

Federal Court



Cour fédérale

Date: 20180620

Docket: IMM-5386-17

Citation: 2018 FC 638

[ENGLISH TRANSLATION]

Ottawa, Ontario, June 20, 2018

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

**KETTIA JOSEPH
STECY DORMEUS
ALYSSA DORMEUS**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Background

[1] The principal applicant, Kettia Joseph, is a citizen of Haiti. She came to Canada from the United States on August 16, 2017, and made a claim for refugee protection. The applicant was

accompanied by the two (2) minor applicants, her eldest daughter, also a Haitian citizen, and her youngest daughter, an American citizen.

[2] In her Basis of Claim [BOC] form, the principal applicant alleges that in July 2011, robbers entered the home she shared with her husband, her parents-in-law, and her eldest daughter. They wanted money, fired gunshots and set fire to the home as they left. A record was prepared by a justice of the peace, but there was no arrest. Following that incident, the applicant's husband left Haiti for Brazil. The applicant joined him with their daughter in January 2014, and they obtained permanent residence in Brazil. The situation in Brazil deteriorated owing to a job shortage. The applicant and her husband suffered a lot of discrimination because they were seen as taking jobs from Brazilians. As a result, they left Brazil for the United States on July 17, 2016, where they filed claims for refugee protection. Their claims were rejected, and the applicant's husband was deported from the United States to Haiti in March 2017. The applicant was not deported, because she was pregnant. After giving birth to her youngest daughter, the applicant left the United States out of fear she would also be deported.

[3] At the hearing before the Refugee Protection Division [RPD], the principal applicant added, in response to a member's question, that she believed that the incident in July 2011 was related to her husband's political activities. She also said that she and her daughters were at risk of receiving poor treatment if they were to return to Haiti, because women experience a lot of violence where she lived.

[4] The minor applicants are represented by the principal applicant, and their refugee claims are based on their mother's claim.

[5] On November 7, 2017, the RPD rejected their claims for refugee protection after finding that the applicants were neither "Convention refugees" nor "persons in need of protection." The RPD also concluded, pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], that their refugee claims had no credible basis.

[6] The RPD found that the applicant had failed to demonstrate that the robbery and arson in July 2011 were related to a Convention ground, or that the incident may show that the applicant and her family were personally targeted under subsection 97(1) of the IRPA. According to the RPD, the incident in July 2011 is part of the unfortunate reality of generalized risk in Haiti. It highlighted the applicant's failure to mention in her BOC that the 2011 incident was possibly related to her husband's political involvement, and her failure to make that clarification at the beginning of the hearing when she was asked whether she had changes to make to her BOC. The RPD considered the applicant's explanations to be unreasonable and said that this omission undermined her credibility. The RPD also noted the applicant's testimony, in which she indicated that after the July 2011 incident, and until she left for Brazil, no other incidents occurred that made her fear for her safety.

[7] Concerning the grounds raised by the applicant regarding violence against women where she lived, the RPD acknowledges that violence against women is endemic in Haiti, especially for

single women who do not have a family unit or male presence to provide protection against gender-based violence. However, it did not find that this situation applies to the applicant.

[8] On November 24, 2017, the applicants appealed the RPD's decision to the Refugee Appeal Division [RAD]. The appeal was dismissed on December 1, 2017, for lack of jurisdiction under paragraph 110(2)(c) of the IRPA.

[9] Therefore, the applicants are seeking judicial review of the RPD's decision.

II. Analysis

[10] Although the applicants stated otherwise, the Court is of the opinion that the key issue in this case is the RPD's finding that the refugee claims had "no credible basis" within the meaning of subsection 107(2) of the IRPA.

[11] Since that finding raises questions of mixed fact and law, it is reviewable on a reasonableness standard (*Mohamed v. Canada (Citizenship and Immigration)*, 2017 FC 598 at paragraph 22). Where the reasonableness standard applies, this Court's role is to determine whether the decision falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law." If "the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility," it is not for the Court to replace the outcome with one that would be preferable (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at paragraph 47 [*Dunsmuir*]; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at paragraph 59).

[12] On reading the record and considering the parties' arguments, the Court is of the view that the RPD's finding that the refugee claims had no credible basis is reasonable and that there are no grounds for intervention.

[13] According to the case law, the threshold for finding that a refugee claim has no credible basis is high. That is because such a finding deprives a refugee claimant of the right to appeal to the RAD (*Rahaman v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89 at paragraphs 19, 27-30, 51-52 [*Rahaman*]; and *Mahdi v. Canada (Citizenship and Immigration)*, 2016 FC 218 at paragraph 10).

[14] Subsection 107(2) of the IRPA reads as follows:

No credible basis

(2) If the Refugee Protection Division is of the opinion, in rejecting a claim, that there was no credible or trustworthy evidence on which it could have made a favourable decision, it shall state in its reasons for the decision that there is no credible basis for the claim.

Preuve

(2) Si elle estime, en cas de rejet, qu'il n'a été présenté aucun élément de preuve crédible ou digne de foi sur lequel elle aurait pu fonder une décision favorable, la section doit faire état dans sa décision de l'absence de minimum de fondement de la demande.

[15] The applicants claim that the RPD could not find that their claims had no credible basis while acknowledging that women face endemic violence in Haiti.

[16] The Court is of the opinion that the RPD's finding about the situation of violence toward women in Haiti must be considered in context. Upon examining the applicant's alleged fear, the

RPD stated that the documentary evidence showed that Haiti was a country where violence toward women was endemic. However, it specified that this situation was particularly true for single women who did not have a family unit or male presence to provide protection against gender-based violence. The RPD concluded that this situation did not apply to the applicant, because she had failed to demonstrate that she could not be protected by her husband or her other family members if she were to return to the country.

[17] Since the applicants did not dispute the RPD's interpretation of the documentary evidence or provide contrary evidence, the RPD could reasonably conclude that the applicant did not belong to the targeted group, since she testified at the hearing that she was married, was in contact with her husband several times a day and had several siblings who lived in the same region as she and her husband. The applicant also acknowledged that, aside from the incident in July 2011, she had never experienced violence against her person.

[18] Although the applicants may claim that their belonging to a group targeted by violence is a credible piece of evidence, the Court finds that this is insufficient to preclude a finding that their claims have no credible basis under subsection 107(2) of the IRPA. In *Rahaman*, the Federal Court of Appeal found that the existence of some credible or trustworthy evidence would not preclude a "no credible basis" finding if that evidence was insufficient in law to sustain a positive determination of the claim (*Rahaman* at paragraph 30). The Court also noted that country reports alone were normally not a sufficient basis for granting refugee status, because they are not specific to the claimant's situation (*Rahaman* at paragraph 29).

[19] In this case, aside from the principal applicant's testimony, which the RPD did not consider to be credible, the applicants presented no other evidence to justify a favourable decision on their refugee claims. Therefore, it was reasonable for the RPD to find under subsection 107(2) of the IRPA that there was no credible basis for the refugee claims.

[20] For these reasons, the Court finds that the RPD's decision is reasonable because it falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and the law." It is also justified in a manner that satisfies the criteria of transparency and intelligibility within the decision-making process (*Dunsmuir* at paragraph 47).

[21] The application for judicial review is dismissed. No question of general importance was submitted for certification, and the Court believes that this case does not raise any.

JUDGMENT in IMM-5386-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. No questions of general importance were certified.

“Sylvie E. Roussel”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5386-17

STYLE OF CAUSE: KETTIA JOSEPH ET AL v THE MINISTER OF
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PLACE OF HEARING: MONTRÉAL, QUEBEC

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APPEARANCES:

Darius Constantin

FOR THE APPLICANTS

Michèle Plamondon

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Chamoun, Constantin Avocats
Montréal, Quebec

FOR THE APPLICANTS

Attorney General of Canada
Ottawa, Ontario

FOR THE RESPONDENT