Federal Court  Cour fédérale

Date: 20211108

Docket: IMM-176-21

Citation: 2021 FC 1198

[ENGLISH TRANSLATION]

Ottawa, Ontario, November 8, 2021

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

SIDNE FERDINAND

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Sidne Ferdinand is a citizen of Haiti who came to Canada seeking refugee protection. He was denied refugee protection by a decision of the Refugee Protection Division (RPD) on December 14, 2020. Since the refugee protection claim was rejected and the member also found that it lacked a credible basis, there was no appeal to the Refugee Appeal Division (RAD).

Accordingly, it is from the RPD's decision that judicial review may be sought. Judicial review is sought under section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

I. Preliminary matter

[2] The member found that the application lacked a credible basis. It is under subsection 107(2) of the IRPA that the member may make this declaration. That subsection reads as follows:

(2) If the Refugee Protection Division is of the opinion, in rejecting a claim, that there was no credible or trustworthy evidence on which it could have made a favourable decision, it shall state in its reasons for the decision that there is no credible basis for the claim.	**(2)** Si elle estime, en cas de rejet, qu'il n'a été présenté aucun élément de preuve crédible ou digne de foi sur lequel elle aurait pu fonder une décision favorable, la section doit faire état dans sa décision de l'absence de minimum de fondement de la demande.

[3] The consequences of that decision is found in paragraph 110(2)(c) of the IRPA. It reads as follows:

(2) No appeal may be made in respect of any of the following:	**(2)** Ne sont pas susceptibles d'appel :
. . .	. . .
c) a decision of the Refugee Protection Division rejecting a claim for refugee protection that states that the claim has no credible basis or is manifestly unfounded;	**(c)** la décision de la Section de la protection des réfugiés rejetant la demande d'asile en faisant état de l'absence de minimum de fondement de la demande d'asile ou du fait que celle-ci est manifestement infondée;

In this case, the application for judicial review relates to the refusal to grant the claim for refugee protection, but also to the RPD's decision to rely on subsection 107(2) of the IRPA.

II. Impugned decision

[4] The facts giving rise to the claim are simple. The applicant alleged that on February 17, 2010, criminals went to his parents' home. The applicant was not there. He reported that projectiles were fired at a dog and into the air; the criminals allegedly smashed the main door of the house and set fire to tires. The details of this incident are not extensive. In fact, the applicant claimed that the leader of the criminals was someone named Wagner Saint-Hilaire who is now deceased. The reason for this incident was presented as being tied to the applicant's role as a leader during demonstrations demanding the return to office of Justice of the Peace Cenatus Ferdinand, the applicant's uncle, who was dismissed arbitrarily after 28 years of service. The applicant alleged that the dismissal was for political reasons. The applicant stated that he filed a complaint, but that nothing was done to stop the criminals, who were out on the streets with impunity. It seems that the applicant hid for some time, but in any case, he left Haiti to move to Venezuela on May 24, 2010.

[5] Given the difficult situation in Venezuela for several years, the applicant left Venezuela and went to the United States, where he allegedly arrived on August 2, 2016. It is not known when the applicant left Venezuela in 2016. Mr. Ferdinand signed the Basis of Claim Form (BOC Form) on September 26, 2017, but he arrived in Canada in July of the same year.

[6] In its decision, the RPD considered the applicant's permanent resident status in Venezuela. This examination did not last very long since the RPD concluded Mr. Ferdinand's status in Venezuela was temporary, which meant that he did not have the same status as Venezuelan nationals. It therefore concluded that Article 1(E) of the UN *Convention Relating to the Status of Refugees* did not apply. Mr. Ferdinand was therefore not excluded under section 98 of the IRPA, which provides that a person described in section E of Article 1 of the Convention cannot be a refugee or a person in need of protection.

[7] The RPD also did not question the applicant's credibility. It focused the decision on another aspect. What was lacking, according to the RPD, was a demonstration that if the applicant returns to Haiti, he will face a forward-looking risk in relation to the allegations of his refugee protection claim (RPD decision, para 17).

[8] The core reasons for Mr. Ferdinand's refugee protection claim in Canada are found in paragraphs 16 and 17 of the RPD decision. Instead of paraphrasing them, I reproduce them here:

> [TRANSLATION]
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> [16] When asked to explain whom he fears in Haiti, the claimant stated that the person he was most afraid was the leader of the group of criminals he fled, who is now dead. Further, when asked whom he fears if he had to go back to Haiti, the claimant stated that he cannot go back given the current situation in the country, especially since he has three children who are now in Canada. When asked if he believes that members of the criminal gang that targeted him in the past might be interested in him, despite the death of their leader, the claimant replied that the country is "completely rotten", and that people have been murdered in his home region.
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> [17] Based on the claimant's testimony, the panel concludes, on the balance of probabilities, that the criminals who targeted him in 2010 are, with the 10-year gap and the death of their leader, no

> longer interested in the claimant. In this regard, the claimant does not face any forward-looking risk in relation to the allegations concerning this criminal gang.

[9] The applicant also made general allegations about the situation in Haiti. However, according to the RPD, no personal risk of return to Haiti has been demonstrated. The general state of insecurity in Haiti cannot support a claim for refugee protection. Relying on case law of the Federal Court, the RPD noted that a personal risk must exist in order for the analysis to proceed.

[10] The RPD also considered the consequences for an applicant like Mr. Ferdinand of returning to Haiti from North America. There is a perception that these individuals could be victims of threats of extortion because they are seen as having financial means. Without denying this risk factor, the RPD also noted that people returning from abroad are not automatically categorized as having special means. In addition, according to the National Documentation Package, fellow Haitians cannot know who is returning from abroad if the case is not publicized. Being part of the diaspora does not guarantee anything. Relying on *Prophet v Canada (Citizenship and Immigration)*, 2008 FC 331, 2009 FCA 31 and *Lamour v Canada (Citizenship and Immigration)*, 2011 FC 322, the RPD stated that [TRANSLATION] "a generalized risk of criminality shared by the entire population of a country cannot support a claim for refugee protection under subparagraph 97(1)(b)(ii) of the IRPA" (RPD decision, para 24).

[11] For the RPD, there is no evidence on the record to justify that this applicant would be targeted in a way that is different from other Haitians or that he might attract envy; therefore, in

the eyes of the RPD, this Court's decision in *Burgos Gonzales v Canada (Citizenship and Immigration)*, 2013 FC 426, appears to sum up the state of the law:

> The RPD must answer the following question: whether in the context of the alleged present or prospective risks, the applicants provided evidence of their specific circumstances that would make their risk distinct from that of the general population given the widespread presence of gangs in their country"

This is not the case, according to the RPD. There is no basis for concluding that the applicant could be targeted.

[12] Having thus considered the submissions, the member concluded that there was no credible or trustworthy evidence on which to base a favourable decision. The risk referred to by the applicant in its BOC Form simply no longer exists. The allegations relating to the general situation in Haiti cannot form the basis of a favourable decision. As a result, the claim lacks any credible basis.

III. Arguments and analysis

[13] Everyone agrees that the rejection of a refugee claim is subject to the standard of reasonableness on judicial review.

[14] The applicant argues that being a victim of a gang should be held against the rule that general country conditions do not support a refugee protection claim. If I understand the argument, this would make the risk to the applicant personalized. The difficulty with this proposal is that the applicant's fear is no longer a function of a gang that may have been active in

2010. In fact, its leader has been dead for several years. Put another way, there is no evidence that the applicant is currently being targeted by a group, so he finds himself like any other Haitian who lives in a country where the situation is such that the risk is widespread. I see nothing wrong with the RPD's decision. The applicant has not shown how the decision is unreasonable, which is his burden of proof. There is nothing special about Mr. Ferdinand's case. Therefore, the case law cited by the applicant is of no assistance to him (*Balcorta Olvera v Canada (Citizenship and Immigration)*, 2012 FC 1048, at paras 37 to 41).

[15] The applicant raises the RPD's decision regarding the Haitian diaspora. Relying on the most recent National Documentation Package on Haiti, the RPD noted that one cannot know where someone is from unless there is a situation that is publicized. People are not automatically categorized. The applicant is simply citing a decision that is more than ten years old and, moreover, has been taken out of context (*Saint-Hilaire v Canada (Citizenship and Immigration)*, 2010 FC 178). In that case, this Court merely noted that the RPD accepted that, as a member of the diaspora, the applicant could be considered wealthy. But that was not enough to displace the principle that there must be individualized risk. The RPD's rejection of the claim was later confirmed with the dismissal of the application for judicial review.

[16] It follows, therefore, that the application for judicial review of the decision to reject the claim must be dismissed. The impugned decision is clearly reasonable.

[17] The applicant's argument is more focused on the application of subsection 107(2) of the IRPA. The argument appears to be that the applicant has a document about his uncle and his

removal from office as Justice of the Peace, as well as the complaint he made to the Cabaret peace court. The applicant appears to believe that these two items constitute credible or trustworthy evidence within the meaning of subsection 107(2) of the IRPA. That may be so, but it must be evidence on which the RPD could have based a favourable decision to avoid the effect of the provision. With respect, the applicant has never been able to make any such demonstration. These documents have no probative value on judicial review, and they do not advance the applicant's case with regard to the lack of a credible basis for the claim. They cannot form the basis of a favourable decision.

[18] It is easy to agree that whenever a witness is found not to be credible, this should not lead to a finding of no credible or trustworthy evidence, especially since it denies, by operation of law, an appeal to the Refugee Appeal Division (*Rahaman v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89; [2002] 3 FC 537 [*Rahaman*], at para 51).

> [51] Finally, while I have not been able to accept the position advanced by counsel for Mr. Rahaman in this appeal, I would agree that the Board should not routinely state that a claim has "no credible basis" whenever it concludes that the claimant is not a credible witness. As I have attempted to demonstrate, subsection 69.1(9.1) requires the Board to examine all the evidence and to conclude that the claim has no credible basis only when there is no trustworthy or credible evidence that could support a recognition of the claim.

In our case, the RPD made no complaint about the applicant's lack of credibility.

[19] The applicant's argument is that a lack of credibility does not mean that there is no credible basis for the claim. This true, but what must be present is credible or trustworthy evidence on which to base a favourable decision. There is no such evidence. We must return to

the essence of this case. Suffice it to recall that the RPD did not in any way challenge the credibility of the applicant. Rather, it is that the alleged risk no longer exists, more than ten years after the alleged incident in 2010. Moreover, he has relied on the general situation in Haiti to show that he does not want to return. As noted above, this is not, under our law, grounds for refugee protection in Canada. The two arguments for seeking protection in Canada no longer exist, and exhibits P-2 (removal of the applicant's uncle as Justice of the Peace) and P-3 (complaint to the Cabaret peace court), which are very peripheral, do not constitute evidence upon which to base a favourable decision. This evidence only corroborates, if one accepts its veracity, that the applicant's uncle had his commission as a judge revoked and that he had filed a complaint about shootings. The result was that there was no credible or trustworthy evidence on which to base a favourable decision. The two exhibits submitted could not, in the RPD's view, be that basis. The applicant has not demonstrated how this conclusion would be unreasonable.

[20] The respondent is not wrong to highlight paragraph 30 of the Federal Court of Appeal's decision in *Rahaman*. It is worth reproducing that paragraph in its entirety, which, it seems to me, disposes of the applicant's argument:

> [30] On the other hand, the existence of <u>some</u> credible or trustworthy evidence will not preclude a "no credible basis" finding if that evidence is insufficient in law to sustain a positive determination of the claim. Indeed, in the case at bar, Teitelbaum J. upheld the "no credible basis" finding, even though he concluded that, contrary to the Board's finding, the claimant's testimony concerning the intermittent availability of police protection was credible in light of the documentary evidence. However, the claimant's evidence on this issue was not central to the Board's rejection of his claim.
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> [Emphasis in original.]

IV. Conclusion

[21] It follows that the application for judicial review cannot be allowed. The parties agree, and the Court agrees, that there are no serious questions of general importance that should be certified.

JUDGMENT in IMM-176-21

THIS COURT ORDERS as follows:

1. The application for judicial review is dismissed.

2. There is no question of general importance to certify.

"Yvan Roy"
Judge

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-176-21
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APPEARANCES:

Aristide Koudiatou	FOR THE APPLICANT
Chantal Chatmajian	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney Montréal, Quebec	FOR THE APPLICANT
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT