

Federal Court



Cour fédérale

Date: 20110729

Docket: IMM-251-11

Citation: 2011 FC 966

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, July 29, 2011

PRESENT: The Honourable Mr. Justice Scott

BETWEEN:

JEAN PATRIQUE ORPHÉE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] The applicant is seeking judicial review of a decision of the Immigration and Refugee Board (the Board), dated December 21, 2010, under paragraph 72(2)(d) of the *Immigration and Refugee Protection Act*, R.S.C., 2001, c 27 (the Act). In that decision, the Board dismissed the applicant's

claim for refugee protection and determined that he was neither a refugee nor a person in need of protection within the meaning of sections 96 and 97 of the Act.

[2] For the following reasons, the Court finds that its intervention is not warranted.

II. THE FACTS

[3] The applicant is a citizen of Haiti. His spouse still lives there, along with their children.

[4] At the time of the events that give rise to his refugee claim, the applicant was working as a taxi driver. He was also a member of the Association des chauffeurs guides d'Haïti (the Association).

[5] On March 30, 2005, unknown armed men attempted to kidnap the applicant, his spouse and his daughter when they were getting into their car. They fled and escaped their assailants.

[6] On January 8, 2009, the applicant received telephone threats demanding that he resign from the Association. One of his colleagues received the same threats.

[7] On February 1, 2009, that colleague was killed.

[8] The applicant fled on February 6, 2009. He showed up at the Canadian border on February 7, 2009, and claimed refugee protection.

III. THE BOARD'S DECISION

[9] In its decision, the Board determined that the applicant had not established a fear of persecution within the meaning of one of the five grounds set out in the United Nations Convention Relating to the Status of Refugees. It also determined that the risk he faced in Haiti was not a personalized risk.

[10] The applicant maintains that he is a member of a “particular social group” as defined in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, 103 D.L.R. (4th) 1 [*Ward*]. The Board dismissed this claim because the risk he faced arose out of his membership in the Association. According to the Board, the Association was neither “[a group] whose members voluntarily associate for reasons so fundamental to their human dignity that they should not be forced to forsake the association” nor a group “associated by a former voluntary status, unalterable due to its historical permanence”. Furthermore, the Board noted from the applicant’s testimony that he planned on changing vocations if he were to return to Haiti.

[11] The applicant also claims to fear being persecuted for his political opinion. He states that the arms used by the bandits who tried to kidnap him in 2005 came from the government. The Board also dismissed this ground because that allegation does not constitute a political opinion.

[12] The Board then examined the protection of the Haitian state within the meaning of section 97 of the Act. It found that the applicant faced, in Haiti, a generalized risk within the meaning of paragraph 97(1)(b). The Board relied on the decision of Madam Justice Tremblay-Lamer in

Prophète v. Canada (Minister of Citizenship and Immigration), 2008 FC 331, 167 A.C.W.S. (3d)
151 [*Prophète*].

IV. APPLICABLE LAW

Immigration and Refugee Protection Act, R.S.C. 2001, c 27:

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n’a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi

they do not have a country of nationality, their country of former habitual residence, would subject them personally

vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Person in need of protection

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

Personne à protéger

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

V. ISSUES AND STANDARD OF REVIEW

[13] The following issues arise from this matter:

- a. Is the applicant a member of a “particular social group” as defined in Ward?*
- b. Is the risk faced by the applicant in Haiti a personalized risk?*

[14] The Board's decision with regard to the applicant's fear of persecution on one of the Convention grounds is reviewable on a reasonableness standard (see *Mia v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 120, 94 A.C.W.S. (3d) 970 (QL) at para. 16). The same standard applies to the second issue (Is the risk face by the applicant in Haiti personalized?) (see *De Parada v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 845, [2009] F.C.J. No. 1021 (QL) at para. 19).

[15] The Court examines the justification, transparency and intelligibility within the decision-making process, “[b]ut it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v. New Brunswick*, 2008 CSC 9, [2008] 1 S.C.R. 190 at para. 47).

VI. ANALYSIS

a) Is the applicant a member of a “particular social group” as defined in Ward?

The applicant’s position

[16] The applicant argues that the Board erred by determining that the Association did not meet the definition of a particular social group within the meaning of *Ward*. The applicant noted that he had been an active member of the Association since 2000. His employment as a taxi driver and his membership in the Association enabled him to earn a dignified living and provide for his needs and the needs of his family in Haiti.

[17] The applicant claims that the Association is a particular social group because its members voluntarily choose to become taxi drivers. The Association’s goals were not limited to the monetary or commercial success of the business, but sought to promote the human dignity of all of its members. Having a job allowed members of the Association to provide for themselves and earn a decent living. The applicant further argues that every human being should be able to freely choose their employment. He should not be forced to change professions because of threats.

The respondent’s position

[18] The respondent argues that determining whether someone is a Convention refugee is done by weighing the nature of the threats against an individual and not according to the grounds perceived by the refugee claimant. The respondent relies on *Zolfagharkhani v. Canada (Minister of Employment and Immigration)*, [1993] 3 FC 540, 155 NR 311 (FCA) at para. 13. According to the respondent, the applicant acknowledged at the hearing that the intent of the threats was to extort money from him. Extortion is a criminal offence that has no nexus with any of the Convention grounds.

[19] The respondent cited the three categories of groups of persons set out by the Supreme Court in *Ward*: those that are defined by an innate or unchangeable characteristic, those whose members associate for reasons fundamental to their human dignity and those associated by a former voluntary status, unalterable due to its historical permanence. The respondent argues that the Association is not based on an innate or unchangeable characteristic, and that it is not fundamental to its members' human dignity. The respondent further argues that the applicant intends to change vocations if he returns to Haiti. The respondent also cites *Mortera v. Canada (Minister of Employment and Immigration)* (1993), 71 F.T.R. 236, 45 A.C.W.S. (3d) 720 at para. 3, in which it is stated that privileged or wealthy individuals do not meet the definition of members of a particular social group based solely on their financial status.

Analysis

[20] In order for his application for judicial review to succeed, the applicant must convince the Court that the Board erred in its finding that the Association is not a particular social group within the meaning of *Ward*. The vocation of taxi driver does not constitute an innate characteristic or one that is fundamental to human dignity. Furthermore, the applicant acknowledges that he would change professions if he has to return to Haiti. This acknowledgement confirms the voluntary nature of his choice of employment as a taxi driver. His membership in the Association has no impact on his impact on his human dignity. Therefore, the Association cannot be considered as a “particular social group” within the meaning of *Ward*, despite the difficult living conditions in Haiti and the chronic unemployment that continues to plague that country.

b) Is the risk faced by the applicant in Haiti a personalized risk?

The applicant’s position

[21] The applicant maintains that his fear arises from his job as a taxi driver and not only because he is thought to have money. The applicant states that the murder of his colleague convinced him to flee without his spouse and children. Furthermore, he maintains that he filed documentary evidence and provided testimony establishing that the murder and the threats against him resulted from his employment as a taxi driver.

The respondent’s position

[22] The respondent claims that it was reasonably open to the Board to find that the risk to which the applicant would be exposed if he were to return to Haiti is a generalized and not a personalized risk. The respondent cites *Paz Guifarro v. Canada (Minister of Citizenship and Immigration)*, 2011 FC 182, [2011] F.C.J. No. 222 (QL), in which there is a reference to *De Parada v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 845, [2009] F.C.J. No. 1021 (QL) at para. 22. In that decision, it is stated that “an increased risk experienced by a subcategory of the population is not personalized where that same risk is experienced by the whole population generally, albeit at a reduced frequency”. According to the respondent, the Board’s findings are reasonable and the applicant simply proved that he is part of a class of Haitian society that is relatively wealthy and therefore more likely to receive threats of extortion.

Analysis

[23] The Court is of the view that the Board’s decision contains no error in its assessment of the facts, or any error in law applicable in this case. In fact, the evidence in the record leads us to find that the Board correctly applied the principles set out in *Ward*, above. The applicant’s membership in the Association and his status as a taxi driver-guide do not make him a person in need of protection within the meaning of the Convention because he is not exposed to a different and personalized risk (see *Prophète*, above, and *Étienne v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 64, 154 A.C.W.S. (3d) 1171 (QL)).

VII. CONCLUSION

The present application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS that

1. The Court dismiss the application for judicial review.
2. This matter raises no question of general importance.

“André F.J. Scott”

Judge

Certified true translation

Sebastian Desbarats, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-251-11

STYLE OF CAUSE: JEAN PATRIQUE ORPHÉE v.
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PLACE OF HEARING: Montréal, Quebec

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