



RAD File No. / N° de dossier de la SAR : MB3-04723

*Private Proceeding / Huis clos*

***Reasons and decision – Motifs et décision***

2014 CanLII 15012 (CA IRB)

**Person who is the subject of  
the appeal**

**XXXX XXXX XXXX**

**Personne en cause**

**Appeal considered/heard at**

Montréal, Quebec

**Appel instruit à**

**Date of decision**

February 24, 2014

**Date de la décision**

**Panel**

Normand Leduc

**Tribunal**

**Counsel for the person who is  
the subject of the appeal**

Jean-Marie Hercules

**Conseil de la personne  
en cause**

**Designated representative**

N/A

**Représentant désigné**

**Counsel for the Minister**

N/A

**Conseil du ministre**

## REASONS AND DECISION

### INTRODUCTION

[1] XXXX XXXX XXXX, a citizen of Haiti, is appealing against the decision of the Refugee Protection Division (RPD) rejecting his claim for refugee protection.

[2] He submitted new evidence in support of his appeal.

[3] He is leaving to the discretion of the Refugee Appeal Division (RAD) whether a hearing should be held under subsection 106(6) of the *Immigration and Refugee Protection Act* (IRPA).

### DETERMINATION OF THE APPEAL

[4] Under subsection 111(1) of the IRPA, the RAD confirms the determination of the RPD, namely, that XXXX XXXX XXXX is neither a “Convention refugee” under section 96 of the IRPA nor a “person in need of protection” under section 97 of the IRPA.

### BACKGROUND

[5] The appellant alleged before the RPD that he worked as a representative for the Rassemblement des démocrates nationaux progressistes (RDNP) [assembly of progressive national democrats] political party at a polling station in the city of XXXX XXXX XXXX XXXX XXXX in Haiti during the presidential election of March 20, 2011. He alleged having received threats from five individuals who attempted to vote a second time and that armed people came to his home the next day to kill him. He was allegedly able to escape them and supposedly took refuge at the request of his brother-in-law in the town of XXXX, where he stayed for a month.

[6] The appellant alleged that he left his country on XXXX XXXX, 2011, for Cuba, where he stayed until XXXX XXXX, 2011, before returning to Haiti.

[7] The appellant alleged that he came across an individual in XXXX XXXX XXXX XXXX XXXX on XXXX XXXX XXXX 2013, who threatened him. He allegedly began to receive anonymous telephone calls two days later.

[8] The appellant left his country on XXXX XXXX, 2013, for Canada, where he claimed refugee protection. He alleged that, on XXXX XXXX, 2013, some individuals came to his home to ask questions about him. Subsequently, his wife, children and brother-in-law allegedly took refuge in the town of XXXX.

[9] The RPD rejected the claim for refugee protection on the ground that the appellant's main allegations were not credible.

[10] The appellant submits before the RAD that the RPD erred in its assessment of his credibility for the following reasons:

- by attaching no probative value to the [translation] “representative card” document entered into evidence by reason of the date indicated on it; and
- by drawing negative inferences regarding the fact that he stayed at the same job for a year without being found again by the individuals who were threatening him, even though he believed it was imperative to change residences.

[11] For these reasons, the appellant requests that the RAD set aside the determination of the RPD and grant him refugee protection.

#### **ADMISSIBILITY OF NEW EVIDENCE**

[12] The appellant submitted the following new evidence on appeal:

- Exhibit P-1: statement of complaints to the board of directors of the XXXX XXXX XXXX XXXX communal section, XXXX XXXX XXXX XXXX XXXX, dated XXXX XXXX, 2013;

- Exhibit P-2: statement of complaints to the board of directors of the XXXX XXXX XXXX communal section, XXXX XXXX XXXX XXXX XXXX, dated XXXX XXXX, 2011;
- Exhibit P-3: complaint report to the Haitian national police, XXXX XXXX, 2013;
- Exhibit P-4: refugee protection claimant's document issued by the Canadian government, undated; and
- Exhibit P-5: copy of the appellant's passport, issued XXXX XXXX XXXX 2013.

[13] Subsection 110(4) of the IRPA provides that the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.

[14] Subparagraph 3(g)(iii) of the *Refugee Appeal Division Rules* (RAD Rules) also requires the appellant to include in his memorandum full and detailed submissions regarding how the new evidence submitted meets the requirements of subsection 110(4) of the Act and how that evidence relates to the appellant.

[15] Subrule 28(1) of the RAD Rules requires that:

**28.** (1) All documents used by a person who is the subject of an appeal in an appeal must be in English or French or, if in another language, be provided together with an English or French translation and a declaration signed by the translator.

[16] I note, first, that Exhibit P-3 is not translated into English or French and, consequently, I cannot accept it as evidence.

[17] With respect to exhibits 1, 2, 4 and 5, I note that, in his memorandum, the appellant does not comply with the requirements of subparagraph 3(g)(iii) of the RAD Rules in that he does not provide full and detailed submissions regarding how the evidence complies with

subsection 110(4) of the Act. There is no reference in the appellant's memorandum to exhibits 4 and 5. There also is no explanation for the fact that Exhibit 2, which is dated XXXX XXXX, 2011, predates the date on which the claim for refugee protection was rejected. Lastly, I find that the reference to Exhibit 1 at page 14 of the appellant's memorandum is not sufficiently "full and detailed" to comply with subparagraph 3(g)(iii), particularly with respect to how that evidence relates to him.

[18] Consequently, I also do not accept exhibits 1, 2, 4 and 5 as evidence.

### **DECISION ON WHETHER TO HOLD A HEARING**

[19] Under subsection 110(6) of the IRPA, the RAD may hold a hearing if, in its opinion, the new evidence presented on appeal is admissible and meets the following three criteria: (1) it raises a serious issue with respect to the credibility of the person; (2) it is central to the decision with respect to the refugee protection claim; and (3) if accepted, it would justify allowing or rejecting the refugee protection claim.

[20] Since the provision that is preliminary to that provision was not satisfied, given that I did not accept as evidence the document submitted by the appellant, I conclude that a hearing may not be held in the context of this appeal.

### **STANDARD OF REVIEW**

[21] The IRPA does not expressly set out the standard of review that the RAD should apply when reviewing RPD decisions, nor is that standard of review set out in the case law. In this case, the appellant also does not propose in his memorandum what that standard of review should be.

[22] In *Dunsmuir*,<sup>1</sup> rendered in 2008, the Supreme Court of Canada reviewed the foundations of judicial review and the standards of review that apply in various situations. In order to simplify the analysis, the Supreme Court held that, henceforth, there ought to be only two standards of review: correctness and reasonableness.

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<sup>1</sup> *Dunsmuir v. New Brunswick*, 2008 SCC 9, (2008) 1 SCR 190.

[23] Although the RAD does not conduct judicial reviews of RPD decisions, but rather acts as an appellate body within the same administrative tribunal, the IRB, I am of the opinion that, without more direct guidance from higher courts, the principles developed in *Dunsmuir* can be applied to the RAD.

[24] In paragraph 51 of its decision in *Dunsmuir*, the Supreme Court wrote:

...[Q]uestions of fact, discretion and policy as well as questions where the legal issues cannot be easily separated from the factual issues generally attract a standard of reasonableness while many legal issues attract a standard of correctness. Some legal issues, however, attract the more deferential standard of reasonableness.

[25] In this case, the issue of whether the RPD erred in its assessment of credibility is a question of fact and, therefore, I will apply the reasonableness standard of review.

[26] In paragraph 47 of *Dunsmuir*, the Court states that “reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.” Judicial deference is therefore required, and deference must be given to the decision of the RPD.

## **ANALYSIS**

[27] The issue in this case is whether the RPD erred in its assessment of the appellant’s credibility.

[28] In paragraphs 10 and 11 of its reasons, the RPD found that the RDNP representative card, which was submitted as evidence and would corroborate the appellant’s allegation that he was a representative for that party, was a false document and that this undermined the appellant’s credibility. The RPD reached this conclusion as a result of the date indicated on the card, namely, the date of the [translation] “November 2010 legislative and presidential elections,” whereas the appellant alleged having been a representative only during the second round of the March 2011 presidential election. The RPD did not find the appellant’s explanation that the date was in fact the date on which the card was issued to be reasonable, given that it is unlikely that such a card would have been issued to him in 2010 if he was a representative only in 2011. The RPD also

noted that the card itself was [translation] “all crumpled,” whereas the photograph of the appellant affixed on it was not, further undermining the probative value of this card.

[29] In his memorandum, the appellant first submits that the RPD erred in doubting the appellant’s participation as a representative for the RDNP party because he was not a member (see paragraphs 1 to 4 of the memorandum). In my opinion, this was not a finding by the RPD but rather a mere statement of the fact that the appellant was not a member of the party, as he testified. The RPD’s findings with respect to the appellant’s credibility are not based on the fact that he was not a member of the party. Therefore, the RAD’s intervention in this matter is not warranted.

[30] The appellant also submits that the RPD erred [translation] “in not understanding why the date on the representative card is different from the second-round election day.” The appellant then explains that the electoral counsel may have decided to use the same representative cards for the first and second rounds for financial reasons.

[31] In my opinion, it was open to the RPD to make the finding it made with respect to the representative card. Its grounds for this finding are clear in paragraphs 10 and 11 of its reasons. The RPD took into account the appellant’s explanations, which differ from those raised on appeal. If the appellant had wanted to raise financial reasons to explain the date indicated on the card, he should have done so before the RPD, not before the RAD. In addition, those explanations do not explain the RPD’s finding that the card was crumpled.

[32] The RPD subsequently found that the appellant’s credibility was undermined by the contradiction in his testimony regarding his residence between the time he returned from Cuba in XXXX 2011 and the time he left Haiti in XXXX 2013 because of the omission in his Basis of Claim Form of the different residences during this same period and because the appellant apparently continued to hold the same job during this period, but alleged that he had changed residences in order to escape his pursuers (see paragraphs 15 and 16 of the RPD’s reasons).

[33] In this regard, the appellant submits that the RPD erred because it would not be inconsistent for him to hold the same job while changing residences, as it would be easier to find him at home than at work, where he would be surrounded by co-workers.

[34] Therefore, it is my opinion once again that the RPD's determination in this matter is reasonable. It is based not only on the contradictions and omissions noted, which the appellant does not dispute in his memorandum, but also on the implausibility of changing one's residence while keeping the same job. I cannot accept the appellant's explanation on this matter given that, in my opinion, he would have been just as easy to find at his workplace as at home, whether or not he was surrounded by co-workers. His pursuers could have found him at work and then followed him, for example, and harmed him if that was their goal.

[35] For all these reasons, I am of the opinion that the RPD's determination, overall, is reasonable because it is transparent and intelligible, and falls within the range of possible, acceptable outcomes that are defensible in respect of the facts and law.

## REMEDIES

[36] For these reasons, I confirm the RPD's determination, namely, that **XXXX XXXX XXXX** is neither a "Convention refugee" nor a "person in need of protection."

[37] The appeal is dismissed.

*Normand Leduc*

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**Normand Leduc**

*February 24, 2014*

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**Date**

IRB translation

Original language: French