

Federal Court



Cour fédérale

Date: 20200819

Docket: IMM-4901-19

Citation: 2020 FC 835

[ENGLISH TRANSLATION]

Ottawa, Ontario, August 19, 2020

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

ALIUS CAZIUS

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of a decision rendered by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board [IRB] on July 15, 2019, in which the RAD confirmed the decision of the Refugee Protection Division [RPD] that the applicant is a person referred to in Article 1E of the United Nations *Convention relating to the Status of*

Refugees [Convention] and that, under section 98 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], he is therefore not a Convention refugee or a person in need of protection.

II. Facts

[2] The applicant is a citizen of Haiti who claims that he was beaten on July 30, 2015, because he distributed pamphlets for 22 days at the beginning of an electoral campaign. The applicant stated at the RAD hearing that he had held the position of pamphlet distributor but was not a member of the party.

[3] He tried to avoid the persecution by moving to Gonaïves; even so, he received threatening telephone calls. Fearing for his life, he left Haiti.

[4] Believing that his life was in danger, he fled Haiti for Brazil on September 23, 2015, where he became a permanent resident.

[5] The applicant alleges that he was discriminated against in Brazil and that he therefore left the country on December 31, 2015. Following his departure, he arrived in the United States on February 8, 2016. On May 16, 2017, he arrived in Canada and claimed refugee protection.

III. IRB decision

[6] The RAD confirmed the RPD's determination that the applicant was a person referred to in Article 1E of the Convention because he received and already has *prima facie* permanent residence in Brazil.

[7] As a result of this finding, the burden of proof shifted, and the applicant had to establish, by means of evidence specific to him, why he would no longer have the permanent residence in question (see paragraphs 23 and 24 of the RAD decision).

[8] In addition, the RAD concluded that the applicant had not been subjected to persecution.

[9] With respect to his country of citizenship, Haiti, the RAD concluded, as did the RPD, that the applicant had held the position of pamphlet distributor and had not been a member of the party. Consequently, the RAD also concluded that the applicant had not held a prominent position within the party.

IV. Analysis

[10] The criteria set out in *Fleurisca v Canada (Citizenship and Immigration)*, 2019 FC 810, form the basis for this Court's analysis in respect of Article 1E of the Convention.

[11] Exclusion under Article 1E of the Convention arises from findings of mixed fact and law, which are reviewable on reasonableness, using the specific criteria from the most recent Supreme

Court of Canada decision on reasonableness, *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

[12] Article 1E of the Convention is incorporated into Canadian law in section 98 of the IRPA, which provides that a person who is referred to in Article 1E of the Convention is not a Convention refugee or a person in need of protection.

[13] Considering the evidence before it, the RAD reasonably concluded that the applicant failed to rebut the *prima facie* evidence that he held—or could still claim—permanent residence status in Brazil, given that his personal status remained to be proven.

[14] The evidence indicates that a permanent resident has the same rights and obligations as those of a citizen of Brazil; therefore, four specified criteria provide a basis for the decision (*Noel v Canada (Citizenship and Immigration)*, 2018 FC 1062). The Court agrees with the RAD's decision and finds it to be reasonable; therefore, the decision will not be reviewed by this Court.

V. Conclusion

[15] Section 98 of the IRPA states that a person referred to in Article 1E of the Convention is excluded and is not a Convention refugee or a person in need of protection.

[16] On the basis of the legislation, as interpreted by case law, this Court agrees that the RAD's decision is reasonable in the context of the statute and the case law interpreting the statute.

[17] Accordingly, this Court dismisses this application for judicial review.

JUDGMENT in IMM-4901-19

THIS COURT’S JUDGMENT is that the application for judicial review is dismissed.

There is no question of general importance to be certified.

Obiter

Perhaps one day, discrimination on its own may be considered to be a ground, but that is not the case at present; see my judgment at paragraph 68 and my obiter in respect of paragraph 68 at the end of *Csonka v Canada (Citizenship and Immigration)*, 2012 FC 1056.

“Michel M. J. Shore”

Judge

Certified true translation
Johanna Kratz, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4901-19

STYLE OF CAUSE: ALIUS CAZIUS v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MATTER HEARD BY VIDEOCONFERENCE
BETWEEN OTTAWA, ONTARIO, AND
MONTRÉAL, QUEBEC

DATE OF HEARING: AUGUST 12, 2020

JUDGMENT AND REASONS: SHORE J.

DATED: AUGUST 19, 2020

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