Federal Court  Cour fédérale

Date: 20200812

Docket: IMM-4677-19

Citation: 2020 FC 822

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, August 12, 2020

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

JEAN RIGAN BENOIT

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant is from Haiti. He seeks judicial review of a decision rendered by the Refugee Appeal Division [RAD] on July 3, 2019. The RAD dismissed the applicant's appeal and upheld the decision of the Refugee Protection Division [RPD] in which the latter concluded that the

applicant was neither a refugee nor a person in need of protection, pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] The only issue in dispute is whether, in finding that the applicant had the possibility of an internal flight alternative [IFA] in Haiti, the RAD committed a reviewable error.

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

II. Factual Background

[4] The applicant's refugee protection claim is based on the following allegations.

[5] The applicant's father owned a farm in Haiti, where he lived with his entire family, including the applicant. In January 2013, graffiti was put on the front door of the farm and death threats were made. As the eldest son, the applicant felt the threats were targeted at him.

[6] These acts were reported to the police and the justice of the peace, however, the threats persisted. A few weeks later, the applicant and his family had to leave the farm to live in Croix-des-Bouquet, a town 20 minutes away.

[7] In November 2013, the applicant left Haiti for Brazil. He took the opportunity to work in that country, and stayed there for around three years.

[8] On August 7, 2017, the applicant entered Canada through the United States and filed his refugee protection claim.

[9] The RPD concluded that the applicant was not caught by the exclusionary provision of Article 1E of the *United Nations Convention relating to the Status of Refugees*, as no evidence had been presented as to his status in Brazil. However, the account of his fear in Haiti was deemed not credible. In addition, the SPR concluded that there was a viable internal flight alternative in the cities of Cap-Haitien, Cayes or the capital, Port-au-Prince. As a result, the RPD rejected the claim on January 24, 2018.

[10] On appeal, the RAD concluded that the RPD erred regarding the applicant's credibility. The decisive issue in the appeal was the existence of an IFA. The RAD considered the two-part IFA test set out in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 at paragraphs 9 and 10, [1991] FCJ No 1256 (QL) (FCA), namely, that: (1) the decision-maker must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the proposed IFA; and (2) conditions in the proposed IFA must be such that it would not be unreasonable, upon consideration of all the circumstances, including consideration of a claimant's personal circumstances, for the claimant to seek refuge there.

[11] The RAD first considered whether the applicant was at serious risk of persecution in the region constituting the IFA. It concluded that the applicant was not at risk of threats to his life nor did he risk cruel and unusual treatment or punishment if he returned to Croix-des-Bouquets, where his family was located, and even less so if he took refuge elsewhere in the country.

[12] As for the second part, the RAD concluded that the applicant has several family members in Haiti, that he has the possibility of moving within the country, and that his ability to earn a living is not limited, despite the fact that the country's economic performance is not ideal.

[13] The RAD concluded that a viable internal flight alternative exists for the applicant, either in Croix-des-Bouquets or elsewhere in Haiti.

III. Analysis

[14] The applicant argued that the specific circumstances prevailing in Haiti meant that an IFA could not reasonably be considered.

[15] According to the applicant, the RAD could not ignore the fact that Haiti is a highly community-based country where it is particularly easy to obtain information on a specific target and efficiently track that person down. In addition, he criticized the RAD for having erred in its analysis of the applicant's possibility of working elsewhere in Haiti.

[16] The parties agreed that the standard of review that applies to a finding of a viable IFA is reasonableness (*Singh v Canada (Citizenship and Immigration)*, 2019 FC 727 at para 7). The recent Supreme Court decision *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65, confirms that there is a presumption that the appropriate standard of review is reasonableness.

[17] There was no evidence to indicate that those who allegedly threatened the applicant and his family still wish to pursue them. I agree with the respondent that the IFA in this case has been

demonstrated due to the presence of his family in Croix-des-Bouquets for several years without incident. It was therefore open to the RAD to conclude that the interest of the perpetrators was simply to seize the land.

[18] As to applicant's difficulty in obtaining suitable employment, this is not a valid reason for not applying the viable internal flight alternative (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (FCA)). In any event, the evidence shows that the applicant studied five years at the secondary level in Haiti, which, in the context of that country, is considerable. He also worked as a stock handler for almost two years in Brazil. It was therefore reasonable for the RAD to conclude that the applicant had the capacity to work [TRANSLATION] "as he did during his recent stay in Brazil".

IV. Conclusion

[19] Before this Court, the applicant made the same arguments that were already analyzed, but were not accepted by the RAD. In judicial review, the role of the Court is not to reweigh the evidence or to interpret it differently (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 61).

[20] The conclusions involving the existence of an IFA "warrant deference because they involve not only the evaluation of the applicant's circumstances, …but also an expert understanding of the country conditions involved" (*Photskhverashvili v Canada (Citizenship and Immigration)*, 2019 FC 415 at para 16; *Lebedeva v Canada (Citizenship and Immigration)*, 2011 FC 1165 at para 32).

[21] I find nothing irrational in the RAD's decision-making process and its conclusions. Rather, I believe that its analysis has the required attributes of transparency, justifiability and intelligibility, and there is no reviewable error in the decision.

[22] It follows that the application for judicial review must be dismissed.

[23] The parties have not presented any question of general importance for certification, and I agree that there is none.

JUDGMENT in IMM-4677-19

THE 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 18th day of August, 2020

Elizabeth Tan, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4677-19
STYLE OF CAUSE:	JEAN RIGAN BENOIT v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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