

Federal Court



Cour fédérale

Date: 20220603

Docket: IMM-3495-20

Citation: 2022 FC 822

[ENGLISH TRANSLATION]

Ottawa, Ontario, June 3, 2022

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

GUYSON TELUSME

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Mr. Guyson Telusme, is a citizen of Haiti who claims that he fears for his life and safety if he returns to his country of origin, as men working for those currently in power are allegedly searching for him because of his political identity and the fact that he expressed his political opinion publicly. He is seeking judicial review of a July 30, 2020, decision by the

Refugee Appeal Division [RAD], which refused to grant him refugee status because of the implausibility of his story, as well as a contradiction and major omissions noticed in the evidence and in his testimony.

[2] For the reasons that follow, I am of the opinion that the application for judicial review should be dismissed.

II. Background

[3] Mr. Telusme was born in Léogâne, Haiti. In 2009, he and his brother were allegedly actively involved in the presidential campaign for Mrs. Mirlande Manigat, the candidate for the Rassemblement des démocrates nationaux progressistes [RDNP] political party. After Mrs. Manigat lost the elections, Mr. Telusme apparently openly criticized the government's mismanagement in front of his colleagues. These statements reportedly displeased supporters of the current regime, who apparently made death threats against Mr. Telusme on several occasions to dissuade him from speaking out against the government.

[4] On March 12, 2013, three unidentified individuals allegedly went to Mr. Telusme's house when he was not there. He claims that he called the police, but they never came. Several months later, on the night of June 27, 2013, some individuals apparently broke into Mr. Telusme's house while he was sleeping elsewhere. He claims that he called the police again, but that they did not follow up because of the ties between the perpetrators of the break-in and the ruling party. In reaction to these incidents, Mr. Telusme reportedly took refuge at his father's home.

[5] On July 10, 2013, some individuals allegedly shot at Mr. Telusme and his brother while they were in their father's yard. Mr. Telusme claims that he was only grazed by a bullet and managed to escape; unfortunately, his brother was apparently hit by a bullet and died on the scene. Police officers reportedly came to the scene in order to pronounce the brother's death but did not begin an investigation into the circumstances of the death. Mr. Telusme alleges that he then took refuge in Arcahaie but continued to receive threats by telephone. Additionally, some individuals reportedly approached his father and his cousin to find out where Mr. Telusme was.

[6] Mr. Telusme then left Haiti by boat on August 31, 2013, heading for the United States. He states that he did not apply for asylum in the United States because at the time, he did not have the financial means. He was able to work in the United States thanks to a work permit that was renewable on an annual basis. Four years later, in 2017, with a new administration in office, Mr. Telusme was afraid of being deported. He therefore came to Canada on August 17, 2017, and filed a refugee protection claim.

[7] In a decision dated April 9, 2019, the Refugee Protection Division [RPD] completely rejected the credibility of Mr. Telusme's testimony and, as a result, determined that he was not a Convention refugee or a person in need of protection. The RPD noticed an implausibility, a contradiction, and an omission in the evidence, and was not satisfied by the explanations given by Mr. Telusme during the hearing. Therefore, the RPD determined that Mr. Telusme's entire testimony was not credible.

[8] The RPD did not give any probative value to the written record taken from the registry of the peace court in Haiti, after noticing an implausibility in it. Mr. Telusme had claimed in his testimony that his brother had died at 4 p.m. on July 10, 2013; however, the written record shows that the justice of the peace pronounced the brother's death between 10:30 a.m. and 11:00 a.m., essentially predicting the death, which Mr. Telusme claims did not take place until five hours later. The RPD was not satisfied with Mr. Telusme's explanation that at the time of the incident, everyone thought his brother was dead, but that he was still breathing and apparently died several hours later. The RPD indicated that it gave Mr. Telusme the necessary time at the beginning of the hearing to read the documents he had filed, to affirm under oath that he had read them, and to attest to their veracity and accuracy. For this reason, Mr. Telusme's credibility is greatly undermined.

[9] Additionally, the RPD noted a contradiction between the name of the RDNP party written on the documents submitted by Mr. Telusme—his party identity card and his certificate of membership—and the name of the party found in the objective documentary evidence. According to the RPD, the RDNP is a [TRANSLATION] “relatively important” political party that could not have written its own name incorrectly on two different documents issued two years apart. For this reason, the RPD concluded that Mr. Telusme's credibility was greatly undermined and did not give any probative value to the identity card or the certificate of membership.

[10] The RPD also found an important omission in Mr. Telusme's written account. During the hearing, he was able to name two of the people who are allegedly looking for him in Haiti—one of whom is a former public prosecutor turned member of parliament for Léogâne—despite the

fact that he had not identified them in his written account. The RPD concluded that Mr. Telusme's credibility was greatly undermined by this omission. Furthermore, the RPD did not give any probative value to the police complaint he filed, as he had not identified his agents of persecution in it.

[11] Finally, Mr. Telusme stated that if he were to return to Haiti, the fact that he is a Haitian returning from abroad would mean that he would be seen as wealthy and would therefore be at risk for kidnapping. The RPD concluded that the risk Mr. Telusme would face is a generalized risk in Haiti.

[12] Like the RPD, the RAD did not assign any credibility to Mr. Telusme's testimony because of the implausibility, the contradiction, and the notable omission found in the evidence. Mr. Telusme stated before the RAD that the RPD had assigned too much weight to the implausibility found in the written record and had not considered the inefficiency of Haitian courts. The RAD was not satisfied with Mr. Telusme's arguments and explanations:

[24] The RAD concludes that the implausibility was apparent on the face of the excerpt from the peace tribunal registry record because it specifies that the statement, which concerns an incident that did not occur until several hours later, was allegedly completed at 11 am. Like the RPD, it is of the opinion that the appellant did not provide a satisfactory explanation of this implausibility. Contrary to what the appellant claims in his memorandum, it is not the inefficiency on the part of justices of the peace who process complaints that is at issue here, but the implausible content of the information in a document.

...

[27] The RAD is of the opinion that this is not a matter of a simple error owing to inefficiency. The number 4 is not followed by an acronym such as AM or PM, and the word [translation] "afternoon" is written out in full. This is also the case with the time

the justice arrived and the time he completed the record and signed it. The time of arrival is written out in full as [translation] “TEN THIRTY in the morning” and the time of signature is written as “ELEVEN in the morning.”

[13] Additionally, the RAD found another anomaly in the written record that contradicts Mr. Telusme’s testimony: Mr. Telusme had testified that he did not know who had contacted the justice of the peace, but the written record indicates that the justice of the peace came [TRANSLATION] “upon the verbal request” of Mr. Telusme and was accompanied to the scene by Mr. Telusme.

[14] The RAD did not assign any probative value to Mr. Telusme’s identity card or certificate of membership. Mr. Telusme submitted as new evidence pages containing an excerpt from tab 1.2 of the National Documentation Package [NDP] for Haiti dated June 28, 2007, which includes a list of Haiti’s political parties that indicates that RDNP stands for “Rassemblement des démocrates nationalistes et progressistes” [emphasis added]. The RAD concluded that this excerpt from the NDP satisfied the criteria of subsection 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, and that it was credible, relevant, and new. That said, according to the RAD, the new evidence did not support Mr. Telusme’s argument, as the name of the party is still different from that found on the documents submitted as evidence. Additionally, the RAD found another anomaly in these documents: the first name of the secretary general is written as “Lesly” when it should be “Leslie”. The RPD questioned Mr. Telusme about this, and the RAD, after listening to the recordings of the hearing, concluded that his explanations were not satisfactory.

[15] The RAD also drew a negative inference with respect to Mr. Telusme's credibility because of the fact that he did not identify the people who are looking for him in his written account. The RAD would have expected his written account to include the names of the individuals who allegedly threatened him and whom he fears. The RAD also noted that Mr. Telusme had stated, at the beginning of his hearing before the RPD, that the content of his Basis of Claim form was "complete, correct, and true", and that the RPD had given him the opportunity to add information or modify any information that he had provided in that form. The RAD also did not give any probative value to the complaint he filed with the police, as he had not identified his agents of persecution in it.

[16] Finally, Mr. Telusme did not dispute the RPD's conclusion with regard to the risk he faces if he returns to Haiti because of the perception that Haitians who return from abroad are wealthy. The RAD did not note any errors by the RPD on this point.

III. Issue and standard of review

[17] This application for judicial review raises just one issue: was the RAD's decision reasonable? The RAD's conclusions with respect to Mr. Telusme's credibility should be reviewed on the reasonableness standard of review (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at paras 16–17).

IV. The RAD's decision is not unreasonable

[18] Mr. Telusme argues that he should have benefited from a presumption that his persecution was likely and his fear, justified; that the RAD did not examine in detail his situation

and the role played by the State in his persecution; that the RAD neglected to consider any of his testimony with regard to the situation in Haiti; and that the RAD gave too much importance to [TRANSLATION] “trivialities” found in the evidence without considering the situation in Haiti.

[19] First of all, it should be noted that Mr. Telusme’s credibility was the determinative issue for the RAD. Mr. Telusme relies on the Supreme Court of Canada’s decision in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 [Ward], to claim that he should benefit from a presumption that his fear was justified. However, this presumption applies when the claimant has demonstrated that he or she subjectively fears persecution and that this fear is objectively justified, and when there is clear and convincing evidence that the State is unable to protect the claimant (*Ward* at pp 723, 726). That is not the case here.

[20] Then, Mr. Telusme makes references to reports by the United Nations Human Rights Committee and the Institute for Justice and Democracy in Haiti to demonstrate how RDNP supporters are treated by the police and political authorities in Haiti. These documents are not found within the NDP. However, and in any case, these reports do not address the credibility problems raised by the RAD.

[21] With regard to Mr. Telusme’s argument that the RAD should not have given too much importance to the details in the written record, the Minister rightly points out that the implausibility found in that document was related to a key element of Mr. Telusme’s account, that is, the moment when the agents of persecution allegedly attacked him and killed his brother (*Garay Moscol v Canada (Citizenship and Immigration)*, 2008 FC 657, at para 21). Furthermore,

Mr. Telusme did not address the fact that he neglected to identify his agents of persecution in his written account, which is another element that contributed to the rejection of his protection claim.

[22] I am of the opinion that the applicant's arguments do not raise any reviewable errors. The RAD gave detailed reasons for its conclusions regarding Mr. Telusme's credibility, and I find the decision to be reasonable.

V. Conclusion

[23] I will dismiss the application for judicial review.

JUDGMENT in IMM-3495-20

THIS COURT’S JUDGMENT is as follows:

1. The style of cause shall be amended so as to correctly spell the name of the applicant, replacing “Guyson Telsume” with “Guyson Telusme”.
2. The application for judicial review is dismissed.
3. There is no question to be certified.

“Peter G. Pamel”

Judge

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3495-20

STYLE OF CAUSE: GUYSON TELUSME v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MATTER HEARD BY VIDEOCONFERENCE

DATE OF HEARING: APRIL 26, 2022

JUDGMENT AND REASONS: PAMEL J.

DATED: JUNE 3, 2022

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