

Federal Court



Cour fédérale

Date: 20150821

Docket: IMM-427-15

Citation: 2015 FC 996

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, August 21, 2015

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

JENNIFER ST LOUIS

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Preliminary

[1] The credibility of an account as a whole cannot be re-established by testimony that completely contradicts the written evidence when said written evidence, in itself, comes from comments stated directly by the person involved; a change of account further to the

contradictions identified becomes detrimental to the very crux of a claim when that account no longer makes sense.

II. Introduction

[2] This is an application pursuant to the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA) for judicial review of a decision by the Refugee Appeal Division (RAD) dated January 5, 2015, allowing the respondent's appeal of a decision by the Refugee Protection Division (RPD), granting the applicant refugee status.

III. Facts

[3] The applicant is a 25-years-old citizen of Haiti.

[4] Sponsored by her mother, who lives in Canada, the applicant applied for permanent residence on December 31, 2012.

[5] The applicant arrived in Canada on February 19, 2014, with a permanent resident visa that was issued on January 27, 2014.

[6] Upon her arrival, the applicant was the subject of an inadmissibility report prepared pursuant to subsection 44(1) of the IRPA on the basis that she apparently told the immigration officer that she had gotten married in Haiti on February 14, 2014, but failed to inform the Canadian Embassy in Haiti of the change in her marital status.

[7] The applicant was allowed to withdraw her application to enter Canada and to leave Canada promptly to regularize her status with the Canadian Embassy in Haiti.

[8] The applicant remained in Canada and claimed refugee protection on February 26, 2014.

[9] The respondent intervened before the RPD, alleging that the applicant's credibility was undermined because she had not declared her change in marital status. Furthermore, the respondent argued that the applicant is not credible regarding her alleged fear in Haiti because she demonstrated her intention of settling in Canada as early as December 2012, when she filed her application for permanent residence.

[10] On May 15, 2014, giving the applicant the benefit of the doubt and finding that the allegations in her refugee claim form were credible, the RPD granted the applicant refugee status.

IV. Impugned decision

[11] Following a hearing on December 15, 2014, the RAD allowed the respondent's appeal and substituted its decision for that of the RPD, finding that the applicant is not a Convention refugee or a person in need of protection under sections 96 and 97 of the IRPA.

[12] In its reasons, the RAD determined that the evidence submitted by the respondent in support of the appeal raised a serious issue with respect to the applicant's credibility and

contradicted, at first glance, some of the applicant's essential allegations before the RPD, namely concerning her marital and family status and her subjective fear.

[13] After reviewing the Federal Court case law contemporaneous to its decision and the relevant sections of the IRPA, the RAD carried out its own assessment of the evidence.

[14] First, the RAD found that the applicant's failure to mention, in her basis of claim form, the existence of her half-brother, who lived with her in Haiti, was not sufficient to undermine the applicant's general credibility.

[15] Second, the RAD examined the contradictory statements that the applicant made upon arriving in Canada, on February 19, 2014. The RAD noted that the explanations provided by the applicant to justify those contradictions were themselves contradictory.

[16] First, regarding her statements about her marital status, the RAD noted that the applicant stated that she had gotten married to not contradict what her uncle purportedly stated in respect of her (that she had gotten married in February 2014), and then stated that she did not know what her uncle had said and that, if she had known, she would have re-established the facts, and then, finally, she stated that she had said that she had gotten married because she had felt threatened by the immigration officer. Before the RAD and the RPD, the applicant stated that she did not get married on February 14, 2014, but that she had instead gotten engaged to the man who she had been dating since 2008.

[17] When asked to explain that contradictory testimony, the applicant allegedly provided an unsatisfactory response.

[18] Then, regarding her fear of return to Haiti, the RAD noted that the applicant first stated that she feared returning, and then stated that she did not know if she had been asked the question.

[19] Given those contradictions, the RAD assigned more probative value to the evidence submitted by the respondent than to the applicant's testimony, in particular, the notes entered into the Field Operations Support System for the interviews that took place with the applicant. The notes show that the applicant stated that she was married and fears returning to her country. The RAD relied on the affidavit signed by the officer who interviewed the applicant upon her arrival, which confirms those statements.

[20] Finally, the RAD found that, on a balance of probabilities, the applicant is not credible with respect to at least two important elements of her refugee claim, that is, her marital status and her fear of return to Haiti.

[21] More specifically, the RAD found that the applicant did not demonstrate "the elements central to her claim for refugee protection as alleged in her BOC Form, namely the fact that she lived in Haiti under the continual threat of criminal gangs, given her statements that she was not afraid to return to her country, and that this danger would be far greater because she was allegedly [translation] 'a girl on her own' in her country, given that I find that the evidence

instead demonstrates that she was married in Haiti” (RAD Decision, Applicant’s Record, at page 21).

V. Statutory provisions

[22] Sections 96 and 97 of the IRPA state the law applicable to the determination of refugee status in Canada:

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n’a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle

have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

[23] The following sections of the IRPA set out the applicable criteria for the role of the RAD, the admissibility of evidence on appeal and the holding of a hearing:

Appeal

110. (1) Subject to subsections (1.1) and (2), a person or the Minister may appeal, in accordance with the rules of the Board, on a question of law, of fact or of mixed law and fact, to the Refugee Appeal Division against a decision of the Refugee Protection Division to allow or reject the person's claim for refugee protection.

Procedure

(3) Subject to subsections (3.1), (4) and (6), the Refugee Appeal Division must proceed without a hearing, on the basis of the record of the proceedings of the Refugee Protection Division, and may accept documentary evidence and written submissions from the Minister and the person who is the subject of the appeal and, in the case of a matter that is conducted before a panel of three members, written submissions from a representative or agent of the United Nations High Commissioner for Refugees and any other person described in the rules of the Board.

Evidence that may be presented

(4) On appeal, the person who is the subject of the appeal may present only evidence that

Appel

110. (1) Sous réserve des paragraphes (1.1) et (2), la personne en cause et le ministre peuvent, conformément aux règles de la Commission, porter en appel — relativement à une question de droit, de fait ou mixte — auprès de la Section d'appel des réfugiés la décision de la Section de la protection des réfugiés accordant ou rejetant la demande d'asile.

Fonctionnement

(3) Sous réserve des paragraphes (3.1), (4) et (6), la section procède sans tenir d'audience en se fondant sur le dossier de la Section de la protection des réfugiés, mais peut recevoir des éléments de preuve documentaire et des observations écrites du ministre et de la personne en cause ainsi que, s'agissant d'une affaire tenue devant un tribunal constitué de trois commissaires, des observations écrites du représentant ou mandataire du Haut-Commissariat des Nations Unies pour les réfugiés et de toute autre personne visée par les règles de la Commission.

Éléments de preuve admissibles

(4) Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de

arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.

Hearing

(6) The Refugee Appeal Division may hold a hearing if, in its opinion, there is documentary evidence referred to in subsection (3)

(a) that raises a serious issue with respect to the credibility of the person who is the subject of the appeal;

(b) that is central to the decision with respect to the refugee protection claim; and

(c) that, if accepted, would justify allowing or rejecting the refugee protection claim.

Decision

111. (1) After considering the appeal, the Refugee Appeal Division shall make one of the following decisions:

(a) confirm the determination of the Refugee Protection Division;

(b) set aside the determination and substitute a determination that, in its opinion, should have been made; or

(c) refer the matter to the Refugee Protection

preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.

Audience

(6) La section peut tenir une audience si elle estime qu'il existe des éléments de preuve documentaire visés au paragraphe (3) qui, à la fois :

a) soulèvent une question importante en ce qui concerne la crédibilité de la personne en cause;

b) sont essentiels pour la prise de la décision relative à la demande d'asile;

c) à supposer qu'ils soient admis, justifieraient que la demande d'asile soit accordée ou refusée, selon le cas.

Décision

111. (1) La Section d'appel des réfugiés confirme la décision attaquée, casse la décision et y substitue la décision qui aurait dû être rendue ou renvoie, conformément à ses instructions, l'affaire à la Section de la protection des réfugiés.

Division for re-determination, giving the directions to the Refugee Protection Division that it considers appropriate.

VI. Issue

[24] Is the RAD decision reasonable in light of the facts and the law?

VII. Analysis

[25] The applicant's evidence adduced from the record demonstrates that she was not credible on the very crux of the claim. That is enough to demonstrate the reasonableness of the decision analyzed by the Court.

[26] Furthermore, the applicant herself stated during the second judicial review that she did not fear return to Haiti. Keeping that in mind, the Court takes particular note of the account by which the applicant came to Canada with a permanent resident visa and then claimed refugee status. The whole refugee claim is implausible in light of the applicant's previous account. It clearly contradicts her prior allegations.

VIII. Conclusion

[27] In light of the foregoing, the application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question of importance to be certified.

“Michel M.J. Shore”

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT
SOLICITORS OF RECORD

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