

Federal Court



Cour fédérale

Date: 20200731

Docket: IMM-3104-19

Citation: 2020 FC 804

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, July 31, 2020

PRESENT: The Honourable Mr. Justice McHaffie

BETWEEN:

EDRICE MICHERA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Edrice Michera alleges that he is in danger from unknown persons in Haiti because of his political views, and is seeking refugee protection in Canada. His claim is based primarily on two events that took place after he published an article in his capacity as spokesperson for a political

organization called KOSIKO (Kolektif Sitwayen Konsène). First, he says that the day after the article was published, three armed men showed up at his residence. Not finding him home, the men beat and raped his sister, caused damage and stole some of his belongings. Second, after he left Haiti for Canada on a visa obtained a few months earlier, he says that his wife and parents received anonymous threatening calls, and that threatening graffiti referring to KOSIKO and his article was painted on the walls of his parents' home.

[2] The Refugee Appeal Division (RAD) did not believe Mr. Michera, finding that his credibility was undermined by numerous omissions and contradictions in his testimony and documents. The RAD therefore upheld the decision of the Refugee Protection Division (RPD) rejecting Mr. Michera's claim for refugee protection.

[3] In this application for judicial review, Mr. Michera criticized many of the findings of the RAD. In my opinion, the findings of the RAD with respect to the attack on Mr. Michera's sister were unreasonable and the decision can therefore not be upheld, notwithstanding the deference accorded to findings of fact, and of credibility in particular.

[4] The application for judicial review is therefore allowed. The matter is referred back to the RAD for reconsideration.

II. Issue and standard of review

[5] Only one question arises from the submissions of the parties: Was the RAD's decision reasonable?

[6] The RAD based its decision on findings of credibility. The parties agree that the standard of review applicable to such findings is reasonableness: *Zamaseka v Canada (Citizenship and Immigration)*, 2014 FC 418 at para 20; *Gabila v Canada (Citizenship and Immigration)*, 2016 FC 574 at para 21. The hearing in this case took place on the eve of the *Vavilov* decision being made public, but the findings in *Vavilov* confirm that the standard of review applicable here is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25, 125–126.

[7] A reviewing court assessing the reasonableness of an administrative decision “asks whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Zamaseka* at para 20; *Vavilov* at para 26). Questions of credibility in particular require “a high degree of judicial deference upon judicial review, considering the role of trier of fact conferred to the administrative tribunal” (*Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 15); (*Ould Kaza v Canada (Minister of Citizenship and Immigration)*, 2006 FC 558 at para 11).

III. Mr. Michera’s refugee claim

[8] Mr. Michera, a Haitian citizen, lived in Port-au-Prince with his wife, son and sister. He was studying civil engineering. He testified that in January 2014, he became a member of the socio-political organization KOSIKO, which seeks to raise awareness among Haitians with a view to overthrowing the current political system in Haiti.

[9] As spokesperson for KOSIKO, Mr. Michera published an article on October 12, 2016, in the newspaper *Haiti Progrès*. His article criticized the current government in Haiti and called for the establishment of [TRANSLATION] “Federalism in Haitian form”. The article was placed before the RAD, and its publication is not in question. Mr. Michera claims that the following evening, three armed men went to his home looking for him because of the article. He was away, so the men allegedly beat and raped his sister, who was living with him. They also allegedly stole personal documents that belonged to Mr. Michera, including documents related to KOSIKO and academic notes and notebooks. Mr. Michera contacted the police, who told him they could not be of assistance. The next day, his sister was examined by a doctor, and Mr. Michera went to the local Peace Court (Tribunal de la paix). A justice of the peace and a clerk went to Mr. Michera’s home to inspect the damage to the house and write a report ([TRANSLATION] justice of the peace report).

[10] On October 19, 2016, Mr. Michera left Haiti and arrived in Canada. He already had a visitor’s visa, which he had applied for in June. Following his departure, his family continued to receive threats in the form of anonymous phone calls and graffiti on the walls of his parents’ home. The graffiti, which appeared on November 6, 2016, December 12, 2016, and January 2, 2017, referred to KOSIKO and his federalist views, and contained death threats.

[11] Mr. Michera filed a refugee claim in Canada in February 2017. He alleged that he feared he would be attacked, persecuted or even killed as a result of his involvement with KOSIKO and the political views he expressed in the article.

IV. The RAD decision

[12] Mr. Michera's claim was rejected by the RPD on the basis that it lacked credibility. The RAD upheld the RPD's decision, listing numerous inconsistencies between Mr. Michera's testimony and his written documentation. The RAD confirmed the RPD's findings with respect to Mr. Michera's "vague" testimony, the threats received by other members of KOSIKO, the lack of corroborative evidence from KOSIKO, inconsistencies between his testimony and his visa application with respect to his addresses, and his delay in filing his claim for refugee protection. It also noted difficulties with the photographs of the graffiti incidents.

[13] However, for the purposes of this application, it is the RAD's findings pertaining to the incident of October 13, 2016, that I believe are critical. I find that the RAD's analysis of this event, namely the attack on his residence and the rape of his sister the day after the publication of his article, was unreasonable. Given the fundamental importance of this incident to Mr. Michera's claim for refugee protection, I find that the RAD's decision cannot stand, no matter whether or not the other findings on credibility were reasonable.

[14] This Court has a very limited role in assessing the reasonableness of the RAD's credibility findings: *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at para 42. Nevertheless, findings of credibility are unreasonable if they are inconsistent with the evidence, or fail to consider relevant evidence: *Zamaseka* at paras 25–29; *Afonso v Canada (Citizenship and Immigration)*, 2007 FC 51 at para 26, citing *Sadat Jamil v Canada (Minister of Citizenship and Immigration)*, 2006 FC 792 at para 25; *Vavilov* at paras 125–126.

[15] To establish that the October 13, 2016, incident had taken place, Mr. Michera himself testified and submitted two corroborating documents: the justice of the peace report and the medical report of the doctor who examined his sister. In determining that Mr. Michera was not credible, the RAD made substantive errors in its analysis of the justice of the peace report, and failed to consider the medical report at all.

[16] The RAD upheld the RPD's finding that the justice of the peace report had "no probative value" for the following reasons:

- the report makes no mention of what caused the incident, which the RAD believed that "finding the cause would be foremost in the mind of anyone asked to open an investigation" and that it was unlikely that Mr. Michera would not have been asked to explain why the incident had occurred;
- the report indicates that "numerous officers" were present, while Mr. Michera referred only to the justice of the peace and the clerk in his Basis of Claim (BOC) and his testimony;
- Mr. Michera said that the other people cited in the report were there to observe and report to the media and did not enter the premises, but the RAD concluded that "one of their tasks would have been to follow the justice of the peace and enter the premises with him";
- the report indicates that the door and the lock to enter the house were broken and that everything was stolen, whereas Mr. Michera testified that it was the door to his room that was damaged and that some of his belongings were taken; and

- the end of the report only partially lists the names of the lawyers cited in the document, and the second page includes “some observations that contradict the first page” and does not contain a heading or date.

[17] In my view, these findings of the RAD demonstrate a misreading of the report, unsupported assumptions about the Haitian legal process, and unsubstantiated findings on plausibility.

[18] What is clear from the report is that the first page of text essentially repeats the wording of a petition filed in the tribunal by Mr. Michera and his lawyers. This is evident from the introductory words, which read as follows:

[TRANSLATION]

We, Mr. **Jaccius Louis**, Justice of the Peace of the Commune of Croix-des-Bouquets, assisted by our Clerk **Alfred DORELIAN**.

In accordance with a petition addressed to us on October 14, 2016, which reads as follows:

[Underlining added; bolding in original.]

[19] After these words, the report repeats the text of the petition, which included a list of Mr. Michera’s lawyers (and not a list of individuals who also went to Mr. Michera’s home), a brief statement of the facts and the nature of the petition, as follows:

[TRANSLATION]

Which is why, Honourable Magistrate, the petitioner requests that you visit the above mentioned places for the purpose of ascertaining the damage done by these unidentified bandits and preparing a report on it. At the same time, send [Mr. Michera’s sister] to the hospital in order to obtain a medical certificate

concerning her state of health. This is for the purposes of further legal action.

With great respect;

[Mr. Michera's name and those of three of his lawyers]

[Emphasis added.]

[20] Despite the limited nature of the petition to the tribunal to ascertain and report on the damage, the RAD appears to believe that the role of the justice of the peace was to “open an investigation” and to inquire about the motivations for the incident. This conclusion is not supported by the document and is implicitly based on an assumption regarding the role of the various actors in the Haitian legal system. It is also effectively a finding of implausibility that the justice of the peace would carry out his mandate without asking this type of question. This Court has often emphasized that implausibility findings should only be made in the clearest of cases, particularly when they may involve cultural assumptions: *Gabila* at paras 36–37; *Santos v Canada (Minister of Citizenship and Immigration)*, 2004 FC 937 at paras 14–15.

[21] A similar assumption is found in the conclusion that it was a “task” of the other participants to follow the justice of the peace inside. This assumes that it is permissible or typical in Haiti to follow a justice of the peace while he or she looks at damage, or that their role is to observe the justice of the peace. The RAD failed explain the basis for these assumptions.

[22] As for the RAD's conclusion that there were inconsistencies between the justice of the peace report and Mr. Michera's testimony, this again appears to be based on a misreading of the document. Contrary to the conclusions of the RAD, the report does not indicate that the door into

the house was broken. The petition, repeated on the first page of the report, mentions this, but the justice of the peace's observation refers to an interior door, which is entirely consistent with

Mr. Michera's testimony:

[TRANSLATION]

Following this petition, we expressly travelled to the site, having arrived there, the petitioner took us to his property, land and buildings, where we saw and noted a house with several rooms, saw and noted inside said house a maroon-coloured door giving access to the petitioner's room was damaged, and noted objects scattered about inside the room.

[Emphasis added.]

[23] We can also see from this passage that the justice of the peace did not find "that everything was taken", but on the contrary, that he saw objects scattered about.

[24] The RAD suggested that the end of the report "only partially mentions the names of the lawyers cited". This again shows a misunderstanding of the document. The only passage to which the RAD could be referring is not an indication of the names of the lawyers. It is the signature block in the petition that was reproduced in the report. This is not a reasonable basis on which to make findings on credibility. Similarly, the RAD's conclusion that the second page contains "some observations that contradict" the first page does not distinguish between the observations of the justice of the peace on the second page and the reproduction of the petition by Mr. Michera and his lawyers on the first page. Finally, with respect to the RAD's conclusion regarding the lack of letterhead and date on the second page, I make the same observation as Justice Noël, "that the tribunal record does not contain any document mentioning that [court] documents must display the institution's letterhead" (*Zamaseka* at para 28).

[25] Taken together, these issues render unreasonable the RAD's analysis of this important corroborative document.

[26] In addition, the SAR failed to consider at all the other documents submitted by Mr. Michera to corroborate the event, namely his sister's medical report. This purports to be a certificate issued by a doctor after a physical examination, confirming the after-effects of rape. The RPD rejected this document entirely because it had already concluded that the incident had not taken place (a conclusion that itself could be contrary to the principles set out in *Chen v Canada (Citizenship and Immigration)*, 2013 FC 311 at paras 20-21). The RAD made no reference to it. Needless to say, the RAD is not obliged to refer to every piece of evidence: *Hassan v Canada (Minister of Employment and Immigration)* (1992), 147 NR 317 (FCA). However, it also goes without saying that the more important the evidence, the more the lack of analysis could indicate that the panel made an erroneous finding of fact without considering the relevant evidence: *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC), 157 FTR 35 at para 17.

[27] The medical report is one of two documents submitted to corroborate the incident of October 13, 2016. In the circumstances, I find that the failure to directly address this document undermines the transparency, intelligibility and justification of the RAD's conclusion regarding the incident.

[28] The Minister argued that the decision must be considered as a whole, and pointed out that the RAD based its credibility findings on several other omissions and contradictions that were

identified. Mr. Michera argued that the other findings on credibility were also unreasonable, in part because they were based on minor or trivial omissions or contradictions: *Feradov v Canada (Citizenship and Immigration)*, 2007 FC 101 at paras 18–19. I find that it is not necessary that I decide these issues. The incident of October 13, 2016, is central to Mr. Michera’s claim for refugee protection, as it is the reason he says he left Haiti, and one of the two main events upon which his claim is based. I cannot conclude that the RAD’s findings regarding the occurrence of the incident and Mr. Michera’s credibility would be the same if it had not erred in its analysis of the corroborating documents.

[29] In light of all the relevant circumstances, I believe that the errors of the RAD undermine the reasonableness of the decision, and warrant referring the case back for reconsideration.

V. Conclusion

[30] The application for judicial review is allowed. The RAD decision is set aside and the matter is returned to the RAD for reconsideration. Neither party proposed a question for certification, and none is certified.

JUDGMENT in IMM-3104-19

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is allowed.

“Nicholas McHaffie”

Judge

Certified true translation

On this 25th day of August 2020

Sebastian Desbarats, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3104-19

STYLE OF CAUSE: EDRICE MICHERA v. THE MINISTER OF
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PLACE OF HEARING: OTTAWA, ONTARIO

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