CANADA / JUDGMENT

Calce v. Canada (Citizenship and Immigration)

2020 FC 713

COURT
Federal Court

DECIDED
19 June 2020

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Calce v. Canada (Citizenship and Immigration) Court (s) Database Federal Court Decisions Date 2020-06-19 Neutral citation 2020 FC 713 File numbers IMM-4966-19 Decision Content Date: 20200619 Docket: IMM-4966-19 Citation: 2020 FC 713 [UNREVISED CERTIFIED ENGLSISH TRANSLATION] Ottawa, Ontario, June 19, 2020 PRESENT: The Honourable Madam Justice Roussel BETWEEN: FRANCCES CHARLES CALCE Applicant and THE MINISTER OF CITIZENSHIP AND IMMIGRATION Respondent JUDGMENT AND REASONS I. Background

[1] The applicant, Francces Charles Calce, is seeking judicial review of a decision rendered on July 15, 2019, by the Refugee Appeal Division [RAD]. In its decision, the RAD confirmed the decision of the Refugee Protection Division [RPD] that the applicant was neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA].

[2] The applicant is a citizen of Haiti. In her claim for refugee protection, she alleges persecution by reason of her husband's close ties with a presidential candidate in the elections of October 25, 2015, and the Unité Nationale pour le Développement Appliqué.

[3] More specifically, she states the following:

(1) On October 25, 2015, her husband was attacked by extremists from the political party "Haïti en action", who continued to make death threats against him.

(2) On October 1, 2016, she received death threats from supporters of the same political party and was informed during one of the two (2) calls received that an incident in 2014 directed at her son was not a common crime, but rather a deliberate attempt to teach her and her husband a lesson.

(3) When she took refuge at a friend's house in another city where she stayed until October 10, 2016, she received a call from the same people telling her that she could not escape them.

(4) Having already obtained a visa and airline ticket to Canada, she left Haiti for Canada on October 11, 2016.

(5) On December 8, 2016, while she was in Canada, her husband informed her that extremists from the political party “Haïti en action” had asked her friend for her husband’s home address.

[4] On May 9, 2018, the RPD rejected the claim on the basis that the applicant’s allegations were not credible. It found the applicant’s testimony vague, general and full of contradictions. It determined that the applicant had not shown that her husband has been in danger in Haiti since October 2015 because of his political involvement or that she was personally threatened. In addition, it found that the documentary evidence produced in support of the claim lacked specifics and did not corroborate the applicant’s allegations.

[5] The applicant appealed that decision to the RAD. Like the RPD, the RAD found that the applicant’s allegations were not credible and that she had failed to provide credible evidence that she was personally targeted because of her husband’s political activities. It also rejected the applicant’s argument that the RPD breached the rules of procedural fairness by being insensitive in its assessment of the claim. The RAD found that the RPD was completely transparent with the applicant, giving her every opportunity to support her claim with post-hearing evidence. Furthermore, it was of the view that the RPD took into account Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution (November 13, 1996), which provides an analytical framework for determining gender-related claims in a comprehensive and sensitive manner. Finally, the RAD confirmed that the applicant had failed to establish that she was exposed to a prospective risk in Haiti related to gender-based violence.

[6] In general, the applicant alleges that the RAD erred in its assessment of the evidence. She further alleges that it placed the wrong burden of proof on her. II. Analysis

[7] The standard of review applicable to RAD decisions on credibility and the assessment of evidence is reasonableness (Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 at para 143 [Vavilov]; Canada (Citizenship and Immigration) v Huruglica, 2016 FCA 93 at para 35; Aguebor v Canada (Minister of Employment and Immigration), [1993] FCJ No 732 (QL) at para 4 (CA); Noël v Canada (Citizenship and Immigration), 2020 FC 281 at para 16).

[8] Where a reasonableness standard applies, “[t]he burden is on the party challenging the decision to show that it is unreasonable” (Vavilov at para 100). The Court’s focus “must be on the decision actually made by the decision maker, including both the decision maker’s reasoning process and the outcome” (Vavilov at para 83) to determine whether the decision 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” (Vavilov at para 85). Close attention must be paid to the decision maker’s written reasons, and these must be interpreted holistically and contextually (Vavilov at para 97). Nor is a reasonableness review to be a “line-by-line treasure hunt for error” (Vavilov at para 102). If “the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether

it is justified in relation to the relevant factual and legal constraints that bear on the decision", it is not for this Court to substitute its own preferred outcome (Vavilov at para 99).

[9] The applicant submits that she did not have the burden of proving that her husband's life was in danger, only that she had a reasonable apprehension that her life was in danger because of her husband's activities. This argument is ill founded. Her claim is based on the allegation that she is threatened and at risk because of her husband's political activities. As noted by the RAD, the details of the husband's problems in Haiti are not a trivial matter, but rather are at the heart of her own claim. The applicant was unable to provide specific details of her husband's activities in Haiti since October 2015 that would support the assertion that he is still being targeted by the political party "Haïti en action", that he is fighting for change and that he was living underground. She was also unable to explain why her husband was travelling back and forth to the United States if he is in fear for his life and is currently wanted. Moreover, the contradictions between the applicant's testimony, her Basis of Claim Form, and her husband's attestation as to his absences from home undermined the applicant's credibility.

[10] The applicant submits that her testimony was corroborated by her documentary evidence. She argues that the documentary evidence was clear and precise and that it was unreasonable for the RAD to [translation] "minimize" that evidence by looking for what it does not say. The applicant also argues that it was unfair for the RPD to blame her for not providing telephone records when she had allegedly given the RPD her consent to obtain them for itself.

[11] Contrary to the applicant's submissions, it was reasonable for the RAD to find the documentary evidence provided in support of the claim to be vague and general and to give it little probative value. The spouse's affidavit provides little detail about the specific circumstances of the alleged persecution. It does not specify the type or frequency of threats he received. It does not specify how he has been living in hiding since October 2015. Although the husband states that he went into hiding in the United States, he fails to provide any other information on the subject. Second, the applicant's son's attestation merely repeats his mother's account and raises further questions about the credibility of the account. Finally, the political candidate who signed an attestation after the RPD hearing provides very little information about the political activities of the applicant's husband and fails to indicate how the husband or the applicant are targeted and threatened with death. Nor does it indicate the source of this information.

[12] Moreover, the Court considers the applicant's criticisms of the telephone records to be ill founded and out of context. At the hearing before the RPD, the applicant stated that she received two (2) telephone calls on October 1, 2016, the first at [translation] "7 p.m. in the evening" and the second at [translation] "2 a.m. in the morning". The RPD member then asked the applicant if he would see the two (2) calls in question as well as several calls with her husband if he obtained the call records from the applicant's cell phone. The applicant indicated that these were unknown calls. The member then responded to the applicant that

it would still be seen that unknown calls were made [translation] “at about 7 p.m., at about 2 a.m. and in the meantime, with your husband” and that even though the applicant no longer has a telephone, the telephone company is able to provide this information. Doubting the applicant’s answers, the member asked the applicant if she would give the Government of Canada permission to check her telephone records, to which the applicant responded yes. The member then asked her for the telephone number she was using and the company she was doing business with. The applicant replied that she could not remember. At the end of the hearing, the member expressed concerns about the applicant’s credibility. Rather than dismiss the application, he adjourned the case for a period of approximately four (4) months to allow the applicant to gather evidence in Haiti that could corroborate her allegations regarding her husband’s activities and profile. He also asked the applicant to obtain more detailed information, including the telephone records of the applicant and her husband. In light of the exchanges that took place before the RPD, particularly at the end of the hearing, the applicant cannot claim that she had a [translation] “legitimate expectation” that the RPD would obtain the telephone records on its own initiative. On the contrary, the RPD wanted to allow the applicant to corroborate her testimony. Obtaining the telephone records would have allowed the applicant to demonstrate that the alleged calls did in fact take place.

[13] Finally, the applicant alleges that the RAD and the RPD placed a higher burden of proof on her than that set out in section 96 of IRPA, namely, the burden of proof beyond a reasonable doubt. Her personal circumstances were clear, and the context of Haiti is such that her allegations can be believed. In this regard, she relied in particular on objective documentary evidence demonstrating the violent clashes between supporters of the various political parties. She submits that the question the panel had to ask itself was whether, in the context of Haiti, a woman whose husband is involved in politics and who received anonymous calls threatening her with death would have a reasonable fear for her life and dignity.

[14] This argument too is unfounded. The RAD, like the RPD, did not place a higher burden of proof on the applicant. Rather, it is the applicant who was unable to credibly establish that she was personally targeted or threatened because of her or her husband’s political views. Nor has she demonstrated that her particular profile as a woman in Haiti exposes her to a prospective risk. Moreover, at the hearing, the applicant stated that, apart from the not very credible allegations of hardship due to her husband’s political activities, she was not at risk for any other reason in Haiti.

[15] The record shows that the RAD’s conclusion was based on an overall assessment of the evidence, taking into account all of the applicant’s arguments. The RAD could reasonably conclude that the applicant’s allegations were not credible and that the documentary evidence submitted did not corroborate her allegations either.

[16] It is important to recall that findings regarding the credibility of a claimant and the assessment of the evidence command a high degree of deference from this Court. Although the applicant disagrees with the findings of the RAD and the RPD, it is not for this Court to re-evaluate and re-weigh the evidence to reach a conclusion that would be favourable to the applicant (Canada (Citizenship and Immigration) v Khosa, 2009 SCC 12 at para 59).

[17] For these reasons, the application for judicial review is dismissed. No question of general importance has been submitted for certification, and the Court is of the view that this case does not raise any. JUDGMENT in IMM-4966-19 THIS COURT`S JUDGMENT is as follows: The application for judicial review is dismissed. No question of general importance is certified. “Sylvie E. Roussel” Judge Certified true translation This 13th day of July 2020. Michael Palles, Reviser FEDERAL COURT SOLICITORS OF RECORD DOCKET: IMM-4966-19 STYLE OF CAUSE: FRANCCES CHARLES CALCE v THE MINISTER CITIZENSHIP AND IMMIGRATION PLACE OF HEARING: HELD VIA vidEoconfErence IN ottawa, Ontario DATE OF HEARING: JUNE 16, 2020 JUDGMENT AND REASONs: ROUSSEL J. DATED: JUNE 19, 2020 APPEARANCES: François Kasenda Kabemba FOR THE APPLICANT Charles Maher FOR THE RESPONDENT SOLICITORS OF RECORD: François K. Law Office Counsel Ottawa, Ontario FOR THE APPLICANT Attorney General of Canada Ottawa, Ontario FOR THE RESPONDENT

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