

CANADA / JUDGMENT

MB9-09170

COURT

Refugee Appeal Division

DECIDED

21 January 2020

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RAD File No. / No de dossier de la SAR : MB9-09170

MB9-09171 / MB9-09172

Private Proceeding / Huis clos

Reasons and decision ? Motifs et décision

Persons who are the subject of the appeal

XXXX XXXX XXXXXXXXXX XXXX XXXXXXXXXX XXXX

Personnes en cause

Appeal considered / heard at

Montréal, Quebec

Appel instruit / entendu à

Date of decision

January 21, 2020

Date de la décision

Panel

Me Agnès Connat

Tribunal

Counsel for the persons who are the subject of the appeal

Me Cristian Roa-Riveros

Conseil des personnes en cause

Designated representative

XXXX XXXX

Représentant(e) désigné(e)

Counsel for the Minister

N/A

Conseil du ministre

REASONS FOR DECISION

OVERVIEW

- [1] XXXX XXXX (male appellant) and XXXX XXXX (female appellant) are citizens of Haiti. Their son, XXXX XXXX (minor appellant), is a citizen of the United States.
- [2] The male appellant fears persecution by members of the Ayiti An Aksyon (AAA) political party in Haiti. The female and minor appellants are basing their claims on the male appellant's. The family initially went to Brazil, but left after encountering discrimination in that country.
- [3] The appeal is dismissed. The Refugee Appeal Division (RAD) confirms the determination of the Refugee Protection Division (RPD).
- [4] XXXX XXXX and XXXX XXXX, citizens of Haiti, are persons referred to in Article 1E of the Convention. They cannot be either Convention refugees or persons in need of protection.
- [5] XXXX XXXX, a citizen of the United States, is not a Convention refugee or a person in need of protection.

Refugee Protection Division decision appealed

- [6] The Minister intervened in writing to request the exclusion of the adult appellants by reason of their permanent residence in Brazil.
- [7] Having analyzed the criteria for Zeng,¹ the RPD concluded that the adult appellants are excluded from Canada's protection under Article 1E of the Convention. The RPD is of the opinion that the adult appellants are asylum shopping. In the RPD's view, they cannot return to Brazil on the grounds of the voluntary loss of their permanent residence status and the fact that they did not take the necessary steps to obtain that status when they could have done so. With regard to their fear of returning to Haiti, the RPD finds that the appellants are not credible.
- [8] The minor appellant did not make any specific allegations of a fear or a risk to his life in his Basis of Claim Form (BOC Form). The RPD concluded that he would not be subjected to any fear of persecution, to a risk to his life or to a risk of cruel and unusual treatment or punishment in the United States.

Arguments presented by the appellants

- [9] The appellants allege that the RPD erred in concluding that they are persons referred to in Article 1E of the Convention and that the RPD did not justify its conclusion when it determined that the male appellant had obtained permanent residence in Brazil. It also did not justify its conclusion that the male appellant could have obtained permanent residence but did not do so. They submit that the RPD erred in concluding that their departure from Brazil was voluntary. In the appellants' view, they experienced discrimination in Brazil and, although this issue is not sufficient to justify persecution, it is enough to justify a lack of intent on the part of the male appellant to leave Brazil. They maintain that if the male appellant needed the protection of the Brazilian government, it would have been insufficient.
- [10] With regard to the analysis of the risk in the event of a return to Haiti, the appellants submit that the RPD erred in finding that they are not credible. They state that none of the contradictions, omissions, inconsistencies or implausibilities identified by the RPD relate to key elements for which reasonable explanations were not provided by the appellants.

Determinative issues the Refugee Appeal Division must address

- [11] Did the RPD err in concluding that the adult appellants are excluded from the protection offered to refugees under Article 1E of the Convention?
- [12] Did the RPD err in concluding that the minor appellant, as a U.S. citizen, is not a Convention refugee or a person in need of protection?

Role of the Refugee Appeal Division in this appeal

- [13] The RAD conducts an independent analysis of the evidence, including that at the hearing. It must determine whether the RPD decision contains errors in applying the correctness standard of review.

ANALYSIS

The status of the adult appellants in Brazil on the day of the hearing

- [14] The RPD concluded that the male appellant could have obtained permanent residence, a status similar to that of Brazilian nationals, but that he did not do so. It concluded that the female appellant obtained this permanent residence and that she lost it.²
- [15] According to the appellants,³ the RPD erred in concluding that they are persons referred to in Article 1E of the Convention. The appellants allege⁴ that there are two lines of jurisprudence for analyzing exclusion under Article 1E of the Convention, but that in both cases, the resident status of the person referred to must be established prior to the analysis.

The female appellant's residence status in Brazil

[18] The appellants allege that they are not permanent residents in Brazil⁷ and that the RPD did not justify its conclusions.⁸ They do not dispute that Brazilian permanent residence offers the right to work freely, study and use social services available in the country, without any restrictions that do not apply to Brazilian citizens.

[illegible]

4 / 18

- [illegible]

The appellants cannot return to Brazil

- [27] The RPD concluded that the evidence on record does not establish, on a balance of probabilities, that the appellants can return to Brazil.¹⁷ The RPD relied on the fact that the objective documentary evidence is not particularly clear with regard to the interpretation of Brazilian law on the effect of an irregular departure from the country.¹⁸
- [28] The appellants submit that it is unreasonable to analyze this criterion as it was determined that the male appellant did not obtain permanent residence in Brazil.¹⁹
- [29] The analysis of this factor is prescribed in Zeng. The appellants could have obtained permanent residence in Brazil but they failed to do so. They have no other status. The appellants left Brazil in XXXX 2016. At the time of the hearing, they had been gone for more than two years. Even if they had obtained permanent resident status, they could not return since foreigners lose their permanent resident status in Brazil "if absent from the national territory for a period exceeding two years."²⁰
- [30] The RPD's conclusion is correct. The appellants cannot return to Brazil.
- [31] This factor weighs against exclusion.

The appellants' loss of permanent residence was voluntary

- [32] The RPD concluded²¹ that the loss of permanent resident status in Brazil was voluntary since, at the time of their departure, there was no fear of persecution, a danger of torture or a risk of cruel or unusual punishment or a risk to their lives, within the meaning of subsection 97(1) of the Immigration and Refugee Protection Act (IRPA).
- [33] The appellants submit²² that the RPD erred in concluding that in order to establish an absence of voluntary loss of status in Brazil, the appellants needed to establish a fear of persecution or a risk of serious harm. In their view, this burden of proof is unreasonable as it amounts to stating that the status of Convention refugee or of person in need of protection must be shown with regard to Brazil in order for the loss of status in that country to be considered involuntary.
- [34] The RPD was correct in deciding to proceed with an analysis as to whether the loss of permanent resident status was voluntary or involuntary. The appellants had the option of obtaining a status that would entitle them to the same rights as Brazilians. However, they did not do so. According to Zeng, the examination of exclusion in accordance with Article 1E of the Convention amounts to questioning whether the appellants need protection from Canada. If they have or could have had a status in Brazil, if they can live there safely, then they must be excluded to prevent them from asylum shopping. The country in which they have or could have had a status must allow them to live there without persecution, a risk to their lives or a danger of torture. To establish a voluntary loss of status, the appellants must establish that at the time of their departure, they were experiencing persecution, a risk to their lives or specific circumstances that made leaving the country their only choice. Unlike

for a refugee status analysis, the appellants do not need to show that there is a prospective risk if they return to Brazil, but rather that the risk existed when they lived there.

- [35] The appellants submit that they experienced discrimination and racism in Brazil, and that the extent of this problem was sufficient to justify a lack of intent on their part to leave Brazil. They submit that the documentary evidence establishes that people of colour in Brazil are specifically targeted and attacked by government agents and the general public due to their race. They also submit that state protection would be insufficient by reason of the violence and corruption entrenched in the police force and the judicial system, which fails to investigate and punish offenders.
- [36] I disagree with the appellants for the following reasons.
- [37] According to the case law,²³ persecution requires an affliction of repeated acts of cruelty or a particular course or period of systematic infliction of punishment. Discriminatory acts may constitute persecution where those acts are "sufficiently serious and occur over such a long period of time that it can be said that the claimants' physical or moral integrity is threatened." The line between discrimination and persecution depends on the circumstances and can be difficult to establish. The Handbook on Procedures and Criteria for Determining Refugee Status by the United Nations High Commissioner for Refugees (UNHCR Handbook) mentions the following in paragraph 53:24

In addition, an applicant may have been subjected to various measures not in themselves amounting to persecution (e.g. discrimination in different forms), in some cases combined with other adverse factors (e.g. general atmosphere of insecurity in the country of origin). In such situations, the various elements involved may, if taken together, produce an effect on the mind of the applicant that can reasonably justify a claim to well-founded fear of persecution on "cumulative grounds". Needless to say, it is not possible to lay down a general rule as to what cumulative reasons can give rise to a valid claim to refugee status. This will necessarily depend on all the circumstances, including the particular geographical, historical and ethnological context.

- [38] The guide provides examples of serious restrictions, such as the right to earn a livelihood, the right to practise one's religion, or one's access to normally available educational facilities.²⁵ Persons who receive less favourable treatment are not necessarily victims of persecution, and it is only in certain circumstances that discrimination will amount to persecution. The measures of discrimination must lead to consequences of a substantially prejudicial nature for the victim.²⁶
- [39] The appellants made very few specific allegations in their written accounts regarding the discrimination and racism they may have experienced in Brazil. In addition to the problems with the Frente de Luta par Moradia group, which the RPD did not believe, the appellants explained that they had difficulties finding work by reason of discrimination against Haitians and that they were often mistreated and insulted by Brazilians.

- [40] The appellants gave few details regarding the events in Brazil on their BOC Forms. At the hearing, the male appellant no longer remembered the date of the alleged starting point of his problems in Brazil. He could no longer remember the exact month. He could no longer provide the date of their eviction from their home. Yet, they were only in Brazil for a short time, approximately one year. The fact that their stay was so short should help them remember more clearly the timeline of events during their stay. The male appellant explained that, after the problems with the group, they moved. However, they explained that they stayed in the same town and that the male appellant kept the same job. Their testimony was general, vague and lacked detail. Their version is not credible. The RPD's conclusion is correct. The appellants did not have a well-founded fear that prevented them from living in Brazil.
- [41] The appellants did not make any changes to their BOC Form regarding the difficulties they encountered, yet they knew that exclusion would be addressed at the hearing. The evidence shows that the appellants had the same rights as Brazilians, such as the right to education, social services and employment. At the hearing, the female appellant explained that she XXXX XXXX and that people sometimes refused to let her serve them because she was black. She stated that she would have rather swept floors or washed dishes. Nevertheless, she found work. She stated that she was examined by a doctor during her pregnancy. She had access to healthcare services. The appellants found housing. The male appellant found a job, which he kept until his departure. When the RPD asked whether they had tried to settle in Rio or Porto Alegre, the male appellant responded that they had not as they thought they would face discrimination, but he did not submit any facts to support his allegations.
- [42] In light of the Handbook and the case law, given that the appellants experienced some difficulties in Brazil with respect to racism and discrimination, their experiences are insufficient, even when analyzed cumulatively, to qualify as persecution. They found work, in spite of their difficulties, and had access to housing and healthcare.
- [43] The Brazilian constitution guarantees foreign nationals residing in Brazil the same rights that it guarantees to any Brazilian residing in the country, i.e. the right to education, health, work, leisure and social security. Certain rights are excluded, such as the rights to vote, perform military service and hold certain government positions.²⁷ There are laws in Brazil against racial discrimination and inciting racial discrimination. Race-based discrimination is prohibited with regard to access to public or private space, employment and housing. Approximately 52% of the population identifies as "non-white." Brazil's Racial Equality Statute promotes affirmative action.²⁸ Despite this, Afro-Brazilians and dark-skinned people frequently face discrimination. According to Amnesty International's annual report,²⁹ acts of discrimination against refugees multiplied in 2016-2017. For example, refugee protection claimants have regularly reported experiencing discrimination when attempting to access public services, particularly in the areas of health and education.

- [44] The appellants submit that men of colour like him are specifically subjected to violence by government agents and the general public by reason of their race. The appellants do not match the profile of the individuals who are most often murder victims in Brazil. The Report of the Special Rapporteur on minority issues³⁰ gives an indication of the high level of violence in the country, with more than 56,000 homicides per year. Of this total, 30,000 victims are between 15 and 29 years old, of which 77% are Afro-Brazilian male youth. In 2013, 80% of these victims were killed by the police or militias. According to Paula Miraglia, Brazil is one of the most violent countries in the world³¹ with a national homicide rate of 27.1 per 100,000 inhabitants in 2011. Like other Latin and Central American countries, a large portion of this violence and criminality is linked to organized crime and drug trafficking. The murder victims are frequently young black men from poor areas, Favelas, who are recruited by organized crime groups. That was not the case for the male appellant.
- [45] The Special Rapporteur³² observed that Brazilian society is currently experiencing demographic changes. As it gains economic strength, Brazil is increasingly becoming a country of destination for migrants, as well as refugees and asylum seekers, who are often in vulnerable situations in society. These communities often lack adequate access to social services. The Special Rapporteur acknowledges that some Haitian refugees may have been victims of violent attacks, apparently on account of their race and nationality. In the case of the appellants, they did not make any allegations of assault by the general public that they may have experienced on the grounds of their race, and they had access to public services.
- [46] The appellants³³ cite abundant documentary evidence regarding the issue of state protection in Brazil. However, state protection is not a determinative issue here.
- [47] While the objective evidence refers to discrimination toward refugees and black people (including Haitians), the evidence on record does not establish that the discriminatory acts experienced by the appellants constitute persecution. They are not sufficiently serious and did not occur over such a long period of time that it could be said that the claimants' physical or moral integrity was threatened. In light of the testimony and the documentary evidence, the appellants did not demonstrate that they experienced discrimination that could constitute persecution because they were Haitian immigrants.
- [48] The appellants did not apply for permanent resident status in Brazil, which they were eligible for, when they were not experiencing persecution there or facing a risk to their lives. This behaviour is tantamount to a voluntary departure by the appellants, who left Brazil to go to the United States (U.S.). The RPD's conclusion is correct.

The appellants are not at risk in Brazil

- [49] The appellants are not subjected to a serious fear of persecution in Brazil or a risk of harm. Analysis of this factor favours exclusion, in particular considering that the case law establishes that "[r]efugee claims were never meant to allow a claimant to seek out better protection than that from which he or she benefits already."³⁴

The appellants did not credibly establish a fear or risk of harm if they were to return to Haiti

Credibility

- [50] In its summary of allegations,³⁵ the RPD indicates that the female appellant left Haiti for Brazil in XXXX 2015, whereas the stamps in her passport confirm that she left for Brazil on XXXX XXXX, 2015.
- [51] The appellants submit³⁶ that the RPD erred in raising a contradiction between the stamps in the female appellant's passport and her statements.
- [52] The information regarding the passport stamps can be found in the RPD's allegations section. The RPD did not draw any negative credibility findings regarding this point in the analysis. It erred in making allegations of facts without it affecting its analysis.
- [53] In the female appellant's passport, I identified the following stamps: XXXX 2015 - Exit from Haiti and entry into the Dominican Republic; XXXX XXXX, 2015 - Entry into and exit from Haiti and entry into and exit from the Dominican Republic; XXXX XXXX, 2015 - Entry into and exit from the Dominican Republic and exit from Haiti; XXXX XXXX XXXX 2015, exit from the Dominican Republic and entry into Ecuador; Visa Policia Federal - Brazil, XXXX XXXX XXXX 2015. The female appellant explained at the hearing that she went to the Dominican Republic on XXXX XXXX XXXX 2015. She left for Brazil on XXXX XXXX, 2015, via Ecuador and then Peru. She explained that the XXXX and XXXX 2015 visas were due to an administrative constraint that required her to have her passport checked every two months. The stamps in the female appellant's passport confirm her testimony at the hearing. She left Haiti on XXXX XXXX, 2015, for the Dominican Republic, then for Brazil on XXXX XXXX XXXX 2015. She arrived in Brazil on XXXX XXXX XXXX 2015. There are no contradictions between the female appellant's testimony and the stamps in her passport with respect to her departure date for Brazil.
- [54] The RPD points out³⁷ that it noted significant contradictions between the female appellant's account and oral testimony, thereby finding her not credible.
- [55] The RPD pointed out that, in his oral testimony, the male appellant identified a certain XXXX XXXX as being present at the attack on XXXX XXXX, 2015, and that he is the XXXX XXXX XXXX XXXX of the candidate and leader of the AAA party, the political party from which the male appellant fears political reprisals. The RPD notes³⁸ that XXXX XXXX is not mentioned in the male appellant's BOC Form. The RPD adds³⁹ that the male appellant explained in his testimony that he did not think to provide all the details on his BOC Form and that, in any case, XXXX XXXX was not very well known, whereas the AAA party was very well known in Artibonite. The RPD⁴⁰ did not accept the male appellant's explanations and pointed out that he was required to provide all details in support of his claim on his BOC Form. The RPD further adds that the male appellant had the opportunity to change his story in his second account, which was submitted after the deadline on March 5, 2019, and at the beginning of the hearing, which he did not do.

- [56] The appellants submit⁴¹ that the male appellant delivered a straightforward, spontaneous and convincing testimony with regard to the allegations against Haiti. They allege⁴² that the RPD failed to identify any contradictions, omissions, inconsistencies or implausibilities concerning important elements for which the male appellant did not provide reasonable explanations or justifications. More specifically, the appellants submit the following errors with regard to the agent of harm:
- The RPD erred⁴³ in stating that the male appellant failed to mention XXXX XXXX or his significance on his BOC Form, when he had actually mentioned him.
 - The RPD⁴⁴ drew a negative inference regarding the male appellant's credibility and was overzealous in determining that he had not provided details about XXXX XXXX on his BOC Form, such as his name and the fact that he worked for the agent of persecution and harm, when he had actually done so.
- [57] The RPD erred in drawing a negative inference regarding the male appellant's credibility based on his failure to mention XXXX XXXX on his BOC Form.⁴⁵ The male appellant referred to his problems with the AAA party in his initial BOC Form dated September 22, 2017. It mentions XXXX XXXX in the last paragraph. Shortly before the hearing, the male appellant filed an amended account (C-4 and C-9), in which he added a number of details to his story. He mentions XXXX XXXX on line 57 of his account. There are no contradictions between the BOC Form, the modified BOC Form and his testimony at the hearing. While it is true that the male appellant failed to mention the role of the party leader's XXXX XXXX XXXX XXXX on his BOC Form, I agree with the male appellant that he could expand on his account at the hearing. The male appellant's written account contains many other details of his story, and the RPD was overzealous in drawing a negative inference from this omission, which was not fatal.
- [58] The RPD noted⁴⁶ that the justice of the peace did not mention XXXX XXXX XXXX The male appellant explained that he had not done so on the grounds that XXXX XXXX had not come to do anything personal. The RPD also noted⁴⁷ that the justice of the peace reported that the female appellant was living with the male appellant at the time of the attack, whereas she had already left the country. The male appellant replied that since all of his wife's belongings were in the house, he had declared that she was living there. He clarified that he had stated that his wife, mother and father were living in the house and that he did not consider what he had declared to the justice of the peace to be a lie. In the RPD's view,⁴⁸ the fact that the male appellant provided incorrect information to the Haitian judicial system despite stating that he was seeking protection seriously undermines his credibility. The RPD therefore deems that the written record has no probative value.
- [59] For the appellants,⁴⁹ the RPD erred because the errors identified are insufficient to have given no probative value to the written account provided by the justice of the peace. In their view, the RPD was overzealous in unduly undermining the male appellant's credibility.

- [60] In order to evaluate and assess the evidence presented, I must take into account the fact that the appellants testified under oath. This creates a presumption that what they state is true, unless there is a valid reason to doubt this.
- [61] The written record mentions that the male appellant lived with his parents and his wife in an eight-bedroom house. That house was attacked on Monday, XXXX XXXX, 2015, by members of the AAA party. The male appellant confirmed that he had chosen to state that his wife was living with him because her belongings were still there. These explanations do not justify having lied to a justice of the peace, an officer of the court. The event in XXXX 2015 is a key element of the claim. The male appellant testified that he decided to leave the country following the attack. Discovering that a witness has lied can, in some cases, be insufficient to discredit the rest of the evidence. However, in this specific case, the male appellant lied to an officer of the court, with no valid reason. I do not give any probative value to the document. Even if this reason is insufficient to doubt the truthfulness of this part of his testimony, I draw a negative inference regarding the male appellant's credibility.

Prospective risk

- [62] The RPD questioned the male appellant about the prospective risk if he were to return to Haiti. More specifically, it asked the appellant why AAA party members would go after him four years after the elections. The appellant replied that he had spoken out against the party, which meant that he had spoken out against candidate Latortue. In his opinion, if party members attacked him, it meant that the leader had ordered them to do it. The RPD50 considers the male appellant's explanations to be unreasonable, hypothetical and unsupported by documentation. In the RPD's view, the male appellant's reply shows that he has no knowledge of how the opposition party works, and he did not answer the question. The RPD wonders whether the male appellant shifted the identification of the agent of harm from XXXX XXXX and AAA party members to Mr. Latortue.
- [63] In the appellants' view,⁵¹ the RPD erred in drawing a negative inference regarding the male appellant's credibility because he gave a hypothetical and speculative response to a question regarding the prospective fear. They consider this conclusion to be nonsensical.
- [64] The RPD drew a negative inference regarding the male appellant's credibility from his hypothetical and speculative response. The male appellant's explanations are, in fact, hypothetical. However, the RPD should have drawn a conclusion regarding the male appellant's prospective risk rather than his credibility. The male appellant must establish that there is a reasonable risk of persecution by the AAA party on the grounds of his political opinion if he returns to Haiti. In his BOC Form and amended BOC Form, the male appellant did not explain why or how AAA party members would go after him. At the hearing, when the RPD questioned him about his prospective fear if he were to return to Haiti, he explained that:
- The Latortue family runs Antibonite. That's why they want to seek vengeance against him.

- He spoke out against the AAA group, which is tantamount to speaking out against the candidate.
 - If a member does anything (to anyone), Latortue is the one who gives the orders. Members cannot act without receiving an order from the party leader.
- [65] The male appellant did not provide any documentary evidence to support his claims. He explained this shortcoming at the hearing by stating that he assumed that Mr. Latortue giving the orders was the only possible explanation. This explanation is insufficient. The male appellant has the burden of establishing the risk he would be subjected to if he were to return to Haiti.
- [66] Furthermore, he did not allege, either on his BOC Form or in his testimony, that members of his family were subjected to reprisals by AAA party members, or any other circumstances that could establish that the fear is current. According to the objective documentary evidence,⁵² Youri Latortue is the leader of the AAA party, which is an ally of the PHTK party. He is an advisor to the president of the Republic. The RPD acknowledged that the male appellant was a member of the XXXX party during the 2015 election campaign. He distributed pamphlets, organized meetings and put up posters for XXXX XXXX XXXX XXXX. Even if I accept that he was harassed and attacked by AAA party members in 2015, the male appellant did not establish that the members of this party, who are now in power locally as well as nationally, would still wish to persecute him. At the time of the elections, he was not a public figure. He was simply a party member. No elements in his profile suggest that supporters of Mr. Latortue's party, much less Mr. Latortue himself, could be interested in threatening his life or that there is a serious possibility that they would persecute him for his political opinion. Furthermore, he did not make allegations leading me to conclude that the risk from 2015 still exists in 2019.
- [67] For these reasons, I conclude that the appellants did not demonstrate that there is a well-founded fear of persecution or that, on a balance of probabilities, there is a risk within the meaning of subsection 97(1) of the IRPA if they were to return to Haiti.
- [68] This factor argues in favour of exclusion.

Canada's international obligations

- [69] The appellants cannot return to Brazil, but they can return to Haiti, their country of citizenship. Canada would therefore fulfill its international obligations, as the Haitian appellants would not be subjected to a serious fear of persecution or a risk of harm in their country of citizenship.
- [70] This factor argues in favour of exclusion.

The Haitian appellants are excluded from protection in Canada under Article 1E of the Convention

- [71] The Haitian appellants could have obtained permanent resident status in Brazil but they failed to do so. This status is substantially the same as that of Brazilian nationals. I weighed the various criteria established by the Federal Court of Appeal in Zeng. The appellants cannot return to Brazil. This factor weighs against exclusion. They left the country voluntarily to go to the U.S. This factor weighs in favour of exclusion. The appellants would not be subjected to a risk if they were to return to their country of origin. This criterion undermines a fundamental aspect of the claim for refugee protection, i.e. their fear of returning to Haiti. I give it significant weight as they can return to their country of nationality without risk. Canada would therefore meet its international obligations.
- [72] The Haitian appellants are excluded from the protection offered by Canada. The RPD's conclusion is correct.

No risk of persecution in the United States for the child, XXXX XXXX

- [73] The child is a U.S. citizen.
- [74] The appellants are not contesting the RPD's conclusion with regard to this child. The RAD agrees with the RPD's conclusions.
- [75] The RPD's determination is correct. The minor appellant, XXXX XXXX, is not a Convention refugee or a person in need of protection.

CONCLUSION

- [76] The appeal is dismissed. The RAD confirms the RPD's determination.
- [77] XXXX XXXX and XXXX XXXX, citizens of Haiti, are persons referred to in Article 1E of the Convention. Consequently, they are neither Convention refugees nor persons in need of protection.
- [78] XXXX XXXX a United States citizen, is not a Convention refugee or a person in need of protection.

Agnès Connat

Me Agnès Connat

January 21, 2020

Date

IRB translation

Original language: French

- 1 Canada (Citizenship and Immigration) v. Zeng, 2010 FCA 118, (Zeng), at para. 28.
- 2 Refugee Protection Division (RPD) decision, at paragraphs 21 and 22.
- 3 Appellants' memorandum, at paragraph 13.
- 4 Appellants' memorandum, at paragraphs 13 et seq.
- 5 Jean v. Canada (Citizenship and Immigration), 2019 FC 242 (CanLII).
- 6 RPD decision, at paragraphs 17 et seq.
- 7 Appellants' memorandum, at paragraph 6.
- 8 RPD decision, at paragraphs 9 and 11.
- 9 RPD record, at page 222, Document 6 - The Minister's intervention dated November 23, 2018, Exhibit M-1, National Documentation Package (NDP) on Brazil, Tab 3.7.
- 10 In light of the provisions of Normative Resolution No. 27 of November 25, 1998, and Recommended Resolution No. 08 of December 19, 2006, by the National Immigration Council (CNIg); given that, under Normative Resolution No. 97 of January 12, 2012, the CNIg invoked humanitarian grounds to justify the immigration of Haitians to Brazil following the earthquake in Haiti on January 12, 2010; considering the reception and social integration of Haitians in Brazil; the Chair of the National Committee for Refugees (CONARE) DECIDES, the CNIg Chair AUTHORIZES, and the Director of the Foreign Affairs Department of the Secretariat of State for Justice Relations GRANTS permanent residence to the individuals appearing in the list attached to this Order. At the time of registration with the Federal Police, which must be done within one (1) year of the date of this publication, as well as during subsequent checks, the applicant must provide the following documents: a) an application; b) two 3x4 photos; c) a birth or marriage certificate (translated by a sworn translator), or a consular certificate; d) a certificate of criminal record issued in Brazil; e) a declaration stating that the applicant was never pursued under criminal law in their country of origin; f) proof of payment of fees. Individuals interested in pursuing the listed refugee claims should note that they must request a continuation of the eligibility procedure within 30 days through CONARE or the Federal Police. Applications must include the applicant's current address, in accordance with article 6, paragraph II of CONARE Resolution No. 18 of April 30, 2014.
- 11 Milfort-Laguere v. Canada (Citizenship and Immigration), 2019 FC 1361, at paragraphs 31-34; Jean-Baptiste v. Canada (Citizenship and Immigration) 2019 FC 1612, at paragraphs 51-52.
- 12 RPD decision, at paragraph 21.
- 13 Appellants' memorandum, at paragraph 20.
- 14 RPD record, at page 222, Document 6 - The Minister's intervention dated November 23, 2018, Exhibit M-1, NDP on Brazil Tab 3.7.

15 *Milfort-Laguere v. Canada* (Citizenship and Immigration), 2019 FC 1361, at paragraphs 31-34; *Jean-Baptiste v. Canada* (Citizenship and Immigration) 2019 FC 1612, at paragraphs 51-52.

16 Archive - NDP on Brazil, April 30, 2018, Tab 3.4: The rights and duties of permanent residents, including the rights and duties of individuals who have a permanent visa, such as professors, researchers, highly-skilled technicians and foreign scientists; procedure to obtain or renew a residency permit; grounds for losing permanent residence (2014-May 2016). Immigration and Refugee Board of Canada. May 25, 2016. BRA105515.FE.

17 RPD decision, at paragraph 29.

18 RPD decision, at paragraph 28.

19 Appellants' memorandum, at paragraph 40.

20 Archive - NDP on Brazil, April 30, 2018, Tab 3.7: Brazil and Haiti: Resident status of Haitian citizens in Brazil, including their rights and responsibilities (2010-September 2017). Immigration and Refugee Board of Canada. October 3, 2017. ZZZ105986.FE.

21 RPD decision, at paragraph 26.

22 Appellants' memorandum, at paragraph 46.

23 *Bandula v. (Minister of Citizenship and Immigration)*, 2003 FC 1062; *Sagharichi v. Canada (Minister of Employment and Immigration)* (1993), 182 N.R. 398 (C.A.); *Rajudeen v. Canada (Minister of Employment and Immigration)*, [1984] F.C.J. No. 601 (C.A.).

24 United Nations High Commissioner for Refugees (UNHCR), Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, January 1992, at paragraph 53.

25 *Ibid.*, at paragraph 54.

26 *Ibid.*, at paragraph 54.

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33 Appellants' memorandum, at paragraphs 27 et seq.

34 Canada (Attorney General) v. Ward, [1993] 2 SCR 689, at p. 726; recently cited in *Fleurant v. Canada* (Citizenship and Immigration), 2019 FC 754, at para. 13.

35 RPD decision, at paragraph 9.

36 Appellants' memorandum, at paragraph 51.

37 RPD decision, at paragraph 31.

38 RPD decision, at paragraph 33.

39 RPD decision, at paragraph 33.

40 RPD decision, at paragraph 35.

41 Appellants' memorandum, at paragraph 49.

42 Appellants' memorandum, at paragraphs 50 and 52.

43 Appellants' memorandum, at paragraph 53.

44 Appellants' memorandum, at paragraph 54.

45 RPD decision, at paragraph 33: [translation] "Confronted with the lack of any mention of XXXXX or his significance on his BOC Form and the contradiction between his written account, which mentions four unidentified individuals at the attack on XXXXX, 2017 [sic], the claimant stated that he had not thought to provide all the details in his refugee protection claim, and that he could give those details at the hearing."

46 RPD decision, at paragraph 34.

47 RPD decision, at paragraph 36.

48 RPD decision, at paragraph 37.

49 Appellants' memorandum, at paragraph 55.

50 RPD decision, at paragraphs 38 to 40.

51 Appellants' memorandum, at paragraph 56.

52 Archive - NDP on Haiti, July 20, 2018, Tab 4.12: Haiti. Chambre des Députés (Chamber of Deputies). Inter-Parliamentary Union. Parline. January 11, 2018.

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Immigration and Refugee

Board of Canada

Refugee Appeal Division

Commission de l'immigration

et du statut de réfugié du Canada

Section d'appel des réfugiés

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