Federal Court Cour fédérale

Date: 20200211

Docket: IMM-2994-19

Citation: 2020 FC 225

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, February 11, 2020

Present: The Honourable Mr. Justice LeBlanc

BETWEEN:

DILASE ELUSME

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

<u>REASONS FOR JUDGMENT</u>

[1] A Haitian citizen having fled his country of origin in January 2014, the applicant is appealing a decision rendered by the Refugee Appeal Division [RAD] on April 23, 2019. The RAD determined that the applicant was neither a refugee nor a person in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*,

SC 2001, c 27, on the grounds that he had a viable Internal Flight Alternative [IFA] in Jacmel or Port-au-Prince, thereby confirming a decision of the Refugee Protection Division [RPD] to the same effect.

[2] The applicant, a truck driver by trade, entered Canada in August 2017 after having spent some time living in Brazil and later on, the United States. According to his claim for refugee protection, the events leading up to his departing Haiti occurred in the fall of 2013, when he declined an invitation from an unknown individual to accompany him in carrying out what the applicant considered to be dishonest acts. Two weeks earlier, he had received a similar invitation from another unknown individual, which the applicant had also declined. This other individual allegedly threatened him with death if he refused to cooperate, even telling him that he knew where the applicant's wife and children lived. The applicant, who is 61 years old and illiterate, subsequently went into hiding in several locations outside of the village where he lived before leaving Haiti for Brazil.

[3] The test for determining the viability of an IFA is two-pronged. The first consists of ensuring that there is no serious possibility, on a balance of probabilities, of the claimant being persecuted in the proposed IFA. If this is the case, then the second prong requires that the conditions in the proposed IFA be such that it would not be unreasonable, upon consideration of all the circumstances, including the claimant's personal circumstances, for the claimant to seek refuge there (*Ndimande v Canada (Citizenship and Immigration)*, 2019 FC 1025 at para 27; *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] FC 706 (CA); *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] FC 589 (CA) [*Thirunavukkarasu*]).

[4] As to the first prong of this test, the RAD determined that the RPD had not erred in its characterization of the two individuals who had approached the applicant given the lack of evidence that would support a finding that these individuals were members of a criminal group whose tentacles extended to Port-au-Prince and Jacmel. Nor was there any evidence, in the RAD's view, that these two individuals had the motivation needed to pursue the applicant all the way to Port-au-Prince or Jacmel given that there was nothing in the record to show that these individuals had attempted to go after, or even contact, the applicant or members of his family either before or after he left Haiti. The RAD also pointed out that according to the evidence in the record, the applicant's wife and nine children have never left Haiti and remain in the same place they and the applicant lived in at the time the events that led him to flee to Brazil occurred.

[5] With respect to the second prong of the test, the RAD found that the viability of the two IFAs recommended by the RPD did not appear unreasonable to it, despite the applicant's age and lack of education. It found that the applicant's true concern with regard to the possibility of moving to Port-au-Prince or Jacmel was, at that level, related to the fact that he would have difficulty finding work, but that this concern was insufficient to conclude that the two IFAs were unreasonable. According to the RAD, the issue of unemployment is endemic throughout Haiti and is therefore not a phenomenon specific to those two destinations. The RAD further noted that it is well-established by the case law of this Court that the fact that Canada is able to provide foreign nationals with more promising economic opportunities is not sufficient to preclude a viable IFA.

[6] The applicant, who notes that neither the RAD, nor RPD before it, questioned the credibility of the chronicle of events that forced him to leave Haiti, criticized the RAD for having concluded that there was a lack of motivation on the part of the two individuals concerned to track him down elsewhere in Haiti, and for having disregarded documentary evidence that word-of-mouth is a preferred means used by criminals to find their victims, wherever they may flee to in Haiti. With respect to the issue of the reasonableness of the two IFAs in question, he criticized the RAD for having failed to give sufficient weight to the existence of customs and perceptions in Haiti about individuals who move from town to town, who, according to the applicant, are often perceived and stigmatized as criminals.

[7] As to the assessment of his personal circumstances, the applicant argues that the RAD erroneously attributed to him a higher level of education when in fact he has none, while failing to properly appreciate Haiti's employment situation in light of his age and illiteracy. He asserts that even the RAD acknowledged that there were "minimal employment opportunities" if he were to return to his country (RAD decision at para 23), which puts at risk his own physical integrity and that of his family as it would make him unable to provide for himself and his family.

[8] The issue here is whether the RAD, in finding as it did, committed an error that warrants the intervention of the Court.

[9] At the time this matter was argued, the standard of review applicable to decisions of the RAD with regard to an IFA—the reasonableness standard—was not problematic (*Brahim v*

Canada (Citizenship and Immigration), 2019 FC 503 at para 13; see also *Verma v Canada (Citizenship and Immigration)*, 2016 FC 404 at para 14). However, a few days after I took this matter under advisement, the Supreme Court of Canada rendered a judgment in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], a case that provided the Supreme Court "with an opportunity to re-examine its approach to judicial review of administrative decisions" (*Vavilov* at para 1).

[10] As per a directive issued to the parties, I gave the parties an opportunity to make additional written submissions on the potential impact that the decision might have on the matter at hand. The applicant declined the offer, being of the view that the decision had no bearing on this matter. For its part, the respondent availed itself of the offer, finding that *Vavilov* crystalized the presumption that reasonableness is the standard applicable to all cases, subject to exceptions that find no application here.

[11] Indeed, out of concern for the clarification and simplification of the applicable law with regard to determining the standard of review to be applied in a given case, the Supreme Court adopted a "framework . . . [that] begins with a presumption that reasonableness is the applicable standard in all cases" (*Vavilov* at paras 10 and 25). This analytical framework takes it as a given, as a conceptual basis for this presumption, that the administrative decision maker's expertise is to be considered as inherent to its specialized function (*Vavilov* at paras 26–28).

[12] According to *Vavilov*, deviation from this presumption can only occur in two types of situations. The first concerns cases in which the legislature has clearly indicated that it intends a

different standard than that of reasonableness to apply. This will be the case where Parliament prescribes the applicable standard of review or where it has provided a statutory appeal mechanism from an administrative decision to a court. The will of the legislature must be respected here.

[13] The second type of situation involves, for its part, instances in which the presumption of the application of the reasonableness standard must give way where the rule of law requires that a correctness standard be applied. This would be 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 para 17).

[14] I agree with the respondent that this matter contains none of the characteristics that would permit deviating from the presumption of the application of the reasonableness standard.

[15] As for the contents of the reasonableness standard itself, the respondent submits that *Vavilov* is consistent with the framework for applying that standard, set out in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*], and those decisions that followed it. I generally agree with this assertion. I should just add, for the purposes of the case at bar, that, as the Supreme Court reminds us, “a court applying the reasonableness standard does not ask what decision it would have made in place of that of the administrative decision maker, attempt to ascertain the ‘range’ of possible conclusions that would have been open to the decision maker, conduct a de novo analysis or seek to determine the ‘correct’ solution to the problem”. It must “consider only

whether the decision made by the administrative decision maker — including both the rationale for the decision and the outcome to which it led — was unreasonable" (*Vavilov* at para 83).

[16] With respect to that last point, the Supreme Court points out that a court reviewing the decision of an administrative decision maker on a reasonableness standard must defer to such a decision (*Vavilov* at para 85) and must take care not to engage in a "line-by-line treasure hunt for error" (*Vavilov* at para 102).

[17] At the end of the day, a reviewing court must, according to the Supreme Court, "develop an understanding of the decision maker's reasoning process" and determine "whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility" (*Vavilov* at para 99).

[18] However, in so doing, a reviewing court must not interfere with an administrative decision maker's findings of fact, except where there are "exceptional circumstances", such as where the decision maker "has fundamentally misapprehended or failed to account for the evidence before it" (*Vavilov* at paras 125–126). In so doing, it must always bear in mind that the written reasons given by an administrative body "must not be assessed against a standard of perfection", given that administrative justice will not always look like judicial justice (*Vavilov* at para 91). Furthermore, when assessing the quality of the decision maker's reasoning, as revealed in the reasons for its decision, it should read these in light of the history and context in which they were rendered as well as the evidence that was before the decision maker (*Vavilov* at para 94).

[19] This analytical method is therefore, in my view, consistent with the principles established in *Dunsmuir*, although one must ensure that the application of these principles to a given case aligns with those set out in *Vavilov*, the ultimate goal of which is to "develop and strengthen a culture of justification in administrative decision making" (*Vavilov* at paras 2 and 143).

[20] Applying a reasonableness standard to the facts and circumstances of the case at bar, I am of the view that no intervention in the RAD's decision is warranted.

[21] First, the RAD's findings with respect to the first prong of the test for determining whether the applicant can find refuge in Port-au-Prince or Jacmel without a serious prospective risk of persecution appear reasonable to me. Although it acknowledged that Haiti can be the site of violent crimes motivated by longstanding desires for vengeance between armed individuals or groups, the RAD based its conclusion on the lack of evidence of any motivation on the part of the two persecutors to track down the applicant in either one of the proposed IFAs.

[22] This conclusion comes from the fact that, according to the evidence in the record, these individuals have made no effort to locate the applicant since 2013 and never bothered, let alone threatened, his family, his wife and nine children having remained in Haiti after the applicant's departure. Yet the RAD noted that the individual who purportedly threatened the applicant knew, according to the applicant's own testimony, where his wife and children lived. In my opinion, both the reasoning of the RAD and its ensuing determination meet the standard of reasonableness.

[23] Second, as for the viability of the IFAs proposed by the RAD, here again I see no grounds for intervening. In the first place, the criticism directed at the RAD to the effect that it failed to consider the fact that the applicant would be labelled as a "criminal" if he were to leave his home village and move to Port-au-Prince or Jacmel is without merit. At the hearing of this judicial review, counsel for the applicant acknowledged that this concern was not based on any objective evidence.

[24] Furthermore, as I recall, the RAD noted from the evidence that the applicant's main concern with the prospect of moving to Port-au-Prince or Jacmel was in relation to the difficulty he would have in finding a job and thus in providing for the needs of his family, which he would be able to do from Canada.

[25] The onus of demonstrating that an IFA is unreasonable in a given case, an onus that rests with the claimant, is quite an exacting one (*Jean Baptiste v Canada (Citizenship and Immigration)*, 2019 FC 1106 at para 21 [*Baptiste*]; *Pineda v Canada (Citizenship and Immigration)*, 2019 FC 1446 at para 14; *Molina v Canada (Citizenship and Immigration)*, 2016 FC 349 at para 14; *Aznar Alvarez v Canada (Citizenship and Immigration)*, 2009 FC 1164 at para 10). In fact, it requires nothing less than demonstrating the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area, and it requires actual and concrete evidence of such conditions (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 at para 15 [*Ranganathan*]).

[26] A fear of being unable to find suitable employment is not sufficient to meet that onus (*Thirunavukkarasu* at para 14) especially given that in this case, according to his own testimony in which he described himself as being a [TRANSLATION] "resourceful person" able to [TRANSLATION] "do any kind of work", it would be easy for the applicant, upon returning to Haiti, to renew his driver's licence and thereby resume his work as a truck driver (Certified Tribunal Record at pages 236 and 245).

[27] In *Baptiste*, a matter that involved an RAD decision regarding a Haitian national's refugee protection claim, the Associate Chief Justice of this Court pointed out that "the mere fact that it would be difficult to find employment in Cap-Haïtien is insufficient to conclude that it would be unreasonable to find refuge there", despite the fact that "unemployment rates are high throughout Haiti" (*Baptiste* at para 28). Like Mr. Baptiste, the applicant had a good job before he left Haiti, and one can therefore not assume that he would be unable to find employment in Port-au-Prince or Jacmel (*Baptiste* at para 28).

[28] To my mind, the circumstances in this case differ from those in *Fernandez Cuevas v Canada (Citizenship and Immigration)*, 2005 FC 1169, in which the refugee claimant was being pursued by guerillas because he was a wealthy businessman. The Court found it unreasonable to require him to find work in a field that was unknown to him in order to elude his agents of persecution. Here, the fact remains that the applicant does not have the same profile and that, as he himself attested, as I have noted above, he can do any kind of work, including that of a truck driver, in Port-au-Prince or Jacmel.

[29] Lastly, the fact that the RAD referred to the applicant's "level of education", when he had described himself as illiterate is, in my view, inconsequential. One cannot reasonably infer from this that it failed to grasp the personal situation of the applicant, who had not completed elementary school.

[30] It is clear that Canada offers the applicant much better prospects in terms of employment and living standards. However, as I mentioned earlier, that is not the test to be met to demonstrate that an IFA is not viable (*Ranganathan* at para 15).

[31] This application for judicial review is therefore dismissed. Neither party proposed any questions for certification. I agree that none arises in this matter.

JUDGMENT in IMM-2994-19

THE COURT'S JUDGMENT is as follows**:**

1. The application for judicial review is dismissed;

2. No question is certified.

"René LeBlanc"
Judge

Certified true translation
This 20th day of February 2020

Johanna Kratz, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2994-19
STYLE OF CAUSE:	DILASE ELUSME v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	DECEMBER 12, 2019
REASONS FOR JUDGMENT AND JUDGMENT:	LEBLANC J.
DATED:	FEBRUARY 11, 2019

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