

Federal Court



Cour fédérale

Date: 20230809

Docket: IMM-9141-21

Citation: 2023 FC 1084

Ottawa, Ontario, August 9, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

**ODILIA (LAURENT) BENOIT
SIERRA LILY JOSEPH
VIRGINIA JAYLA LAURENT**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The applicants are citizens of Saint Lucia. Odilia Benoit was born there in September 1979. Her daughters Sierra Lily Joseph and Virginia Jayla Laurent were born there in November 2002 and August 2005, respectively.

[2] Ms. Benoit arrived in Canada in May 2012. In June 2012, she sought refugee protection on the basis of her fear of her ex-partner, E.J. Ms. Benoit also claimed to identify as bisexual and sought protection on this ground as well. Sierra and Virginia joined their mother in Canada a short time later. In August 2012, they too made claims for protection on the basis of their fear of E.J. and other members of the community.

[3] The three claims were heard jointly by the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada (IRB) on March 1, 2018. In a decision dated March 6, 2018, the RPD rejected the claims on credibility grounds.

[4] Ms. Benoit claims that she retained and instructed counsel to appeal this decision to the Refugee Appeal Division (RAD) of the IRB but her counsel failed to follow through with this. Whatever may be the case, given when they made their claims for refugee protection, the applicants did not have the right to an appeal to the RAD in any event. On their own behalf, the applicants did file an application for leave and judicial review of the RPD's decision on April 10, 2018, but they failed to file an Application Record within the required time. As a result, the application was dismissed on June 22, 2018 (Court File No. IMM-1656-18).

[5] In March 2020, the applicants applied for a pre-removal risk assessment (PRRA) under section 112 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA). The application was based on the applicants' fear of E.J. and, to a lesser extent, the claims of both Ms. Benoit and now Virginia to be bisexual and, as such, to be at risk in Saint Lucia. The PRRA

application was supported by a significant amount of evidence that had not been submitted to the RPD.

[6] A Senior Immigration Officer rejected the PRRA application in a decision dated January 5, 2021. The officer found that “Not all of the submitted evidence counts as new evidence.” The evidence that could be considered was found to be insufficient to result in a positive finding, particularly in view of the RPD’s earlier determination concerning Ms. Benoit’s lack of credibility. The officer therefore concluded that the applicants are neither Convention refugees nor persons in need of protection.

[7] The applicants now apply for judicial review of this decision under subsection 72(1) of the *IRPA*. They submit that the officer’s determinations concerning the new evidence as well as the ultimate decision are unreasonable.

[8] As I will explain in the reasons that follow, I am not persuaded that the officer’s assessment of whether the applicants’ evidence was new evidence within the meaning of paragraph 113(a) of the *IRPA* is unreasonable. Although the officer appears to have overlooked some of the new evidence on which the applicants relied, I am satisfied that this does not affect the reasonableness of the ultimate result. As for the balance of the new evidence, the officer determined either that it was precluded by paragraph 113(a) of the *IRPA* or it was insufficient to support a favourable outcome. These are reasonable determinations. Nor am I persuaded that the decision is unreasonable in any other respect. This application for judicial review will, therefore, be dismissed.

II. BACKGROUND

A. *The Applicants' Claim for Refugee Protection*

[9] In her 2012 claim for refugee protection, Ms. Benoit stated that she fled Saint Lucia after being threatened and assaulted on multiple occasions by E.J., her former romantic partner. The two had begun their relationship in 2009. When E.J. began to threaten and physically abuse her, Ms. Benoit confided in her neighbour, Sasha. Eventually Ms. Benoit and Sasha began a romantic relationship. (Ms. Benoit claimed to have had other same sex relationships previously.) In February 2012, E.J. discovered Ms. Benoit and Sasha in bed together and assaulted them. He also sexually assaulted Ms. Benoit numerous times over the course of their relationship. Ms. Benoit reported the attacks to the police, but they told her they could not assist her. After fleeing from E.J. and hiding out on the island, Ms. Benoit was able to make her way to Canada. A short time later, she arranged for Sierra (age 10) and Virginia (age 7) to follow.

[10] The RPD found that Ms. Benoit's claim lacked credibility for several reasons, including the omission of material facts from her Personal Information Form narrative. The RPD gave "little evidentiary weight" to a report from a psychotherapist because it purported to diagnose Ms. Benoit as suffering from post-traumatic stress disorder when the author of the report was not qualified to make such a diagnosis. As well, the report was based on information provided by Ms. Benoit, someone the RPD had determined to lack credibility "on several pivotal elements of her claim." The applicants also provided an affidavit from E.J.'s sister sworn on February 15, 2018, an affidavit from Ms. Benoit's mother, and a letter from her common law

male partner in Canada to corroborate her claim. The RPD gave little weight to these documents.

[11] The RPD summarized its findings as follows:

I am aware, as stated at the outset, that none of the credibility concerns raised above may be sufficient on their own to negate this claim; however, the claimant provided instances of evidence that was inconsistent, or simply unsatisfactory, because it made little or no sense in the context of her allegations. The cumulative effect of these is that I do not have sufficient credible and trustworthy evidence upon which to base a determination that the claimant is a Convention refugee.

After considering the totality of the evidence, I find, on a balance of probabilities, that the claimant is neither lesbian nor bisexual.

I find, therefore, that the claimant is not a Convention refugee.

[12] For similar reasons, the RPD also found that Ms. Benoit is not a person in need of protection.

[13] Since the claims of her daughters were wholly dependent on Ms. Benoit's claim, the RPD rejected those claims as well.

[14] As noted above, the applicants commenced but failed to perfect an application for leave and judicial review of the RPD's decision.

B. *The Applicants' PRRA Application*

[15] The applicants' PRRA application was submitted in two stages. The initial application and some supporting materials were submitted in March 2020. Additional supporting materials together with written submissions by counsel were submitted in December 2020.

[16] Generally speaking, the narrative of events supporting the PRRA application was the same as that advanced in support of the claim for refugee protection. However, in a letter provided in March 2020, Ms. Benoit raised two new allegations. First, when she was a child, E.J. had pushed Sierra off a balcony, giving her a serious concussion. (Ms. Benoit does not give a date for this incident but a letter from Victoria Hospital in Castries, Saint Lucia, states that it occurred on December 17, 2010.) According to Ms. Benoit, at the time, Sierra told her she had fallen off accidentally. It was only after the RPD rejected their claim that Sierra told her what in fact had happened. Second, after she shared this information with Sierra's birth father, Barry Joseph, he confronted E.J. According to Ms. Benoit, E.J. apologized and, to smooth the waters between them, gave Mr. Joseph a bottle of rum as a gift. After drinking some of the rum, Mr. Joseph died of alcohol poisoning. Ms. Benoit maintained that E.J. had poisoned Mr. Joseph deliberately. Three others also died after drinking the rum; a fourth person became ill but survived.

[17] In addition to the letter from Ms. Benoit and the letter from the hospital, the initial package of supporting materials included the death certificate for Barry Joseph, an affidavit from

E.J.'s sister sworn on February 15, 2018, and letters from social agencies that had been working with the family in Canada.

[18] Subsequently, Ms. Benoit provided an affidavit sworn on December 1, 2020. In the affidavit, she states that when she prepared her refugee claim with the assistance of her then-lawyer, she "opened up to him" about her sexual orientation and the domestic abuse she had suffered. The lawyer advised her to base her claim on her sexual orientation because it would be more likely to succeed. Although Ms. Benoit "did not agree," she "trusted his advice" and "embellished" her sexual orientation over the domestic abuse in her refugee claim. Likewise, when the lawyer's secretary took her statement about her experiences in Saint Lucia, she told Ms. Benoit that they were going to focus on her sexual orientation and not the domestic abuse. Ms. Benoit stated that when she was given her narrative to review and sign, she signed it without reading it because, at the time, she was unable to read. She was too embarrassed to mention this to her lawyer or his secretary. As a result, she did not understand what she was signing.

[19] Ms. Benoit states in her affidavit in support of the PRRA application that she retained and instructed an immigration consultant to appeal the RPD's decision to the RAD. She does not mention that she and her daughters commenced but did not perfect an application for leave and judicial review of the RPD's decision.

[20] In her affidavit, Ms. Benoit provides many additional details about abuse inflicted on her and her daughters by E.J., including the incident when he pushed Sierra off the balcony. (In her affidavit, Ms. Benoit states that the incident occurred in 2009 but, as noted below, medical

records give a different date.) She also relates the incident in March 2018 involving the toxic rum. Ms. Benoit also briefly reiterates that she identifies as bisexual. She adds that Virginia recently told her that she identifies as LGBTQ and currently has a girlfriend.

[21] The following documents were attached as exhibits to Ms. Benoit's affidavit:

- a) An interim order dated September 27, 2018, from the IRB concerning the immigration consultant Ms. Benoit claimed to have retained to appeal the negative RPD decision to the RAD. The order prohibited the consultant from appearing on behalf of any person before any Division of the IRB. Also attached as part of the same exhibit was confirmation that as of the same date the consultant had been suspended by the Immigration Consultants of Canada Regulatory Council.
- b) A letter dated November 23, 2020, from Ms. Benoit's daughter Virginia. In the letter, Virginia describes being physically abused by E.J. as well as witnessing him abuse her mother. She does not mention being LGBTQ or having a girlfriend.
- c) A letter dated November 23, 2020, from Ms. Benoit's daughter Sierra. In the letter, Sierra describes witnessing E.J. abuse her mother. She also describes him pushing her off the balcony on December 17, 2010. Sierra states that she had "stayed silent" about what had happened until after their claim for refugee protection was rejected because she was too scared to say anything at the time.
- d) A letter dated November 25, 2020, from Ms. Benoit's eldest daughter, Kadianna Sextus. Kadianna was already living in Canada when her mother met E.J. so she had no first-hand

knowledge of events in Saint Lucia. Once her mother was in Canada, she shared her experiences with her.

- e) A letter dated November 25, 2020, from Ms. Benoit's mother, Assunta Laurent. Ms. Laurent moved to Canada in 2011 but before that she had witnessed E.J. abusing her daughter. (In support of her refugee claim, Ms. Benoit had provided an affidavit from her mother sworn on February 14, 2018. The RPD gave it "little evidentiary weight.") Ms. Laurent also describes the impact of Mr. Joseph's death on the family.
- f) A letter dated November 23, 2020, from Ms. Benoit's father, Titus Elouis. Mr. Elouis describes his daughter's relationship with E.J. but does not have any first-hand knowledge of E.J.'s abusive behaviour (although he had heard about it from others, including Ms. Benoit).
- g) A letter dated November 23, 2020, from Claudette Elouis, Ms. Benoit's father's aunt. She had met E.J. once but did not have any first-hand knowledge of his abusive behaviour (although she had heard about it from others, including Ms. Benoit).
- h) A letter dated November 29, 2020, from Jane Antoine Arundell, Ms. Benoit's aunt. Ms. Arundell describes the circumstances that led to Ms. Benoit's daughter Kadianna coming to Canada in 2002.
- i) A letter dated November 27, 2020, from Ms. Benoit's sister, Yandy Laurent. She did not have any first-hand knowledge of E.J.'s abusive behaviour (although she had heard about it from others, including Ms. Benoit).

- j) A letter from Victoria Hospital in Castries, Saint Lucia dated February 13, 2018, summarizing medical records relating to Sierra's fall. According to these records, the fall occurred on December 17, 2010. (This letter was also provided in March 2020.)
- k) The death certificate for Barry Joseph. The certificate records that Mr. Joseph died on March 12, 2018, from methanol toxicity, methanol ingestion, and chronic alcohol use. (The death certificate was also provided in March 2020.)
- l) A letter dated November 12, 2020, from Caleb Joseph, the sole survivor of the episode involving the toxic rum. Caleb Joseph describes Barry Joseph sharing a bottle that had been given to him by an unnamed friend. Months afterwards, based on things he heard in the community, Caleb Joseph came to believe that it was E.J. who had provided the rum to Barry Joseph. Included with the letter is an article dated March 15, 2018, from St. Lucia News Online concerning an incident involving toxic alcohol. In the article, Caleb Joseph describes drinking a small amount of what he thought was rum at a funeral the previous week and becoming very ill. Four others who drank the rum had died.
- m) A letter dated November 1, 2020, from Annoya Joseph, Barry Joseph's sister. She describes the impact of her brother's death on their family and blames E.J. for what happened.
- n) An article dated September 13, 2013, from St. Lucia News Online concerning the death of Ms. Benoit's cousin, Cherece Benoit. The article stated that the 19-year-old woman had been killed in her home. Mr. Benoit alleged in her affidavit that her cousin had been killed by her boyfriend but he was never charged. She offered this as an example of how domestic abuse cases are treated by police in Saint Lucia.

- o) A psychotherapy assessment of Ms. Benoit dated November 25, 2020. The assessment, which was conducted on November 22, 2020, included a clinical interview and the administration of assessment devices. The purpose of the assessment was “to determine the nature of, and the extent to which, [Ms. Benoit] is suffering from emotional difficulties, and to make recommendations for treatment.”

[22] Ms. Benoit’s counsel provided detailed written submissions in support of the PRRA application. Counsel attempted to distinguish the PRRA application from the adverse RPD determination on the basis that the latter addressed only Ms. Benoit’s claim to be bisexual and did not address the credibility of her account of domestic abuse. Counsel’s submissions did not address how the evidence submitted in support of the PRRA application met the requirements of paragraph 113(a) of the *IRPA*.

III. DECISION UNDER REVIEW

[23] Looking first at the question of what evidence may be considered under paragraph 113(a) of the *IRPA*, the officer itemizes some but not all the evidence the applicants submitted in support of their PRRA application. As noted above, the officer finds that “Not all the submitted evidence counts as new evidence.” The officer specifically finds that the letter from Victoria Hospital, the news article concerning the death of Ms. Benoit’s cousin, and the affidavit from E.J.’s sister (which the officer refers to as a letter) all pre-date the RPD’s decision. Indeed, the affidavit from E.J.’s sister was submitted to the RPD and found to be deserving of little probative value. The officer finds that the applicants did not provide a reasonable explanation for why the other documents that pre-dated the RPD’s decision were not provided earlier. The officer finds

that other documents the applicants submitted post-date the RPD's decision but they contain information that pre-dates the decision and the applicants did not provide a reasonable explanation for why that information was not provided earlier (e.g. the information in letters from family members).

[24] The officer appears to have accepted Ms. Benoit's affidavit as a whole as new evidence, despite the fact that it largely repeats or adds details about events that occurred prior to the RPD's decision. The officer concludes, however, that the affidavit is deserving of little weight because of Ms. Benoit's admission to having embellished her claim before the RPD, which would have included making false statements under oath. It followed from this that the psychotherapy assessment is also entitled to little weight because it depended on the narrative provided by Ms. Benoit and she "is not a reliable witness to her own history."

[25] On the merits of the PRRA application, the officer disagrees with the submission of counsel for the applicants that the RPD decision focused exclusively on Ms. Benoit's sexual orientation and that the RPD did not dispute that she faced risk from E.J. The officer finds that the two elements were part of a single narrative and the RPD made adverse findings concerning the credibility of her account of being the victim of domestic abuse along with her claim to be bisexual. The new evidence relied on by the applicants did not overcome the RPD's findings. The evidence that was genuinely new (e.g. the letters from social services in Toronto) did not speak to the issue of risk at all. In sum, the officer finds that the applicants "have provided insufficient new evidence to result in a positive finding" under either section 96 or section 97 of the *IRPA*. As a result, the officer rejects the PRRA application.

IV. STANDARD OF REVIEW

[26] The parties agree, as do I, that the officer's decision should be reviewed on a reasonableness standard.

[27] A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). A decision that displays these qualities is entitled to deference from the reviewing court (*ibid.*). For a decision to be reasonable, a reviewing court "must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic, and it must be satisfied that there is a line of analysis within the reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived" (*Vavilov* at para 102, internal quotation marks and citation omitted). On the other hand, "where reasons are provided but they fail to provide a transparent and intelligible justification [. . .], the decision will be unreasonable" (*Vavilov* at para 136).

[28] The onus is on the applicants to demonstrate that the officer's decision is unreasonable. To set aside a decision on this basis, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

V. ANALYSIS

[29] The applicants submit that the officer's determination that not all of the evidence they submitted "counts as new evidence" is unreasonable. They place particular emphasis on the failure of the officer to address any of the evidence relating to the toxic rum incident. They contend that this was cogent evidence of the risk E.J. posed them. While they submit in passing that the officer's failure to consider this evidence was a breach of procedural fairness, the main focus of their argument on review is the impact of this omission on the reasonableness of the decision. They contend that the officer's failure to address this evidence undermines the reasonableness of the decision.

[30] I do not agree. The applicants are correct that the officer appears to have overlooked this evidence entirely. The presumption that the officer considered all of the evidence does not assist because, while the toxic rum incident post-dates the RPD's decision, there is no way to know whether the officer found that the evidence relating to it met the other requirements of *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at para 13, or not. Nevertheless, I am not persuaded that this gap in the officer's analysis undermines the reasonableness of the decision.

[31] When applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances (*Vavilov* at para 125). In the present case, the officer did not make any factual findings about the toxic rum incident. The question on

review is whether this omission is sufficiently central or significant to render the decision unreasonable. I am not persuaded that it is.

[32] While the issue of the risk E.J. posed to the applicants was central to their PRRA application, the evidence the officer overlooked is entirely peripheral to this issue. This is because E.J.'s alleged link to the incident rests on nothing but speculation. Ms. Benoit purports to describe E.J. giving Barry Joseph the bottle of toxic rum but she was not there at the time and she says nothing about how she knows what happened. Caleb Joseph's belief that E.J. gave Barry Joseph the toxic rum is based on nothing but his interpretation of something he was told E.J. had said in another context months later. In short, no reasonable decision maker could give the incident any probative value when determining whether the applicants are at risk in Saint Lucia. The officer should have addressed the evidence relating to this incident but the failure to do so does not undermine the reasonableness of the decision. There is no reasonable possibility that, if the evidence had been considered, the outcome would have been different.

[33] For the sake of completeness, I will simply state that it follows from the foregoing analysis that the officer's failure to consider this evidence did not breach the requirements of procedural fairness.

[34] Apart from the toxic rum incident, the PRRA application was largely an attempt to recast evidence that either was or could have been presented to the RPD in the hope of securing a different result. However, a PRRA application is not an appeal or reconsideration of the RPD's decision to reject a claim for protection (*Raza* at para 12). Rather, its purpose is "to determine

whether on the basis of a change in country conditions or on the basis of new evidence that has come to light since the RPD decision, there has been a change in the nature or degree of risk” (*Kreishan v Canada (Citizenship and Immigration)*, 2019 FCA 223 at para 116; see also *Demesa v Canada (Citizenship and Immigration)*, 2020 FC 135 at paras 15-19).

[35] Given the delay between the rejection of the refugee claim and removal from Canada, the applicants were entitled to ask that the question of risk be assessed anew. However, unless there is evidence that meets the requirements of paragraph 113(a) of the *IRPA*, the PRRA officer must respect the negative determination by the RPD (*Raza* at para 13; see also *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at para 47).

[36] The applicants attempted to limit the scope of the RPD’s adverse determination by arguing that it was restricted to Ms. Benoit’s claim to be bisexual. It is true that the RPD expressly found that Ms. Benoit is neither lesbian nor bisexual but did not make a similar finding that she is not the victim of domestic abuse. Nevertheless, almost all of the RPD’s adverse credibility findings relate to Ms. Benoit’s account of the domestic abuse she alleges she was subjected to by E.J. The PRRA officer reasonably found that the claim to be a victim of domestic abuse and the claim to be bisexual were parts of a single narrative that the RPD had found to be entirely lacking in credibility.

[37] Having considered how the refugee claim was cast, it was open to the officer to find that the applicants had not provided a reasonable explanation for why the detailed evidence of E.J.’s abusive behaviour they were submitting now was not submitted in support of their refugee claim.

This is especially so considering that, notwithstanding the erroneous legal advice she was allegedly given, Ms. Benoit did not omit E.J.'s abusive behaviour entirely from her refugee claim but, rather, embellished her claim relating to her alleged bisexuality. Absent such an explanation, the applicants were not permitted to rely on this "new" evidence. If anything, the officer took an overly liberal approach to evidence that did not meet the requirements of paragraph 113(a) of the *IRPA* by giving much of that evidence "little weight" rather than refusing to consider it altogether.

[38] Furthermore, the officer concluded that the evidence that could be considered under paragraph 113(a) because it post-dated the RPD's decision was insufficient to support a different outcome. This was an altogether reasonable determination. For example, according to Ms. Benoit's affidavit sworn on December 1, 2020, Virginia recently told her that she identifies as LGBTQ and has a girlfriend. However, Virginia herself says nothing about this in her November 23, 2020, letter. No one else mentions this, either. It was not unreasonable for the officer to find that the evidence presented was insufficient to establish that Virginia is LGBTQ and, as such, would be at risk in Saint Lucia.

[39] Contrary to the applicants' submissions, the officer did not make new credibility findings that, had they been in play, would have entitled them to a hearing under section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. The officer certainly took note of the RPD's detailed credibility concerns as well as Ms. Benoit's admitted dishonesty in presenting her refugee claim. In the end, however, the officer's concerns related to the sufficiency of the evidence that could be considered. The applicants have not established any

basis to interfere with the conclusion that, when viewed against the backdrop of the RPD's decision, the evidence that could be considered in support of the PRRA application was insufficient to establish that the applicants are Convention refugees or persons in need of protection.

VI. CONCLUSION

[40] For these reasons, the application for judicial review will be dismissed.

[41] The parties did not propose any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

[42] Finally, the style of cause is amended to reflect the correct spelling of the principal applicant's given name, Odilia, which is misspelled on the Application for leave and for judicial review.

JUDGMENT IN IMM-9141-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. No question of general importance is stated.
3. The style of cause is amended to reflect the correct spelling of the principal applicant's given name, Odilia.

"John Norris"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9141-21

STYLE OF CAUSE: ODILIA BENOIT ET AL v THE MINISTER OF
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PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 8, 2023

JUDGMENT AND REASONS: NORRIS J.

DATED: AUGUST 9, 2023

APPEARANCES:

Linda Kassim FOR THE APPLICANTS

Leanne Briscoe FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lewis & Associates FOR THE APPLICANTS
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario