Federal Court  Cour fédérale

Date: 20200501

Docket: IMM-2055-19

Citation: 2020 FC 579

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, May 1, 2020

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

ANTONIO GUERRIER

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Antonio Guerrier, a citizen of Haiti, is seeking judicial review of the decision rendered by the Refugee Appeal Division on March 11, 2019. The application for judicial review is based on section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. The entire case revolves around the applicant's credibility, which the Refugee Protection Division [RPD] and the Refugee Appeal Division [RAD] found to be lacking. In my opinion, the decision of the

RAD, which is the one before the Court, is perfectly reasonable, and the application for judicial review must therefore be dismissed.

I. Facts

[2] Mr. Guerrier claims to have received threats between July 24, 2017, and August 11, 2017, which led him to conclude that he should leave Haiti, particularly given that he was in possession of a U.S. visa. Upon arrival in New York on August 11, 2017, he headed to Canada, where he arrived on August 12, 2017.

[3] The events that precipitated such a move are as follows. Mr. Guerrier had been a police officer in Haiti since 2003. It appears that he was a member of the Haitian National Police between 2014 and 2017, until he left Haiti to apply for refugee protection status in Canada.

[4] On or about January 1, 2016, Mr. Guerrier participated in the conviction of one Kenson Bien-Aimé for illegally carrying firearms and knives. On July 24, 2017, Mr. Guerrier's vehicle was approached by individuals on a motorcycle, and shots were fired in his direction. Mr. Guerrier filed a complaint with the police that same day. He states that he was informed at that time that Mr. Bien-Aimé had been released.

[5] He filed a second complaint on August 7, 2017, with regard to verbal threats he had allegedly received over the phone from a person he claimed he did not know. I note from the outset that the complaint against an "unknown person" adds that this person allegedly called and texted Mr. Guerrier to say [TRANSLATION] "that he was out of prison, and as [the applicant] was

the one who had arrested him and taken him to the prosecutor's office in Croix-des-Bouquets, he would soon be killing [him] for that" (complaint dated August 7, 2017, page 1). It does not appear that Mr. Guerrier identified Kenson Bien-Aimé in this August 7 complaint, even though he alleges that he was warned by someone a few days earlier (July 24, 2017) that Kenson Bien-Aimé had been released, that the circumstances mentioned in the complaint corresponded to the arrest of Mr. Bien-Aimé by the applicant, and that the case had been investigated by the Croix-des-Bouquets prosecutor's office.

[6] Lastly, the RPD was provided with an excerpt from the minutes of the Croix-des-Bouquets peace court registry, which contained a report of a visit to the applicant's home by a Croix-des-Bouquets justice of the peace and his clerk. The home had allegedly been damaged during the night of August 7 to 8, when the applicant had already vacated it. Paradoxically, this document refers to threatening messages received on July 31 and August 3, 2017. However, in the complaint made on August 7, 2017, Mr. Guerrier claimed to have received numerous calls threatening him with death, including one on the morning of the complaint. This is inconsistent with the August 8 excerpt, where the author reports that Mr. Guerrier stated, [TRANSLATION] "I have recently received two odd threatening messages on my cell phone" (p. 1).

II. The RAD decision

[7] These problems did not escape the notice of the RAD. As all parties are aware, the RAD decision is the exclusive focus of the application for judicial review. The RAD is required to review the record without deference to the RPD. The case law therefore recognizes that the standard of review used by the RAD is correctness. Clearly, however, the RAD is in complete

agreement with the RPD. The RPD's decision is summarized in paragraph 7 of the RAD's decision, and that summary seems to me to be perfectly sound. It reads as follows:

> [7] The RPD gave no credence to the appellant's allegations concerning the attacks that took place on July 24 and on the night of August 7 to 8, or to the threats he claimed to have received. Noting that the appellant had failed to mention the attack on the night of August 7 to 8 in his claim, the RPD stated that it had asked him to explain this omission but that his explanations were not satisfactory. The RPD questioned the genuineness of the justice of the peace's report, because it states [translation] "in the name of the Republic" twice and is not signed. The RPD also noted an inconsistency between the appellant's complaint to the police filed on August 7 and the justice of the peace's report from the next day, concerning the dates of the threatening text messages. Finally, it noted that there is no evidence supporting the appellant's claim that KA threatened to kill him because he blamed him for his imprisonment.

[8] The RAD indicates that the appeal alleges that the RPD erred in its assessment of credibility. The applicant claimed that the documentary evidence corroborated his testimony and that, contrary to what the RPD had indicated, the report from the justice of the peace was signed on the back of the document.

[9] In view of the perceived contradictions and inconsistencies in the evidence, the RAD undertook an assessment of the appellant's credibility. The first problem is not a trivial one. The claimant alleges that his home, which he abandoned on August 7, was damaged that very night, which clearly motivated his departure from Haiti three days later. His basis of claim, however, which is stamped September 8, 2017—less than a month after his arrival in Canada—contains no mention of this incident, which some would consider to be major. The basis for claim is 16 sentences long. I note, moreover, that the applicant refers to Kenson Bien-Aimé in it three times, clearly indicating that he [TRANSLATION] "understood that Kenson Bien-Aimé or members

of his criminal association or persons related to him want[ed] to kill [him].” There is no such reference in the documentary evidence from Haiti provided by the applicant.

[10] The RAD found that this failure to even mention the alleged incident of August 7 to 8, 2017, tarnished the applicant’s credibility. The same is true of the difficulty in reconciling the complaint of August 7 with the registry minutes of August 8; as noted earlier, the August 7 complaint mentions a threat made on that day, while on August 8, the claimant spoke in terms of two [TRANSLATION] “odd threatening messages on [his] cell phone”.

[11] The RAD also notes that it is surprising that a career police officer did not report the threats against him until several days after they were allegedly made.

[12] This is even odder given that the applicant said he knew as early as July 24, 2017, that his life was in danger.

[13] The RAD also noted that the applicant alleges that he was warned on July 24, 2017, that Mr. Bien-Aimé had been released and intended revenge. However, the applicant did not specify who had provided him with this information and how that person could have known that Mr. Bien-Aimé intended to seek revenge against him. In any event, the RAD held:

> [18] . . . it seems improbable that a criminal would tell the police about a plan to seek revenge on a police officer. However, if he did do so, the officer would likely have taken immediate action to protect their colleague and inform him of the threat rather than waiting for the criminal to have the opportunity to harm him. Furthermore, it does not make sense that KA would have warned the appellant by calling and texting him to tell him that he wanted

> to kill him, which happened several times between the first attack on July 24 and the second attack during the night of August 7 to 8.

[14] Finally, the RAD viewed the failure to mention KA in the August 7 complaint as an inconsistency. As noted, the September 2017 basis of claim referred to Kenson Bien-Aimé as the person who had made threats against him. Neither the August 7 complaint nor the excerpt from the registry minutes refer to Mr. Bien-Aimé.

[15] These omissions and inconsistencies resulted in the RAD also finding that the claimant lacked credibility.

III. Arguments and analysis

[16] The applicant argues that the RAD's decision is not reasonable. I have identified four elements in his factum through which he attempts to show that his credibility has been unreasonably tarnished:

1. It is an error of law for someone to substitute their own perception of the applicant's actions. The same is true for the actions of a Haitian criminal.
2. The RAD analysis focused on minutiae and peripheral aspects. The RAD did not adequately consider the documentary evidence that the applicant says corroborates his version of events.
3. The RAD did not take into account the applicant's profile, age, origin, or social background.
4. The RAD should have accorded greater weight to cultural differences.

[17] At the hearing, the applicant sought to rely on the words of the majority in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. The decision in *Vavilov* was rendered after the applicant had been granted leave for judicial review. For some unexplained reason, no additional factum was submitted with regard to the arguments to be drawn from *Vavilov*. At the hearing, the applicant referred to numerous paragraphs from that decision (85, 86, 95, 99–105 and 126) in the clear belief that they would serve as ammunition for him. Since the applicant relied on *Vavilov*, I find it useful to refer to the paragraphs of that decision that were mentioned and that are relevant to the case before the Court.

[18] Paragraph 85 in *Vavilov* establishes the test as follows: "a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker. The reasonableness standard requires that a reviewing court defer to such a decision." Paragraph 86 indicates that this reasonable decision must still have the qualities of reasonableness described in *Dunsmuir v New Brunswick*, 2008 SCC 9, 2008 1 SCR 190, which are "concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process", as well as "with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (para 47). The Court further states that it would be "unacceptable for an administrative decision maker to provide an affected party formal reasons that fail to justify its decision, but nevertheless expect that its decision would be upheld on the basis of internal records that were not available to that party" (para 95).

[19] But the burden with regard to an administrative decision lies with the party wishing to have it declared unreasonable (para 100). Furthermore, the reviewing court must be satisfied that there are seriously sufficient shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility, and transparency (para 100). But the applicant relied in particular on paragraph 104 of *Vavilov*, which reads as follows:

> [104] Similarly, the internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise. This is not an invitation to hold administrative decision makers to the formalistic constraints and standards of academic logicians. However, a reviewing court must ultimately be satisfied that the decision maker's reasoning "adds up".

[20] The applicant obviously felt that the RAD decision contained flaws, or serious shortcomings, in terms of rationality. However, other than mentioning that such shortcomings adversely affect reasonableness, on which everyone can agree, no such serious shortcomings were demonstrated. The analysis conducted by the RAD was by no means focused on minutiae. Quite the opposite. Each element raised by the applicant was tainted by serious credibility issues. They were in fact patently obvious. First and foremost, something as significant as the damage to the applicant's home on the night of August 7 to 8, 2017, was completely absent from the basis of claim. This is a major omission. The applicant ignored this omission, however, and did not even attempt to explain the reason for it.

[21] The applicant claimed that his story was corroborated. That is not the case. The complaint of August 7 is only the applicant's story as recounted to the police. There is nothing independent that would support his account of events. The same is true of the excerpt from the minutes of the

Croix-des-Bouquets peace court registry, which was suspicious given that the words “au nom de la République” appear twice in the header, and that said report, which may be incomplete, was signed on the back of the document. In any event, that report is also a recounting of what the applicant stated. That is not corroboration. In fact, as explained earlier, there is a lack of consistency between the two documents, which in itself is problematic.

[22] Of course, the applicant sought to emphasize cultural differences. However, there is no evidence whatsoever as to how these cultural differences might explain omissions and inconsistencies. As counsel for the respondent noted in her arguments, the inconsistencies are numerous and are at the very core of the applicant’s claims. Finally, the applicant complained of what he called the RAD’s substitution of its own perception rather than exclusive reliance on the evidence presented. It seems to me that this assertion ignores the duty of administrative tribunals to examine the evidence from the standpoint of common sense and human experience. Indeed, the Supreme Court has repeatedly reiterated in recent years that this is the task of the decider of facts. It is up to the decision maker to determine whether the evidence has the necessary plausibility to be accepted and given significant weight. In this case, however, plausibility was lacking. Indeed, both administrative tribunals, the RPD and the RAD, reached similar conclusions about the credibility of the story (and therefore of the applicant). The applicant did not demonstrate why the various inconsistencies and omissions identified lacked the qualities of reasonableness, or why the conclusions drawn about them are not justified, transparent and intelligible. That was the burden on him.

[23] I emphasize in particular the absence of any reference in the basis of claim to the most telling incident in this case. Nowhere does the applicant refer to the damage caused to his home, which he stated he had left for fear of being assaulted three days before he departed Haiti. An administrative tribunal has the right, and probably the duty, to examine such an omission, and the administrative tribunal is entitled to draw conclusions about someone's credibility. The inconsistencies that were identified are also considerable. And it is significant that Mr. Guerrier states that his alleged attacker was Kenson Bien-Aimé, even though his own evidence pertaining to his complaints in Haiti makes no reference to that individual. At best, inexplicably, he referred to Mr. Bien-Aimé in an elliptical fashion in mentioning in the complaint of August 7, 2017, that the person harassing him told him that he was being released from prison and that it was easy to figure out who that was since the person said he had been arrested and taken to the prosecutor's office in Croix-des-Bouquets. The applicant goes so far as to say in his basis of claim for refugee protection that he understood that Mr. Bien-Aimé was his attacker, but for some reason, he did not mention this to the Haitian authorities before leaving his country three days later.

[24] The RAD's decision is well articulated and provides the applicant with reasons for the conclusion that there was a lack of credibility. The type of rationale referred to in *Vavilov* is very much present here. There is neither a lack of internal rationality nor a decision that is in some respect untenable. In my view, the qualities of reasonableness were demonstrated in this decision. The application for judicial review must be dismissed.

[25] The parties agreed that there is no question warranting certification under section 74 of the Act. I agree.

JUDGMENT in IMM-2055-19

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. No serious question of general importance is certified.

"Yvan Roy"
Judge

Certified true translation
This 14th day of May 2020.

Johanna Kratz, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Felipe Morales	FOR THE APPLICANT
Renalda Ponari	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Semperlex Avocats Montréal, Quebec	FOR THE APPLICANT
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT