Khosa*, [2009] 1 SCR 339, and *Zaqout v Canada (Citizenship and Immigration)*, 2019 FC 779 at para 14).

[13] The RAD's decision on the assessment of the applicant's evidence and credibility will be reviewed according to the standard of reasonableness (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35, and *Konate v Canada (Citizenship and Immigration)*, 2019 FC 170 at para 5).

V. Relevant provisions

[14] The following provisions of the IRPA are relevant:

Convention refugee

96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that

Définition de « réfugié »

96 A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

country.

Person in need of protection

97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(2) A person in Canada who is a member of a class of persons

Personne à protéger

97 (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(2) A également qualité de personne à protéger la

prescribed by the regulations as being in need of protection is also a person in need of protection.

personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

VI. Analysis

A. *Was there a breach of procedural fairness?*

[15] The applicant submits that the RPD Member asked him questions about photos submitted as evidence at the hearing and that he had not yet been sworn in at that time. Considering that the swearing-in took place a few minutes before the hearing and that the question about the photos was first asked a few minutes after the hearing began, the RAD was correct in concluding that this question is unfounded.

[16] Since the applicant has not challenged the RPD Member's allegation of bias before this Court, the RAD's decision on this issue will not be considered by the Court.

B. *Was the RAD Member's decision reasonable?*

[17] The applicant's argument can be summarized as follows: since the RAD found that the RPD was wrong to conclude that there was a lack of credibility on the first point, which was whether there were reasons why the bandits would want to personally attack the applicant, the rest of the credibility analysis should have been disregarded automatically.

[18] The respondent argues that, since the applicant has failed to establish the existence of a prospective risk, his claim must be dismissed. This conclusion is based on the fact that the documentary evidence does not confirm that current or former humanitarian workers are particularly targeted by criminal groups. He further points out that the RAD also determined that the applicant lacked credibility, particularly with respect to the applicant's conduct, which was found to be clearly incompatible with that of a person who fears retaliation from bandits. He therefore argues that the RAD's decision was reasonable.

[19] The RAD stated that it conducted its own assessment of the applicant's file, including his credibility. Contrary to the applicant's claims, the RAD could determine that the applicant lacked credibility on the other aspects of his claim and conclude that this undermined his credibility enough for the RPD to reject his claim. Each element analyzed first by the RPD, and then by the RAD, could exist on its own; the applicant's argument that all aspects of his credibility that received an adverse assessment must be ignored cannot be accepted.

[20] Upon reading the RAD's decision, it is clear that the RAD Member took the time to read the entire record, listen to the RPD hearing, conduct her own analysis and conclude that there was a lack of credibility (see *Mobil Oil Canada Ltd. v Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 SCR 202 at pp 228 and 229). Overall, the decision is written in a clear and logical manner.

[21] Since no errors requiring the intervention of this Court have been detected, the application for judicial review is dismissed.

VII. Conclusion

[22] For the reasons mentioned above, the application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There are no questions of general importance to certify.

“Michel M.J. Shore”

Judge

Certified true translation
Johanna Kratz, Translator

FEDERAL COURT
SOLICITORS OF RECORD

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