

Federal Court



Cour fédérale

**Date: 20190305**

**Docket: IMM-4065-18**

**Citation: 2019 FC 264**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, March 5, 2019**

**PRESENT: The Honourable Mr. Justice Bell**

**Docket: IMM-4065-18**

**BETWEEN:**

**JEENS SARAH GENEUS**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**(Delivered from the Bench at Montréal, Quebec, on February 18, 2019.  
Edited for syntax and grammar with added references to the relevant case law.)**

[1] The applicant [Ms. Geneus] asks that the decision of the Refugee Protection Division [RPD] dated July 25, 2018 [Decision], in which the members found that the applicant was not a “Convention refugee” within the meaning of section 96 of the *Immigration and Refugee*

*Protection Act*, SC 2001, c 27 [IRPA] nor a “person in need of protection within the meaning of subsection 97(1) IRPA , be set aside and that the matter be reheard by another panel.

[2] I listened carefully to the oral arguments made by the parties at the hearing. I assessed the submissions presented by the parties concerning the facts in this case, my role on judicial review and the importance of exercising deference in a situation such as this one. I am therefore well aware of my position as a judge on judicial review; I am also aware of the instructions provided by the Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*].

[3] Findings concerning credibility attract a reasonableness standard of review, which requires this Court to show deference to the decision rendered by the administrative tribunal (*Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at para 47; *Coronel Archundia v Canada (Citizenship and Immigration)*, 2012 FC 6, at para 12; *Zavalat v Canada (Citizenship and Immigration)*, 2009 FC 1279, at para 18).

[4] Indeed, my role is not to reweigh the evidence that was before the RPD. However, when the reasons for decision provided by the administrative tribunal clearly indicate that no probative value was ascribed to certain items of evidence, without any justification being provided to explain this assessment, the situation calls for the intervention of the judge on judicial review.

[5] Ms. Geneus is a young, 29-year-old lady who is now a widow. She learned about her husband’s death while she was in the United States receiving prenatal care. According to

Ms. Geneus, both she and her husband were victims of intimidation and extortion by two different groups of bandits at different times.

[6] There is no doubt that her husband was murdered in Haiti after being brutalized, as the state in which his body was found and taken to hospital attests. Indeed, when the applicant's late husband was taken to hospital, he had a broken arm, and his body was almost completely covered in bruises.

[7] I acknowledge that there were some contradictions in the applicant's testimony. I also acknowledge that there were certain errors in the chronology of the facts in the applicant's story. However, it is important to remember that the applicant completed the Basis of Claim (BOC) Form shortly after the death of her husband and several months before giving birth. Indeed, Ms. Geneus explained that she was afraid to return to Haiti because of the bandits that had murdered her husband. She states that she was able to identify the two groups of bandits who had assaulted and intimidated her husband before his death. She fears being tortured or even being completely at the mercy of these individuals should she return to Haiti. Because of the errors in the chronology of the facts that she provided, the RPD found that she lacked credibility. The RPD found that the two incidents which Ms. Geneus referenced during her testimony did not happen. The RPD therefore concluded that the rest of the documentary evidence had no probative value.

[8] I find that the RPD erred in concluding that it would not ascribe any probative value to the documentary evidence and that this error resulted in an unreasonable decision.

[9] Ironically, without the evidence listed below, there would be no solid proof of the death of the applicant's husband, even though this fact is not contested. I believe that the RPD should have given weight to the following documents:

- a. Document P-7 is an email from the employer of Ernst Joseph, Ms. Geneus' late husband. The email was forwarded to employees of TalkPool on August 10, 2017. This email reads as follows: "Hi all, it is with great sorrow that I share this sad news. However, our dear brother Ernst Joseph passed away last night. This news came as a shock to me and I am sure it would do the same to you as well. At this time I take the opportunity to express my deepest condolences to all TalkPool family, especially those who are very close to him. May he rest in peace! Regards Marilyn". The RPD did not ascribe any probative value to this document even though Ms. Geneus was not involved in preparing or writing this email.
- b. Document P-8 is entitled [TRANSLATION] "Excerpt from the registry of the district civil court of the commune of Petion-ville". Ms. Geneus was not involved in preparing this report either. The report was written on August 11, 2017. The document states, among other things, that the two suspects who took the late gentleman's brutalized body to the hospital were questioned by officers and reported that [TRANSLATION] "Mr. Ernst Joseph was indeed murdered by bandits, whose names they were unwilling to disclose, because of his job, and that both he and his wife, Jeens Sarah Geneus, had previously been threatened because of the poor service provided by the company that they worked for and the refusal to cooperate in funding the bandits". The RPD did not ascribe any probative value to this document either.

- c. Document P-9 is a death certificate/attestation of death issued for Ernst Joseph. This document was also not given any probative value in the RPD's assessment of the evidence, even though Ms. Geneus was not involved in preparing this document.
- d. A letter prepared by the employer of both Ms. Geneus and her late husband, dated June 30, 2018, clearly written for the purposes of the RPD hearing, reads as follows:  
[TRANSLATION] "Ernst Joseph was employed by TalkPool from 2007 until the day of his death. He was employed as a network technician for the company and was assigned to so-called undesirable areas (red zone). He informed us about threats that had been made against him by bandits in these areas on several occasions. He told us that both he and his family were in danger, and a complaint was filed with the police, who were unable to protect our colleague and his family. They even went to his home to threaten him. Unfortunately, on August 9, while on his way to work, he was followed by these thugs who took his life. These bandits, who have complete control over their territory and sow seeds of terror, also know his wife, Jeens Sarah Geneus, who was also my assistant. Our employees are often assaulted and are constantly threatened. Our complaints to the police have been in vain. After Ernst Joseph's death, the company had to deal with several resignations because the lives of several employees had also been threatened. This unfortunate incident has left our staff saddened and living in fear on a daily basis". It is true that Ms. Geneus undoubtedly asked the company to provide the letter for the purposes of her application for refugee protection. Given that the RPD had already found that the applicant lacked credibility, it did not ascribe any probative value to this letter.

[10] I consider the approach used to analyze the evidence, particularly the decision to disregard evidence that is clearly relevant, objective and untainted by any suggestion of fraud, to be illogical and unintelligible. A lower tribunal or court cannot shield itself from review in declaring a party not to be credible unless it has considered all the evidence, particularly when there is evidence supporting the credibility of that party. Moreover, the RPD disregarded this evidence because it had already established that the applicant was not credible. In my opinion, this is a reverse reasoning process. It is not reasonable to conclude that someone is not credible and subsequently reject any and all relevant and reliable evidence obtained from independent third parties. The lack of reasonableness becomes even more evident when one considers that the disregarded evidence was independent and reliable and could have confirmed the party's credibility.

[11] Accordingly, being mindful of the teachings instilled in us by *Dunsmuir*, it is my opinion that this Court may intervene when the decision-making process is not justified, transparent or intelligible and when the decision falls outside a range of possible, acceptable outcomes which are defensible in respect of the facts and law. In this case, I find that this was the case. The RPD did not attribute any probative value to evidence that it should have taken into consideration in order to make a decision. Consequently, it essentially made a decision based on its own speculations and information it deemed to be [TRANSLATION] "illogical" while ignoring the evidence.

[12] I therefore allow the application for judicial review. I order that that case be referred to a different panel of the RPD for reconsideration.

[13] There is no question of general importance to certify.

**JUDGMENT in IMM-4065-18**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is allowed;
2. The matter shall be reconsidered by a different panel of the RPD; and
3. No question of general importance is certified.

“B. Richard Bell”

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4065-18

**STYLE OF CAUSE:** JEENS SARAH GENEUS v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** FEBRUARY 18, 2019

**JUDGEMENT AND REASONS:** BELL J.

**DATED:** MARCH 5, 2019

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