Federal Court  Cour fédérale

Date: 20190712

Docket: IMM-6265-18

Citation: 2019 FC 933

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, July 12, 2019

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

MARIE THÉRÈSE JN PIERRE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision rendered by the Refugee Appeal Division (RAD), upholding a decision rendered by the Refugee Protection Division (RPD) rejecting the applicant's claim for refugee protection. The RAD and the RPD found that the applicant was neither a "Convention refugee" nor a "person in need of protection" under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [*IRPA*].

[2] The applicant is a citizen of Haiti, where she owned and operated a small restaurant that she had been running since the 1990s. She is seeking Canada's protection because she claims that since the political situation deteriorated in Haiti since about 2004, she had been a victim of street gangs who demanded money from her on a regular basis.

[3] In February 2010, after the earthquake in Haiti, the applicant settled in Canada with her daughter, who is a Canadian citizen. She decided to return to Haiti on August 26, 2013, [TRANSLATION] "believing that the gangs would have forgotten about me". She alleges that the incidents of intimidation resumed one month after her return, and that she subsequently decided to leave Haiti because she [TRANSLATION] "felt too old to deal with that". The applicant left Haiti for the United States on October 31, 2013, and then returned to Canada on November 4, 2013. The applicant filed her claim for refugee protection on March 16, 2016.

[4] The RPD held a hearing in March 2017. At the beginning of the hearing, counsel for the applicant asked the tribunal to declare her client a "vulnerable person", because she had memory problems and was exhibiting symptoms of Parkinson's disease and dementia. The RPD did not declare the applicant a "vulnerable person", but, in light of the circumstances, the RPD granted all the accommodations requested. After the hearing had started and in light of the applicant's answers to certain questions, the RPD decided to appoint a "designated representative" in order to ensure that all relevant evidence was obtained during the hearing. The applicant's daughter agreed to act as her designated representative and she confirmed that she did not need additional time to collect additional evidence.

[5] The RPD dismissed the applicant's claim, essentially because it found that she was not credible in terms of the alleged fear cited in support of her claim for refugee protection. The RAD upheld this decision.

[6] The application for judicial review is based on three key points: (i) that the RPD and the RAD erred by failing to explain how they factored the applicant's medical condition into their analysis of her credibility; (ii) that the applicant provided reasonable explanations for the delay in filing her claim for refugee protection; and (iii) that by dismissing her fear of persecution as an elderly woman living alone in Haiti, the decisions rendered by the RPD and the RAD were unreasonable.

[7] The applicable standard of review for a case where the key issue is the applicant's credibility is that of reasonableness: *Obinna v Canada (Citizenship and Immigration)*, 2018 FC 1152 at para 18.

[8] First, with respect to the applicant's medical condition, the RPD's decision is clear: all accommodations requested by counsel for the applicant were granted and furthermore, the RPD appointed a "designated representative" in order to ensure that all the evidence was presented. The applicant's medical note does not demonstrate that her medical condition could compromise her testimony and the RAD noted that the applicant's testimony was spontaneous. The medical note, dated March 10, 2017, indicates that the medication prescribed to the applicant was having a positive impact: "The donepezil has allowed for stabilisation of the cognitive impairment and an improvement in the patient's concentration. She has remained stable in terms of her current activities of daily living". There is no other evidence concerning the impact of her medical conditions on her ability to testify at the hearing.

[9] However, the main problem with this argument is that the claims that the applicant made in her Basis of Claim (BOC) Form concerning her fears were not supported by her daughter's testimony or by the letter provided by her son, who lives in Haiti. More specifically, the RAD did not err in considering her son's statement that [TRANSLATION] "unidentified individuals often knocked on the door of the [applicant's] house in order to beg and ask for money". This evidence independently confirms the applicant's testimony during the hearing, indicating that the people that she feared [TRANSLATION] "did not use violence, but would come back to ask for money again as soon as they saw that things at the restaurant seemed to be doing better".

[10] I am not persuaded that it was unreasonable for the RAD to ascribe considerable weight to the consistency between the evidence provided by the applicant's son and her own testimony, which revealed an internal consistency, rather than focusing on the version in the applicant's BOC Form. It is clear that the RPD and the RAD took the evidence into consideration, including the explanations provided by the applicant's daughter, who was acting as her designated representative, indicating that [TRANSLATION] "her brother viewed these individuals as beggars rather than bandits". However, it is not the role of this Court to re-assess the credibility or the competence of witnesses.

[11] I share the applicant's opinion that it would have been preferable for the RPD and the RAD to have explained how the applicant's medical condition was factored into their analysis, but I do not believe that this was a fatal error in the RAD's decision. The standard of review is that of reasonableness, and I must weigh the decision in its entirety: see *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62; *Delta Air Lines Inc v Lukács*, 2018 SCC 2 at para 24.

[12] I share the applicant's view that "procedural" accommodations are not sufficient and that consideration should also be given to the individual's capacity in the context of assessing evidence. It is clearly preferable to be able to benefit from a clear explanation of how the decision maker accomplished its task. However, the lack of such an explanation is not an indication of an unreasonable decision in and of itself. I agree that the RAD considered all the evidence in the context of making its decision, including the applicant's medical condition, the difference between her BOC Form and her testimony as well as other evidence filed.

[13] With respect to the issue of the delay, I share the applicant's opinion that the delay is not determinative in and of itself: *Dcruze v Canada (Citizenship and Immigration)* (1999), 171 FTR 76, 1999 CanLII 8254 (FC FI). However, I also agree that it was not unreasonable to consider the applicant's actions, including her annual trips to the United States and Canada between 2005 and 2010, and the fact that she did not file her claim for refugee protection immediately after her most recent arrival in Canada. It was not unreasonable to conclude that she would have claimed refugee protection promptly if she had had a real fear of returning to Haiti, and that her conduct was not consistent with someone who had such a fear. The RPD noted that the incidents in 2013 were identical to the incidents that had occurred in previous years, but the applicant did not decide to seek protection before 2016. The RAD also rejected the applicant's argument that her return trips to Haiti did not undermine her subjective fear because her daughter had testified that the applicant wanted to know "how things were going in the country". The RAD's finding was based on the facts on record and it is not the role of the reviewing Court to substitute its own findings for those of the RAD.

[14] Lastly, I agree that it was reasonable for the RAD to conclude that the applicant will not be at risk as [TRANSLATION] “an elderly woman living alone”. First, the RAD concluded that she did not live alone, since her son is sometimes at home with her and the members of her family who run the restaurant adjacent to her home are very often in the neighbourhood. Moreover, this fear was not mentioned in her BOC Form or in her testimony during the hearing, and, as noted by the RPD, [TRANSLATION] “she was never threatened with rape or targeted by individuals who wanted to do so”. The RAD reasonably concluded – based on these factors, as well as the delay in filing the claim, her return to Haiti and the fact that she had articulated her lack of fear spontaneously and repeatedly during the hearing – that the applicant did not have any subjective fear of persecution if she returned to Haiti.

[15] There is therefore no need to intervene in this case. The RAD’s decision was justified, transparent and intelligible, and falls within a range of possible, acceptable outcomes that are defensible in respect of the facts and the law (*Dunsmuir v New Brunswick*, 2009 SCC 9 at para 47).

[16] For all these reasons, I am dismissing the application for judicial review. There is no serious question to certify.

[17] In closing, I note that the RPD and the RAD noted that the designated representative and her brother were concerned about their mother, an elderly woman with serious medical conditions. Both divisions noted that these elements were perhaps more relevant in the context of an application based on humanitarian considerations. I agree with this observation, but that is not the issue before me and it would be best to review this matter at another time.

JUDGMENT in Docket IMM-6265-18

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed.

2. There is no question of general importance to certify.

"William F. Pentney"
Judge

Translation certified true
On this 26th day of July 2019

Sebastian Desbarats, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6265-18
STYLE OF CAUSE:	MARIE THÉRÈSE JN PIERRE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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