Federal Court  Cour fédérale

Date: 20201215

Docket: IMM-420-20

Citation: 2020 FC 1153

[ENGLISH TRANSLATION]

Ottawa, Ontario, December 15, 2020

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

WEDNISE BRAVEUS
GREGORY PIERRE-CHARLES
GREGOIRE PIERRE-CHARLES

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The principal applicant, Wednise Braveus, is a citizen of Haiti. Her two minor sons, also applicants in the proceeding, are citizens of the United States. Together, they are seeking judicial

review of a decision of the Refugee Appeal Division [RAD], dated December 23, 2019. In its decision, the RAD dismissed their appeal and upheld the decision of the Refugee Protection Division [RPD] that they are neither Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act,* SC 2001, c 27.

[2] In the written account accompanying her Basis of Claim form [BOC Form], the applicant alleges that she is in danger in Haiti because of her spouse's political views. Specifically, she alleges that on September 26, 2012, the house she lived in with her husband and daughter was burned down by armed thugs. These criminals were after her husband because he allegedly spoke out against the ruling party and was a member of the opposition party. A legal report of the incident was produced, but no action was taken. The next day, the applicant, her husband, and their daughter fled to Port-au-Prince. However, the applicant's spouse continued to receive threats. On November 13, 2012, he was pursued by two armed criminals who fled after some people intervened. In January 2013, the applicant's spouse left Haiti for Brazil. As they did not have the means to leave together, the applicant and her daughter remained in Haiti.

[3] On October 15, 2015, criminals broke into the applicant's home in Port-au-Prince. They asked her where her husband was and threatened to kill her. The applicant and her daughter subsequently hid with relatives. On December 22, 2015, the applicant left Haiti alone to join her husband in Brazil.

[4] On May 14, 2016, the applicant's spouse was beaten on his way home. The applicant and her spouse therefore decided to leave Brazil for the United States. Upon crossing the U.S. border

in October 2016, the applicant's spouse was arrested and detained. He was later deported. The applicant nevertheless managed to cross the border because she was pregnant at the time. She remained in the United States for nearly 11 months, where she gave birth to twins, the minor applicants. As the threat of deportation increased with the inauguration of the new president, the applicant left the United States for Canada accompanied by the minor applicants. They entered Canada on September 8, 2017.

[5] On August 23, 2019, the RPD rejected their claim for refugee protection on the basis that the applicant's allegations were not credible. In this regard, the RPD pointed out several inconsistencies and omissions in the applicant's narrative and found that her failure to make a claim for asylum during her nearly 11-month stay in the United States was inconsistent with the alleged risk. It also found that the applicant had an internal flight alternative elsewhere in Haiti and that she had not demonstrated a serious possibility of persecution by reason of her gender. With respect to the minor applicants who are U.S. citizens, the RPD found that there was no evidence of a fear of persecution in the United States.

[6] The applicants appealed that decision to the RAD. Like the RPD, the RAD concluded that the applicant's allegations were not credible. In its view, the RDP's finding was determinative, and it found that there was no need to examine the internal flight alternative arguments. The RAD also confirmed that the applicant had not demonstrated that there was a serious possibility of persecution by reason of her membership in the social group of women, in the event she were to return to Haiti.

[7] Before this Court, the applicants criticized the RAD for improperly reviewing the findings of credibility made by the RPD and for failing to take into account the applicant's particular characteristics in its analysis of the risk of persecution based on her membership in the social group of women, in the event she were to return to Haiti.

II. Analysis

[8] The standard of review applicable to RAD decisions on credibility and the assessment of evidence is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 143 [*Vavilov*]; *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35; *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (QL) at para 4 (FCA); *Noël v Canada (Citizenship and Immigration)*, 2020 FC 281 at para 16).

[9] Where the reasonableness standard applies, the starting point is judicial restraint and respect for the distinct role of administrative decision makers (*Vavilov* at para 75). The Court is interested in "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para 83). It must consider 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" (*Vavilov at* para 99). Close attention must be paid to the written reasons of the decision maker and they must be interpreted holistically and contextually (*Vavilov* at para 97). The Court does not ask "what decision it would have made in place of that of the administrative decision maker, attempt to ascertain the 'range' of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis or seek to determine the 'correct' solution to the

problem" (*Vavilov* at para 83). Nor is it a "line-by-line treasure hunt for error" (*Vavilov* at para 102). Finally, the "burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov* at para 100).

[10] The applicants argue that the RAD failed to comply with the principle established by the Federal Court of Appeal in *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (FCA) [*Maldonado*], that the sworn testimony of a refugee protection claimant is presumed to be true unless there is good reason to doubt its truthfulness. They argue that it was unreasonable for the RAD to reject the applicant's explanation for her failure to claim asylum in the United States and to criticize her for not being able to indicate the number of individuals who entered her home on October 15, 2015.

[11] The Court finds the applicants' argument to be ill-founded.

[12] The presumption arising from *Maldonado* is not absolute. If there is a valid reason to doubt an applicant's testimony, the court may derogate from the presumption of truthfulness.

[13] In this case, the RAD found the applicant's allegations not to be credible because of the omissions, inconsistencies and implausibilities arising from her testimony on central elements of her written account. The RAD's concerns are clearly set out in its decision.

[14] First, the RAD found it unlikely that the applicant was unable to remember the name of the person with whom she alleged having lived in Port-au-Prince for more than 2 years following

the departure of her spouse to Brazil, even though she was able to provide his address in a precise manner as well as dates with respect to various events. Second, the RAD found inconsistent the failure to mention the address of this friend in her IMM 5669 form. Noting that there was no mention that a translation was required, the RAD pointed out that the applicant provided her different addresses in Brazil, the United States and Canada and that she also indicated that she had been in transit for a period of three months in 2016. The RAD found that the location where the applicant took refuge after the threats and the fire at the family residence was directly related to the measures she took to protect herself and was not peripheral. Third, the RAD was unsatisfied with the applicant's explanation that she did not claim asylum in the United States because she did not have the means or time to do so as a result of her pregnancy and was unaware that legal aid services were available to her in the United States. Given the minor applicants' dates of birth, the length of time they were in hospital, and the applicants' dates of entry into Canada, the RAD was of the view that the applicant had enough time to claim asylum after giving birth. It also noted that the applicant had family in the United States and that she acknowledged that she had failed to take any steps to regularize her situation. Fourth, the RAD found that the description of the October 15, 2015, incident was inconsistent and that the applicant had not established that the incident had actually occurred. In this regard, the RAD pointed out that the applicant was unable, at the hearing, to give even an approximate number of criminals who had entered her [TRANSLATION] "home".

[15] The RAD assessed the credibility findings made by the RPD and, after an independent analysis of all of the evidence, including the recording of the hearing before the RPD, it found that the applicant's allegations were not credible. The omissions, inconsistencies and

implausibilities arising from the applicant's account accompanying her BOC form and her testimony were sufficient to raise doubts in the minds of the RPD and the RAD as to the truthfulness of the applicant's allegations. The applicants failed to persuade the Court that the RAD's findings on the first point were unreasonable.

[16] The applicants further argue that the RAD failed to consider the applicant's membership in the social group of women. In particular, they allege that the RAD failed to take into account the applicant's particular characteristics, as directed in the *Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution* and the case law (*Josile v Canada (Citizenship and Immigration)*, 2011 FC 39; *Frejuste v Canada (Citizenship and Immigration)*, 2009 FC 586). The applicant alleges that if she were to return to Haiti, she would be alone, as a single mother, without any family support. She adds that her spouse, who is no longer in Haiti, has no intention of returning and that her parents do not have the means to support her and her minor children.

[17] The Court cannot agree with this argument, given that the RAD's reasons clearly demonstrate that it took into account all of the applicant's characteristics that were brought to its attention. The RAD acknowledged that the situation in Haiti is particularly difficult for women who are homeless, or living in camps for displaced persons or in poor neighborhoods near urban centers. It noted, however, that the applicant's family has a home where there are two men present. In addition, it added that the applicant had lived in Haiti without her spouse from January 2013 to December 2015 and that with the exception of the incident of October 15, 2015, which the RAD did not find to be credible, the applicant did not speak of any fears during this

period at the hearing. On this point, the RPD noted that the applicant's mother, three sisters and two brothers lived in Haiti and that the applicant was a resourceful young woman who had always worked as a merchant in Haiti.

[18] The RAD was also in agreement with the RPD's determination that there was nothing in the evidence to indicate that the applicant could not go and live with her family or that it would be unreasonable for her to do so. In the absence of any allegation or evidence showing that the applicant would not have the support of her family in Haiti, the RAD could reasonably find that the applicant did not fit the profile of vulnerable women at risk of persecution on the basis of their gender.

[19] It is important to remember that findings of credibility and the assessment of evidence require a high degree of deference from this Court. While applicants may disagree with the findings of the RAD and the RPD, it is not for this Court to re-assess and re-weigh the evidence to reach a conclusion that is favourable to them (*Vavilov* at para 125; *Canada* (*Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59).

[20] In conclusion, the Court is of the view that, when the reasons of the RAD are interpreted holistically and contextually, they bear the hallmarks of reasonableness (*Vavilov* at paras 97, 99).

[21] For these reasons, the application for judicial review is dismissed. No issue of general importance was submitted for certification, and the Court is of the view that none arises in this matter.

JUDGMENT in IMM-420-20

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

Johanna Kratz, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

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