Federal Court  Cour fédérale

Date: 20180703

Docket: IMM-5278-17

Citation: 2018 FC 672

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 3, 2018

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

KERMITHA NERE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for leave and judicial review filed by Kermitha Néré (the applicant) concerning a decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada dated October 31, 2017. The RPD determined that the applicant is not a

Convention refugee or a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001 c. 27 [IRPA].

II. Facts

[2] The applicant is a woman of Haitian origin. She has been a member of the association "Solidarité Haïtienne de Défense des Droits Humains" (SOHDDH) since 2010. She alleges that she escaped an attack on October 4, 2012, by armed supporters of the group "Réponse Paysanne," which opposes the ideals of the SOHDDH and apparently ransacked her father's home (the attack). The applicant alleges that she was at school at the time of the attack.

[3] The applicant left her town, Fond Parisien, the day of the attack to seek refuge in the capital, Port-au-Prince, for a month before joining a cousin in the city of Puebla, Mexico, in November 2012. A few months later, on January 31, 2013, she crossed the border and filed a claim for refugee protection in the United States. She received her American work permit on August 28, 2014. During this period, the applicant met her future husband. The couple married on February 21, 2015. Her husband convinced her to abandon her claim for refugee protection so that he could initiate the sponsorship process, but the marital relationship ultimately deteriorated. Worried about being sent back to Haiti, she decided to join an uncle in Canada and filed a claim for refugee protection there on November 22, 2016.

[4] On January 30, 2017, the applicant received her notice to appear for a hearing before a member. Her claim for refugee protection was heard on October 10, 2017. A negative decision was rendered on October 31, 2017.

III. Decision

[5] The evidence filed with the RPD included numerous documents attesting to the applicant's identity, among them her birth certificate, proof of entry into the United States, social security card, American work permit and a copy of her notice to appear concerning sponsorship by her husband. A copy of her SOHDDH membership card, an attestation from the executive director of that organization and a copy of a report from a justice of the peace confirming the occurrence of the incident on October 4, 2012, were also provided to the RPD.

[6] In its reasons, the RPD noted a number of contradictions and omissions in the applicant's file, from which the RPD drew a negative inference as to the applicant's credibility; these included (i) the date of her arrival in Mexico and the duration of her temporary stay in that country, (ii) her proof of education in Haiti and enrolment in school at the time of the attack, (iii) the absence of copies of her claim for refugee protection in the United States, and (iv) the absence of a copy of her passport.

[7] The RPD was concerned about the following facts:

i. The applicant indicated two different dates for her departure from Haiti (2010 and 2012), which is important because the attack in Haiti allegedly took place in 2012;

ii. Contradictions between the applicant's testimony and statements concerning the duration of her stay in Mexico – one year versus one month (even based on the applicant's current version of events, she would have been in Mexico longer than two months);

iii. The applicant indicated that she was in school at the time of the attack in 2012, whereas Schedule A (form IMM 5669) to the Generic Application Form for Canada indicates that she completed school in 2011;

iv. Despite the gaps in her file, the applicant made little effort to obtain additional proof to clarify the situation.

[8] Based on these observations, the RPD concluded that the applicant was probably not in Haiti in October 2012 and that her narrative was not credible.

[9] Additionally, the RPD acknowledged that the claim for refugee protection was based mainly on the grounds of the applicant's political opinion but that this aspect had not been proved. The RPD attributed little probative value to the attestation from the executive director of the SOHDDH because it found that he did not witness the alleged attack.

[10] The RPD also evaluated the argument concerning fear of gender-based persecution. Based on the applicant's oral testimony, particularly concerning her socio-economic conditions before leaving Haiti and the absence of specific allegations, the RPD concluded that the fear of persecution mentioned in her narrative was not justified.

[11] Finally, the RPD concluded that the applicant's subjective fear of persecution in Haiti was not genuine, since she did not file a claim for refugee protection in Mexico and the reasons she provided for having made that choice were not compatible with subjective fear.

IV. Issues

[12] The applicant raised three types of alleged errors:

i. Unreasonable analysis of the evidence concerning the attack;

ii. Lack of procedural fairness in drawing negative inferences from the statements made by the applicant at the port of entry into Canada in the absence of the interpreter she had requested; and

iii. Unreasonable analysis of the gender-based aspect of the claim for refugee protection.

V. Analysis

A. *Standard of review*

[13] The standard of correctness applies to issues of procedural fairness: *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at para. 43; other aspects of the RPD's decision, notably its evaluation of the evidence on the record, are subject to the standard of reasonableness: *Jean-Baptiste v. Canada (Citizenship and Immigration)*, 2018 FC 285 at para. 11. There is no debate on this point.

B. *Analysis of the evidence – alleged attack*

[14] The applicant criticizes the RPD's conclusions on three points: (i) the date of her departure from Haiti; (ii) the duration of her stay in Mexico; and (iii) doubts as to her statement concerning the seizure of her passport by the American authorities.

[15] The RPD noted that in her documents, the applicant indicated two different dates for her departure from Haiti: 2012 and 2010. This is important because if she had left Haiti in 2010, she would not have been there at the time of the attack in 2012.

[16] The applicant submits that this is due to a simple typographical error: she indicated 2012 (the correct date) multiple times, whereas the incorrect date (2010) appears only a single time, on Schedule A to the Basis of Claim form.

[17] The issue of the duration of the applicant's stay in Mexico, meanwhile, appears to be justified as a simple slip of the tongue at the hearing before the RPD. Although this slip does not appear in the hearing transcript, the applicant appears to acknowledge that she spent one year in Mexico before correcting herself and indicating that she was there for one month.

[18] With regard to seizure of the applicant's passport, although at the hearing, the RPD did appear to be under the impression that the passport had not been seized by the American authorities, this point was not raised in the RPD's decision.

[19] I accept that the errors described in the preceding paragraphs are not sufficient to reasonably conclude that the applicant was not in Haiti at the time of the attack or that she lacked credibility. However, the RPD provided additional reasons for doubting her credibility.

[20] On her form IMM 5669, the applicant indicated that she had completed school in 2011, which appears incompatible with her statement that she was at school at the time of the attack. The applicant maintains that this was simply another error made in her submissions to the RPD.

[21] Whatever the case, I find that, in light of this error and the others mentioned above, the RPD was right to have suspicions. It was also conceivable for the RPD to expect the applicant to supply documents (e.g. passport, school documents) that could have corroborated her statements, or to explain why she did not provide these documents and the efforts she had undertaken to obtain them: *Radics v. Canada (Citizenship and Immigration)*, 2014 FC 110 at para. 33.

[22] With respect to school documents, the applicant indicated simply that she had not brought them with her because she had no intention of continuing her studies.

[23] As for her passport, she explained that the American authorities seized it in the context of her claim for refugee protection in the United States. She indicated that she had not made any efforts on her own to retrieve it since she arrived in Canada, but she submitted a copy of a letter from her lawyer to her American lawyer seeking to obtain the documents, including her passport, submitted for her claim for refugee protection in the United States. At the hearing before the RPD, the Canadian lawyer stated that he had followed up on that letter with multiple telephone calls in an unsuccessful effort to obtain the documents. Unfortunately, there is nothing to corroborate those follow-ups.

[24] The RPD noted further that the applicant had stated that she was in the habit of making photocopies of all her important documents, and it consequently found odd that she had neglected to make a copy of her own passport.

[25] In my opinion, it was reasonable for the RPD to conclude that the documentary evidence supporting her claim for refugee protection was insufficient, to expect the applicant to have made greater effort in this context, and to draw a negative inference from the absence of these documents or of a reasonable explanation for their absence.

[26] The RPD also addressed the other documents provided by the applicant, these being an SOHDDH membership card, a report from the justice of the peace concerning the attack, and a letter from the president of the SOHDDH confirming the applicant's membership in that organization and describing the attack.

[27] The RPD gave less probative value to these documents because they were copies and not originals. In the applicant's case, I find this to be reasonable.

[28] The RPD also gave less probative value to the copy of the letter from the president of the SOHDDH because he was not present during the alleged attack. This was also reasonable, although the letter did contain additional relevant information.

[29] Finally, the RPD gave less value to the copy of the report from the justice of the peace because it appeared to have been altered. This is the only conclusion on the part of the RPD that I

find unreasonable. In reviewing the record, the vertical line on the copy (which appears to be the alteration to which the RPD was referring) did not appear on the copy provided by the applicant but was instead added to a second copy made from that document. This being the case, I do not find that the RPD's error in this regard is sufficient to vacate its decision.

C. *Lack of procedural fairness*

[30] The applicant indicates that she clearly requested a Creole interpreter when she entered Canada, but that this request was not respected. She submits that this is a violation of section 14 of the *Canadian Charter of Rights and Freedoms*, part I of the *Constitution Act, 1982*, schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11 [the *Charter*]. She argues further that the use of information obtained without respect for her request for an interpreter constitutes a breach of procedural fairness.

[31] There does not appear to be any dispute that the officer at the port of entry followed the policy applicable to controls at ports of entry. This policy does not provide for the absolute right to an interpreter upon request. The officer may rely on the documents in the traveller's possession. It is in situations where officers intend to prohibit a traveller from entering that they are required to suspend the proceedings until a qualified interpreter is available. Such is not the case here. Moreover, the applicant was able to communicate with the officer effectively enough to complete her form IMM 5669 and an interview report.

[32] Apart from the applicant's testimony, there is no indication that she had communication problems at the port of entry into Canada. The alleged problems relate solely to the

inconsistencies identified by the RPD. However, these inconsistencies do not appear to be due to communication problems, but rather to errors in the documents. If they were communication problems, the applicant did not justify them.

[33] I do not accept that all travellers arriving at ports of entry into Canada automatically have the right to an interpreter upon request. The applicant does not cite any authority as to the applicability of *R c. Tran*, [1994] 2 SCR 951 to ports of entry. In my opinion, *Mohammadian v. Canada (Citizenship and Immigration)*, 2001 FCA 191, differs in that it involves the presence of an interpreter for a hearing before the RPD, which is not the case here.

[34] In my opinion, the case law indicates that the right to an interpreter depends on difficulty in communicating: *Umba v. Canada (Citizenship and Immigration)*, 2001 FCT 582 at para. 19; *Lasin v. Canada (Citizenship and Immigration)*, 2005 FC 1356 at para. 11; *Essaidi v. Canada (Citizenship and Immigration)*, 2011 FC 411 at para. 27.

[35] I am not convinced of the occurrence of a violation of section 14 of the *Charter* or of procedural fairness.

D. *Analysis of the gender-based aspect*

[36] In her account, the applicant refers to the persisting difficult conditions for women in Haiti since the earthquake in 2010. However, the applicant does not cite any personal incidents arising due to her gender.

[37] The RPD noted the absence of personal incidents. The RPD also noted that the applicant was living with her father before leaving Haiti, and the absence of proof that she could not go back to living with him in the event of her removal.

[38] The RPD concluded that the applicant could return and live with her father. I find this conclusion to be reasonable.

VI. Conclusion

[39] For the above reasons, this application must be dismissed.

[40] The parties agree that there is no serious question of general importance to be certified.

JUDGMENT in IMM-5278-17

THIS COURT'S JUDGMENT is that:

1. The application for leave and judicial review is dismissed.

2. There is no question of general importance to be certified.

3. The style of cause has been modified to correctly reflect the respondent as The Minister of Citizenship and Immigration.

"George R. Locke"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5278-17
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