

Federal Court



Cour fédérale

Date: 20200220

Docket: IMM-4277-19

Citation: 2020 FC 276

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Montréal, Quebec, February 20, 2020

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

OBED IDENS PETIT HOMME

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant, Obed Petit Homme, is applying for judicial review of a decision rendered by the Refugee Appeal Division [RAD] on June 18, 2019, concluding that he should be excluded from protection in Canada under section 98 of the *Immigration and Refugee Protection Act*, SC 2001, c 21 [IRPA], and Article 1E of the United Nations *Convention Relating to the Status of Refugees*, July 28, 1951, 189 UNTS 137 [Convention].

[2] The applicant is a citizen of Haiti. He fled Haiti in July 2008, after he reported to the police that his daughter had been kidnapped and sexually assaulted. He states that after he filed the report, he started to receive threats.

[3] The applicant went to the Dominican Republic, and after three years he moved to Brazil. He testified that he feared death threats he received in Brazil after he lost his job. He left Brazil for the United States and then continued to Canada in July 2017 to claim refugee protection.

[4] The Refugee Protection Division [RPD] rejected the applicant's refugee protection claim because he holds permanent resident status in Brazil and this status was still valid on the date of the hearing before the RPD. The RPD concluded, considering the submitted evidence, that the applicant left Brazil on September 11, 2016, and the hearing took place on September 6, 2018, which is within the two-year period that permanent residence in Brazil remains valid after leaving the country.

[5] The RPD was also of the opinion that the applicant failed to establish a risk of persecution should he return to Brazil. The applicant had not mentioned the threats in Brazil on his refugee protection claim form, and he had not reported them to the police. The RPD found that this undermined his credibility.

[6] The RAD noted a contradiction in the evidence regarding the date the applicant left Brazil. The document from the United States authorities indicates that the applicant arrived there on September 12, 2016, so the RAD concluded that he left Brazil a few weeks before that date.

The RAD found that the RPD had erred and that at the time of the hearing before the RPD, the applicant did not have permanent residence status in Brazil.

[7] Next, the RAD proceeded with an analysis of the criteria set out in *Canada (Citizenship and Immigration) v Zeng*, 2010 FCA 118 [Zeng]. The RAD confirmed the RPD's conclusion that the omission of threats in Brazil in the applicant's refugee protection claim form undermined his credibility. In addition, the RAD found the applicant to not be credible with respect to his fear in Haiti given the gaps and inconsistencies in the evidence, and the fact that he returned to Haiti from December 2015 to February 2016 and no threats were made against him. Considering all of these elements and applying the factors in *Zeng*, the RAD concluded that the applicant should be excluded from protection in Canada under section 98 of the IRPA, and under the exclusion provided in Article 1E of the Convention.

[8] The applicant seeks judicial review of this decision, alleging that the RAD breached procedural fairness and that the decision is unreasonable.

[9] The standard of review that applies to a review of the merits of the decision is that of reasonableness. To be reasonable, a decision must be based on internally coherent reasoning and must be justified in light of the applicable legal and factual constraints: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at para 101 [Vavilov]; *Canada Post Corporation v Canadian Union of Postal Workers*, 2019 SCC 67 at paras 29–33 [Canada Post Corporation]. The burden is on the party challenging the decision to show the Court that “any

shortcomings or flaws . . . [are] sufficiently central or significant to render the decision unreasonable” (*Canada Post Corporation*, at para 33, citing *Vavilov*, at para 100).

[10] The applicant submits that the decision is unreasonable because the RAD did not demonstrate an appreciation of the facts of the case, in particular the fact that his daughter’s abductors are still in Haiti and that the threats against him are part of the general situation in Haiti. He claims that the RAD did not give sufficient weight to the medical certificate relating to the trauma his daughter suffered, and that it undermined his credibility without adequate explanation. According to the applicant, the RAD’s decision is unreasonable. The applicant did not elaborate on his allegations of a lack of procedural fairness in his memorandum, and therefore there is no need to address them.

[11] I am not persuaded that the RAD’s decision is unreasonable. Applying the factors set out in *Vavilov*, I agree that the decision demonstrates coherent reasoning and that the RAD applied the relevant law. The RAD closely followed the criteria provided in *Zeng* for the application of the exclusion under Article 1E of the Convention, and the analysis of the criteria is well reasoned and supported by the evidence on the record. While the applicant does not agree with the assessment of the evidence, and in particular the assessment of his credibility, this task is central to the roles of the RPD and RAD, and I maintain that the analysis is based on the appropriate evidence and considerations, according to the case law (see *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319).

There is no need to intervene. The application for judicial review is dismissed. There is no question of general importance to certify.

JUDGMENT in IMM-4277-19

THIS COURT’S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. There is no question of general importance to certify.

“William F. Pentney”

Judge

Certified true translation
This 4th day of March 2020.

Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4277-19

STYLE OF CAUSE: OBED IDENS PETIT HOMME v MCI

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: FEBRUARY 19, 2020

JUDGMENT AND REASONS: PENTNEY J.

DATED: FEBRUARY 20, 2020

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