

CANADA / JUDGMENT

MB8-02632

COURT

Refugee Appeal Division

DECIDED

9 December 2020

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RAD File No. / No de dossier de la SAR : MB8-02632 MB8-02633 Private Proceeding / Huis clos
Reasons and decision - Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXXXXXXX XXXX XXXX XXXX XXXX XXXX Personnes en cause Appeal considered / heard at Montréal,
Quebec Appel instruit / entendu à Date of decision December 9, 2020 Date de la décision Panel
Me Toni Jedid Tribunal Counsel for the persons who are the subject of the appeal Fabiola
Ferreya Coral Conseil des personnes en cause Designated representative N/A Représentant(e)
désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION
OVERVIEW

- [1] XXXX XXXX (principal appellant) and XXXX XXXX XXXX XXXX XXXX (associate appellant) are citizens of Haiti. They are appealing the decision of the Refugee Protection Division (RPD), which excluded them under Article 1E of the Convention.
- [2] The appellants allege that they were victims of crime in Haiti. They allege that they obtained permanent residence in Brazil and were victims of discrimination in that country.
- [3] The appellants' appeal memorandum states that they lost permanent resident status in Brazil. The additional submissions they provided after the appeal was perfected state that they never obtained permanent resident status in Brazil, but rather humanitarian visas. They argue that they should not have been excluded under Article 1E of the Convention. The RPD, for its part, considered that the appellants are excluded.
- [4] For the Refugee Appeal Division (RAD), the determinative issue is whether or not the exclusion under Article 1E of the Convention was correctly examined by the RPD.
- [5] I determine that the appellants are not excluded, that the RPD's decision is incorrect and that the appeal is allowed.

DETERMINATION

- [6] The appeal is allowed. I am referring the matter to a differently constituted RPD panel for re-determination.

BACKGROUND

- [7] In his Basis of Claim Form (BOC Form), the principal appellant states that he was a victim of theft in Haiti in XXXX 2011. His assailants allegedly threatened to kill him if he reported them to the police. The same three assailants apparently returned to his home to kill him in XXXX 2012. Due to police inaction and fearing for his life, he left Haiti on XXXX XXXX, 2013, and arrived in Brazil the next day. He alleges that he was a victim of discrimination, theft and threats in Brazil, which is why he left that country for the United States on XXXX XXXX, 2016. On XXXX XXXX XXXX 2017, he arrived in Canada, where he claimed refugee protection.
- [8] The associate appellant, for her part, alleges that she was a victim of theft by five thieves who beat her in XXXX 2015. Her husband was reportedly abducted during this attack and she has not heard from him since the event took place. Her report to the police did not bring about any results. She therefore left Haiti and arrived in Brazil on XXXX XXXX, 2016. She alleges that she was the victim of discrimination in that country and left for the United States on XXXX XXXX, 2016. She reportedly met her spouse on her journey from Brazil to the United States. She arrived in Canada accompanied by her spouse, where both claimed refugee protection. History of proceedings
- [9] On December 20, 2017, the RPD rendered its decision to exclude the appellants under Article 1E of the Convention. This decision led to an appeal before the RAD, which dismissed the appeal on November 9, 2018. An application for leave and for judicial review was submitted before the Federal Court and a decision was made on March 6, 2019, setting aside the RAD's decision and referring the matter to another RAD panel for re-determination. NEW EVIDENCE Evidence presented on perfection of the appeal
- [10] Under the Immigration and Refugee Protection Act1 (IRPA), I can only allow evidence:
- that arose after the RPD rendered its decision;
 - that was not reasonably available at the time of the decision;
 - that the person could not reasonably have been expected in the circumstances to have presented to the RPD before the decision was rendered.
- [11] If the evidence meets one or more of these requirements, I must decide whether the evidence is new, credible and relevant before admitting it.²
- [12] To support their appeal memorandum, the appellants presented newspaper articles (A-1 to A-7) alluding to discrimination against Haitian nationals in Brazil; the headlines read as follows: * "Brésil : Toutes les 23 minutes un jeune Noir est assassiné !" [Brazil: Black youth assassinated every 23 minutes!], published May 3, 2017. * "Haïti-Brésil/Migration : La présidente Dilma Rousseff condamne l'assassinat d'un ressortissant haïtien" [Haiti-Brazil/Migration: President Dilma Rousseff condemns assassination of Haitian national], published October 24, 2015. * "Brésil : un autre jeune haïtien assassiné à coups de couteau" [Brazil: Another young Haitian stabbed to death], published October 22, 2015. * "Un ressortissant haïtien poignardé à mort au Brésil" [Haitian national stabbed to death in Brazil], published

October 22, 2015. * "Migration : Les ressortissants d'Haïti aux abois au Brésil" [Migration: Haitian nationals in desperate straits in Brazil], published September 10, 2015. * "BRÉSIL : Des Haïtiens attaqués par des xénophobes armés de carabine à plomb" [BRAZIL: Haitians attacked by xenophobes armed with pellet guns], published August 10, 2015. * "Dans le sud du Brésil, les illusions perdues des immigrants haïtiens" [Illusions lost for Haitian immigrants in the south of Brazil], published May 27, 2014.

- [13] The appellants state that they had not been informed that their BOC Form had to include all of the events they experienced in Brazil. They report that they were informed of this one week before the hearing, which is why the above-mentioned evidence could not have been reasonably available, or reasonably presented, under the circumstances. They submit that their attention was instead focused on preparing their written account and that they did not have sufficient time to collect evidence. The appellants requested an oral hearing before the RAD.
- [14] With all due respect, I am not satisfied with the appellants' submissions. I would like to point out that the appellants' claims for refugee protection were heard on December 1, 2017, and rejected on December 20, 2017, approximately three weeks after the date of the hearing. The evidence on record is not conclusive and the appellants have provided no satisfactory explanation as to why they could not present the newspaper articles to the RPD before it could render its decision, that is, between the date of the hearing and the date of rejection. In fact, the rejection of the appellants' claims for refugee protection represents the cut-off point as regards the application of subsection 110(4) of the IRPA. Every newspaper article was published before the claims for refugee protection were rejected and nothing suggests that they would not have been publicly available before the RPD made its determination. For the above-mentioned reasons, I am of the opinion that the newspaper articles do not meet one or more of the requirements of subsection 110(4) of the IRPA. Evidence presented after the appeal was perfected
- [15] The appeal was perfected on February 15, 2018.³ On July 30, 2020, the appellants presented new submissions and new evidence, namely: * Exhibit A-8: Tab 14.15 of the National Documentation Package (NDP) on Haiti, August 19, 2019. * Exhibit A-9: The appellants' foreigner identity cards (CIE).
- [16] Subsection 29(4) of the Refugee Appeal Division Rules (RAD Rules) governs the admission of such evidence presented after the appeal is perfected and stipulates whether or not this evidence will be allowed; the RAD considers all relevant information, particularly:
- a) the document's relevance and probative value;
 - b) any new evidence the document brings to the appeal; and
 - c) whether the person who is the subject of the appeal, with reasonable effort, could have provided the document or written submissions with the appellant's record, respondent's record or reply record.

- [17] The appellants' written submissions claim that the new evidence is relevant because it contains information that contradicts the RPD's conclusion regarding the exclusion or the loss of permanent residence in Brazil. With regard to admissibility under subsection 110(4) of the IRPA, they argue that Exhibit A-8 is dated August 19, 2019, and therefore arose after the RPD rejected the claims for refugee protection. Exhibit A-8
- [18] Barring a thorough examination of the new evidence's admissibility under subsection 29(4) of the RAD Rules, as it complies with the list of factors a priori, I am of the opinion that Exhibit A-8 is admissible and complies with one of the requirements under subsection 110(4) of the IRPA, as it arose after the claim for refugee protection was rejected. With regard to the above-mentioned jurisprudential criteria, I have no doubts regarding the relevance, newness and credibility of the new evidence and, as a result, it is admissible. Exhibit A-9
- [19] Without necessarily examining the admissibility of such evidence under subsection 29(4) of the RAD Rules and subsection 110(4) of the IRPA, I wish to point out that this new evidence is not admissible, as it was already part of the RPD's record.
- [20] I will examine in greater detail the additional submissions presented after the appeal was perfected in my independent analysis, presented below. ORAL HEARING REQUEST
- [21] The appellants requested an oral hearing before the RAD. Subsection 110(6) of the IRPA stipulates that the RAD may hold an oral hearing if it is of the opinion that there is new admissible evidence and that this evidence meets all three conditions listed. Since the evidence presented by the appellants is not admissible, with the exception of Exhibit A-8, the RAD will proceed without an oral hearing.

ANALYSIS

- [22] My role is to consider all of the evidence and establish whether the RPD's decision is correct.⁴ In light of *Huruglica* and *Rozas del Solar* and after conducting my own analysis of the record, in particular by listening to the audio recording of the hearing and considering the entirety of the evidence, I am of the opinion that the correctness standard of review must be applied. *Foreigner Identity Cards (CIE)*
- [23] In its decision, the RPD stated that the appellants obtained permanent resident status in Brazil; it supported this conclusion with the following: [translation] ...the principal claimant...submitted into evidence a copy of his permanent resident card...For her part, the claimant...submitted into evidence a copy of her permanent resident card.⁵
- [24] However, and with all due respect, I am of the opinion that the cards presented by the appellants are not permanent resident cards, but rather foreigner identity cards (CIE) as it appears from their titles, which read as follows: "Cédula de identidade de Estrangeiro."⁶ The objective documentary evidence shows that: The former foreigner identity card [Cédula de identidade de Estrangeiro - CIE), more commonly known as the National Registry of

Foreigners [Registro Nacional de Estrangeiro - RNE][,] has been replaced by the National Migration Registry Card [Carteira de Registro Nacional Migratório - CRNM].⁷ ... the CIE [granted under Law No. 6,815 of 1980, replaced by Law No. 13,445 of 2017] [translation] "is the physical identity document for foreigners registered in Brazil ...".⁸ The same source indicates that ...foreigners admitted to Brazil temporarily, permanently or as refugees must register with the Federal Police within 30 days of their arrival or after being granted asylum and, once registered, they are issued a foreigner identity card (Brazil 13 Sept. 2017 According to the same source, the National Registry of Foreigners was created as a means to register all foreigners residing temporarily or permanently in Brazil, and enrolment in this registry is "what will prove the effective residence of the foreigner" in Brazil.

- [25] In light of all the evidence, I am of the opinion that the RPD erred in its interpretation of the evidence presented by the appellants. Appellants' status in Brazil
- [26] The appellants' appeal memorandum does not contest the RPD's conclusion that they are persons referred to in Article 1E of the Convention.
- [27] However, in their additional submissions presented after the appeal was perfected, the appellants claim that they did not hold permanent resident status in Brazil, but rather a five-year humanitarian visa. They recognize having stated that they received permanent resident status in Brazil during the hearing, but they ascribe this declaration to the concept of [translation] "permanent" as it appears on the CIE card. They argued that they should not have been referred to in Article 1E of the Convention.
- [28] With regard to the loss of permanent resident status, they argue that, even if the exclusion applies in this case, their permanent resident status has currently expired due to an uninterrupted two-year absence since leaving Brazil.
- [29] With regard to the appellants' status in Brazil, I wish to point out that I have carefully examined the information that appears in the latest update of the NDP on Brazil, and that the CNIg adopted Normative Resolution No. 97 (NR 97), under Law No. 6,815 of 1980, in order to grant Haitian nationals a permanent humanitarian visa for a five-year period.⁹ Under article 3 of this resolution and in accordance with the applicable legislation, Haitian nationals are required to provide a document that supports their work status before the end of the period covered by paragraph 1 (5 years) of this NR in order to validate their permanent status in Brazil and receive a new foreigner identity card.¹⁰
- [30] Another source explains that, to apply for permanent residence under Brazil's immigration law of 1980 (replaced by Law No. 13,445 of 2017), Haitians must go to the Federal Police Department before the expiration of their five-year visa (IJDH and NWIRP, 3 Apr. 2017, 2). Haitian nationals must prove that they are working and are domiciled in Brazil.¹¹

- [31] With regard to the foreigner identity card (CIE), objective documentary evidence shows that foreigners with permanent status have a CIE valid for a period of nine years.¹² However, the evidence on record indicates that the appellants had cards (CIE) valid for a period of five years.¹³ In light of all the evidence, I am of the opinion that the appellants had not obtained permanent resident status in Brazil and are therefore not referred to in Article 1E of the Convention.
- [32] Considering that the appellants' fear in Haiti has not been analyzed, I am referring the matter to a differently constituted RPD panel for re-determination.

CONCLUSION

- [33] The appeal is allowed. I refer the matter to a differently constituted RPD panel for re-determination. (signed) Toni Jedid Me Toni Jedid December 9, 2020 Date IRB translation Original language: French 1 Subsection 110(4) of the Immigration and Refugee Protection Act (IRPA). 2 Canada (Citizenship and Immigration) v. Singh, 2016 FCA 96; Canada (Citizenship and Immigration) v. Raza FC 385. 3 P-2, Appellant's record, perfection of the appeal, at page 2. 4 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93; Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145. 5 SPR-1, Refugee Protection Division (RPD) record, RPD reasons, at page 6. 6 Ibid., List of refugee protection claimant's documents, CIE cards, Exhibit D-3, at page 188 and 221. 7 National Documentation Package on Brazil, September 1, 2020, Tab 3.3: Brazil and Haiti: Situation of Haitians in Brazil, including rights and obligations; permanent resident status; documents issued to Haitians, including Foreigner Identity Cards (Cédula de Identidade de Estrangeiro, CIE); treatment of Haitians ... Immigration and Refugee Board of Canada. August 28, 2020. ZZZ200291.FE, at page 21. 8 Ibid., at page 22. 9 Ibid., at page 6. 10 Ibid., at page 7. 11 Ibid., at page 10. 12 Ibid., at page 23. 13 Supra endnote 6, CIE cards.

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Disponible en français 9 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
RAD.25.02 (January 2020) Disponible en français

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