

Federal Court



Cour fédérale

Date: 20130710

Docket: IMM-9856-12

Citation: 2013 FC 771

Montréal, Quebec, July 10, 2013

PRESENT: The Honourable Madam Justice Gagné

BETWEEN:

INETIDE GILOT

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Ms. Inetide Gilot seeks judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board [Board], made on August 27, 2012, whereby it was decided that she is not a Convention refugee or person in need of protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. Essentially, Ms. Gilot challenges the Board's credibility findings and argues that it failed to properly address her fear of violence and rape in her home country based on gender, as a member of a particular social group.

Background

[2] Ms. Gilot is a 63-year-old citizen of Haiti. Since 2008, she has traveled on five different occasions to the United States and to Canada, where one of her three daughters lives.

[3] After the January 2010 earthquake in Haiti, Ms. Gilot traveled to the United States from April 5 to July 28, 2010 to visit her family. She alleges that two days after her return, on July 30, 2010, four armed men wearing balaclavas broke into her house, where she lived with her husband, her two younger daughters and her cousin, Fritz. She alleges that the trespassers attacked them, tied them up and stripped them of their belongings.

[4] A few days later, on the night of August 5, 2010, the same men came back to their house, raped her daughter, Marie Lynda, and shot Fritz when he tried to come to Marie Lynda's rescue. In her response to question 31 of the Personal Information Form [PIF narrative], Ms. Gilot states that Fritz died immediately after being shot.

[5] On August 6, 2010, Ms. Gilot and her husband filed a complaint to the police but there was no follow-up on the matter.

[6] Since then, she and her family wandered from dwelling to dwelling in fear of going back to their house. On August 9, 2010, they moved to a friend's house in Pétion-ville, and later to another friend's house in Péguy-ville. In mid-September 2010, Ms. Gilot and her family moved to her sister's home in Bas Delmas, where the thieves allegedly managed to find them. In October 2010, they moved to her niece's house in Puits Blain. They also lived with Ms. Gilot's sister in Jacmel

before she decided to definitively leave the country since she was allegedly still sought by the thieves.

[7] Ms. Gilot arrived in Canada on October 27, 2010 but only claimed refugee protection two months later.

Impugned Decision

[8] The Board addressed both of the grounds on which Ms. Gilot sought refugee protection. It first dealt with her fear of thieves perceiving her as being wealthy due to the fact that she travelled outside Haiti and that she has a daughter living in Canada. The Board also analyzed Ms. Gilot's fear of the bandits, due to being a woman, and her assertion that she would have no safe place to stay if she returned to Haiti.

[9] While addressing Ms. Gilot's fear of theft or kidnapping for ransom or extortion in Haiti, the Board noted that this allegation could only fall under paragraph 97(1) of the IRPA because the jurisprudence has established that individuals perceived as being wealthy are not part of a particular social group as defined in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 [Ward].

[10] However, the Board noted several credibility issues with respect to Ms. Gilot's story.

[11] First, it noted that Ms. Gilot had never been attacked by thieves before July 2010, although she traveled several times to the United States and to Canada between 2008 and July 2010.

[12] Second, Ms. Gilot and her family did not leave their house to go live elsewhere after the first attack. They only did so after the second attack.

[13] Third, the Board noted that Ms. Gilot first testified that the same thieves went back to her home nine days after the first attack, even though she had testified earlier that the thieves had stolen all of her family's belongings on July 30, 2010 and had left nothing behind. In response to the Board's statement that if that was the case, the thieves had no reason to go back to the same home, Ms. Gilot said that she was unsure if it was the same thieves that came back to her home the second time.

[14] Fourth, Ms. Gilot testified that hooded and armed thieves came to her place around 10 p.m. on the night of August 5, 2010 while the occupants (whom she had earlier identified as being her husband, her two daughters, and her cousin Fritz) were sleeping. She first stated that the thieves tied up everyone and raped her daughter, Marie Lynda, and that Fritz intervened to help Marie Lynda. When questioned by the Board how Fritz could intervene if he was tied up, Ms. Gilot stated that Fritz was not at home at that time and that he arrived around 10 p.m., at the same time as the thieves.

[15] Fifth, the Board noted that according to Ms. Gilot's PIF narrative and her oral testimony, Fritz immediately died from the two rifle shots he received. She later changed her version to say that Fritz died two hours later. However, Fritz's death certificate mentioned that he died at 11 p.m. on August 6, 2011, which is inconsistent both with Ms. Gilot's PIF narrative and with her oral testimony.

[16] Sixth, the Board found that the letters from Ms. Gilot's husband and two daughters were inconsistent with her version of the facts. Notably, it took issue with the fact that neither of these letters mentioned Fritz's death during the alleged incident of August 5, 2010. The letter from Ms. Gilot's husband contained no mention of Fritz's death during the alleged theft incident. Her daughter, Marie Lynda, stated on her part that her father and Fritz were present when she was raped but could not help her. She further stated that on August 25, 2011 (the date the letter was written), they still feared that the thieves would come to their tent, but they had nowhere else to go. The Board observed that according to Ms. Gilot's testimony, her family left their house after the incident of August 5, 2010. Moreover, her other daughter, Sheila, also did not mention Fritz's death in her letter although she went into detail as to the fact that the thieves asked for American money. These contradictions and inconsistencies led the Board to doubt Ms. Gilot's allegations with regard to Fritz's murder.

[17] In addition, the Board rejected the medical certificate according to which Marie Lynda was raped "around 2 a.m., while she was sleeping" as, according to Ms. Gilot, the attack took place around 10 p.m.

[18] The Board rejected the police report in which Ms. Gilot's husband reported the theft of jewellery, a television, a radio and money on August 5, 2011, since, according to Ms. Gilot's narrative, the thieves had taken everything with them on July 30, 2011 and left nothing in the house.

[19] Finally, the Board found that Ms. Gilot was not credible when she alleged that the thieves managed to trace her to a friend's house because she was targeted and sought after for being rich. The Board found this allegation to be "illogical and exaggerated" and noted that, if that was the case, Ms. Gilot's husband and daughters would likely face the same risk.

[20] With respect to the second ground raised in this claim, the Board referred to this Court's decisions in *Josile v Canada (Minister of Citizenship and Immigration)*, 2011 FC 39 [*Josile*] and *Dezameau v Canada (Minister of Citizenship and Immigration)*, 2010 FC 559 [*Dezameau*], and stated that while a personalized analysis is required to address a female claimant's fear of rape and sexual violence on the basis of her membership in a particular social group under section 96 of the IRPA (*Josile*, above, at paras 36-39), mere membership in the particular social group of Haitian women is insufficient for a finding of persecution. The evidence provided must satisfy the Board that there is more than a mere possibility of a risk of harm in a particular applicant's circumstances (*Dezameau*, above, at para 29).

[21] The Board concluded that Ms. Gilot and her narrative were not credible, and that, in the circumstances, she had not demonstrated that she was a vulnerable person with no secure place to live with her husband and family if she were to return to Haiti. The Board found that she has friends, two sisters, a brother, and a family with whom she can live safely. If that was not the case, Ms. Gilot would not have returned to Haiti in July 2010.

Issues

[22] Ms. Gilot has raised the following issues in her application for judicial review and the Court will address them in turn:

- 1) Was the Board's assessment of her credibility reasonable?
- 2) Did the Board properly address her fear of sexual violence and rape upon her return to Haiti?

Appropriate Standard of Review

[23] The appropriate standard of review with respect to both issues is that of reasonableness.

[24] It is well established that the Board's credibility findings are reviewable under the standard of reasonableness (*Lawal v Canada (Minister of Citizenship and Immigration)*, 2010 FC 558 at para 11).

[25] Failure to consider a ground for protection is reviewable on the standard of correctness (*Woldesellasie v Canada (Minister of Citizenship and Immigration)*, 2011 FC 522 at para 34). However, issues involving the determination of facts are reviewable on a standard of reasonableness (*Brazier v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1101 at paras 8-9; *Barthelemy v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1222 at paras 16-21 [*Barthelemy*]).

[26] In this case, Ms. Gilot does not argue that the Board failed to consider the second ground of her request for protection. Her position is that the Board erred in its assessment of her personal fear of sexual violence and rape in Haiti when it rejected her claim based on section 96 of the IRPA. Accordingly, the standard of reasonableness is to be applied to the second issue as well.

Review of the Impugned Decision

[27] For the reasons that follow, the Court finds that its intervention is not required in this case.

The Board's assessment of Ms. Gilot's credibility

[28] Ms. Gilot submits that the Board's reasons for disbelieving her story are so questionable and tainted with zeal in looking for contradictions, that the finding of negative credibility falls outside of the defensible range of possible acceptable outcomes. With respect, I disagree. Although the Court might not agree with all of the Board's various concerns as being reasonable, when reviewed as a whole, the negative credibility finding does fall within the range of possible acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

[29] First, Ms. Gilot alleges that the Board's assumption that she and her family had somewhere to go after the first attack, or that she could stay with her relatives or friends if she was returned to Haiti, is without evidentiary foundation and based on mere speculation (*Buitrago v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1046 at para 16). She argues that it is reasonable to find that only the second attack prompted her and her family to leave their house. Furthermore, the Board should have considered that even if her relatives and friends could help her at that time, in the aftermath of the earthquake it would have been extremely hard.

[30] The Court agrees with Ms. Gilot to some extent and also concedes that it was unreasonable for the Board to question the authenticity of a medical certificate of rape on account of a four-hour time difference. However, the contradiction in Ms. Gilot's testimony and her PIF narrative concerning the identity of the thieves; her hesitant and inconsistent testimony with respect to the

events that occurred during the second attack such as the time of the attack, the items that were stolen from the house, the presence of Fritz on the scene and the exact time and circumstances of his death; as well as the lack of important information in the letters written by her daughters and husband were enough to raise serious doubts in the mind of the Board with respect to the veracity of the events as alleged. In brief, the Board questioned the truthfulness of key allegations made by Ms. Gilot with respect to the incidents of July 30 and August 5, 2010, and these findings are in fact reasonable.

[31] I have considered Ms. Gilot's argument that she had undergone significant trauma and it is normal for her not to remember the exact times and events that occurred during the attacks. However, upon reviewing the transcripts of the hearing, nothing suggests that the Board has been insensitive to her circumstances in assessing her testimony, and such a finding cannot be made by this Court on the sole basis of the negative credibility inference. It is not appropriate for this Court to reassess Ms. Gilot's credibility on the basis of its own understanding of her story. The Board, contrary to the Court, had the benefit of hearing Ms. Gilot in person and was entitled to consider and evaluate her general demeanor while testifying: see *Leung v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 685 (FCA); *Wen v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 907 (FCA); *Mostajelin v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 28 (FCA); and *Valtchev v Canada (Minister of Citizenship and Immigration)*, [2001] FCJ No 1131.

The Board's assessment of Ms. Gilot's fear of sexual violence and rape upon her return to Haiti

[32] Ms. Gilot takes issue with the Board's assessment of her risk of rape. She recognizes that the appearance of wealth does not have a nexus with a Convention ground (*Menendez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 221 at para 27). She nonetheless argues that it is a factor the Board should have considered in assessing her gender-specific targeting and heightened risk of sexual violence and rape due to her being conceived as a wealthy person. Therefore, she submits that the Board erred in failing to properly assess both her personal and documentary evidence and to properly determine whether her claim presented a link to the Convention based on gender, which this Court has found to be a ground for protection under the Convention as per *Ward (Josile, above, at paras 28-30; Gutierrez v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1055, at para 37).

[33] Ms. Gilot refers to excerpts of the documentary evidence in support of the fact that rape is a particular problem for women generally across Haiti (National Documentation Package, June 29, 2012, Item 5.1.1. (Response to Information Request HTI104085.E) and Item 2.1. (United States Department of State *Country Reports on Human Rights Practices for 2011*)) and argues that the Board erred by not referring to this evidence in its decision.

[34] As Justice Martineau wrote in *Josile*, above, at para 31:

[T]he real test is whether the claimant is subject to persecution by reason of his or her membership in that particular social group. In the case at hand, the Board has generally found that Haitian women do not face persecution in the form of violence and sexual abuse because of their membership in that group: "Women in Haiti are not targeted qua women. They, like all others in Haiti, including men and boys are subject to endemic violence and as a result all kinds

including rape. They are victims, as is everyone else, of chronic state breakdown and ubiquitous crime and violence”. This conclusion is untenable in this case.

The Court further added, at paragraph 38 of the decision, that:

The impugned decision was made on May 25, 2010, that is only four months after the earthquake of January 12, 2010 in Haiti. Before this Court, the applicant alleges that “[t]here is a rape epidemic in Haiti, exacerbated by the earthquake”. It would appear that since the earthquake, some 1.5 million persons have been displaced and are living in close proximity in camps or elsewhere in extreme conditions and without adequate protection, as the case may be. Considering that fear of persecution is forward-looking, the Court expects that there will be a complete and objective evaluation of the most up-to-date documentation with respect to rape and sexual abuse committed against women and children in Haiti in light of the particular situation of the applicant and increasingly worsening country conditions.

[emphasis added]

[35] However, in the case at bar, the Board did find that risk existed in Haiti. The Board specifically mentioned the documentary evidence relied upon by Ms. Gilot and found that Haitian women are indeed at risk of being victims of rape. However, it was still open to the Board to find it unlikely, on a balance of probabilities, that Ms. Gilot would be attacked by bandits and rapists in her own particular circumstances. The Board considered all of Ms. Gilot’s personal characteristics that were raised before it, for the purposes of section 96. Notably, it took into account the fact that her family is still in Haiti; that, if returned to Haiti, she would live with her husband and not as a single woman; that she would most likely be living in the tent where she lived after her return from the United States and would continue to have the support of her relatives and friends. In fact, to follow Ms. Gilot’s position would mean that every Haitian woman who would be perceived as wealthy and

who would be victim of an attack by bandits would qualify for refugee protection under section 96.

That proposition does not stand.

[36] In concluding so, I find support in Justice de Montigny's decision in *Barthelemy*, above, at paras 18-19, where he stated:

[T]he applicant argues that the panel did not consider her particular characteristics before finding that her subjective fear was based not on gender, but rather on criminal acts. The panel wrote the following in that respect:

[11] ... The claimant also stated that she felt vulnerable as she did not have a husband. The file is based on the claimant's story of two attacks by the Chimères - one in May 2005 and one in August 2009. The Tribunal does not find a link between these two crimes and does not view either crime as gender-related and thus related to the Convention. The file will be analysed according to Section 97(1) of the Act. The motivation behind the 2005 attack on the claimant and her daughter-in-law is not possible to determine. There is no reason to believe that the attack was a crime because of her gender. Neither woman was the victim of a sexual aggression. The bandits took the money, shot at the women and left.

This analysis by the panel seems completely reasonable to me and relies on the facts before the panel. Nothing in the evidence makes it possible to establish that the applicant was targeted because of her gender or even because she is a widow and would therefore be more vulnerable. In fact, there is every reason to believe that the first attack was motivated solely by the robbery; furthermore, the applicant was not even present in Haiti when her abandoned business was targeted by vandalism. Under these circumstances, it was open to the panel to find that the criminal offences on which the applicant relies to state that she was a victim of persecution could just as easily have been committed against a man. It is settled law that a fear of criminal assaults does not constitute, in itself, persecution linked to one of the five Convention grounds. For women to be recognized as a particular social group, the evidence must prove that they are subject to severe violations of their fundamental human rights because of their gender (see Lorne Waldman, *The Definition of Convention Refugee*,

Markham, Ontario: Butterworth, 2001, at paragraph 8.288). That is not the case here.

[37] Even if, contrary to the case in *Barthelemy*, Ms. Gilot's daughter was raped in the present case, the Board's comprehensive and reasonable credibility findings justify its decision.

[38] In light of the foregoing, this application for judicial review must be dismissed. Neither party proposed a question of general importance for certification, and none arises in this case.

JUDGMENT

THIS COURT’S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. No question of general importance is certified.

“Jocelyne Gagné”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE: INETIDE GILOT AND THE MINISTER
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**REASONS FOR JUDGMENT
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