

Federal Court



Cour fédérale

Date: 20200127

Docket: IMM-1433-19

Citation: 2020 FC 142

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, January 27, 2020

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

STEEVENS JANVIER

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Steevens Janvier, is a citizen of Haiti. He is seeking judicial review of a Refugee Appeal Division [RAD] decision dated January 22, 2019 [Decision]. The RAD confirmed the decision of the Refugee Protection Division [RPD] rejecting Mr. Janvier's claim for refugee protection and denying him the status of refugee or person in need of protection

under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], on the grounds that his claim was not credible.

[2] Mr. Janvier is now seeking judicial review of the RAD decision. He alleges that the RAD erred in rejecting his claim for refugee protection and submits that the Decision is unreasonable for three reasons: (1) the RAD relied on speculative evidence, failed to presume that the testimony was true and erroneously drew negative inferences as to his credibility; (2) the RAD gave too much weight to inconsistencies between the account in his Basis of Claim Form [BOC Form], his testimony before the RPD, and the peace court record; and (3) the RAD should have set aside the RPD's decision because of errors that the RAD itself identified. Mr. Janvier is asking the Court to set aside the Decision and remit the matter back to the RAD for reconsideration by a different panel.

[3] The sole issue raised by this application for judicial review is whether the RAD's negative credibility findings with respect to Mr. Janvier were reasonable. For the reasons below, I will dismiss the application. Having reviewed the reasons and findings of the RAD, the evidence before it and the applicable law, I see no reason to set aside the Decision. The deficiencies in the evidence submitted by Mr. Janvier and the contradictions in his testimony reasonably support the RAD's negative credibility findings, and the RAD's reasons have the qualities that make the line of reasoning rational and consistent within the legal and factual constraints that apply. Therefore, there are no grounds for the Court to intervene.

II. Background

A. *Facts*

[4] Mr. Janvier worked as an accountant for a company in Haiti from September 2009 to November 2015. He then left the company for nine months to travel. On returning to Haiti in July 2016, he was allegedly rehired by his employer.

[5] Mr. Janvier alleges that he received death threats for being involved in the dismissal of five company employees in August 2016. The five employees were allegedly furious with Mr. Janvier for writing a report that led to their dismissal. Mr. Janvier describes the alleged actions of the five employees as follows: (1) stones were thrown at his car; (2) criminals gathered outside his place of work and fired shots while shouting his name; and (3) a group of strangers broke into his house, killed his dog and made death threats against him.

[6] In October 2016, Mr. Janvier left Haiti because of the threats. He entered Canada on October 6, 2016, and made his claim for refugee protection on November 21, 2016.

[7] On November 10, 2017, the RPD rejected Mr. Janvier's claim for refugee protection, finding that he was not credible in light of contradictions and inconsistencies in his account of events. In addition, the RPD determined that Mr. Janvier had not presented the additional evidence requested to establish his relationship with his employer (namely pay stubs and bank statements) and to corroborate his testimony.

[8] Mr. Janvier appealed against the RPD's decision but the RAD, in its decision, dismissed Mr. Janvier's appeal and confirmed the RPD's findings. It is from the RAD's decision that this application for judicial review arises.

B. *RAD decision*

[9] In its decision, the RAD began by establishing that the determinative issue was credibility. Having carried out an independent review of all the evidence, including the audio recording of the hearing before the RPD, the RAD agreed with the RPD's finding that Mr. Janvier was not credible because of significant inconsistencies and omissions in his account as well as a lack of documentary evidence that he should have been able to obtain.

[10] The RAD stated that Mr. Janvier did not discharge his burden of proving, on a balance of probabilities, that he was a person in need of protection. In this regard, the RAD determined that Mr. Janvier's credibility was undermined by two main factors: (1) his failure to provide documentary evidence about his employment, which the RPD specifically asked him to submit before the hearing; and (2) his failure to provide the evidence necessary to corroborate the allegations at the heart of his story.

[11] First, the RAD noted that Mr. Janvier failed to provide key documents related to his employment, including bank statements and pay stubs for the period in which he was allegedly re-employed. Having noted that Mr. Janvier was the company's accountant, the RAD did not find it credible that he could not provide any kind of payroll record of the cheques payable to him that were apparently issued. Mr. Janvier provided a copy of a letter from his employer

confirming his rehiring in July 2016, but the RAD agreed with the RPD's decision not to give the document any weight. Indeed, Mr. Janvier failed to provide any credible, reasonable explanation for not having submitted the original letter. Mr. Janvier merely told the RPD that his brother in Haiti had the original letter and that his brother could not provide it because he was being threatened and was living in hiding.

[12] In addition, the RAD found that Mr. Janvier's credibility was undermined by his failure to provide a statement from his employer corroborating the threats he allegedly experienced, which were related to his work. On this point, Mr. Janvier had testified before the RPD that he had not requested a statement from his director, believing it to be unnecessary. However, before the RAD, he changed his story, stating that he had tried to obtain such a letter but was unsuccessful. The RAD was of the view that Mr. Janvier could have provided a statement from his employer, especially considering that Mr. Janvier had told the RPD that he was still in contact with the director of the company. The RAD therefore did not understand why, in the circumstances, it was impossible to obtain a statement from his employer.

[13] Moreover, the RAD identified several inconsistencies in Mr. Janvier's evidence, which also undermined his credibility:

(1) Regarding the telephone threats received on September 10, 2016, Mr. Janvier testified that a stranger told him he would be kidnapped and tortured and that they would [TRANSLATION] "finish him off." However, in his BOC Form, Mr. Janvier states that the caller told him that if he worked on payroll accounting one more time, he would be murdered as payback for the five layoffs. When asked by the RPD to explain this

inconsistency in the evidence, he simply replied that he meant the same thing. The RAD noted that, although this contradiction alone was not sufficient to reject Mr. Janvier's refugee protection claim, the RAD did give it some weight in the evidence as a whole because it was related to a key allegation in the claim.

(2) Regarding the gathering of criminals outside Mr. Janvier's workplace on September 20, 2016, Mr. Janvier stated at the RPD hearing that security guards told him they had exchanged shots with the criminals. However, the RAD stated that there is no mention of this in Mr. Janvier's BOC Form.

(3) Regarding the peace court record of the break and enter on the night of September 22, 2016, the RAD found that the RPD was correct in not giving it any weight to corroborate Mr. Janvier's allegation that his home had been invaded by criminals with ties to the five dismissed employees. The RAD noted that Mr. Janvier testified that he did not return to his home after September 20, 2016. However, the record indicates that Mr. Janvier was at home to provide a statement about the break and enter, and it specifically referred to Mr. Janvier and his identification number. The RAD rejected Mr. Janvier's submission that this inconsistency was due to corruption and the lack of resources and training for police and justice system staff in Haiti. The RAD also noted that the peace court record made no mention of the problems that Mr. Janvier allegedly experienced in his workplace.

[14] The RAD was therefore of the view that the RPD was correct in relying on these inconsistencies undermining Mr. Janvier's credibility as a basis for its decision. The RAD also

rejected Mr. Janvier's explanation that the inconsistencies were attributable to the inherent stress of the hearing. Rather, after listening to the audio recording of the hearing before the RPD, the RAD noted that Mr. Janvier was remarkably calm, articulate and prepared.

[15] Aside from the negative findings as to Mr. Janvier's credibility, the RAD acknowledged that the RPD had erroneously made a finding of implausibility by assuming that it was unlikely that Mr. Janvier's employer would rehire him after an absence of several months. The RAD also criticized the RPD for drawing a conclusion based on a microscopic analysis of some evidence. Despite these two errors in the RPD's decision, the RAD concluded that the RPD had correctly determined that, on the whole, Mr. Janvier's evidence that he was threatened with death by criminals with ties to the five dismissed employees was not credible. The RAD therefore determined that Mr. Janvier was not a Convention refugee or a person in need of protection within the meaning of sections 96 and 97 of the IRPA and dismissed his appeal.

C. *Standard of review*

[16] The framework for judicial review of administrative decisions was recently reviewed by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. The framework is now based on the presumption that the standard of reasonableness is the applicable standard in all cases. The presumption can be rebutted in only two types of situations. The first is where the legislature has prescribed the applicable standard of review or provided for a statutory appeal mechanism from an administrative decision to a court; the second is where the question under review falls within one of the categories of questions for which the rule of law requires review on a standard of correctness (*Vavilov* at paras 10, 17;

Canada Post Corp v Canadian Union of Postal Workers, 2019 SCC 67 [*Canada Post Corp*] at para 27). This is the case for constitutional questions, general questions of law of central importance to the legal system as a whole and questions related to the jurisdictional boundaries between two or more administrative bodies (*Vavilov* at paras 17, 53).

[17] None of the situations justifying derogation from the presumption of reasonableness review applies in this case. The RAD decision is therefore reviewable on a standard of reasonableness. The parties do not dispute this.

[18] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and determine whether the decision is based on “an internally consistent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85; *Canada Post Corp* at paras 2, 31). The reviewing court must consider “the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified” (*Vavilov* at para 15). The reviewing court must therefore ask “whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility—and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov* at para 99, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at paras 47, 74 and *Catalyst Paper Corp v North Cowichan (District)*, 2012 SCC 2 at para 13).

[19] It is not enough for the outcome of a decision to be *justifiable*. Where reasons for decision are required, the decision “must also be justified, by way of those reasons, by the decision maker to those to whom the decision applies” (emphasis in original) (*Vavilov* at para 86). A reasonableness review is therefore concerned with both the outcome of the decision and the reasoning process followed (*Vavilov* at para 87). I note that this approach is consistent with the direction in *Dunsmuir* that judicial review is concerned with both outcome and process (*Dunsmuir* at paras 27, 47–49).

[20] That said, the reviewing court must focus on the decision the administrative decision maker actually made, including the justification offered for it, and not on the conclusion the court itself would have reached if it had been in the decision maker’s shoes.

[21] A reasonableness review must include a careful evaluation of administrative decisions. A reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with “respectful attention” and seeking to understand the reasoning process followed by the administrative decision maker to arrive at its conclusion (*Vavilov* at para 84). The reviewing court must exercise restraint and intervene only “where it is truly necessary in order to safeguard the legality, rationality and fairness of the administrative process” (*Vavilov* at para 13). It is important to remember that reasonableness review still finds its starting point in the principle of judicial restraint and must still demonstrate a respect for the distinct role given to administrative decision makers (*Vavilov* at paras 13, 75). The presumption of reasonableness review is based on “respect for the legislature’s institutional design choice, according to which the authority to make a decision is vested in an administrative decision maker rather than in a

court” (*Vavilov* at para 46). In other words, according to the majority of the Supreme Court, *Vavilov* is not a eulogy for deference to administrative decision makers.

III. Analysis

[22] Mr. Janvier contends that the RAD’s credibility findings contain reviewable errors and are unreasonable. I disagree. In *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 [*Lawani*], I summarized the main principles governing the manner in which an administrative decision maker like the RPD or the RAD must assess the credibility of refugee applicants (*Lawani* at paras 20–26). Applying these principles, I conclude that the RAD decision is reasonable in all respects. In Mr. Janvier’s case, the deficiencies in the evidence and the accumulation of contradictions and inconsistencies regarding crucial elements of his claim amply support the RAD’s negative credibility finding against him (*Lawani* at para 21). Moreover, the negative credibility findings did not arise from minor contradictions that were secondary or peripheral to Mr. Janvier’s refugee protection claim, but rather were at the very heart of Mr. Janvier’s story of retaliation for performing his duties for his employer.

[23] As a result of *Vavilov*, the reasons provided by administrative decision makers have taken on greater importance and have become the starting point for the analysis. They are the primary mechanism by which administrative decision makers show that their decisions are reasonable—both to the affected parties and to the reviewing courts (*Vavilov* at para 81). They “explain how and why a decision was made”, demonstrate that “the decision was made in a fair and lawful manner” and shield against “the perception of arbitrariness in the exercise of public power” (*Vavilov* at para 79). In short, it is the reasons that establish the justification for the decision.

[24] In the case of Mr. Janvier, I am satisfied that the reasons for the RAD's decision provide a transparent and intelligible justification (*Vavilov* at paras 81, 136; *Canada Post Corp* at paras 28–29; *Dunsmuir* at para 48). They demonstrate that the RAD followed a rational, consistent and logical line of reasoning in its analysis and that the Decision conforms to the relevant legal and factual constraints that bear on the RAD and the issue at hand (*Canada Post Corp* at para 30, citing *Vavilov* at paras 105–7). Ultimately, the omissions and other errors alleged by Mr. Janvier do not cause me to “lose confidence in the outcome reached by the decision maker” (*Vavilov* at para 123).

A. *Documentary evidence*

[25] First, Mr. Janvier submits that the RAD erred in its consideration of his failure to provide documentary evidence to establish his re-employment between July and September 2016 or to corroborate the events that led to his claim for refugee protection. Mr. Janvier contends that the RAD relied on conjectural and theoretical evidence to reject his explanations, and that, in the absence of grounds for doubt, it failed to presume that his testimony was true (*Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (FCA) [*Maldonado*] at para 5; *Ismaili v Canada (Citizenship and Immigration)*, 2014 FC 84 at para 38; *Ndjavera v Canada (Citizenship and Immigration)*, 2013 FC 452 [*Ndjavera*] at para 6). Mr. Janvier further states that the RAD applied a North American or Western approach to its explanations as to why he could not provide documentation to prove the existence of cheques and pay stubs, and to its conclusion that there should be documentation showing that the employer had issued cheques payable to him.

[26] I disagree.

[27] First, I note that the RAD carried out an independent analysis of all the evidence, including listening to the complete recording of the hearing before the RPD. It therefore followed to the letter the Federal Court of Appeal in *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 [*Huruglica*]. It is clear from the reasons for decision that the RAD carried out its own independent, comprehensive and in-depth assessment of the evidence to determine whether Mr. Janvier was credible. That is precisely the requirement of the intervention test set out in *Huruglica* (*Huruglica* at para 103). The fact that the RAD reached the same conclusion as the RPD regarding Mr. Janvier's lack of credibility does not mean that the RAD failed to do its job as an appeal tribunal.

[28] In his submissions, Mr. Janvier places considerable emphasis on the presumption, established in *Maldonado*, that testimony is true. However, this presumption of truthfulness is not irrebuttable. *Maldonado* merely established that “[w]hen [a claimant] swears to the truth of certain allegations, this creates a presumption that those allegations are true unless there be reason to doubt their truthfulness” (emphasis added) (*Maldonado* at para 5).

[29] The underlying reason for the presumption of truthfulness in *Maldonado* is that claimants who have experienced certain types of crises cannot reasonably be expected to have documents or other evidence to corroborate their claims. These circumstances may include refugee camps, conditions in war-torn countries, cases of discrimination, and situations where the claimant has

only a very short time to escape from a persecutor and is subsequently unable to access documents or other evidence from Canada.

[30] However, in cases where refugee protection claimants appear to have had the opportunity to gather evidence to corroborate their claim before or after arriving in Canada, the strength of the presumption of truthfulness may depend directly on the extent to which corroborative evidence is provided. As a result, if there is any reason to doubt the truthfulness of the allegations made in a refugee protection claimant's affidavit or sworn testimony, the presumption of truthfulness disappears. In other words, where there is a valid reason to question a refugee protection claimant's credibility, negative credibility findings may be drawn if the claimant cannot explain a lack of reasonably expected corroborating evidence (*Ndjavera* at para 7). Similarly, where corroborating evidence should reasonably be available to establish the essential elements of a claim for refugee protection and there is no reasonable explanation for its absence, the administrative decision maker may draw a negative credibility finding based on the claimant's lack of efforts to obtain that evidence (*Ismaili* at paras 33, 35).

[31] In Mr. Janvier's case, he stated that he was paid by cheques from his employer and, in his story, he referred to pay cheques that he had to cash directly at work because of the risks in Haiti. Moreover, he was an accountant for the company. In addition, the entire risk of persecution he claimed arose from his activities with his employer, with whom he remained in contact. In the circumstances, Mr. Janvier's inability to obtain the work-related documents requested by the RPD is incomprehensible, and it was not unreasonable for the RPD and the RAD to consider that this undermined his credibility. This was evidence to which Mr. Janvier could have had access,

and it was certainly not inappropriate to ask for it in the circumstances. Similarly, Mr. Janvier testified that he was still in contact with the company director and, in the absence of any explanation for the failure to provide a company document corroborating his testimony about events at his workplace attributable to his work, it was not unreasonable for the RAD to conclude that his credibility was undermined.

[32] Note that the burden is on the claimant to prove the elements of a claim for refugee protection (*Morales Esquivel v Canada (Citizenship and Immigration)*, 2009 FC 468 at para 16). Under section 11 des *Refugee Protection Division Rules*, SOR/2012-256, the refugee protection claimant must provide documents establishing the elements of the claim. The RAD could therefore logically conclude in its analysis that Mr. Janvier's failure to produce documents that could reasonably be expected to be received could undermine his credibility.

B. *Inconsistencies*

[33] Second, Mr. Janvier submits that the RAD decision is unreasonable because the RAD gave too much weight to the inconsistencies between his account in his BOC Form, his testimony before the RPD and the peace court record. Again, I am not persuaded by Mr. Janvier's arguments in this regard.

[34] I acknowledge that some of the RAD's submissions, for example, on the issue of gunshots when the criminals gathered outside Mr. Janvier's workplace on September 20, 2016, do not appear to be supported by the evidence. However, I am satisfied that the evidence on the record confirms the inconsistencies noted by the RAD with respect to the telephone threats

received on September 10, 2016, and the peace court record of the break and enter that occurred on the night of September 22–23, 2016. Although they may be insufficient when considered individually or in isolation, the accumulation of contradictions, inconsistencies and omissions regarding crucial elements of a claim may support a negative credibility finding (*Sary v Canada (Citizenship and Immigration)*, 2016 FC 178 at para 19; *Quintero Cienfuegos v Canada (Citizenship and Immigration)*, 2009 FC 1262 a para 1).

[35] The reviewing court must look to the record as a whole to understand the decision (*Vavilov* at para 91). Reasons must be read holistically and contextually in order to understand “the basis on which a decision was made” (*Vavilov* at para 97; *Canada Post Corp* at para 31). The reasons for a decision need not be perfect or even exhaustive. They merely need to be understandable. The reasonableness standard of review does not focus on the degree of perfection of the decision, but rather on its reasonableness (*Vavilov* at para 91; *Bhatia v Canada (Citizenship and Immigration)*, 2017 FC 1000 at para 29). This standard requires that the reviewing court begin with the decision and an acknowledgement that the administrative decision maker has the primary responsibility for making factual determinations. The reviewing court examines the reasons, the record and the outcome and, if there is a logical and consistent explanation for the outcome, the court does not intervene. In the case of Mr. Janvier, I am satisfied that the explanations in the Decision provide an understanding of why the RAD found Mr. Janvier’s account to be lacking in credibility. No intervention by the Court is required.

C. RPD errors

[36] Lastly, Mr. Janvier argues that the RAD erred in its analysis, as it should have set aside the RPD's decision because of errors that the RAD itself identified in the RPD's findings as to the implausibility of Mr. Janvier's return to his employer and because of an overly microscopic analysis of one of the findings. Mr. Janvier states that the RAD's reasoning is contradictory, since the RAD cannot both recognize errors in the RPD's decision and at the same time validate that decision.

[37] Again, I am not persuaded by Mr. Janvier's arguments. Judicial review is not a "line-by-line treasure hunt for error"; rather, a reviewing court must consider the reasons and outcome of the tribunal's decision as a whole (*Vavilov* at para 102; *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54; *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 53). In the Decision, the RAD mentions several factors that led it to disbelieve Mr. Janvier's story, and the reasonableness of a decision must be assessed in the context of all the reasons. It is well established that the Court must show deference to the RPD's and the RAD's assessment of a claimant's credibility (*Dunsmuir* at para 53; *Aguebor v (Canada) Minister of Employment and Immigration* (1993), 160 NR 315 (FCA) at para 4). Questions of credibility are at the very heart of their jurisdiction and expertise (*Pepaj v Canada (Citizenship and Immigration)*, 2014 FC 938 at para 13). The arguments put forward by Mr. Janvier merely express his disagreement with the RAD's assessment of the evidence and invite the Court to prefer his opinion and reading to that of the RAD. That is not the role of a reviewing court in judicial review.

[38] In summary, the RAD provided detailed, carefully considered reasons as to why Mr. Janvier was not found to be credible. The lack of documentation and the accumulation of inconsistencies led the RAD to make a negative credibility finding. Having read the RAD decision holistically in conjunction with the record, I am satisfied that the RAD made a thorough and detailed assessment of the evidence and that its conclusions reflect a rational and consistent chain of analysis (*Vavilov* at paras 103–4).

[39] The purpose of reasonableness review is to understand the basis on which the decision was made and to determine whether there is a sufficiently serious shortcoming or unreasonable chain of analysis. (*Vavilov* at paras 96–97, 101). The party challenging the decision must satisfy the reviewing court that “any shortcomings or flaws relied on . . . are sufficiently central or significant to render the decision unreasonable” (*Vavilov* at para 100). In *Vavilov*, the Supreme Court identified two types of fundamental flaws: a failure of rationality internal to the reasoning process and the fact that a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it (*Vavilov* at para 101). In this case, I am satisfied that the reasoning of the RAD can be traced without encountering any decisive flaws in its overall logic, and that there is a line of analysis in the reasons that could reasonably lead the administrative decision maker from the evidence before it to the conclusion at which it arrived (*Vavilov* at para 102; *Canada Post Corp* at para 31).

IV. Conclusion

[40] For the above reasons, Mr. Janvier’s application for judicial review is dismissed. I find nothing irrational in the RAD’s decision-making process and conclusions. Rather, I find that the

RAD's analysis of Mr. Janvier's lack of credibility has the required attributes of transparency, justification and intelligibility, and that the Decision is not tainted by any reviewable error.

Under the reasonableness standard, it is sufficient that the Decision be based on an internally consistent and rational chain of analysis and that it be justified within the legal and factual constraints that bear on the decision maker. That is the case here.

[41] No question of general importance was proposed by the parties for certification, and I agree that none arises.

JUDGMENT in IMM-1433-19

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed, without costs.
2. No question of general importance is certified.

“Denis Gascon”

Judge

Certified true translation
This 14th day of February 2020.

Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1433-19

STYLE OF CAUSE: STEEVENS JANVIER v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JANUARY 13, 2020

JUDGMENT AND REASONS: GASCON, J.

DATED: JANUARY 27, 2020

APPEARANCES:

Mohamed Diaré FOR THE APPLICANT

Patricia Nobl FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mohamed Diaré FOR THE APPLICANT
Saint-Laurent, Quebec

Attorney General of Canada FOR THE RESPONDENT
Montréal, Quebec