

CANADA / JUDGMENT

Eustache v. Canada

(Citizenship and Immigration)

2020 FC 1140

COURT

Federal Court

DECIDED

9 December 2020

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20201209 Docket: IMM-5915-19 Citation: 2020 FC 1140 [ENGLISH TRANSLATION] Montréal,
Quebec, December 9, 2020 PRESENT: The Honourable Mr. Justice Martineau BETWEEN: JULYSSA
ANN LYNN EUSTACHE Applicant and THE MINISTER OF CITIZENSHIP AND IMMIGRATION
Respondent JUDGMENT AND REASONS

- [1] This is an application for judicial review pursuant to subsection 72(1) of the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA], of a decision of the Refugee Appeal Division [RAD] upholding a decision of the Refugee Protection Division [RPD] in which the applicant's claim for refugee protection was rejected.
- [2] At the oral hearing of this application, counsel for the parties indicated that they were relying on the written submissions contained in their respective memoranda.
- [3] The facts in support of the claim for refugee protection made by the applicant—who is a minor with U.S. citizenship—are related to those of her mother, who is a Haitian citizen. The latter recounted that she had worked evenings as a nurse supervisor in a hospital in Port-au-Prince, Haiti. On June 3, 2017, she attended to a man with bullet and/or stab wounds. As per the hospital's instructions, she notified the police. Shortly thereafter, a group of people came to see the injured man. As they were not family members of the wounded man, the mother refused, but the group's leader issued a warning to her. On June 9, she received a call threatening her life and filed a complaint with the police. On June 17, the injured man was released from hospital and immediately arrested. On June 17, the mother was again threatened for having cooperated with the police; she returned to file another complaint with the police. On June 20, criminals showed up in front of the hospital to attempt to murder the mother, shouting her name and firing into the air. Fearing for their lives, the mother and daughter left Haiti in July. Having transited through the United States, they claimed refugee protection in Canada a month later.

- [4] In December 2018, the RPD rejected both refugee protection claims. The RAD did not have jurisdiction to hear the applicant's mother's appeal. On September 5, 2019, the RAD dismissed the applicant's appeal, hence this application for judicial review.
- [5] On numerous occasions since the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov], this Court has affirmed that the standard of review for RAD decisions is reasonableness (*Limonos Munoz v Canada (Immigration, Refugees and Citizenship)*, 2020 FC 1051 at para 23; *Elusme v. Canada (Citizenship and Immigration)*, 2020 FC 225 at paras 9–14; *Akinkunmi v Canada (Citizenship and Immigration)*, 2020 FC 742 at para 13; *Onuwavbagbe v Canada (Citizenship and Immigration)*, 2020 FC 758) at para 20. In this regard, a reasonable decision must be based on an internally coherent and rational chain of analysis and be justified in relation to the facts and law that constrain the decision maker (Vavilov at para 85).
- [6] In this case, the RAD dismissed the applicant's appeal on the principal ground that there was a clear lack of evidence to support her claim of a well-founded fear of persecution or risk in her country of nationality, the United States. Moreover, the RAD noted that the applicant did not cite any specific error committed by the RPD. The RAD also found that the potential separation from her other family members—who are not citizens of the United States—did not amount to persecution under the case law, nor did it amount to a danger of torture, a personal risk to life or a risk of cruel and unusual treatment or punishment.
- [7] There is no need to intervene in this case. The applicant has not satisfied the Court that the RAD made a reviewable error or that its decision was unreasonable. With respect to the risk that the applicant might face if she were to return to Haiti, sections 96 and 97 of the IRPA refer to the existence of a fear or risk in relation to the country of nationality. However, the applicant is not a Haitian national; she is a U.S. citizen. Furthermore, this fear does not exist with respect to the United States, as the applicant indicated in her written submissions of January 28, 2019 (Certified Tribunal Record, p 32). Incidentally, in this Court's view, the applicant's failure to cite any specific error or errors before the RAD—when she had the burden of establishing that the RPD had erred—appears fatal to me (*Majebi v Canada (Citizenship and Immigration)*, 2016 FCA 274 at paras 8–9).
- [8] In the alternative, the applicant alleges that she has a fear of persecution in the United States, based on the forced separation policy commonly applied by U.S. authorities, as well as detention and removal to the foster care system, which is the fate of U.S. citizen children of non-status parents. The problem here is that this is a new argument that could and should have been raised before the RAD. However, given that the applicant failed to do so, this Court cannot consider it today (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 22–23). In any event, this Court has already held that the separation of family members does not amount to persecution, a danger of torture, a personal risk to life, or a risk of cruel and unusual treatment or punishment, as the concept of family unity is not recognized in Canadian refugee law (*Nazari v Canada (Minister of Citizenship and Immigration)*, 2017 FC 561 at paras 17–21; *Canada (Citizenship*

and Immigration) v Ali Khan, 2005 FC 398 at para 11).

- [9] While the Court is very sensitive to the personal circumstances and best interests of the applicant, who is a minor, this is not a judicial review of an immigration officer's refusal to grant an application for permanent residence on humanitarian and compassionate grounds. In this case, which involves a refugee protection claim, the applicant has not raised any serious grounds that would permit the Court to allow this application to set aside the RAD's decision.
- [10] For these reasons, the application for judicial review is dismissed. Counsel raised no questions of general importance. JUDGMENT in IMM-5915-19 THIS COURT'S JUDGMENT is that the application for judicial review is dismissed. No question is certified. "Luc Martineau" Judge Certified true translation Michael Palles, Reviser FEDERAL COURT SOLICITORS OF RECORD DOCKET: IMM-5915-19 STYLE OF CAUSE: JULYSSA ANN LYNN EUSTACHE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION PLACE OF HEARING: MATTER HEARD BY VIDEOCONFERENCE IN MONTRÉAL, QUEBEC DATE OF HEARING: DECEMBER 7, 2020 JUDGMENT AND REASONS: MARTINEAU J. DATED: December 9, 2020 APPEARANCES: Mohamed Diaré For the APPLICANT Mario Blanchard For the respondent SOLICITORS OF RECORD: Mohamed Diaré, Counsel Montréal, Quebec FOR THE APPLICANT Attorney General of Canada Montréal, Quebec For the respondent

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