Federal Court  Cour fédérale

Date: 20110726

Docket: IMM-7290-10

[UNREVISED ENGLISH CERTIFIED TRANSLATION] **Citation: 2011 FC 931**

Ottawa, Ontario, July 26, 2011

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

VEILLOT JASON

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] This is a judicial review of a decision by a member of the Refugee Protection Division of the Immigration and Refugee Board of Canada, with regard to docket MA8-00342, dated November 22, 2010, that Mr. Jason, a citizen of Haiti, is neither a Convention refugee nor a person in need of protection.

[2] The Board member determined that Mr. Jason is not credible, that he does not face a personalized risk and that he does not have a subjective fear of persecution.

Facts

[3] Mr. Jason fled Haiti in 2006 because he feared that he would be persecuted by two hoodlums known as Doudou and Ti-Blanc by virtue of his part-time position as an articling student at Port-au-Prince's city hall from 1996 to 2000.

[4] At city hall, his work consisted of looking after adoption records and taking statements when bandits were arrested near city hall.

[5] In 1996, a known hoodlum named Doudou accosted and threatened Mr. Jason.

[6] In 2006, Doudou once again accosted and threatened Mr. Jason, this time accompanied by another known hoodlum named Ti-Blanc. Both of them took up residence with other members of their gang in the neighbourhood where Mr. Jason lived.

[7] The applicant fled Haiti for Canada because he feared for his life. He arrived in Montréal on September 16, 2006.

Applicant's credibility

[8] The applicant's counsel cast doubt on some, but certainly not all, of the Board member's findings of fact. The omissions found are not serious enough to warrant overturning the Board member's decision.

[9] It appears from the decision that the Board member spent an inordinate amount of time calculating the number of hours Mr. Jason worked per week, a point that is nonetheless a peripheral detail. In addition, the Board member did not accept the allegation that the mayor personally arrested bandits. That finding seems to be the fruit of speculation rather than a reasonable finding based on established facts.

[10] However, in spite of the statements by the applicant's counsel that Mr. Jason's implausible claims could be explained, the fact remains that the applicant was vague about the number of times he was accosted and threatened and by whom. Was it only twice, in 1996 and in 2006? Had he been threatened in 1996, 1997, 1998 and 2006? Was it only Doudou and Ti-Blanc who had persecuted him? Were other members involved?

[11] It should be noted that in *Stein v. Kathy K (The)*, [1976] 2 S.C.R. 802, [1975] S.C.J. No. 104 (QL), even though that case dealt with the findings of a trial judge as opposed to an administrative tribunal, Justice Ritchie stated:

[7] In this regard reference may be had to the case of S.S. Honestroom (Owners) v. S.S. Sagaporack (Owners), [[1927] A.C. 37], where Lord Sumner said, at pp. 47-8:

> ... not to have seen the witnesses puts appellate judges in a permanent position of disadvantage as against the trial judge, and unless it can be shown that he has failed to use or has palpably misused his advantage, the higher Court ought not to take the responsibility of reversing conclusions so arrived at, merely on the result of their own comparisons and criticisms of the witnesses and of their own view of the probabilities of the case. The course of the trial and the whole substance of the judgment must be looked at, and the matter does not depend on the question whether a witness has been cross-examined to credit or has been pronounced by the judge in terms to be unworthy of it. If his estimate of the man forms any substantial part of his reasons for his judgment the trial judge's conclusion of fact should, as I understand the decisions, be let alone. In The Julia, (1860) 14 Moo. P.C. 210, 235, Lord Kingsdown says:
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> > They, who require this Board, under such circumstances, to reverse a decision of the Court below, upon a point of this description, undertake a task of great and almost insuperable difficulty ... We must, in order to reverse, not merely entertain doubts whether the decision is right, but be convinced that it is wrong.

(The italics are my own).

In the same case, Lord Sumner adopts the practice laid down by James L.J. in The Sir Robert Peel, (1880), 4 Asp. M.L.C. 321, at p. 322, where he said:

> The Court will not depart from the rule it has laid down that it will not overrule the decision of the Court below on a question of fact in which the judge has had the advantage of seeing the witnesses and observing their demeanour, unless they find some governing fact which in relation to others has created a wrong impression.

These passages were expressly adopted by Martland J., when delivering judgment of this Court in Prudential Trust Co. Ltd. v.

> Forseth, [[1960] S.C.R. 210.], at pp. 216-7, where he also adopted the following passage from the judgment of Lord Shaw in Clarke v. Edinburgh Tramways Co. [[1919] S.C. (H.L.) 35.], at p. 36, which is quoted by Lord Sankey in Powell v. Streatham Manor Nursing Home, [[1935] A.C. 243.], at p. 250:
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> > "Am I—who sits here without those advantages, sometimes broad and sometimes subtle, which are the privilege of the Judge who heard and tried the case—in a position, not having those privileges, to come to a clear conclusion that the Judge who had them was plainly wrong? If I cannot be satisfied in my own mind that the Judge with those privileges was plainly wrong, then it appears to me to be my duty to defer to his judgment."
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> These authorities are not to be taken as meaning that the findings of fact made at trial are immutable, but rather that they are not to be reversed unless it can be established that the learned trial judge made some palpable and overriding error which affected his assessment of the facts. While the Court of Appeal is seized with the duty of re-examining the evidence in order to be satisfied that no such error occurred, it is not, in my view, part of its function to substitute its assessment of the balance of probability for the findings of the judge who presided at the trial.

[12] In *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35, Justice Evans, then of the Trial Division of the Federal Court, stated:

> It is well established that section 18.1(4)(d) of the *Federal Court Act* does not authorize the Court to substitute its view of the facts for that of the Board, which has the benefit not only of seeing and hearing the witnesses, but also of the expertise of its members in assessing evidence relating to facts that are within their area of specialized expertise. In addition, and more generally, considerations of the efficient allocation of decision-making resources between administrative agencies and the courts strongly indicate that the role to be played in fact-finding by the Court on an application for judicial review should be merely residual. Thus, in order to attract judicial intervention under section 18.1(4)(d), the applicant must satisfy the Court, not only that the Board made a palpably erroneous finding of material fact, but also that the finding was made "without regard to the evidence"...

[13] The Board member's findings that Mr. Jason was unable to demonstrate the existence of a personalized risk and that he lacked a subjective fear of persecution are reasonable.

[14] He came to Canada on a visitor's visa, tried to renew it unsuccessfully and remained in Canada without status for a significant period of time before claiming refugee protection at the inland Citizenship and Immigration Canada office in Montréal, on December 5, 2007. He is an educated man. He is able to submit his application for a visitor's visa but is unable to file a claim for refugee protection, at least until a chance encounter with an old friend on a bus who provided him with the necessary tools to do so. That is the opposite of common sense.

[15] When he is asked why he fears returning to Haiti, instead of talking about his fear of the hoodlums Doudou and Ti-Blanc, he instead talks about generalized crime. Such a situation does not give rise to a personalized risk warranting the protection sought by the applicant.

[16] It seems that the reason why Mr. Jason is seeking refugee status is because he simply wants a better life for himself, and for his spouse and son who are still in Haiti.

ORDER

FOR THE FOREGOING REASONS;

THE COURT ORDERS that the application for judicial review be dismissed. There is no serious question of general importance to certify.

"Sean Harrington"
Judge

Certified true translation

Sebastian Desbarats, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7290-10
STYLE OF CAUSE:	JASON v MCI
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APPEARANCES:

Mylène Barrière	FOR THE APPLICANT
Boris Stoichkov	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mylène Barrière Counsel Montréal, Quebec	FOR THE APPLICANT
Myles J. Kirvan Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT