

Federal Court



Cour fédérale

Date: 20201203

Docket: IMM-5017-19

Citation: 2020 FC 1117

[ENGLISH TRANSLATION]

Ottawa, Ontario, December 3, 2020

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

PIERRE CHARLES DESRAVINES

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Pierre Charles Desravines, is a citizen of Haiti. He fled Haiti in 2013 and obtained permanent resident status in Brazil. Mr. Desravines applied for refugee protection in Canada, following which the Refugee Protection Division [RPD] found that he was excluded from the definitions of “refugee” and “person in need of protection” under Article 1E of the

United Nations Convention Relating to the Status of Refugees, July 28, 1951, 189 UNTS

[Convention] and section 98 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The Refugee Appeal Division [RAD] dismissed his appeal and confirmed the RPD's decision.

[2] Pursuant to subsection 72(1) of the IRPA, Mr. Desravines is seeking judicial review of the RAD decision. He claims that the RAD's decision is unreasonable. He states that the loss of his status in Brazil was not voluntary and challenges the RAD's negative findings of credibility.

[3] After careful consideration of the record and the submissions of both parties, for the reasons that follow, I conclude that this application must be dismissed.

II. Background

[4] According to Mr. Desravines, he witnessed the assassination of a member of the opposition political party, Pitit Dessalines, in Port-au-Prince in June 2013. The individuals involved in the conspiracy were armed and wore clothing identifying them as members of the ruling party. Mr. Desravines publicly denounced the murder on the radio. He states that he subsequently received anonymous death threats by telephone, which he believes are also linked to his alleged affiliation with the Pitit Dessalines party. After filing a complaint with the police, his house was riddled with bullets.

[5] According to Mr. Desravines, he fled to Gonaïves where he continued to demonstrate against the ruling party. Mr. Desravines states that he again received death threats by telephone.

In November 2013, he fled to the Dominican Republic and then to Brazil, where he remained for three years. In May 2016, he says he came across individuals in Brazil linked to the ruling political party in Haiti. They knew him as an opponent of the party and consequently threatened him. He left Brazil in July 2016 and arrived in the United States in September 2016. Fearing deportation from the United States, he entered Canada and applied for refugee protection on August 2, 2017.

III. Decision subject to judicial review

[6] In confirming the RPD's decision to reject Mr. Desravines's claim for refugee protection, the RAD concluded that he was not credible. Like the RPD, the RAD found that Mr. Desravines was a permanent resident of Brazil. As a permanent resident, the RAD concluded that Mr. Desravines had the right to work, to go to school, to access public hospitals, and to enter and leave the country. Relying on the Federal Court of Appeal's decision in *Canada (Minister of Citizenship and Immigration) v Zeng*, 2010 FCA 118 [Zeng], the RAD concluded that Mr. Desravines had lost his permanent resident status in Brazil due to his absence from the country for more than two years, in accordance with Brazilian law. The RAD noted that there was no meaningful process in place for Mr. Desravines to pursue his reintegration.

[7] The RAD then addressed the circumstances surrounding Mr. Desravines's alleged persecution and his departure from Brazil. The RAD noted significant inconsistencies in his account, including the fact that the Pitit Dessalines party did not exist in June 2013 when Mr. Desravines claimed to have witnessed the murder of one of its members. The RAD rejected Mr. Desravines's comments addressing these inconsistencies and concluded that his account was

not credible. The RAD therefore concluded that his departure from Brazil was voluntary. The RAD then addressed the factors identified in *Zeng*, including Canada’s international obligations, and rejected the claim.

IV. Issues and applicable standard of review

[8] There is only one issue to be resolved in this application: did the RAD reasonably reject Mr. Desravines’s claim for refugee protection under Article 1E of the Convention?

[9] The standard of review that applies is that of reasonableness (*Celestin v Canada (Minister of Citizenship and Immigration)*, 2020 FC 97 at paras 31–32, *Petit Homme v Canada (Minister of Citizenship and Immigration)*, 2020 FC 276 at para 9). To be reasonable, a decision must be based on internally coherent reasoning and 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*]. The party challenging the decision must satisfy the court that “that any shortcomings or flaws relied on . . . are sufficiently central or significant to render the decision unreasonable”. (*Canada Post Corp. v Canadian Union of Postal Workers*, 2019 SCC 67 at para 33 citing *Vavilov* at para 100).

V. Analysis

[10] In order to discourage asylum shopping, Article 1E of the Convention has been implemented in section 98 of the IRPA. Article 1E serves to prevent asylum being granted to

someone who already enjoys essentially the same rights and obligations as nationals of another surrogate country:

United Nations Convention relating to the Status of Refugees, 28 July 1951, 189 UNTS 137
Convention des Nations Unies relative au statut des réfugiés, 28 juillet 1951, 189 RTNU 137

1E This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

1E Cette Convention ne sera pas applicable à une personne considérée par les autorités compétentes du pays dans lequel cette personne a établi sa résidence comme ayant les droits et les obligations attachés à la possession de la nationalité de ce pays.

Immigration and Refugee Protection Act, SC 2001, c 27
Loi sur l'immigration et la protection des réfugiés, LC 2001, c 27

Exclusion — Refugee Convention

98 A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.

Exclusion par application de la Convention sur les réfugiés

98 La personne visée aux sections E ou F de l'article premier de la Convention sur les réfugiés ne peut avoir la qualité de réfugié ni de personne à protéger.

[11] In *Zeng*, the Federal Court of Appeal set out a three-prong test to apply when considering Article 1E of the Convention:

[28] Considering all relevant factors to the date of the hearing, does the claimant have status, substantially similar to that of its nationals, in the third country? If the answer is yes, the claimant is excluded. If the answer is no, the next question is whether the claimant previously had such status and lost it, or had access to such status and failed to acquire it. If the answer is no, the claimant is not excluded under Article 1E. If the answer is yes, the RPD must consider and balance various factors. These include, but are not limited to, the reason for the loss of status (voluntary or involuntary),

whether the claimant could return to the third country, the risk the claimant would face in the home country, Canada's international obligations, and any other relevant facts.

[12] The parties do not challenge the RAD's decision regarding the first two prongs of *Zeng*:

(1) Mr. Desravines had permanent resident status in Brazil; and (2) he lost that status after being absent from Brazil for more than two years. The parties disagree on the RAD's analysis of the third prong. Mr. Desravines argues that the RAD made two errors, first by concluding that the loss of his status in Brazil was voluntary, and second by unreasonably relying on negative findings of credibility in its analysis of his risk of persecution, which Mr. Desravines argues was inadequate.

[13] I am not persuaded that the RAD's decision is unreasonable. The RAD detailed numerous inconsistencies between Mr. Desravines's story and the evidence. In identifying the inconsistencies, the RAD acknowledged Mr. Desravines's explanation of administrative errors and omissions. The RAD stated its reasons for rejecting the explanations provided and detailed its reasoning with respect to the many negative findings of credibility. The negative findings of credibility were in several key areas, including:

- A. the fact that Pitit Dessalines did not exist at the time of the triggering element of Mr. Desravines's story, which is the assassination in June 2013;
- B. inconsistencies in the number of anonymous threatening calls; and

- C. the inconsistency relating to the fact that the persons who appeared before the notary took an oath that they knew Mr. Desravines perfectly well when Mr. Desravines stated at the hearing that he did not know them.

[14] It was therefore reasonable for the RAD to conclude, after an independent assessment of the evidence, that the cumulative effect of these numerous inconsistencies undermined Mr. Desravines's credibility (*Tovar v Canada (Minister of Citizenship and Immigration)*, 2016 FC 598 at para 19).

[15] Having concluded that Mr. Desravines was not credible, it was perfectly reasonable for the RAD to further conclude that he had voluntarily left Brazil, that he had allowed his status in that country to expire voluntarily, and that he "failed to establish a need for protection if he is to return to Haiti". Consequently, the RAD reasonably concluded that Mr. Desravines "failed to demonstrate a need for protection in Canada, so it is not a violation of Canada's international obligations to exclude him."

[16] On the basis of the factors set out in *Vavilov* (see paragraph 9 above), there is no need to intervene. The RAD's decision demonstrates a coherent logic and is justified in light of the legal and factual constraints to which the RAD is subject. The RAD followed the criteria prescribed in *Zeng* on the application of the exclusion under Article 1E of the Convention, and its analysis of the criteria is supported by the evidence on the record. Mr. Desravines disagrees with the assessment of the evidence, particularly the assessment of his credibility, but his disagreement does not reveal any reviewable error.

VI. Conclusion

[17] The application for judicial review is dismissed. There is no question of general importance to certify.

JUDGMENT in IMM-5017-19

THIS COURT DECIDES as follows:

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

“Patrick Gleeson”

Judge

Certified true translation
Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5017-19

STYLE OF CAUSE: PIERRE CHARLES DESRAVINES v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: NOVEMBER 30, 2020

JUDGMENT AND REASONS: GLEESON J.

DATED: DECEMBER 3, 2020

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