

Federal Court



Cour fédérale

Date: 20191205

Docket: IMM-2936-19

Citation: 2019 FC 1558

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, December 5, 2019

PRESENT: The Associate Chief Justice Gagné

BETWEEN:

MARIE NADIA JACINTHE

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] Marie Nadia Jacinthe challenges the decision of the Refugee Protection Division (RPD) denying her status as a Convention Refugee or a person in need of protection. In light of the numerous contradictions in the evidence, the RPD was not satisfied with the credibility of

Ms. Jacinthe's story. Moreover, it concluded that Ms. Jacinthe did not fit the profile of a Haitian woman who is vulnerable and at risk of being abused because of her gender.

II. Facts

[2] Ms. Jacinthe is a Haitian citizen and has been married to a Canadian citizen since December 2010. Her husband lives in Canada but her two sons, aged 19 and 21 and born from a previous relationship, live in Haiti. She filed an application for a visa to enter Canada in October 2013, which was refused in February 2017.

[3] The story that follows is drawn from her Basis of Claim (BOC) form and her account.

[4] From 1997 to 2012, Ms. Jacinthe operated a baking and catering service business called "D'Jacinthe Pâtisserie". In order to increase the volume of public servants and state leaders patronizing her business, she joined the Tet Kale (PHTK) party in 2015. While this affiliation resulted in a substantial increase in her sales, it attracted retaliation from Lavalas supporters and members of the Pitit Dessalines party.

[5] In 2015 and 2016, Ms. Jacinthe was attacked on three occasions on leaving supermarkets by individuals wearing balaclavas who fled with her groceries. She filed four complaints but the police officers were unable to locate the suspects.

[6] The attacks stopped and her business declined during a first change of government. However, the attacks resumed with the election of Jovenel Moïse of the PHTK.

[7] On June 27, 2017, assailants broke down the front door of her establishment while she was working there with her son; the individuals accused them of getting paid to do propaganda for the government. Ms. Jacinthe and her son escaped through the back door, but the assailants damaged her store and her adjacent residence.

[8] Ms. Jacinthe took refuge at a friend's house. However, she received an anonymous threatening call at her friend's home and decided to leave for Canada.

[9] She left Haiti on September 14, 2017, and arrived in Canada on September 18, 2017, after transiting through the United States. Her claim for refugee protection was rejected on April 11, 2019.

III. Impugned decision

[10] The RPD characterized Ms. Jacinthe's testimony as confusing and noted a number of contradictions in allegations that are at the heart of her claim for refugee protection, including the fact that Ms. Jacinthe operated a baking and catering business, and the fact that she endured attacks by Lavalas supporters.

A. *Baking and catering business*

[11] Ms. Jacinthe alleges having been the owner of "D'Jacinthe Pâtisserie" in Port-au-Prince from 1992 to 2017, where she offered baking and catering services. Her problems stem from the

profile of her clientele and the profitability of her business. She filed the following documentary evidence in support of her application:

- a. A [TRANSLATION] “patent certificate” dated October 11, 2016, and issued by Haitian authorities;
- b. A [TRANSLATION] “certificate of filing of final declaration”, also dated October 11, 2016, and issued by Haitian authorities; and
- c. A letter from her two sons describing their mother’s clientele and contacts in the PHTK party, and the attacks she endured prior to leaving the country.

[12] However, the RPD noted that in the information package submitted to the Canada Border Services Agency, Ms. Jacinthe actually indicates that she was a transport entrepreneur from 1992 to 2017, with no mention being made of a catering and baking business.

[13] Ms. Jacinthe’s only explanation for this contradiction is that she was under a lot of stress when she filled out the forms for her claim for refugee protection. Without underestimating the stressfulness of the formalities surrounding the filing of a claim for refugee protection, the RPD rather raised the fact that Ms. Jacinthe was able to provide many details pertaining to her education, her parents, her employment history and her addresses dating as far back as 1982; it therefore rejected her explanation.

[14] When confronted with the documentary evidence identified in subparagraphs 11(a) and (b), Ms. Jacinthe indicated a number of dates on which the company was established. She first stated that she had operated the company since 1992. When confronted with the fact that the

certificates are dated October 2016, she stated that the company was founded on her birthday in 2016, on October 30.

[15] When confronted with the fact that her affiliation with the PHTK began in 2015 and that the only reason cited for joining the party was to increase her clientele with its members, she changed her testimony again and stated that she founded her company in 2015. The RPD drew a negative inference from these contradictions, particularly because the gap between the various dates is significant (up to 14 years), but also because the company and her links to the PHTK are at the centre of her claim for refugee protection.

[16] The RPD did not, therefore, attribute any weight to the above-mentioned documentary evidence.

B. Attacks endured by the applicant

[17] The RPD also noted a contradiction between the documentary evidence and Ms. Jacinthe's testimony about one of the attacks against her.

[18] She testified that she was the victim of an attack on January 26, 2016, at 9:00 a.m.; however, the acknowledgment of the police complaint filed to corroborate her testimony points to an attack that occurred on January 18, 2016, at 6:00 p.m. When confronted with this contradiction, she explained that it was an error as the third attack actually occurred on January 27, 2016. With respect to the time difference, Ms. Jacinthe explained that the person who drafted the acknowledgment is not the one who recorded the information in the

[TRANSLATION] “book” and that it is possible that the person misunderstood. The RPD was not satisfied with this explanation and noted that because Ms. Jacinthe signed the acknowledgment, she could have asked to have it corrected prior to signing it.

[19] Ms. Jacinthe also filed an excerpt from the minutes of the justice of the peace called upon to assess the damages following the attack of June 2017; he refers to bullet marks on the walls. The RPD therefore drew a negative inference from the fact that Ms. Jacinthe’s claim for refugee protection, including her account, does not make any reference to shots fired during this attack; not only is this an [TRANSLATION] “important fact to mention to the authorities leading the criminal investigation”, but it is also a fact that should had been recorded in Ms. Jacinthe’s claim for refugee protection.

[20] In light of these contradictions and unsatisfactory explanations provided by Ms. Jacinthe, the RPD concluded that she did not meet her burden of proving, on a balance of probabilities, the merits of her allegations.

[21] As for the possibility that Ms. Jacinthe would face persecution on the basis of her gender if she were to return to her country, the RPD reviewed the documentary evidence and recognized that there is a serious problem of violence against women in Haiti. It noted, however, that the most vulnerable women are young women, older women and women living in precarious housing. The RPD was of the view that Ms. Jacinthe, who lived alone for numerous years with her two children, does not meet the profile described in the documentary evidence. It therefore

concluded that she failed to demonstrate that she would face a serious possibility of persecution in Haiti merely because she is a woman.

IV. Issue and standard of review

[22] This application for judicial review raises only one issue:

Did the RPD err in its analysis of the evidence presented by the applicant?

[23] The standard of review applicable to a question of fact that lies within the heartland of the RPD's jurisdiction is reasonableness (*Shatirishvili v Canada (Citizenship and Immigration)*, 2014 FC 407, at paras 18–20; *Dunsmuir v New Brunswick*, 2008 SCC 9, at paras 51 and 53).

V. Analysis

[24] The applicant complains that the RPD rejected all of the applicant's evidence, contrary to the principles set out in *Maldonado v The Minister of Employment and Immigration*, [1979] F.C.J. No. 248 at para 5, and in *Garande v Canada (Minister of Employment and Immigration)*, 2006 FC 1383 at para 1, that when an "applicant swears to the truth of certain allegations, this creates a presumption that those allegations are true unless there be reason to doubt their truthfulness". She submits that the RPD erred in dismissing her testimony and that it should have actually concluded that her behaviour was entirely compatible with that of a person who fears for his or her safety.

[25] In her memorandum of fact and law, she reiterates that she simply failed to mention her company's catering service in the form submitted to the Canada Border Services Agency. She

also states that she had no reason to lie about the date on which her company was founded and that she simply submitted the certificates of 2016 to show that she had been in business for several years.

[26] However, the applicant mainly criticizes the RPD for not sufficiently taking into account the violence endured and that she would continue to endure as a single women, if she were to return to Haiti. Her counsel's observations at the hearing before the Court focused entirely on this issue.

[27] She criticizes the RPD for issuing an opinion contrary to the applicable case law and the principles developed in respect of the *Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution*. She adds that the fact that she has not been kidnapped and raped before is not a reason to conclude that she would not be at risk if she were to return to Haiti. In addition, Ms. Jacinthe claims that her sons are not old and mature enough to properly protect her from the danger she would face.

[28] Ms. Jacinthe mainly refers me to the decisions rendered by this Court in *Dezameau v Canada (Citizenship and Immigration)*, 2010 FC 559, *Josile v Canada (Citizenship and Immigration)*, 2011 FC 39, and *Desire v Canada (Citizenship and Immigration)*, 2013 FC 167, where the matters before the Court were applications for judicial review filed by Haitian women alleging a fear of persecution in their country because of their gender.

[29] First, although the debate did not actually focus on this issue, I conclude that the RPD's findings on the applicant's credibility were reasonable. The discrepancies and contradictions noted by the RPD are, to say the least, concerning and indicate a lack of general consistency in the applicant's story.

[30] Like counsel for the applicant, I will discuss in more detail whether the applicant belongs to a group of vulnerable Haitian women (as a single woman and as a person who has spent some time abroad and who can be perceived as being rich), such that she faces a real risk of being kidnapped and raped if she were to return to Haiti.

[31] In *Josile, Dezameau and Desire*, this Court found that it was an error on the part of the RPD to not sufficiently take into account the risk of violence and sexual assault to which Haitian women are exposed.

[32] In *Josile*, the RPD stated that in Haiti, women are not specifically targeted because they are women, and that all Haitians are exposed to the risk of widespread violence owing to chronic state breakdown. In his review of this decision, Mr. Justice Martineau found that this was an untenable conclusion, as sexual assault is generally considered to be a gender-specific crime by the Canadian courts and in Guideline 4.

[33] Also, he recognizes at paragraph 39 that "[t]he issue of adequate state protection in the absence of male protection, as the case may be, should be fully considered and analyzed by the Board. Naturally, the geographical location (whether outside of Port-au-Prince or areas not

affected by the earthquake) and the applicant's personal situation (whether she will be accompanied by a spouse or living with family) if returned to Haiti are relevant factors to consider".

[34] In this case, the RPD generally acknowledged the risk of violence to which Haitian women are exposed. At several points in its decision, the RPD referred to Guideline 4 and recognized that women are at higher risk for violence and sexual assault. The RPD considered the documentary evidence and the applicant's personal situation in assessing the risk of persecution based on a Convention ground.

[35] In *Dezameau*, the RPD rejected the claim for refugee protection on the basis that the Prime Minister of Haiti at the time was a woman, that half of Haiti's population were women and that rape was a general risk faced by all Haitians.

[36] In this case, the RPD's analysis differs considerably from that in *Dezameau*. In the excerpt that follows, the RPD considered the specific circumstances of the applicant in an analysis clearly based on sections 96 and 97 of the IRPA:

[TRANSLATION]

[40] While the panel concedes that there is a problem with violence against women in Haiti, the question remains whether there is a serious possibility that the applicant, as a member of the social group of women, would be persecuted based on her gender.

[41] In the Federal Court decision in *Dezameau*, Justice Pinar indicated as follows at paragraph 29:

This is not to say that membership in a particular social group is sufficient to result in a finding of persecution. The evidence provided by the applicant must still satisfy the Board that there is a risk of harm that is sufficiently serious and whose occurrence is “more than a mere possibility”.

[42] In short, the specific circumstances in which the applicant finds herself are not those of individuals who are most vulnerable and at risk of persecution because of their gender. The applicant lived alone in Haiti after she got married on December 20, 2010, while her husband remained in Canada. The applicant also pursued vocational studies in cooking and sewing. Finally, she could benefit from the presence of her two sons in Haiti.

[37] The RPD followed the principle set out in *Dezameau* and concluded that because there is no nexus between the applicant’s risk and her social group, she does not face more than a mere possibility of persecution based on her gender within the meaning of section 96 of the IRPA.

[38] Indeed, Ms. Jacinthe herself stated having been targeted as a result of her business and political affiliations, and not because she is a single woman in Haiti.

[39] Finally, in *Desire*, the RPD recognized that women constitute a particular social group, but it generally denied that they are persecuted because of their membership in this group; the RPD stated that violence and sexual assault are dangers for men and women. Once again, this analysis differs significantly from that of the RPD in this case. The RPD compared the applicant’s profile to that of groups of vulnerable women in Haiti, namely, young women, older women and women living in precarious housing. The RPD, in my view, reasonably concluded that the applicant did not belong to any of these groups.

[40] I am therefore of the opinion that the RPD did not err in concluding that the applicant failed to demonstrate that she faced more than a mere possibility of persecution, kidnapping and rape on the basis of her gender if she were to return to Haiti.

VI. Conclusion

[41] As the applicant's testimony contained serious inconsistencies, the RPD did not err in characterizing her story as non-credible. It properly considered Guideline 4 and reasonably applied the law to the facts before it. It did not err in concluding that the applicant is not a person in need of protection under sections 96 or 97 of the IRPA.

[42] The parties did not propose any question of general importance for certification and I am of the view that this case does not give rise to any.

JUDGMENT in IMM-2936-19

THE COURT’S JUDGMENT is that:

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

“Jocelyne Gagné”

Associate Chief Justice

Certified true translation
This 20th day of December 2019.

Johanna Kratz, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2936-19

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APPEARANCES:

Joseph-Alphonse André

FOR THE APPLICANT

Elsa Michel

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Joseph-Alphonse André
Ottawa, Ontario

FOR THE APPLICANT

Attorney General of Canada
Ottawa, Ontario

FOR THE RESPONDENT