

Cour fédérale



Federal Court

Date: 20210208

Docket: IMM-6699-19

Citation: 2021 FC 126

Ottawa, Ontario, February 8, 2021

PRESENT: Mr. Justice Annis

BETWEEN:

TANISHA TAMARHA BEECHER

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant seeks judicial review of the decision from the Refugee Appeal Division (RAD) dated September 25, 2019, which confirmed the refusal of the Applicant's refugee claim as she was found to be neither a Convention refugee nor person in need of protection pursuant to the *Immigration and Refugee Protection Act*, SC 2011, c 27, ss 96–97(1) [IRPA].

[2] For the following reasons, this Court dismisses this application for judicial review.

II. **Background**

[3] The Applicant is a citizen of Jamaica and is claiming refugee protection for risk to life or of serious harm from her former partner and father of her child, as well as from two gangs.

[4] She alleges that, in the past, she has experienced domestic violence at the hands of the former partner and that she has been robbed, assaulted and harassed by two gangs in Jamaica.

[5] The Applicant came to Canada a number of times on work permits and returned when her work was completed, and she has resided in Canada without returning to Jamaica since 2010. She brought her refugee claim in 2017.

[6] The Refugee Protection Division (RPD) determined that the Applicant was credible but that any risk was speculative and either did not rise to the level of a serious possibility or was generalized risk faced by all Jamaicans. The RAD confirmed the decision on appeal.

[7] The Minister of Immigration, Refugee and Citizenship (the Minister) also intervened on appeal and submitted the Applicant's two previous negative humanitarian and compassionate (H&C) applications and argued that the appeal should be denied as the specific gang violence alleged is not laid out in these applications, nor is any specific targeting of the Applicant which demonstrates that the allegations are credible.

III. **Contested Decision**

[8] The RAD firstly considered whether an oral hearing was required and found that it was justified as the minister's evidence on the past H&C applications, admitted into the record, called the Applicant's credibility into question.

[9] The RAD clarified that the oral hearing was, however, not convened on the basis of the new evidence that the Applicant sought to admit, namely the RPD transcript that was part of the record and a text message dated July 2018 from her former partner that threatens her son; the latter was submitted after the RAD hearing.

[10] In its consideration, the RAD found the text message inadmissible as it predates the RPD hearing and the rejection of her claim, and there was no evidence to suggest that it was not reasonably available at those times, as it is a screenshot from the Applicant's phone. The supposition by her counsel that it was recently discovered was not provided in the form of sworn evidence from the Applicant nor did it explain the timeline of when the Applicant looked for the message or why she could not have done so prior to the hearing as it would have been germane.

[11] Furthermore, upon review, the RAD determined that the message was not relevant to the claim or appeal. The text purports to threaten the Applicant's son, not the Applicant and, therefore, it is not relevant as no threat in evidence is met. The RAD further noted that it saw no connection between the text message and the ministerial intervention as it post-dates the H&C applications.

[12] The RAD then proceeded by conducting a review of the RPD decision on a standard of correctness.

[13] The RAD firstly concurred with the RPD that the alleged risk of persecution on the basis of her gender from her ex-partner does not amount to a serious possibility of persecution.

Though it found the allegations of past abuse credible, it determined for several reasons that the totality of the evidence did not establish more than a mere risk of persecution on a forward-facing basis. It found compelling the following facts:

- a) No physical abuse occurred since 2003, when the relationship ended for good, and the Applicant did not leave Jamaica permanently until 2010;
- b) The ex-partner has not contacted the Applicant since the August 2018 threat, which was found to be an idle threat, on a balance of probabilities;
- c) The Applicant's son has not heard any threats towards the Applicant since the August 2018 threat;
- d) The Applicant's son is nearly an adult and would not be residing with the Applicant were she to live in Jamaica;
- e) The ex-partner is a United States citizen who resides primarily there and visits Jamaica only three or four times a year on average; and
- f) The Applicant did not identify the ex-partner as someone she feared at her RPD hearing.

[14] Additionally, the RAD found that there is no section 97 risk from the ex-partner as it must be established on a higher threshold of a balance of probabilities.

[15] The RAD also agreed that the alleged risk of gang violence is neither persecutory nor personalized on a forward-facing basis and therefore does not meet the requirements of sections 96 and 97 of the *IRPA*. It found no reason, having reviewed the record, to disturb the finding that the allegation was credible and, though not challenged, that the allegation was not based on a Convention ground. The RAD subsequently indicated that the RPD had made no error in its approach and it considered all the relevant factors, notably the personal circumstances of the Applicant and evidence of crime suffered by family members, and determined that the forward-facing risk of gang targeting is general. Moreover, the RAD remarked that the Applicant has been in Canada for nine years and has not presented any evidence to suggest any gang continues to target or threaten her personally.

[16] The appeal was thus dismissed and the RPD's decision was confirmed.

IV. **Issues**

[17] The Applicant advances a number of issues as follows, which the Court will deal with seriatim:

- 1) Whether the RAD erred in not accepting the new evidence;
- 2) Whether the RAD erred in its finding that the risk of persecution on the basis of the Applicant's gender from her ex-partner did not amount to a serious possibility of persecution;
- 3) Whether the RAD erred on finding the personalized risk due to gang violence on a forward-looking basis did not amount to a serious possibility of persecution; and
- 4) Did the RAD fail to consider an objective risk—returnee to Jamaica.

V. Standard of Review

[18] In accordance with the Supreme Court of Canada decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov], the framework to determine the standard of review is based on the presumption that an impugned decision is reasonable (*Ibid* at para 16). This presumption has not been rebutted for any of the issues raised in this case.

[19] The focus of reasonableness review must be on the decision actually made by the decision maker concerning both the reasoning process and the outcome. The reviewing court must determine whether the decision “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” (*Ibid* at paras 85, 99ff). A reasonable decision is justified in light of the particular legal and factual constraints that bear on the decision — “it is not enough for the outcome of a decision to be ... justifiable[,] the decision must also be justified” (*Ibid* at paras 85–86). The reviewing court must determine whether the decision “bears the hallmarks of reasonableness—justification, transparency and intelligibility” (*Ibid* at para 99). Finally, the onus is on the party who contests the decision to demonstrate that it is not reasonable (*Ibid* at para 100).

[20] With respect to factual findings which extends to inferences of fact, a reviewing court is to take a non-interventionist approach in accordance with the policies enumerated in *Housen v Nikolaisen*, 2002 SCC 33 at paras 14–18. Parties must demonstrate that exceptional circumstances apply in order to interfere with factual findings, and must not request the court to re-weigh and reassess the evidence considered by the decision maker (*Vavilov* at paras 125–26).

VI. Analysis

A. *Whether the RAD erred in not accepting the new evidence*

[21] The RAD provided ample reasons to not accept the new evidence, that of a text message from her ex-partner dated July 2018, which she claims only to have recently discovered on her phone. The RAD reasons include that the message predates the hearing, with no evidence to suggest that the message was not reasonably available to her at that time, based upon an unsworn statement. The RAD further found that the text message was not relevant to the claim, as the threat was towards her son and not the Applicant. The arguments regarding the *Chairperson's Guidelines 4* were not advanced before the RAD, nor are they applicable.

B. *Whether the RAD erred in its finding that the risk of persecution on the basis of the Applicant's gender from her ex-partner did not amount to a serious possibility of persecution*

[22] The Applicant argues that the RAD did not apply a forward-looking approach to analyzing the evidence, contending that the RAD speculates—despite the past incidents demonstrating persecution—that she will not face a future risk. This submission does not capture the reasons of the impugned decision summarized above. In effect, the Applicant is asking the court to reweigh the evidence, which cannot do without a process or fact-finding error apparent in the reasons.

C. *Whether the RAD erred on finding the personalized risk due to gang violence on a forward-looking basis did not amount to a serious possibility of persecution*

[23] The RAD rejected the Applicant's section 97 submission of being at risk of gang violence on several grounds, including: that many years have passed since the incident in question without any evidence that the gang has continued to threaten her or try to find her; the Applicant returned to Jamaica after the gang violence without problems; evidence that other family members suffered from violent crime did not establish a personal risk for the Appellant, and on a forward-facing basis there is no evidence that this was anything more than random and widespread crime. Once again, the Applicant is requesting that the Court to reweigh the evidence, which it cannot do when there is probative evidence supporting the conclusion and no evidence of an evident process or fact-finding error.

D. *Did the RAD fail to consider an objective risk — returnee to Jamaica*

[24] The Court agrees with the RAD's statement that the Applicant's arguments on this issue were confusing and not clearly set out. Before the RAD, the submissions were framed under the heading "Natural Justice and Procedural Fairness". She claimed that there was a breach of natural justice by failing to consider state protection or a failure to consider section 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11. The Applicant did not refer to country condition documents before the RPD or the RAD, as are now argued. The submission was that the RPD did not carry out any analysis of state protection, although acknowledging that it was for the Applicant to provide all relevant information. The RAD noted that the issue of state protection

only arises if the Applicant establishes a risk. The Applicant has not established that the RAD was unreasonable in its treatment of this issue, particularly inasmuch as it was not submitted in any fashion to the RAD.

VII. **Conclusion**

[25] The application is dismissed. No questions were presented for certification on appeal and none are certified.

JUDGMENT in IMM-6699-19

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No questions were presented for certification on appeal and none are certified.

"Peter Annis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6699-19

STYLE OF CAUSE: TANISHA TAMRHA BEECHER v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JANUARY 12, 2021

JUDGMENT AND REASONS: ANNIS J.

DATED: FEBRUARY 8, 2021

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