

Federal Court



Cour fédérale

**Date: 20101004**

**Docket: IMM-721-10**

**Citation: 2010 FC 970**

**[UNREVISED CERTIFIED TRANSLATION]**

**Ottawa, Ontario, October 4, 2010**

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

**BETWEEN:**

**ANTOINE IDONY**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, (the Act) for judicial review of a decision dated January 20, 2010, by the Refugee Protection Division of the Immigration and Refugee Board (the panel). The panel determined that the applicant was neither a refugee nor a person in need of protection and therefore rejected his refugee claim.

[2] The applicant is a citizen of Haiti. In 2002, he had been working for three years as a truck driver for a transport company. On January 15, 2002, while he was putting gasoline in the truck, he alleges that he was attacked by unknown armed bandits. They got into the truck, threatened him at gunpoint and stabbed him in the back. The truck was stolen along with the merchandise. The applicant or his boss reported this to the police.

[3] On March 15, 2002, the same bandits attacked the applicant again and hit him on the head with a gun. He was hospitalized for almost a week, then stayed with a friend for a week and left Haiti for the Dominican Republic on March 25, 2002.

[4] The applicant went to the United States where he claimed refugee status but, after a delay of several years, his application was denied. He arrived at the Canadian border on September 16, 2007, and immediately claimed refugee protection.

[5] The panel determined that the applicant's risk would be no different from that of the entire Haitian population, which as a whole faces a very difficult situation. The panel concluded that the applicant was not personally targeted and would not run a prospective risk of return. It found that, after eight years, there was no reason to believe that the same unknown bandits would attack him.

[6] In addition, the panel found that the applicant's credibility was undermined because of a number of contradictions between his testimony and the documentary evidence. The panel also referred to the documentary evidence a number of times and concluded that the Haitian population as a whole lives in a constant state of collective vulnerability and that, therefore, the applicant is not

subject personally to a risk as required by section 97 of the Act. Last, the panel determined that truck drivers do not constitute a social group within the meaning of section 96 of the Act and that, accordingly, the applicant could not obtain the protection afforded by this section. The applicant did not specifically dispute this finding.

[7] The applicant's primary submission is that the panel erred by making its finding without regard to his testimony when he said that the second incident with the bandits was connected to his complaint to the police and that, therefore, he was personally targeted. However, the panel clearly indicated at paragraph 13 of its reasons that it had problems with the credibility of the applicant's story about the alleged incidents. The fact that the panel did not mention every aspect of the applicant's story is not an error (see *Ayala v. Minister of Citizenship and Immigration*, 2008 FC 1258).

[8] By analogy to his situation, the applicant refers to the decision of the Refugee Protection Division (RPD) in *Re W.C.Z.*, [2003] R.P.D.D. No. 425, where the claimant had testified against his friends at a criminal trial and where the RPD found that the applicant would be personally targeted if he returned to Jamaica. The respondent submits, and I agree, that the facts are clearly distinguishable because W.C.Z. knew the people he testified against and the police took action against them whereas in this case the gunmen are unknown and the police did nothing.

[9] The applicant notes that if a reasonable person had been involved in such attacks, that person would be afraid of returning to a place where he or she would risk being attacked again, especially in a small country like Haiti. However, subsection 97(1) is an objective test to be administered in

the context of a present or prospective risk for the claimant (*Sanchez v. Minister of Citizenship and Immigration*, 2007 FCA 99, at paragraph 15). Accordingly, the applicant's subjective fear is not sufficient if the panel did not find an objective risk to his safety.

[10] At paragraphs 12 to 15 of its reasons, the panel found that the applicant's credibility was undermined by various contradictions concerning the identity of the bandits, whether the first incident took place and who filed a complaint with the police. Because of these contradictions, the panel found that the sole purpose of the attacks was to steal the merchandise in the truck and that the applicant's credibility was undermined. It noted at paragraph 24 that, according to the applicant's testimony, other colleagues from the same company were also robbed in the course of their work during the same time period, which makes it less likely that the attackers targeted the applicant. It is trite law that this Court must not intervene where the applicant only repeats the explanations that the panel found not credible without providing evidence that its findings were arbitrary. See, for example, *Muthuthevar v. Canada (Citizenship and Immigration)*, [1996] F.C.J. No. 207, at paragraph 7, where Mr. Justice Cullen wrote:

. . . While the applicant seeks to "explain away" testimony that the Board found implausible, it must not be forgotten that these same explanations were before the Board and were not accepted as credible. The applicant has not directed to this Court evidence that was ignored or misconstrued, and in the absence of such a finding, the Board's conclusions on credibility must stand.

[11] In addition, the panel cited the decision in *Innocent v. Minister of Citizenship and Immigration*, 2009 FC 1019, where Mr. Justice Mainville determined that even multiple attacks by the same thugs were not sufficient to personalize the prospective risk. Mainville J. found that the applicant, who had been the victim of criminal attacks on a number of occasions, was facing a

generalized risk affecting the entire population in the country, not a personalized risk. The panel in this case consulted the documentary evidence about Haiti and concluded that all Haitians are at risk of being harassed by bandits and that the police are unable to intervene.

[12] As for the applicant's claim that his work as a truck driver would put him more at risk than other Haitians, I find that the *Sanchez* decision, above, is again relevant on this point. At paragraph 20, the Court determined that persons are not persons in need of protection simply because of the nature of their occupation unless they can establish that there is no alternate occupation open to them that would eliminate the risk of harm. The respondent appropriately notes that, according to his Personal Information Form, the applicant worked in a restaurant in the United States and currently works as a day labourer in Canada.

[13] I therefore find that the applicant has not established that the panel's decision was unreasonable with regard to the facts. Accordingly, the Court's intervention is not justified. It is well settled that a tribunal's assessment of the facts "command[s] a high degree of deference" (*Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, at paragraph 46). The Court will intervene only if this assessment is unreasonable in the sense that it was done "in a perverse or capricious manner or without regard for the material before it" (*Khosa; Federal Courts Act*, R.S.C. 1985, c. F-7, paragraph 18.1(4)(d)).

[14] For all these reasons, the application for judicial review is dismissed.

**JUDGMENT**

The application for judicial review of the decision dated January 20, 2010, by the Refugee Protection Division of the Immigration and Refugee Board is dismissed.

“Yvon Pinard”

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Judge

Certified true translation  
Mary Jo Egan, LLB

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

**DOCKET:** IMM-721-10

**STYLE OF CAUSE:** ANTOINE IDONY v. MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** September 14, 2010

**REASONS FOR JUDGMENT  
AND JUDGMENT:** Pinard J.

**DATED:** October 4, 2010

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