

Federal Court



Cour fédérale

Date: 20200324

Docket: IMM-4583-19

Citation: 2020 FC 413

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, March 24, 2020

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

JEAN EDDY MORISSAINT

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[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 dated June 21, 2019, confirming the

decision of the Refugee Protection Division (RPD) dated March 27, 2018, rejecting the applicant's refugee protection claim.

[2] The RAD concluded that the applicant is referred to in Article 1E of the *United States Convention relating to the Status of Refugees* [Convention] and is neither a Convention refugee nor a person in need of protection. The applicant does not challenge this conclusion in his application. He submits, however, that the RAD's conclusion, according to which the applicant had not met his burden of establishing a serious possibility of persecution for Haitians in Brazil or a personalized risk should he return to Brazil, his country of residence, was unreasonable.

[3] For the reasons set out below, the application for judicial review is dismissed.

I. Factual background

[4] The applicant is a Haitian citizen who left his country of birth because of alleged death threats. He went to Brazil in 2014, where he has permanent resident status.

[5] Fearing the prevailing climate of intolerance and racism towards Haitians in Brazil, the applicant left Brazil and went to the United States in 2016. He arrived in Canada on August 5, 2017, and claimed refugee protection in September 2017.

[6] On March 27, 2018, the RPD rejected the refugee protection claim on the ground that the applicant is excluded under Article 1E of the Convention as a result of his permanent resident status in Brazil. The RPD also determined that the applicant was not credible and that,

cumulatively, his allegations of discrimination and racism in Brazil did not create a well-founded fear of persecution.

RAD decision

[7] On June 21, 2019, the RAD confirmed the RPD's decision, dismissing the applicant's appeal. The RAD concluded that the applicant was excluded under Article 1E of the Convention. In contrast to the RPD's opinion, it did not draw any negative inferences regarding the applicant's credibility. The RAD found, however, that even assuming the applicant's allegations to be true or established, it could not conclude that the applicant's situation in Brazil exposed him to a serious risk of persecution or a risk of harm.

[8] The RAD noted that the applicant had been able to find a job as soon as he arrived in Brazil and that he had this job for a year. It also found that the applicant was personally aware of a single case of violence during his whole time in Brazil. This incident, which involved a friend, allegedly occurred in 2016, two years after the applicant's arrival. The RAD held that these facts did not establish a generalized risk of violence against all Haitians.

[9] The RAD analyzed the documentary evidence on the situation of Haitians in Brazil. It recognized that there is racism towards people of colour in Brazil, but noted that it does not specifically target Haitians.

[10] It found that there were only a few recorded cases of attacks against Haitians, meaning that the situation could not be characterized as one creating a serious possibility of persecution or

a risk of harm for the applicant. The RAD further noted that not all acts of discrimination amount to persecution.

II. Issue and standard of review

[11] The only issue raised by this review proceeding is whether the RAD erred in concluding that the applicant is neither a Convention refugee nor a person in need of protection because of his permanent resident status in Brazil.

[12] The applicable standard of review for the RAD's findings is that of reasonableness (*Huruglica v Canada (Minister of Citizenship and Immigration)*, 2016 FCA 93, at para 35). The reviewing court must adopt a posture of restraint and may intervene only "where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at para 13.

III. Analysis

[13] The applicant submits that the RAD's assessment of the evidence with respect to the serious possibility of the applicant being persecuted in Brazil was unreasonable. He submits that the RAD erred in concluding that discrimination in Brazil does not amount to persecution, that it failed to consider all the information in the National Documentation Package and that it minimized the incident involving his friend.

[14] The applicant further submits that the RAD erred in requiring the presence of persecution as a criterion, given that in *Canada (Citizenship and Immigration) v Zeng*, 2010 FCA 118, the Federal Court of Appeal does not state that the level of risk must amount to persecution within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[15] Finally, the applicant criticizes the RAD for misassessing the evidence on state protection in Brazil for Haitians since the documentary evidence establishes that “‘very little’ is done by the police in practice to protect citizens from criminal . . . groups” and the legal system often fails to investigate perpetrators and to punish them. According to the applicant, state protection in Brazil is impossible, especially in light of the racial discrimination suffered by Haitians in Brazil.

[16] The arguments raised by the applicant must be rejected, for the same reasons as those underlying the decision of Justice Jocelyne Gagné, as she then was, in *Noel v Canada (Citizenship and Immigration)*, 2018 FC 1062 [*Noel*]. Like the applicant, Mr. Noel was of Haitian origin and claimed that he had been discriminated against in Brazil. Justice Gagné determined that the evidence before the RAD did not establish that Haitians in Brazil were victims of measures of discrimination that led to consequences of a substantially prejudicial nature. She also confirmed that the allegations that Brazilians had a racist attitude towards Haitians were insufficient to conclude that Haitians were being persecuted.

[17] In assessing the risk, the RAD noted that while there was a climate of discrimination against Afro-Brazilians in Brazil, this climate has no serious effect on the exercise of rights

within the meaning of the case law. This finding is in line with this Court's teachings (*Celestin v Canada (Citizenship and Immigration)*, 2020 FC 97, at para 62; *Noel*, at paras 28–31; *Debel v Canada (Immigration, Refugees and Citizenship)*, 2020 FC 156, at para 29; *Simolia v Canada (Citizenship and Immigration)*, 2019 FC 1336, at paras 26–27).

[18] To show that the incidents of harassment or discrimination amounted to persecution, the applicant had to establish that, cumulatively or singly, they constituted a serious, systematic and repeated violation of his core human rights.

[19] The facts alleged by the applicant and the documentary evidence pertaining to his situation did not reveal a string of serious mistreatment amounting to persecution or a risk of harm. The applicant had the burden of supplementing the documentary evidence to link his personal hardship to the general situation in Brazil, which he failed to do (*Jean v Canada (Citizenship and Immigration)*, 2019 FC 242, at paras 16 and 19).

[20] Instead the applicant provided evidence that did not concern his personal situation directly. For example, he cited an incident of violence involving a friend. He also quoted excerpts from a series of reports stating that people of colour in particular were targeted by agents of the state and the general population because of their race.

[21] I believe that, in light of the evidence, the RAD could reasonably conclude that the discrimination alleged by the applicant did not amount to persecution. His allegations that some

Brazilians have a racist attitude towards Haitians are, albeit very unfortunate, insufficient to suggest that Haitians are persecuted.

IV. Conclusion

[22] There was transparency and intelligibility in the decision-making process of the RAD, and its decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. The application is therefore dismissed.

JUDGMENT in IMM-4583-19

THIS COURT’S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. No question is certified.

“Roger R. Lafrenière”

Judge

Certified true translation
This 3rd day of April 2020.

Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4583-19

STYLE OF CAUSE: JEAN EDDY MORISSAINT v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: FEBRUARY 25, 2020

JUDGMENT AND REASONS: LAFRENIÈRE J.

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