

Federal Court



Cour fédérale

Date: 20170421

Docket: IMM-3465-16

Citation: 2017 FC 387

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, April 21, 2017

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

DELICAT, JOB

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Background

[1] The logic inherent in reviewing a specialized tribunal's analysis of a case's credibility requires the Federal Court to examine whether reasonableness governed the specialized tribunal's analysis in a clear, straightforward and comprehensible manner in accordance with the Supreme Court of Canada's judgments in *Dunsmuir v New Brunswick*, [2008] 1 SCR 190,

2008 SCC 9 [*Dunsmuir*]; *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, [2011] 3 SCR 654, 2011 SCC 61; and *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, [2011] 3 SCR 708, 2011 SCC 62.

II. Nature of the case

[2] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [IRPA], of a decision rendered by the Refugee Protection Division [RPD] on July 8, 2016, whereby the applicant is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the IRPA.

III. Facts

[3] The applicant, age 42, is a citizen of Haiti and a Baptist. He is married and has three children. An engineering assistant by training, he is also a member of the Organisation des techniciens pour la reconstruction d'Haïti [OTREH], an organization that meets two to three times a month to discuss certain issues in the country.

[4] During his testimony, the applicant stated that he has been a preacher since he was 15. In July 2003, he obtained a certificate of ordination from the Christian Church of Christ and, in 2015, he received a diploma in theology from the École biblique baptiste Berée des Gonaïves in Haiti.

[5] During an OTREH meeting on April 19, 2014, the applicant allegedly criticized police involvement in rapes and kidnappings. On April 20, 2014, he was allegedly arrested in front of his home by two police officers and subsequently detained for ten (10) days at the police station in Gonaïves, during which time, he was allegedly physically assaulted.

[6] On April 30, 2014, he was reportedly released without being given a reason. Three days after his release, two police officers allegedly came to the applicant's home to make death threats against him.

[7] The applicant states that, following those events, he tried to evade the police, going from one city to the next across Haiti for a year: in Cap-Haïtien from May to July 2014; in Port-de-Paix from August to September 2014; on Tortuga Island in October 2014; on La Gonâve Island from November to December 2014; and in Port-au-Prince from January to May 2015. The applicant states that while he was hiding in those cities, he continued his work as a pastor and preacher at his Church's request.

[8] The applicant states that the police tracked him down in every city where he hid. Thus, on April 14, 2015, he submitted a visa application for the United States, which was denied. On May 26, 2015, he left Haiti for Fort Lauderdale, in the United States, and applied for asylum on July 23, 2015.

[9] Having been unable to find a job, he left his home in the United States on April 30, 2016, and travelled to Fort Erie, Ontario, in Canada. He claimed refugee protection on May 11, 2016,

with an officer of the Canada Border Services Agency, which accepted the claim under the *Safe Third Country Agreement*, given that some of the applicant's family members lived in Canada.

IV. Decision

[10] The RPD concluded that the applicant was not a Convention refugee nor a person in need of protection because he had not discharged his burden of establishing that there is a serious possibility of persecution on one of the Convention grounds, nor did he establish, on a balance of probabilities, that he would be personally subjected to the risk of torture, threats to his life, or to cruel and unusual treatment or punishment if he were to return to Haiti. According to the RPD, the determinative issue was credibility. It found that the applicant was not credible, highlighting the vague, unclear, contradictory and inconsistent nature of his testimony.

[11] In its decision, the RPD first noted that the applicant's testimony on questions related to the identity and misconduct of the police officers was vague and unclear. The RPD found that the applicant's responses showed a "lack of spontaneity and details".

[12] The RPD also noted certain inconsistencies between the applicant's testimony and his statements at the Fort Erie point of entry; in particular, at the hearing, he stated that he had been arrested by police the day after an OTREH meeting, whereas at the point of entry, he stated that he had been arrested a few days after the meeting. The applicant explained that this contradiction was the result of a simple error when he was telling his story at the point of entry, an explanation that the RPD rejected.

[13] The RPD took note of a letter written by the president of the OTREH on paper bearing its letterhead. The letter confirmed the applicant's membership in the OTREH. Based on that letter, the RPD noted that the president of the organization was not hiding from the authorities and was still working in Gonaïves, which did not corroborate that other OTREH members were persecuted by the police.

[14] The RPD found other inconsistencies, namely the applicant's statement that while he hid in several cities for over a year, he publicly advertised his sermons. The RPD concluded that if the applicant was truly hiding, he would not have agreed to have his sermons publicly advertised. Furthermore, the panel concluded that the places where he was preaching did not correspond to the places where he was allegedly hiding.

[15] Lastly, the RPD noted the fact that the applicant went to the civil registrar in his commune to obtain his children's birth certificates. The applicant explained to the RPD that it was his spouse, not him, who went to request the birth certificates. The RPD dismissed that explanation because the birth certificates clearly indicate that [TRANSLATION] "Mr. Job Delicat" appeared and not his spouse. The RPD was of the opinion that if the applicant was truly hiding from the State, he would not have gone to the civil registrar.

[16] For these reasons, the RPD concluded that there were several significant problems that undermined the applicant's credibility. Consequently, the RPD dismissed his claim.

[17] Counsel for the applicant, Constance Byrne, withdrew from the case because she was no longer able to reach her client. Guy Nephtali took up the case. As of March 23, 2017, he had not submitted a supplementary memorandum. The original memorandum was argued.

V. Issues and standard of review

[18] This application for judicial review raises the issue of whether the RPD erred in assessing the applicant's credibility. The RPD's assessment of credibility is a question of fact that falls within the RPD's specialized field of expertise; it requires the application of the reasonableness standard and some deference (*Dunsmuir*, cited above).

VI. Analysis

[19] Given the contradictions, omissions and implausibilities between the testimony and the statements at the point of entry, there is a clear inconsistency in the internal logic.

[20] The lack of details regarding the reprehensible acts alleged by the applicant lead the Court to find that the RPD decided the case in a reasonable manner based on the evidence presented to it. The applicant's behaviour is inconsistent with his fear of persecution.

VII. Conclusion

[21] For these key reasons, the application for judicial review is dismissed.

JUDGMENT in IMM-3465-16

THIS COURT ORDERS that the application for judicial review is dismissed. There are no questions of general importance to be certified.

“Michel M.J. Shore”

Judge

Certified true translation
This 13th day of August, 2019

Lionbridge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3465-16

STYLE OF CAUSE: DELICAT, JOB v THE MINISTER OF CITIZENSHIP
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PLACE OF HEARING: MONTRÉAL, QUEBEC

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