Federal Court  Cour fédérale

Date: 20200630

Docket: IMM-3735-19

Citation: 2020 FC 735

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, June 30, 2020

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

JEAN JULIEN JOSEPH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The applicant, Jean Julien Joseph, is a citizen of Haiti. He is seeking judicial review of a decision rendered on May 29, 2019, by the Refugee Appeal Division [RAD]. In that decision, the RAD confirmed the Refugee Protection Division [RPD] decision that the applicant was excluded

from Canada's protection pursuant to Article 1E of the *Convention Relating to the Status of Refugees*, July 28, 1951, 189 UNTS 137, at page 156 [Convention].

[2] In his Basis of Claim Form, the applicant alleged he had been targeted by members of the Parti haïtien Tèt Kale [PHTK] since 2011 because he supports the Rassemblement des démocrates nationaux progressistes [RDNP] political party. He stated that he fled to Brazil in November 2011 after receiving death threats. In 2015, he returned to Haiti believing that the situation had improved. He again received death threats, and his uncle, also a supporter of the RDNP, was killed by supporters of the PHTK. To avoid the same happening to him, he returned to Brazil in January 2016. In September 2016, he again left Brazil due to the [TRANSLATION] "hate and discrimination" faced by Haitians and because he learned that one of his uncle's murderers had gone to Brazil. He arrived in the United States in December 2016 after transiting through 11 countries. On July 29, 2017, he entered Canada and filed a refugee protection claim.

[3] On June 6, 2018, the RPD rejected the refugee protection claim on the ground that the applicant was excluded from the application of the Convention pursuant to Article 1E since he has permanent resident status in Brazil, where he has rights and obligations similar to those of nationals of that country. In its analysis, the RPD concluded that the applicant's allegations of threats and risks in Brazil were not credible and the documentary evidence on racism and discrimination against Haitians in Brazil was not sufficient to show that the applicant faces a risk of persecution in Brazil.

[4] The applicant is appealing from this decision before the RAD. He is not challenging the fact that, at the time of his hearing before the RPD, he had permanent residence in Brazil. He submits that the discrimination he faced when he was in Brazil meant he did not enjoy a status similar to that of nationals of that country.

[5] The RAD dismisses the appeal and confirms the RPD decision.

II. Analysis

[6] The applicable standard of review in matters of exclusion pursuant to Article 1E of the Convention is reasonableness, as this is a question of mixed fact and law (*Majebi v Canada (Citizenship and Immigration)*, 2016 FCA 274 at para 6; *Canada (Citizenship and Immigration) v Zeng*, 2010 FCA 118 at para 11; *Jean v Canada (Citizenship and Immigration)*, 2019 FC 242 at para 14). The Supreme Court decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] does not change this finding (*Vavilov* at paras 10, 16–17).

[7] When the reasonableness standard applies, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov* at para 100). The Court must "focus . . . on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para 83) to determine whether the 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" (*Vavilov* at para 85). Close attention must be paid to a decision maker's written reasons, and they must be interpreted holistically and contextually (*Vavilov* at para 97). It is not a "line-by-line treasure hunt for error" (*Vavilov* at

para 102). If “the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility—and . . . it is justified in relation to the relevant factual and legal constraints that bear on the decision”, it is not open to this Court to substitute the outcome it would have preferred (*Vavilov* at para 99).

[8] In his memorandum, the applicant raises several issues that were not presented in his appeal before the RAD. These issues mainly address the risk of persecution in Haiti. The Court does not intend to consider them because it is well established that an applicant may not impugn the reasonableness of a decision on the basis of an issue that is raised for the first time on judicial review (*Kalonji v Canada (Attorney General)*, 2018 FCA 8 at para 7; *Canada (Citizenship and Immigration) v RK*, 2016 FCA 272 at para 6; *Idris v Canada (Citizenship and Immigration)*, 2019 FC 24 at paras 23–28). The applicant can hardly accuse the RAD of ignoring arguments that he did not raise on appeal (*Kanawati v Canada (Citizenship and Immigration)*, 2020 FC 12 at paras 23–24; *Constant v Canada (Citizenship and Immigration)*, 2019 FC 990 at para 25).

[9] The other issues raised by the applicant can be summarized as follows: the applicant disagrees with the finding that he had rights similar to those of Brazilian nationals. He submits that his documentary evidence showed that [TRANSLATION] “racism and violence against persons of colour in Brazil are systematic, widespread and common among Brazilian authorities” and that, because of this, he faces a serious possibility of persecution in Brazil by reason of his Haitian nationality and his race. He alleges that the RPD and the RAD neglected to conduct an analysis of cumulative discrimination against him and erred in their assessment of state protection in Brazil.

[10] The Court cannot agree with the applicant's arguments.

[11] A review of the RAD's reasons indicates it was well aware that cumulative effects of discrimination and harassment can amount to persecution. However, like the RPD, the RAD found that the applicant's allegations were not credible. It correctly pointed to the contradictions and omissions the RPD noted in the applicant's testimony and the lack of explanations on appeal that would explain the discrepancies in the applicant's testimony. Moreover, it dismissed the applicant's argument that he did not benefit from the same rights as Brazilian nationals because he received threats in the street daily and had lost his job because of his skin colour and Haitian nationality. On this, the RAD noted that the applicant was able to earn a living in Brazil until his departure in 2016 and that he was able to leave the country to go visit his family in Haiti in 2015 to then return the following year. It also noted the applicant's testimony that he had never filed a complaint with the police and had no evidence to rebut the presumption of state protection. Based on the record, the Court is of the view that it was reasonable for the RAD to find, as the RPD did, that the applicant did not show that the alleged discrimination in Brazil amounted to persecution.

[12] The applicant submits that the RAD erred in its assessment of state protection. This argument is not valid. The applicant did not establish the basis of his fear in Brazil; therefore, it was not necessary for the RAD to analyze whether the applicant could benefit from state protection.

[13] Lastly, the applicant erroneously accuses the RAD of not commenting on all the objective documentary evidence. The RAD clearly considered this evidence, but it was not required to comment on every document. It is well recognized that an administrative decision-maker is assumed to have weighed and considered all the evidence before it (*Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 at para 36; *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (QL) at para 1 (CA)). Neglecting to mention a specific piece of evidence does not mean it was ignored or dismissed (*Vavilov* at para 91; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16), and a decision-maker is not required to refer to every piece of evidence that supported its conclusions.

[14] To conclude, the applicant did not raise any error by the RAD that warrants the intervention of this Court.

[15] The application for judicial review is therefore dismissed. No question of general importance was submitted for certification and the Court is of the opinion that this case does not raise any.

JUDGMENT in IMM-3735-19

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed;

2. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

Certified true translation
This 20th day of August 2020.

Vincent Mar, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3735-19
STYLE OF CAUSE:	JEAN JULIEN JOSEPH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	JANUARY 30, 2020
JUDGMENT AND REASONS:	ROUSSEL J.
DATED:	JUNE 30, 2020

APPEARANCES:

Dorin Cosescu	FOR THE APPLICANT
Suzanne Trudel	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Dorin Cosescu Montréal, Quebec	FOR THE APPLICANT
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT