Federal Court  Cour fédérale

Date: 20210113

Docket: IMM-6812-19

Citation: 2021 FC 48

Ottawa, Ontario, January 13, 2021

PRESENT: Mr. Justice Pentney

BETWEEN:

JEAN LOUIS JEAN PHILIPPE

Applicant

And

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Jean Louis Jean Philippe, is a citizen of Haiti who fled that country for Brazil, where he obtained permanent resident status. After three years in Brazil, he came to Canada where he claimed refugee status. His claim was denied by the Refugee Protection Division (RPD) of the Immigration and Refugee Board and that decision was upheld on appeal by the Refugee Appeal Division (RAD).

[2] The Applicant now seeks judicial review of the RAD's decision. For the following reasons, this application will be dismissed.

[3] The Applicant says that he fled Haiti because he received threats in regard to certain land he inherited. He left Haiti for Brazil in April 2013, and on September 26, 2014, he obtained permanent residence in Brazil. The Applicant says that during the three years he lived in Brazil he experienced persecution because: (a) he was paid less than Brazilians for doing the same job; (b) his last employer did not always pay him; (c) his landlord threatened to evict him when he failed to pay his rent; (d) he was forced to sit separately from others on public transportation; and (e) when he visited a hospital because he had stomach pain, he was told to take lozenges and come back three months later.

[4] He also alleges that in April 2016, he received death threats from a colleague at work, who said the Applicant was stealing jobs from Brazilians. The Applicant did not report this threat to his employer or to Brazilian authorities. He left Brazil on April 23, 2016, approximately ten days after he resigned from his job. He arrived in Canada shortly thereafter and claimed refugee status.

[5] The RPD rejected the Applicant's claim because it found he was excluded by virtue of section 98 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IPRA*] and under Article 1E of the United Nations *Convention Relating to the Status of Refugees*, July 28, 1951, 189 UNTS 137 [*Convention*]. The RPD excluded the Applicant because he had permanent residence status in Brazil, and it found that he did not show that he faced a serious possibility of persecution or risk to life, or risk of cruel and unusual punishment pursuant to sections 97 and 98

of *IRPA* if he was to return to Brazil. The RAD confirmed this decision, on the same grounds, on October 30, 2019.

[6] The Applicant argues that the RAD's decision should be reversed because it failed to analyze his claim that the discrimination he faced in Brazil amounted to persecution when considered cumulatively, and it failed to provide adequate reasons to explain its conclusion on that point. He notes that the RAD's findings on cumulative impact are stated in four words: "même pour motifs cumulés" [TRANSLATION] "even cumulatively."

[7] The Applicant submits that certain of the RAD's findings amounted to errors of law that should be reviewed on a standard of correctness because they constitute general questions of law of central importance to the legal system, citing *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. He also submits that the failure to provide adequate reasons is an error in law that amounts to a breach of procedural fairness, citing *Buri v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1358 at paragraph 22.

[8] I disagree. None of the exceptions in *Vavilov* applies here, and the decision of the RAD is to be reviewed on a standard of reasonableness (*Celestin v Canada (Citizenship and Immigration)*, 2020 FC 97 at paras 31-32 [*Celestin*]). It has long been held that the adequacy of a decision-maker's reasons is not a stand-alone basis for quashing a decision or a matter of procedural fairness, but rather an issue to be considered in assessing the reasonableness of the decision (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 15, 20-22). That approach is confirmed in *Vavilov*, and I will therefore apply the reasonableness standard to the review of the RAD's decision on both issues.

[9] Under the *Vavilov* framework for review on a standard of reasonableness, "[t]his Court's role is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints" (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 2). The reasons must be read as a whole to determine whether they justify the result in light of the facts and the law that applies, and whether they display a logical and coherent chain of reasoning that justifies the result. The burden is on the Applicant to show that "any shortcomings or flaws relied on… are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100).

[10] I am not persuaded that the Applicant has demonstrated any errors in the reasons or reasoning of the RAD in the case at bar that are sufficiently central or significant to warrant overturning the decision.

[11] The Applicant does not deny that he obtained permanent residence status in Brazil. Rather, he argues that the RAD erred in failing to apply the proper test to assess whether the various incidents of discrimination he says he experienced in Brazil amounted to persecution. He also claims that the RAD failed to explain its analysis of the cumulative impact of discrimination, citing *Mete v Canada (Minister of Citizenship and Immigration)*, 2005 FC 840 at paragraphs 8-11 [*Mete*].

[12] In particular, the Applicant points to the RAD's treatment of his evidence that he received a death threat from a colleague. He testified that he knew a Haitian in Brazil who had been stabbed and, even though this was the most convincing evidence submitted in respect of his fear of persecution, the RAD summarily dismissed his testimony by concluding it was merely an

isolated incident. The Applicant submits that this is indicative of the RAD's failure to apply the proper legal standard to the assessment of whether his claims of discrimination amounted to persecution, as set out in the jurisprudence and the *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, UNHCR, UN Doc HCR/1P/4/ENG/REV.4 (2019) [*Handbook*].

[13] I am not persuaded.

[14] In light of the questions that were certified in *Celestin* and *Saint Paul v Canada (Citizenship and Immigration)*, 2020 FC 493, there remains some uncertainty in the case-law as to whether the RPD or the RAD must consider the risk raised by a refugee claimant in respect of his or her country of residence before applying the exclusion under Article 1E of the *Convention* (see *Mwano v Canada (Citizenship and Immigration)*, 2020 FC 792 and the cases cited therein). In this case, however, it is not necessary to consider this further because the RAD did, in fact, conduct such an analysis (see *Joseph v Canada (Citizenship and Immigration)*, 2020 FC 839 at para 6).

[15] The RAD analyzed the Applicant's evidence regarding each of the claims of discrimination, having first stated the stringent test for persecution set out in the jurisprudence and the *Handbook*. As the RAD noted at paragraph 58, this test requires an assessment whether incidents of discrimination are "suffisamment graves et doivent avoir lieu sur une période de temps assez longue pour en conclure que l'intégrité physique ou morale des revendicateurs est menacée" [TRANSLATION] "sufficiently serious and occur over such a long period of time that it can be said that the claimants' physical or moral integrity is threatened."

[16] The RAD accepted that the Applicant had experienced discrimination in Brazil and it also noted the objective documentation that showed that other Haitians had similar experiences. However, the RAD found that the Applicant had been employed during almost the entire time he lived in Brazil, and that he had never been denied access to housing, health care, or other services there.

[17] The Applicant claims that the RAD did not offer sufficient reasons to support its finding that the threats of death from his colleague were isolated incidents, but it is difficult to understand how it could have concluded otherwise because he only offered evidence of a single occasion where such a threat was made against him. The RAD noted that the Applicant did not seek the assistance of his employer or Brazilian authorities after he was threatened (see *Fleurisca v Canada (Citizenship and Immigration)*, 2019 FC 810 at para 24).

[18] Overall, I am not persuaded that the Applicant has demonstrated an error in the analysis of the RAD. The RAD's reasons reflect a careful consideration and engagement with the various arguments raised by the Applicant. This is not a case where the RAD made no attempt to consider the cumulative impact of discriminatory experiences (*Nugzarishvili v Canada (Citizenship and Immigration)*, 2020 FC 459 at para 60), nor did the RAD fail to consider any of the Applicant's allegations as part of its assessment (*Zatreanu v Canada (Citizenship and Immigration)*, 2020 FC 472 at para 17).

[19] Furthermore, this is not the type of situation that was addressed in *Mete*, where no reasons are provided to explain why a long series of discriminatory acts do not amount to persecution (see *Mohammed v Canada (Citizenship and Immigration)*, 2009 FC 768 at para 67). Although it may have been preferable for the RAD to have engaged in a more detailed

explanation of its conclusion on the question of cumulative discrimination, this is not a fatal error given its findings on the individual incidents and its specific reference to this point. Although the analysis is brief, it follows a detailed review of the individual incidents, which in themselves do not tend to support a conclusion that their cumulative impact would be sufficiently grave as to meet the legal test that the RAD correctly cited.

[20] Reviewing the decision as a whole, there can be no doubt that the RAD considered the claims of the Applicant both individually and in their totality, and on both it found that the discrimination he experienced in Brazil did not amount to the type of serious and sustained conduct that would support a finding of persecution – measured against the standard set out in the jurisprudence. The RAD's finding is consistent with *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at 733-34, where the Supreme Court stated that, for treatment to amount to persecution, it must be a "sustained or systemic violation of basic human rights demonstrative of a failure of state protection." The onus was on the Applicant and the record reflects that he failed to discharge his onus (see *Riboul v Canada (Citizenship and Immigration)*, 2020 FC 263 at para 39).

[21] The RAD's analysis is clear and coherent and its conclusion is supported on the facts and the law. This is all that reasonableness review requires under the *Vavilov* framework. For these reasons, I am not persuaded that the RAD's decision should be overturned.

[22] The application for judicial review is dismissed. There is no question of general importance for certification.

JUDGMENT in IMM-6812-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Jonathan Gruszczynski	FOR THE APPLICANT
Renalda Ponari	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Canadian Immigration Team Barristers and Solicitors Westmount, Quebec	FOR THE APPLICANT
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT