

Federal Court



Cour fédérale

Date: 20220616

Docket: IMM-4188-20

Citation: 2022 FC 882

[ENGLISH TRANSLATION]

Ottawa, Ontario, June 16, 2022

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

GETHRO JULES

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The applicant, Gethro Jules, a Haitian citizen, is seeking judicial review of the decision of the Refugee Appeal Division [RAD] dated August 17, 2020. In short, the RAD rejected the new evidence submitted by Mr. Jules and held that the determinative issue was his credibility. The

RAD dismissed Mr. Jules's appeal and confirmed the decision of the Refugee Protection Division [RPD] that he was neither a Convention refugee nor a person in need of protection.

[2] Mr. Jules argues that the RAD erred in that (1) it applied the wrong requirements to the admission of new evidence, first by rejecting new personal evidence directly related to the applicant's claim for refugee protection, and then by failing to consider the material contained in the National Documentation Package on Haiti; (2) it conducted a disproportionate analysis of the facts and evidence and rejected and minimized evidence favourable to the applicant; and (3) the deportation of claimants as a result of a claim being denied violates sections 7 and 12 of the *Canadian Charter of Rights and Freedoms* [the *Charter*] as well as Canada's obligations under international law, including Article 3 of the Convention Against Torture.

[3] For the following reasons, the application for judicial review will be dismissed.

II. Background

[4] On February 24, 2017, Mr. Jules entered Canada illegally and claimed refugee protection.

[5] On the same day, an officer of the Canada Border Services Agency [CBSA] met with the applicant. Mr. Jules confirmed to the officer that (1) he had lost his passport when he entered Mexico; (2) he had entered the United States from Mexico in December 2014; (3) he had no status in the United States and no U.S. study permit; (4) the situation in Haiti was complicated and dangerous, and it was to save his life; (5) no one was out to get him personally, and he had

been plagued by bad luck; and (6) no one in Haiti wanted him dead, and his problems had begun in late 2013.

[6] A few days later, Mr. Jules signed forms reconfirming that he had arrived in the United States in December 2014 and had remained there until his departure for Canada in February 2017.

[7] On March 13, 2017, Mr. Jules signed his Basis of Claim [BOC] form. He again confirmed that he had left Haiti for Mexico, had arrived in the United States in December 2014, and had come to Canada in February 2017. In the written account he attached to his BOC form, Mr. Jules noted that his father had been a political activist since around 1998 and had joined the [TRANSLATION] “Pitit Dessalines platform”, the opposition party, in 2015. Mr. Jules stated that he had accompanied his father quite often, that around August 2013, he had been the victim of a robbery, that his father had received a phone call confirming that it was because of his political views and that in September 2014, someone had hit him and seriously injured him. Mr. Jules stated that he had not been well mentally and morally when the CBSA officer had questioned him upon his arrival. Lastly, Mr. Jules stated that since February 3, 2017, his father had been living in hiding and had been the subject of threats.

[8] On May 8, 2018, the Minister of Public Safety Canada notified the RPD that he would be intervening in Mr. Jules’s claim by producing certain pieces of evidence. This notice of intervention stated, among other things, that (1) the Minister of Public Safety had confirmation from U.S. authorities that a visa had been issued to Mr. Jules in August 2016; (2) Mr. Jules had

allegedly applied for admission to the United States on two occasions, September 28, 2016, and January 17, 2017; (3) Mr. Jules had used his Haitian passport on both of those entries; and (4) from September 2016 through January 2017, Mr. Jules had been in Haiti. The Minister of Public Safety attached supporting documents to his notice.

[9] On June 22, 2018, through his counsel, Mr. Jules submitted 22 exhibits to the RPD in advance of the hearing scheduled for July 4, 2018.

[10] Exhibit P-1 was an amended statement from Mr. Jules, signed on June 18, 2018. In it, Mr. Jules admitted that the contents of the Minister of Public Safety's documents were true. He adjusted his written account to state, in brief, that he had actually remained in hiding at home in Haiti while waiting to find a way to flee the country, and that he had obtained a U.S. study permit since it was the best way to flee the country. Mr. Jules also stated that the persecution of his father worsened after the February 2017 elections, that his father was forced to live a nomadic, solitary life, and that he had decided to come to Canada at that moment. He also explained what had motivated him to lie to the officer when he arrived in Canada and on the forms after his arrival.

[11] On July 4, 2018, the RPD heard Mr. Jules's claim for refugee protection and Mr. Jules testified. In his testimony, Mr. Jules referred to two events that had not been mentioned in either his BOC form or his amended statement: (1) on February 1, 2015, Mr. Jules allegedly attended a meeting in Port-au-Prince with his father, a meeting that brought together departmental representatives and candidate Moise; and (2) between November 2016 and January 2017,

Mr. Jules reportedly met with many groups in order to convince people not to vote for Gracia Delva, who was running for Senate. In addition, during his testimony, Mr. Jules stated that he was the one who had assembled his companions in preparation for the 2013 event during which he was allegedly robbed.

[12] On July 16, 2018, the RPD denied Mr. Jules's claim for refugee protection on grounds of credibility. The RPD concluded that Mr. Jules had not been credible about the fact that he or his father were allegedly politically involved, or that his life was reportedly in danger as a result of that involvement.

[13] The RPD pointed out that (1) Mr. Jules admitted that he had lied; (2) Mr. Jules never mentioned having been persecuted or having political opinions when he arrived in Canada; (3) his statement to the port of entry officer that he had simply been unlucky in Haiti contradicted his subsequent allegations of persecution; (4) Mr. Jules failed to mention in his BOC form that he had attended the first "Pitit Dessalines" conference on February 1, 2015; (5) Mr. Jules failed to mention, in his amended statement, that he had engaged in political activities from November 2016 to January 2017; (6) Mr. Jules speculated about the reasons for the robbery in August 2013 since there was nothing in the message left with his father to suggest that the robbery was related to his political views; (7) there was no evidence to suggest that the September 2014 event had been related to political activities; and (8) Mr. Jules failed to mention in his BOC form the context in which he was brought to the location of the August 2013 robbery.

[14] With regard to the evidence that Mr. Jules submitted with his claim, the RPD noted that (1) the power of attorney issued by the Pitit Dessalines platform (Exhibit P-7) was not addressed to anyone because no name was listed on it; and (2) the copy of the Pitit Dessalines platform proxy was insufficient to render testimony credible that, at its basis, was not.

[15] On August 24, 2018, Mr. Jules filed his submissions with the RAD in support of his appeal. He then attached to his record exhibits P-1 through P-22 previously submitted to the RPD, and two new pieces of evidence, an affidavit, which he had signed on August 24, 2018, and a letter from his father in Appendix A, dated August 22, 2018.

[16] In his initial submissions, Mr. Jules (1) argued that the panel had erred in rejecting both the evidence filed and his testimony; (2) argued that the panel had erred in its assessment of his credibility; and (3) asked [TRANSLATION] “what weight should be given to the fact that the appellant omitted in his BOC form certain details regarding his political involvement after 2014; was saying that he had been politically active not enough?”

[17] Mr. Jules tersely alleged at paragraph 39 that the evidence was not available, and at paragraph 13, Mr. Jules noted that his father [TRANSLATION] “had had to flee and had gone missing”.

[18] On June 15, 2020, the RAD sent a note to Mr. Jules informing him that he was permitted to submit additional documents because of the COVID-19 pandemic.

[19] On July 14, 2020, Mr. Jules filed additional submissions, to which he attached nine new exhibits, identified as P-23 through P-31. Exhibit P-23 was actually a reproduction of the aforementioned Appendix A, the father's letter dated August 22, 2018.

[20] In his additional submissions, Mr. Jules argued that the RPD (1) had made no mention of the personalized evidence; (2) had erred in believing that everything needed to have been recounted in the initial written account; and (3) had disregarded the danger in Haiti and the documentary evidence; and (4) that subsection 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act], must be read together with section 3 of the Act in accordance with the *Charter* (sections 7 and 12); (5) that new evidence after the RPD decision should be considered in light of section 24 of the *Charter*, the *Chahal* decision of the European Court of Human Rights, and the February 2000 position of the Inter-American Commission on Human Rights on the Canadian system; and (6) that the RPD decision breached the applicant's right to fundamental justice as set out in section 7 of the *Charter*.

[21] In his additional submissions, Mr. Jules mentioned (1) at paragraph 15 [TRANSLATION] "statements made before the justice of the peace in 2010 and 2015 that were not available before because his father was on the run"; and noted (2) at paragraph 19 that [TRANSLATION] "his father was on the run at the time of the hearing"; and (3) at paragraph 31 that [TRANSLATION] "[i]t was impossible for the appellant to provide these official documents and his father's statements before because his father had to go into hiding to save his life".

[22] On August 17, 2020, the RAD confirmed the RPD's decision and dismissed the appeal.

[23] On September 9, 2020, Mr. Jules applied for leave and judicial review of the RAD decision. In support of his application, Mr. Jules filed an affidavit found at pages 40 to 42 of the Applicant's Record.

III. RAD decision

[24] The RAD's decision has two main sections, the first dealing with the new evidence and the second dealing with the analysis of the RPD's decision on Mr. Jules's claim. Before considering the first part of the evidence, the RAD set out the issues that Mr. Jules had raised in his appeal, through his initial memorandum and his additional submissions. The RAD also reviewed the facts alleged by Mr. Jules in his BOC form.

[25] In the first part of its decision, which dealt with the new evidence, the RAD started by rejecting the evidence adduced by Mr. Jules. The RAD cited subsection 110(4) of the Act in reference to the requirement that evidence had to have arisen after the RPD's decision. The RAD then stated that, if the evidence met any of the requirements of the Act, the RAD must determine whether the evidence was new, credible and relevant, citing *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 [*Singh*] and *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 [*Raza*].

[26] The second part of the RAD decision dealt with the analysis.

[27] In the first section of the analysis, entitled “Submissions in the Appellant’s Initial Memorandum”, the RAD first considered whether the RPD had disregarded both the evidence adduced by Mr. Jules and his testimony.

[28] The RAD found no merit in Mr. Jules’s arguments. The RAD found that the RPD had considered the material submitted in support of the claim, and it specifically addressed the RPD’s findings with respect to exhibits P-6 and P-7. It noted that the identity documents and those concerning Mr. Jules’s study permit and stay in the United States did not support a finding that the allegations were true. The RAD confirmed that testimony before the RPD is presumed to be credible, but that this “presumption can be rebutted if there are inconsistencies in the oral and written testimony, or if the claimant’s testimony lacks consistency or detail”. The RAD found that “ the appellant’s testimony and evidence relating to central elements of his refugee protection claim do not corroborate the allegation of a serious possibility of persecution or, on a balance of probabilities, a risk of harm. They are not reliable, and they are inconsistent”.

[29] Second, the RAD considered whether the RPD had erred in its assessment of Mr. Jules’s credibility, as the RPD had concluded that Mr. Jules was not credible when he claimed that his life was in danger because of his political views. The RAD stated that it agreed with Mr. Jules on the legal principle that any negative finding must be justified and supported by the evidence, but concluded that the RPD had not erred in its findings regarding Mr. Jules’s credibility.

[30] Third, the RAD considered the weight given to the fact that Mr. Jules had omitted certain details about his political involvement after 2014 in his BOC form, with Mr. Jules arguing that

the RPD should have considered the difficulty of testifying and that contradictions should not be held up to a microscopic examination. The RAD found these to be repetitive arguments and determined that it had already addressed those arguments in the credibility assessment.

[31] In the second section of the analysis, entitled “Submissions in the Appellant’s Supplemental Memorandum (appellant’s new memorandum)”, the RAD first assessed whether the RPD had disregarded the personalized evidence. The RAD further noted that only exhibits P-6 and P-7 were relevant to the allegations of political activity and that they had not been disregarded by the RPD, and found that the RPD had correctly determined that having some knowledge of political issues was not synonymous with political involvement as had been argued by counsel.

[32] The RAD then addressed the omissions in Mr. Jules’s account. The RAD explained that it did not agree with Mr. Jules’s allegation that the RPD had erred in rejecting his testimony without regard to his evidence and the human rights situation in the country. It pointed out that the omission of incidents and events that were central to Mr. Jules’s refugee protection claim had seriously undermined his credibility.

[33] Finally, the RAD examined the argument that the RPD had disregarded the allegations of danger in Haiti raised by Mr. Jules and the documentary evidence. The RAD stated that the applicant was not credible because of inconsistencies and omissions in his BOC form, essential elements of his claim, confusing testimony, unsatisfactory explanations and evidence without probative value. The RAD also pointed out that the applicant had the burden of demonstrating

that the risk of return was different from the generalized risk, and that the RPD had proceeded correctly.

[34] The RAD dismissed the appeal and confirmed the decision that Mr. Jules was neither a Convention refugee nor a person in need of protection.

IV. Standard of review

[35] In light of the arguments raised by Mr. Jules, summarized in paragraph 2 of this decision, the standard of reasonableness applies in this case (*Vavilov*). Where the standard of reasonableness applies, the role of the reviewing court is to examine the reasons given by the administrative decision maker, and to determine whether the decision was based on “an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85). The reviewing court must consider “the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified” (*Vavilov* at para 15). The reviewing court therefore asks “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, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47, 74, and *Catalyst Paper Corp v North Cowichan (District)*, 2012 SCC 2 at para 13).

[36] As the Court noted in *Lawal v Canada (Citizenship and Immigration)*, 2010 FC 558 at paragraph 11, “the credibility finding is a question of fact that deserves deference” (see also

Charles v Canada (Citizenship and Immigration), 2021 FC 520 at para 22, and *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at para 42 [*Rahal*]).

[37] I also note that the standard of review is the same with respect to the admissibility of new evidence before the RAD under subsection 110(4) of the Act (*Khelili v Canada (Public Safety and Emergency Preparedness)*, 2022 FC 188 at para 14 [*Khelili*]).

V. Positions of the parties and analysis

A. *Preliminary remarks on Mr. Jules’s affidavit*

[38] I agree with the Minister of Citizenship and Immigration [the Minister] that Mr. Jules cannot come to court with a more substantiated explanation than the one he provided to the RAD as to why he was unable to submit his new evidence earlier. The new evidence was submitted to the RAD, and it was therefore up to the RAD to read and analyze the supporting documents. In his affidavit submitted to the Court in support of his application for judicial review (see page 40 of the Applicant’s Record), Mr. Jules alleges in paragraphs 5 to 8, that [TRANSLATION “[i]t was impossible for [him] to search for evidence without [his] father’s help, [he] had no one else who could help [him]” and that he had [TRANSLATION] “lost contact with him completely”. This information, however, was not in the RAD record: the appellant’s affidavit submitted to the RAD (see page 86 of the Certified Tribunal Record) makes no mention of it. Thus, the Court will not consider this evidence since it was not submitted to the RAD. In addition, the affidavit that Mr. Jules submitted to the Court also contains opinions that the Court will not consider either (s 81 of the *Federal Courts Rules*, SOR/98-106).

[39] The style of cause should be amended to name the Minister of Citizenship and Immigration as the respondent, pursuant to section 4 of the Act, and as consented to by both parties.

B. *Did the panel apply the wrong requirements for admitting new evidence? Did the panel err in rejecting new personal evidence directly related to the applicant's claim for refugee protection?*

(1) Applicant's arguments

[40] Mr. Jules started by identifying the following errors: (1) an error in the assessment of the applicant's subjective fear; (2) an error in the assessment of the risk to the applicant should he return to Haiti; and (3) the panel's failure to give reasons containing a transparent and intelligible justification for rejecting the new evidence, and its error in respect of the requirements for admitting the new evidence.

[41] Mr. Jules submits that with respect to the evidence presented on appeal, subsection 110(4) of the Act was relevant, as were the criteria in *Singh*. Mr. Jules contends that his new evidence met the requirements set out in the Act and in the case law.

[42] Mr. Jules agreed that exhibits P-1 to P-22 were not new evidence, but did not feel that this removed the obligation on the part of the RAD to consider that evidence, since [TRANSLATION] "[i]t was submitted to the RPD in a timely manner, and the RAD was required to conduct its own analysis of the evidence submitted in the first instance".

[43] However, at paragraph 32 of his memorandum, Mr. Jules identifies Exhibit P-22 as new evidence, and argues that it is a key part of the record because [TRANSLATION] “given that [he] had no contact with his father, he could not provide any letters from him or any evidence that his father had in his possession”. Mr. Jules argues that paragraph 34 of the RAD decision, in which the RAD found that Exhibit P-22 had been available to Mr. Jules before his refugee protection claim was rejected, is wrong. Mr. Jules asserts that his BOC form is clear on the fact that he had been having great difficulty reaching his father. Mr. Jules notes that Exhibit P-26 should have been accepted for the same reasons.

[44] Mr. Jules argues that it is difficult to understand why exhibits P-24 and P-25 were rejected, and notes that according to the decision maker, the letters had not met the credibility test. Mr. Jules alleges that the decision maker hinted at the reasons, but that the reasons were not justified, transparent and intelligible: it was not clear according to Mr. Jules whether the reasons for the rejection were the typographical errors, the same style of French, or the fact that the evidence had been submitted after the COVID-19 letter. Mr. Jules added that the reasons provided by the decision maker were not compelling, citing *Ayeni v Canada (Citizenship and Immigration)*, 2019 FC 1202. Mr. Jules was of the opinion that the missing “l” in the letter was a typographical error, and therefore was not a valid reason.

[45] Mr. Jules argues that exhibits P-27 and P-28 were core elements of the refugee protection claim supporting the applicant and his father’s political involvement. Mr. Jules also submits that Exhibit P-30, which was part of the Immigration and Refugee Board of Canada’s National Documentation Package, should have been considered in the analysis of the decision.

(2) Respondent's arguments

[46] The Minister contends that the RAD did not err in refusing to admit the new documents into evidence.

[47] The Minister claims that [TRANSLATION] "the information contained in the applicant's affidavit and in the letter from his father had been reasonably available to the applicant at the time of the RPD hearing" and was therefore not new information that arose after the refugee protection claim was rejected. The Minister further states that the appeal before the RAD did not allow Mr. Jules to adjust his testimony by giving different explanations to the RAD.

[48] The Minister notes that the applicant concedes, as the RAD found, that it was reasonable to conclude that exhibits P-1 to P-22 did not meet the requirements of subsection 110(4) of the Act as they were already part of the Appeal Record. The Minister alleges that the RAD reasonably concluded that the contents of the new exhibits, P-23 to P-31, had been available prior to the RPD hearing or were new but not relevant or credible.

(3) Analysis

[49] First, exhibits P-1 to P-22 had been submitted to the RPD and were indeed already in the Appeal Record, which the RAD confirmed. They were therefore not new evidence and the RAD therefore did not err in this regard.

[50] As for Mr. Jules’s argument that the RAD did not consider exhibits P-1 to P-22, it is without merit. On the contrary, the RAD has shown that it paid attention to these elements, among other things, at paragraph 129 of its decision. Moreover, at paragraph 106 of its decision, the RAD noted that “[w]ith regard to exhibits P-4 (high school identity card) and P-5 (bachelor’s degree enrollment form), as well as the other exhibits regarding the appellant’s stay in the US, the RAD is of the opinion that this evidence does not lead to the conclusion that the appellant’s allegations would likely be true if he returned to Haiti”.

[51] The RAD described subsection 110(4) of the Act and also set out the test established by the case law when one of the requirements of subsection 110(4) is met. It did not err in setting out the applicable requirements.

[52] Subsection 110(4) provides as follows:

Evidence that may be presented

(4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.

Éléments de preuve admissibles

(4) Dans le cadre de l’appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n’étaient alors pas normalement accessibles ou, s’ils l’étaient, qu’elle n’aurait pas normalement présentés, dans les circonstances, au moment du rejet.

[53] The Federal Court of Appeal has clarified the requirements for new evidence in its decisions in *Singh* and *Raza*. The RAD and the Court are bound by the law and by the teachings of the Federal Court of Appeal.

[54] For example, at paragraph 34 of its decision in *Singh*, the Federal Court of Appeal noted that “[t]here is no doubt that the explicit conditions set out in subsection 110(4) have to be met”; accordingly, the following evidence is admissible if (1) it arose after the rejection of the refugee protection claim; (2) it was not reasonably available; or (3) it was reasonably available, but the person could not reasonably have been expected in the circumstances to have presented it at the time of the rejection. These conditions “leave no room for discretion on the part of the RAD” (*Singh* at para 35).

[55] The Federal Court of Appeal also found that “the implicit criteria identified in *Raza* are also applicable in the context of subsection 110(4)” (*Singh* at para 49). These tests are credibility, relevance and newness (*Singh* at para 38, citing *Raza* at para 13).

[56] In this case, the RAD provided a well-reasoned decision reflecting an analysis of the case law and its requirements. The RAD addressed all of the evidence: it consistently explained why a particular exhibit was being excluded, and the applicant has not persuaded me that it erred.

[57] Indeed, the RAD began by dealing with the evidence submitted with the initial memorandum. It noted that Mr. Jules was submitting two new pieces of evidence with his initial memorandum: (1) his affidavit signed on August 24, 2018; and (2) a letter from Saint Julien

Jules, Mr. Jules's father, dated August 22, 2018, in Appendix A. The RAD stated that Mr. Jules's father was difficult to reach, but found that all of the information in Mr. Jules's affidavit had been reasonably available at the time of the RPD's decision. The RAD was of the view that the exhibit therefore did not meet the requirements of subsection 110(4) of the Act, and that the father's letter completed the explanations the RDP had found unsatisfactory, which was not consistent with (1) the role of the RAD, which does not provide an opportunity to complete a deficient record filed with the RPD, but to allow for errors of fact, in law or of mixed fact and law to be corrected; and (2) the fact that the RAD has no discretion to admit evidence. The RAD did not accept this evidence.

[58] At paragraph 36 of Mr. Jules's initial submissions to the RAD, he specifically confirmed that [TRANSLATION] "[t]he purpose of this evidence [was] to respond to the panel's findings directly concerning the father and son's political involvement, which the Member did not believe". At paragraph 37, Mr. Jules wrote that [TRANSLATION] "[t]his evidence addresses the unforeseeable doubts raised by the RPD, and the RAD must therefore consider this evidence in its assessment of the appeal".

[59] However, as noted by the RAD in its impugned decision, the Federal Court of Appeal has held that "[t]he role of the RAD is not to provide the opportunity to complete a deficient record submitted before the RPD, but to allow for errors of fact, errors in law or mixed errors of fact and law to be corrected" (*Singh* at para 54). As was also noted in *Khelili* at paragraph 20, an attempt to complete a deficient record "is clearly not an acceptable reason under subsection 110(4) of the IRPA and *Singh* (*Singh* at para 54; *Digaf v Canada* (Citizenship and

Immigration), 2019 FC 1255 at para 25; Khan v Canada (Citizenship and Immigration), 2016 FC 855 at para 44; Abdullahi v Canada (Citizenship and Immigration), 2016 FC 260 at para 15)”.

[60] The RAD then turned to the evidence that Mr. Jules had submitted with his additional submissions. It noted that Exhibit P-23 was the above-mentioned Appendix A, the father’s letter dated August 22, 2018.

[61] With respect to exhibits P-24 and P-25, the RAD explained that these were two letters signed on July 8, 2020. Essentially, the RAD considered that the documents were similar, bore the same date, and were written in the same style of approximate French, and noted that one of the signatories had made an error in their name. The RAD determined that the documents met the requirements of subsection 110(4) of the Act, except for credibility, given the deficiencies identified. The RAD did not admit them.

[62] With respect to exhibits P-24 and P-25, the RAD appeared to conclude that the signatory had not written the document, and mentioned the spelling error, among other things. I agree that this may have been a clerical error. However, in the context of the RAD questioning the credibility of the exhibits against the requirements of subsection 110(4) of the Act, it was reasonable for the RAD to enumerate all aspects of the document pointing to the conclusion that there was a credibility issue.

[63] Mr. Jules disagree with the RAD’s conclusion. It is possible that another decision maker would have reached a different decision. But it is not the role of the reviewing court to reweigh

the evidence or to substitute its own conclusions. The deficiencies identified by the RAD are in the documents, and it was not unreasonable for the RAD not to have found the documents to be credible.

[64] With respect to Exhibit P-26, the RAD noted that this was another letter from Mr. Jules's father, also dated July 8, 2020, that the events described in it had not occurred after the RPD decision and that they had been available prior to the hearing. The Court finds no error in the RAD's decision not to have admitted the letter. Mr. Jules had the opportunity to testify about these exhibits before the RPD, and the additional evidence, as noted above, cannot be used to compensate for a deficient record before the RPD.

[65] The RAD then turned to Exhibit P-27, a statement made by the father before a justice of the peace on September 27, 2010, and Exhibit P-28, a statement by Mr. Jules himself dated Monday, May 16, 2015. The RAD noted that the documents considerably predated the RPD decision and could have been submitted to the RPD, and that nowhere had Mr. Jules explained why he had failed to submit them to the RPD. There is no error: these documents both considerably predated the RPD decision and Mr. Jules failed to explain before the RAD why he could not have obtained them at the appropriate time.

[66] With respect to Exhibit P-29, which was a June 14, 2019, circular note from Amnesty International, and Exhibit P-31, a December 1, 2018, report from the National Human Rights Defense Network, the RAD found that they did not establish a direct or indirect link to Mr. Jules, nor were they relevant to the issue or to Mr. Jules's story. Mr. Jules has not persuaded me that

the RAD erred in this regard and has not, before the Court, established the link that the RAD reportedly missed.

[67] With respect to Exhibit 30, the RAD noted that it was a response to a 2019 Response to Information Request [RIR], that the RIR was already part of the latest National Documentation Package [NDP], and that it therefore could not be considered to be new evidence within the meaning of subsection 110(4) of the Act.

[68] The RAD's analysis of exhibits P-27, P-28 and P-30 was intelligible and properly justified under subsection 110(4) of the Act. I do not believe that the analysis of these exhibits requires the Court to elaborate further: the RAD's reasons were clear.

[69] Mr. Jules alleges throughout his memorandum that some of the exhibits were not available to him prior to the RPD decision because he had not been in contact with his father. I agree that this state of affairs, assuming it is true, could have had an impact on his getting hold of documents from Mr. Jules's father himself. However, nowhere did Mr. Jules tell the RAD that only Mr. Jules's father could have obtained the additional evidence and sent it to him.

[70] In his memorandum to the Court, Mr. Jules deals only briefly with the National Documentation Package on Haiti (see paragraphs 50 and 51 of his memorandum). Nothing suggests that the RAD failed to consider it: the panel stated that Exhibit P-30, an RIR dated June 6, 2019, could not be considered to be new evidence, and confirmed that the NDP was part of the Appeal Record. Similarly, when the RAD examined Exhibit P-31, it confirmed that this

“report provides a serious assessment of the situation in the La Saline neighbourhood, reflecting the poor security situation in the country like many other reports and documents in the NDP on Haiti” [emphasis added]. Again, this suggests that the RAD did review the evidence. In any event, the RAD does not have to refer to every single piece of evidence (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53 at para 16).

[71] In short, Mr. Jules has not shown that the RAD applied the wrong test or that it erred in failing to admit the new evidence.

C. *Did the panel err in conducting a disproportionate analysis of the facts and evidence? Did the panel reject and minimize evidence favorable to the applicant?*

(1) Applicant’s arguments

[72] Mr. Jules takes the position that [TRANSLATION] “[a]ll the weight [was] given to the omissions regarding [his] arrival from the United States”, adding that even if lies were told, this did not remove the obligation from the decision makers to consider the other elements in the record. Mr. Jules points out that he had provided explanations for the omission of his time in the United States and other peripheral omissions, and that this should not have undermined his credibility as a whole (*Tahmoursati v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1278 at paras 40–44).

(2) Respondent's arguments

[73] The Minister notes that Mr. Jules is only challenging the credibility finding related to the contradiction between Mr. Jules's account before the Minister's intervention and the one he provided after that intervention, and that Mr. Jules is therefore not disputing the other credibility findings. The Minister responds that [TRANSLATION] "the burden was on the applicant to demonstrate where and how the RAD erred in its analysis in rendering its decision", rather than arguing that the decision placed all the emphasis on the omissions.

[74] The Minister finds that Mr. Jules has not explained the omissions in his BOC form, namely (1) his allegation that he is a victim of political persecution; (2) the events related to his claim for refugee protection, that is, the February 1, 2015, meeting, and the November 2016 to January 2017 meetings; (3) his return to Haiti; (4) his status as a student in the United States; and (5) his two-week stay in the United States. The Minister submits that [TRANSLATION] "[a]n omission without a valid explanation could certainly undermine the credibility of his testimony".

[75] The Minister claims that the accumulation of contradictions and omissions on crucial elements of the refugee protection claim led the RAD to draw negative inferences about Mr. Jules's credibility. The Minister submits that Mr. Jules simply disagrees with the conclusions reached by the RAD.

(3) Analysis

[76] I note, as raised by the Minister, that Mr. Jules is only challenging the credibility finding related to the contradiction between the story he provided before the Minister's intervention and the story he provided after that intervention. Thus, the credibility findings that the RAD has confirmed, resulting from other omissions and contradictions, are not at issue.

[77] At paragraph 26 of *Khelili*, a judgment delivered in the context of an immigration proceeding concerning the admissibility of new evidence before the RAD, Justice Gascon noted that "the issue before the Court [was] not whether the interpretations proposed by Ms. Khelili might be defensible, acceptable or reasonable. Rather, the Court [had] to look at this issue in respect of the interpretation made by the RAD. The fact that there [might] be other reasonable interpretations of the facts [did] not in itself mean that the RAD's interpretation was unreasonable".

[78] In this case, Mr. Jules's arguments that the RAD [TRANSLATION] "rejected and minimized evidence favourable to the applicant" are not persuasive. Mr. Jules has not demonstrated how the RAD's analysis was [TRANSLATION] "disproportionate". The RAD's words were intelligible and coherent, and its conclusion with respect to Mr. Jules's credibility was reasonable. Contrary to what Mr. Jules alleges in paragraph 56 of his memorandum, the RAD did consider the evidence in the record, despite the lies made by the applicant in his original BOC form. Furthermore, and contrary to Mr. Jules's allegations, his false account was repeated in various forms from

February 2017 to June 2018, and that account was only amended after the Minister's intervention.

[79] Finally, as discussed in the “Standard of Review” section of this judgment, the Court owes deference on credibility issues. Indeed, “[i]t is well established that the Court owes significant deference to assessments of refugee protection claimants’ credibility made by the RPD and the RAD since questions of credibility are at the very heart of their jurisdiction” (*Khelili* at para 25; see also *Marquez Obando v Canada (Citizenship and Immigration)*, 2022 FC 441 at para 32). It is not for the Court to reweigh the evidence, on the contrary, it must refrain from reweighing the evidence considered by the decision maker (*Vavilov* at para 125). As my colleague Justice Gascon explained in *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924, “[t]his deferential approach is particularly required when, as in this case, the impugned findings relate to the credibility and plausibility of a refugee claimant’s story”. On such credibility and plausibility questions, a reviewing court can neither substitute its own view of a preferable outcome, nor can it reweigh the evidence (*Diallo v Canada (Citizenship and Immigration)*, 2007 FC 1062 at para 30).

[80] Mr. Jules disagrees with the findings made with respect to his credibility, but that is not sufficient to justify the Court’s intervention.

[81] As to the applicant’s *Charter* arguments, I agree with Justice Roussel’s reasoning at paragraph 11 of her decision in *Singh v Canada (Citizenship and Immigration)*, 2022 FC 164:

Finally, the Applicant’s arguments relating to Article 3 of the *Convention against Torture and Other Cruel, Inhuman or*

Degrading Treatment or Punishment, as well as Canada's obligation to comply with international law instruments and 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, have already been addressed and rejected several times (*Sandhu v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ no 902 at para 2 (FCA); *Ogiemwonyi v Canada (Citizenship and Immigration)*, 2021 FC 346 at para 39; *Singh v Canada (Citizenship and Immigration)*, 2021 FC 341 at paras 17-18; *Fares v Canada (Citizenship and Immigration)*, 2017 FC 797 at paras 40-44; *Sidhu v Canada (Minister of Citizenship and Immigration)*, 2004 FC 39 at para 16).

[82] Moreover, the Court is not required to rule on Mr. Jules's removal here.

VI. Conclusion

[83] The application for judicial review will be dismissed.

JUDGMENT in IMM-4188-20

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed, without costs.
2. No question is certified.
3. The style of cause is amended to name the Minister of Citizenship and Immigration as respondent.

“Martine St-Louis”

Judge

Certified true translation
Johanna Kratz

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4188-20

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CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE

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