

Federal Court



Cour fédérale

Date: 20230907

Docket: IMM-2579-22

Citation: 2023 FC 1210

[ENGLISH TRANSLATION]

Ottawa, Ontario, September 7, 2023

PRESENT: Mr. Justice Régimbald

BETWEEN:

ALIX HENRY

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Alix Henry, is a citizen of Haiti. He is seeking judicial review of a decision of the Refugee Protection Division [RPD or the panel], dated February 9, 2022, in which the RPD determined that the applicant was not a Convention refugee or a person in need of protection.

[2] The RPD believed the applicant's testimony that he had received threats and had been the victim of two attacks, but concluded that he had not shown on a balance of probabilities that, were he to return to Haiti, he would face a prospective personal risk of persecution. The RPD was of the opinion that the threats and attacks the applicant had experienced were part of the generalized climate of violence and insecurity faced by the entire Haitian population.

[3] For the reasons that follow, the application for judicial review is dismissed. The applicant has not discharged his burden of establishing that the RPD's decision is unreasonable. The decision is sufficiently clear, justified and intelligible in light of the evidence presented before the RPD: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 86, 99 [*Vavilov*]).

II. Background facts

[4] The applicant is a citizen of Haiti who worked for the non-governmental organization Doctors Without Borders starting in 2011.

[5] He alleges that he fears persecution by unidentified criminals who targeted him because of his wealth. He alleges that, since he vacationed outside Haiti and has family members living abroad, he was perceived as being wealthier than the majority of Haitians.

[6] The applicant began receiving anonymous death threats on his cellphone in January 2020. Then, on February 21, 2020, he was robbed by unidentified armed criminals as he was leaving his office. On March 14, 2020, the applicant was home with his family when hooded criminals

entered their home. He was inside a bedroom when this happened and jumped out of a window to escape.

[7] The applicant's cellphone was stolen during one of the attacks, and he now alleges a personal prospective risk because the criminals have his personal information.

[8] Following these events, the applicant complained to the police and ultimately decided to move to another location with his family. The applicant's spouse and children moved in with some friends, while the applicant moved elsewhere.

[9] The phone calls began again following the incident of March 14, 2020, and intensified in September 2020.

[10] The applicant then realized that the police could not protect him and that his life was really in danger. Since he had a valid American visa, he decided to travel to the United States on October 16, 2020. He later claimed refugee protection in Canada. His family remained in Haiti, and they have not been bothered since.

III. Standard of review and issues

[11] Having considered the parties' arguments, the evidence on the record and the applicable case law, I am of the view that the main issues in this case boil down to whether the RPD's decision is reasonable.

[12] The reasonableness standard requires a decision to be justified, transparent and intelligible and to fall within the range of possible outcomes defensible in respect of the facts and law (*Vavilov* at para 99).

IV. Analysis

[13] The RPD rejected the applicant's refugee protection claim, concluding that he had not discharged his burden of establishing that he faced a serious possibility of persecution on a Convention ground or that, on a balance of probabilities, he would personally be subjected to a danger of torture, to a risk to his life or to a risk of cruel and unusual treatment or punishment pursuant to section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. Before the Court, the applicant specified that he was only calling into question the RPD's conclusion concerning section 97 of the IRPA.

[14] The applicant is challenging the RPD's decision on the ground that its reasoning was unreasonable because it incorrectly assessed the situation with regard to his safety and the prospective risk he would face should he return to Haiti. He alleges that the panel unreasonably erred in considering that his attackers did not know his identity. Because he worked for an international organization, has family living mainly abroad and has travelled many times outside Haiti, the applicant alleges that he has a profile of a wealthy person, which would not let him return to Haiti unnoticed were he to do so.

[15] The applicant adds that the objective evidence shows that attackers use mainly word-of-mouth to locate their victims and that he would therefore be easy to find upon his return (National Documentation Package on Haiti, tab 7.6).

[16] The applicant submits that he received several telephone threats and was a victim of armed robbery, physical attacks and a home invasion, which clearly shows that he was targeted personally and not randomly. It would therefore be unreasonable to conclude that all these events, which took place in a relatively short time frame, happened purely by chance.

[17] The applicant also alleges that the fact that none of his family members have been attacked by criminals since his departure does not guarantee his integrity or his safety and does not prove that he is not currently in danger.

[18] He adds that the risk he is facing should not be analyzed or interpreted narrowly because that would penalize refugee protection claimants. He submits that the risk must be analyzed on the basis of his specific circumstances, taking the general context of his situation into account.

[19] Finally, the applicant submits that the RPD erred in determining that he had not shown on a balance of probabilities that he would be targeted in Haiti in “retaliation” because his Basis of Claim [BOC] Form is silent on this issue. Although he did not specifically use the word “retaliation” in his account, the documentary evidence and the circumstances demonstrate that it is more likely than not that his agents of persecution would retaliate against him should he return to Haiti because he had not followed their orders and given them the money they had asked for.

[20] The RPD concluded that the threats and attacks that the applicant was a victim of were part of the generalized climate of violence and insecurity faced by the entire Haitian population.

[21] This conclusion is reasonable given the evidence that was before the RPD:

- A. The RPD based this conclusion on the applicant's explanation that his attackers were motivated by money and greed;
- B. The record contains no information demonstrating that the attackers knew the applicant's identity;
- C. The applicant did not know his attackers;
- D. The applicant was unable to confirm whether the crimes committed against him between January and October 2020 were related or had been committed by the same individuals;
- E. No evidence shows that the agents of persecution have attempted to look for the applicant since the home invasion; and
- F. The applicant's spouse and children still live in Port-au-Prince and go about their daily activities there.

[22] The RPD also based its decision on the information available in the National Documentation Package on Haiti, which states that criminal acts such as thefts, home invasions and abductions affect the Haitian population indiscriminately.

[23] Therefore, the RPD based its analysis on both the applicant's personal evidence and the objective evidence, concluding that the crimes committed against the applicant appeared to fall under general criminality. This is a reasonable finding of fact.

[24] The applicant therefore failed to establish on a balance of probabilities that his removal to Haiti would subject him personally to a risk to his life or to a risk of cruel and unusual treatment of punishment.

[25] In addition, being a crime victim in the past is not in itself sufficient to show a personalized future risk. It is for the specialized tribunal to conduct a prospective analysis of such a personalized risk. As Justice Mainville explains in *Innocent v Canada (Citizenship and Immigration)*, 2009 FC 1019, which also dealt with a refugee protection claim of a person fearing a return to Haiti because of the violence there:

[67] A person victimized by crime is not, based on that fact alone, a person in need of protection under section 97 of the Act. It depends on the circumstances of each case: *Cius v. Canada (Citizenship and Immigration)*, above, at paragraphs 3, 4 and 23, *Acosta v. Canada (Citizenship and Immigration)*, above.

[68] Moreover, the personalized risk analysis must be prospective. In the circumstances of this case, it is unlikely that the applicant will be subject to a personalized risk by the same band of thugs almost 4 years after the incidents in question. However, it is not the Court's task to carry out this prospective analysis, but the panel's. The panel found that "according to the evidence adduced before it, the risk to which the claimant could be subjected is a generalized risk affecting the entire population of the country and not a personalized risk . . ." (decision, at para. 18)

[26] The Federal Court of Appeal decision in *Prophète v Canada (Citizenship and Immigration)*, 2009 FCA 31, is also relevant to this case. The facts of that case are similar to the facts at issue here. The appellant was a fairly wealthy man who claimed to be part of a segment of the population at greater risk. He alleged that he had been a victim of extortion at the hands of criminals, but could not be granted the person in need of protection status because his risk of being a victim of crime was generalized:

[10] In the case at bar (*Prophete v. Canada (Citizenship and Immigration)*, 2008 FC 331), there was evidence on record allowing the Applications Judge to conclude:

[23] ... that the applicant does not face a personalized risk that is not faced generally by other individuals in or from Haiti. The risk of all forms of criminality is general and felt by all Haitians. While a specific number of individuals may be targeted more frequently because of their wealth, all Haitians are at risk of becoming the victims of violence.

[27] In this case, the RPD also found that, because of the generalized violence in Haiti, the applicant was no more at risk than other Haitian residents. This is a finding of fact, and the RPD was in the best position to decide on this issue (*Conde v Canada (Citizenship and Immigration)*, 2013 FC 1059 at para 25).

[28] At paragraph 33 of *Forvil v Canada (Citizenship and Immigration)*, 2020 FC 585, Justice Pamel specified that, when dealing with a generalized risk, an applicant must demonstrate how the risk to the applicant differs from the generalized risk. Justice Pamel also notes the following in that decision:

[34] In this regard, it should be borne in mind that the RAD is not required to discuss every piece of evidence in its decision: it is sufficient that it explain its findings (*Vavilov* at paras 126–128; *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at paras 78, 98, 103; *Rozas del Solar v Canada (Citizenship and Immigration)*, 2018 FC 1145 at paras 122–125; *Kreishan v Canada (Citizenship and Immigration)*, 2019 FCA 223 at paras 41–42).

[29] The respondent is also relying on similar cases in *Elverna v Canada*, 2020 FC 410 [*Elverna*] and *Ferdinand v Canada*, 2021 FC 1198 [*Ferdinand*], where the Court applied the FCA's decision in *Prophète*.

[30] In *Elverna*, the applicant had also been targeted by criminals because he was perceived as being rich. As in this situation, both the RPD and the RAD believed that the applicant had really been attacked. However, his claim was also rejected because he had not demonstrated that the risk he was facing in Haiti differed from that faced by other Haitians. Therefore, he did not meet the personalized criteria set out in subparagraph 97(1)(b)(ii) of the IRPA because the only ground of persecution was money.

[31] In *Ferdinand*, the applicant, who had also been persecuted by criminals, attempted to demonstrate that he had been personally targeted. The Court ruled that the applicant had not successfully shown that he had a prospective risk because the gang that had attacked him in 2010 was no longer active and its leader had been dead for several years. There was therefore no evidence demonstrating that the applicant was being targeted personally, and accordingly, he found himself like any other Haitian who lives in a country where the situation is such that the risk is widespread.

[32] In this case, like in *Elverna* at paragraphs 16–18 and *Ferdinand* at paragraphs 14–16, the RPD could reasonably conclude, in light of the evidence before it, that the applicant was not being personally targeted and that the risk he was facing was generalized: his family had not been contacted since the home invasion; he did not know the identity of his attackers; and he did

not testify at the hearing that his attackers would target him in retaliation. His BOC Form also did not refer to this fact. In addition, the applicant was unable to confirm whether the crimes he had been a victim of between January and October 2020 were related and had been committed by the same individuals.

[33] Unfortunately, the situation in Haiti is deplorable and dangerous. There is a generalized climate of violence that affects the entire Haitian population (*Saus c Canada (Sécurité publique et Protection civile)*, 2018 CanLII 59730).

[34] The decision is therefore based on internally coherent reasoning and is justified in light of the applicable legal and factual constraints (*Vavilov* at paras 99–101). The application for judicial review is therefore dismissed.

[35] The parties agree, and the Court concurs, that there is no serious question of general importance in this case requiring certification.

JUDGMENT in IMM-2579-22

THIS COURT'S JUDGMENT is as follows:

1. The application is dismissed.
2. No question is certified.

“Guy Régimbald”

Judge

Certified true translation
Margarita Gorbounova

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2579-22

STYLE OF CAUSE: ALIX HENRY v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: AUGUST 30, 2023

JUDGMENT AND REASONS: RÉGIMBALD J

DATED: SEPTEMBER 7, 2023

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