Federal Court  Cour fédérale

Date: 20160623

Docket: IMM-100-16

Citation: 2016 FC 708

[ENGLISH TRANSLATION]

Montréal, Quebec, June 23, 2016

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

MARIE JOCEMINE GAUCHIER

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This application for judicial review under section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, chapter 27 (the Act) concerns a decision rendered by the Refugee Appeal Division (RAD), which, on December 14, 2015, rejected an appeal of the decision of the Refugee Protection Division (RPD) and concluded that the applicant is neither a Convention refugee nor a person in need of protection (sections 96 and 97 of the Act).

I. Facts

[2] The applicant is basing her application on three incidents that she says occurred in her country of origin, Haiti. On May 13, 2012, she was allegedly attacked on the street by two people. Her ear was injured, and she had to receive medical care. She says she owned an auto parts shop in Cabaret, a city to the north of Port-au-Prince. She apparently filed a complaint the next day and decided to take refuge with her cousin in Port-au-Prince. She says she stayed away from Cabaret for four months.

[3] The applicant visited Canada twice in the second half of 2014, once in August and once in December. She stayed in Canada for three weeks each time.

[4] She was to return to Haiti on December 31, 2014. She went to her shop and met her sister-in-law, who worked there, and she reportedly left the premises late in the afternoon on December 31, 2014. About an hour later, two individuals apparently ransacked the shop and left a note saying they were looking for the applicant. Although the applicant was not present during this alleged incident, she says she recognized the same two individuals who assaulted her in 2012 based on her sister-in-law's description of them.

[5] The applicant filed a complaint with the Cabaret police, but the circumstances of this complaint remain rather unclear. The applicant also alleges that she was assaulted on February 5, 2015, in Port-au-Prince. She claims that the same two individuals attempted to kidnap her by forcing her to get on a motorcycle. The unexpected arrival of the police apparently made them let

go, and they fled with the handbag the applicant was carrying. She then decided she needed to leave Haiti, and she purchased a plane ticket for Canada. She arrived in Canada on February 11, 2015, and applied for refugee protection that same day.

II. Decision under review

[6] The RPD rendered its decision on April 13, 2015. The reasons for the RPD's decision do not need to be reviewed, since the decision subject to the application for judicial review is the RAD's decision. It is enough to say that the RPD concluded based on the contradictions and explanations, which seemed to change as the questions progressed, that the application made under sections 96 and 97 of the Act was unfounded.

[7] Judicial review is sought for the decision rendered on December 14, 2015, on the appeal of the RPD's decision.

[8] Having examined its jurisdiction following several decisions by this Court, the RAD prudently decided not to act as an administrative review tribunal but an appellate court. The jurisdiction exercised by the RAD has not been contested in this case.

[9] The applicant has three complaints. First, she alleges that the RAD erred in drawing conclusions about her credibility. Second, the applicant complains that the RAD did not hold a hearing. Third, she suggests that, due to the complexity of this case, there should have been deliberations instead of a decision rendered at the hearing. For the following reasons, none of these grievances can be accepted.

III. Standard of review

[10] In this case, the standard of review is the standard of reasonableness. The decision of the Federal Court of Appeal in *Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93, confirms that such cases, especially the determination of credibility by the RAD, are based on the standard of reasonableness.

IV. Analysis

[11] When the applicant's arguments are examined, it becomes clear that she is simply expressing her disagreement with the RAD's assessment. Yet, in my opinion, the RAD's findings on her credibility, which are in agreement with the RPD's findings, are perfectly reasonable. The sequence of events deserves some attention. The applicant was allegedly attacked in May 2012. No other incidents happened to her until she returned from two three-week stays in Canada during the second half of 2014. The circumstances surrounding the two other alleged incidents, one of them an assault, are much more nebulous. It is not clear when exactly the December 31 incident occurred, if it did indeed occur. The applicant presented a record from the Port-au-Prince police that is a poor match with her testimony. This record seems to indicate an assault on January 1, 2015, or January 10, 2015, or even early on December 31. Even more problematic is the fact that the applicant claims she recognized the people who did the ransacking even though they wore balaclavas and the only description she had of them was from her sister-in-law, who was allegedly on the premises when the incident occurred.

[12] The February 5, 2015 incident is just as problematic. The document presented to support the existence of a kidnapping attempt is a document supposedly prepared by the national police of Haiti. Yet this document makes no mention of an attempted kidnapping, which in itself is quite remarkable, given that the attempt was supposedly interrupted by the unexpected arrival of the police. In addition, the document is nothing more than a statement that documents were lost, and does not even refer to the supposed theft of the applicant's handbag, but states that her purse ("bourse") was allegedly lost. I agree with the RAD's opinion that it is unlikely that the national police decided not to record the facts on a failed kidnapping and the theft of a handbag and instead to discuss a lost purse and documents. Without an explanation for such behaviour, it is certainly permissible to doubt the existence of the alleged incident, as the RAD did. The RAD clearly states that it doubted the two incidents in January and February 2015: [TRANSLATION] "[the] appellant is not credible as regards the two incidents since which she has feared for her life. The RAD does not believe they occurred" (paragraph 64 of the RAD's decision).

[13] The applicant has failed to demonstrate to this Court that the RAD's decision was unreasonable. As I see it, it is certainly one of the possible, acceptable outcomes that an administrative tribunal could arrive at. And not only is it a possible outcome, but the justification of the decision, its transparency and the intelligibility of the decision-making process support its reasonableness.

[14] The applicant also complained that a hearing should have been held before the RAD. This argument, which was not submitted in writing, but became the main argument at the hearing, is of no merit.

[15] In this case, the RAD allowed as evidence new documents that were not presented to the RPD. These were a tax registration card for the company Distinction Auto Parts, a tax return for the 2014–2015 taxation year, and a patent certificate. It was generous of the RAD to allow this evidence after accepting the applicant's explanation that she lost it in a suitcase that she found only after the hearing before the RPD. In fact, subsection 110(4) of the Act states that new evidence is admissible only if it meets the following conditions:

110(4) On appeal, the person who is the subject of the appeal may present only evidence that 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.	110(4) Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de 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.

[16] This new evidence was used to demonstrate that the applicant was involved in an auto parts shop, as she claimed. However, the RAD declared that it was of the opinion that this did not modify in any way the RPD's finding of lack of credibility in terms of the basis for the applicant's claim for refugee protection.

[17] Moreover, this new evidence in no way justified holding another hearing. Once again, the Act gives the conditions under which a hearing can be held at the RAD's discretion:

110(6) The Refugee Appeal Division may hold a hearing if, in its opinion, there is documentary evidence referred to in subsection (3)	110(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) that raises a serious issue	a) soulèvent une question

with respect to the credibility of the person who is the subject of the appeal;	importante en ce qui concerne la crédibilité de la personne en cause;
(b) that is central to the decision with respect to the refugee protection claim; and	b) sont essentiels pour la prise de la décision relative à la demande d'asile;
(c) that, if accepted, would justify allowing or rejecting the refugee protection claim.	c) à supposer qu'ils soient admis, justifieraient que la demande d'asile soit accordée ou refusée, selon le cas.

[18] According to the RAD, it was not necessary to hold such a hearing, and no arguments were presented to support the claim that this was an error. As we can see, subsection 110(6) requires there to be new documentary evidence that satisfies the three conditions listed. There is no such documentary evidence. Furthermore, the RAD notes in paragraph 42 of its decision that [TRANSLATION] "the appellant left this question to the discretion of the RAD." It is difficult to see how the applicant could complain about this.

[19] Lastly, the applicant claims that the oral decision rendered by the RPD was hasty. This claim was rejected. We can understand why by examining subsection 10(8) of the *Refugee Protection Division Rules*, SOR/2012-256, which states that:

10 (8) A Division member must render an oral decision and reasons for the decision at the hearing unless it is not practicable to do so.	10 (8) Le commissaire de la Section rend une décision et donne les motifs de la décision de vive voix à l'audience, à moins qu'il ne soit pas possible de le faire.

[20] The fact that reasons are rendered orally does not justify a flagrant lack or insufficiency of reasons. Conversely, oral reasons are not insufficient simply because they are rendered orally.

The Act states that a decision rendered by the RPD may be appealed on a question of law, of fact, or of mixed law and fact (subsection 110(1)); of course, reasons from the RPD justifying the decision are expected. In my opinion, if the reasons given orally by the RPD are insufficient to explain the decision, there could be grounds for the RAD to allow the appellant's appeal (subsection 111(4)). But that is not the case here. An allegation of a hasty decision alone does not warrant remedy. In my opinion, there are no more arguments at this stage concerning what occurred in this case. The RPD's decision could be handled by the RAD, which it was.

[21] Consequently, the application for judicial review must be dismissed. There are no questions to certify.

JUDGMENT

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

There are no questions to certify.

"Yvan Roy"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-100-16
STYLE OF CAUSE:	MARIE JOCEMINE GAUCHIER v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	JUNE 22, 2016
JUDGMENT AND REASONS:	ROY J.
DATED:	JUNE 23, 2016

APPEARANCES:

Labib Issa	FOR THE APPLICANT
Caroline Doyon	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Labib Issa Montréal, Quebec	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT