Federal Court Cour fédérale

Date: 20191029

Docket: IMM-1106-19

Citation: 2019 FC 1354

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, October 29, 2019

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

CLIFFORD MASSILLON

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, Clifford Massillon, is a citizen of Haiti. He entered Canada on September 26, 2016, and filed a claim for refugee protection in which he alleged that he feared an individual who belonged to a criminal group that was protected by the Haitian government. The applicant states that he received death threats from this individual on August 24, 2016, because he had denied medical treatment to a child two months earlier.

[2] On January 17, 2019, the Refugee Protection Division [RPD] rejected the claim for refugee protection. First, it found that the applicant had failed to establish a fear of persecution on any of the grounds enumerated in section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], as Haitian physicians do not constitute a particular social group under the Convention. Finding that the applicant's testimony was not credible, the RPD held instead that the applicant was a victim of crime. It then held that because of the applicant's credibility issues and the shortcomings in his evidence, it could not conclude that the applicant faced a personalized risk within the meaning of section 97 of the IRPA.

[3] The applicant seeks judicial review of this decision. Generally, he criticizes the RPD for failing to conduct a separate risk analysis in accordance with section 97 of the IRPA to determine whether he was a person in need of protection. He submits that the RPD's decision is unreasonable because its entire analysis is based on the finding that the applicant was not credible and fails to take into account the documentary evidence that he presented in the context of his claim based on section 97 of the IRPA.

[4] Having reviewed the record, the Court is of the view that the RPD's decision must be set aside.

[5] As is well established, when the RPD makes a general finding that the claimant lacks credibility, that determination is sufficient to dispose of the claim. However, if there is credible documentary evidence capable of supporting a positive disposition of the claim, the RPD must

assess that evidence under section 97 of the IRPA (*Canada (Citizenship and Immigration) v Sellan*, 2008 FCA 381 at para 3).

[6] In this case, such evidence exists. The applicant provided letters from family members and former colleagues in Haiti. In one of them, the author states that he is the owner of a medical biology laboratory and that he has known the applicant since 1999. He confirms that the applicant received death threats in late August 2016 from the individual in question and explains how he came to know that. Other letters also describe the threats received by the applicant.

[7] However, the RPD makes no mention of this independent documentary evidence, which, at first glance, corroborates the applicant's allegations of risk. It was therefore unreasonable for the RPD to rely solely on the applicant's lack of credibility to reject, without analysis, all of his documentary evidence. It was equally unreasonable to rely on [TRANSLATION] "the shortcomings in the evidence" without specifying what they were. While the RPD may well have determined in the end that the applicant did not face the risks contemplated by section 97 of the IRPA, it was still required to assess the risk in light of this evidence.

[8] For these reasons, the Court finds that the RPD's decision is unreasonable because it does not fall with "a range of possible acceptable outcomes which are defensible in respect of the facts and the law" and because it is not justified in a manner that satisfies the criteria of transparency and intelligibility in the decision-making process (*Dunsmuir v New Brunswick,* 2008 SCC 9 at para 47).

[9] Accordingly, the application for judicial review is allowed, the decision is set aside and the matter is remitted for reconsideration by a differently constituted panel of the RPD.

[10] No question of general importance was submitted for certification, and the Court is of the view that this case does not raise any.

JUDGMENT in IMM-1106-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The decision of the Refugee Protection Division is set aside, and the matter is remitted for reconsideration by a differently constituted panel;
3. No question of general importance is certified.

"Sylvie E. Roussel"

Judge

Certified true translation
This 13th day of November, 2019.

Michael Palles, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1106-19
STYLE OF CAUSE:	CLIFFORD MASSILLON v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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APPEARANCES:

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