

CANADA / JUDGMENT

MB9-11962

COURT

Refugee Appeal Division

DECIDED

10 January 2020

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RAD File No. / No de dossier de la SAR : MB9-11962 MB9-11963 / MB9-11964 / MB9-11965 Private Proceeding / Huis clos Reasons and Decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX Personnes en cause Appeal considered / heard at Ottawa, Ontario Appel instruit / entendu à Date of decision January 10, 2020 Date de la décision Panel Me Tammy Tremblay Tribunal Counsel for the persons who are the subject of the appeal Pacifique Siryuyumusi Conseil des personnes en cause Designated representative XXXX XXXX XXXX Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION OVERVIEW

- [1] XXXX XXXX XXXX, the principal male appellant; and his spouse, XXXX XXXX XXXX; as well as their minor daughter XXXX XXXX XXXX (the associate appellants), are citizens of Haiti. Their minor daughter XXXX XXXX XXXX (the associate appellant) is a citizen of the United States.
- [2] The male principal appellant fears for his life because of threatening telephone calls he received from delivery people whom he allegedly reported for stealing XXXX while he was checking the quantity of XXXX delivered to XXXX XXXX, one of his employer's clients. On XXXX XXXX, 2018, he noticed that half of the quantity to be delivered was missing and alerted the company's supervisor. The supervisor told him that the delivery people involved would be fired. On XXXX XXXX XXXX 2018, he allegedly received three telephone calls in which he was threatened with death. He filed a complaint to the police that day. He then fled to Croix-des-Bouquets until he left for Canada. The appellants also claim to fear their neighbour, a drug trafficker, who allegedly threatened the female appellant after she complained that the smoke from the drugs bothered her children.
- [3] The minor associate appellant born United States does not allege a fear in the United States.
- [4] The Refugee Protection Division (RPD) rejected the appellants' refugee protection claims, stating that certain inconsistencies and omissions undermine the appellants' credibility. However, the RPD acknowledged that, generally speaking, the appellants' testimonies were credible. The RPD concluded that the minor associate appellant had no fear in the United States. The appellants are appealing against the decision and argue that the RPD based its determination on arbitrary conclusions, conducted a microscopic analysis of their testimonies and breached the principle of natural justice. The RPD's determination that the

minor appellant born in the United States is not a person in need of protection is not disputed. DETERMINATIVE ISSUE

- [5] Have the appellants demonstrated in a credible manner that, on a balance of probabilities, they could be personally subjected to a danger of torture, a risk to their lives or a risk of cruel and unusual treatment or punishment if they were to return to Haiti?

DETERMINATION OF THE APPEAL

- [6] The appeal is allowed in part. Except for the minor daughter born in the United States, the appellants are credible regarding their fear in Haiti, and are persons in need of protection. The minor associate appellant, a citizen of the United States, is neither a Convention refugee nor a person in need of protection; her appeal is dismissed.

ANALYSIS

- [7] I have conducted my own independent analysis of all the evidence on the record, after listening carefully to the recording of the RPD hearing, in order to form my own opinion concerning this refugee protection claim and to determine whether the RPD's decision is correct. The male appellant's testimony is credible and consistent
- [8] In its decision, the RPD found that the male appellant's account was not credible, in large part due to a [translation] "significant inconsistency," which it then uses to reject other elements of his testimony and the documentary evidence. This inconsistency is the fact that the male appellant testified that the delivery people who threatened him lost their job while also claiming that they could find him anywhere because they deliver gasoline throughout the country. In his memorandum, the male appellant submits that the RPD's reasons for doubting his testimony are false and cannot support its findings.
- [9] While the RPD is to be commended for identifying this inconsistency, it should have considered the male appellant's explanation, given that the evidentiary threshold before the RPD is not to prove beyond reasonable doubt. Moreover, it should have considered the broader context of the case in that part of its decision; as the RPD itself concluded, the appellants' testimonies were generally credible and there are many pieces of evidence corroborating the male appellant's claim.
- [10] When assessing the [translation] "significant inconsistency" raised by the RPD, it becomes clear that the RPD misinterpreted the male appellant's testimony and that the negative inferences it drew from it are therefore unfounded. At the hearing, the male appellant clearly stated that the company fired the delivery people at fault when he filed a complaint to XXXX. He never claimed that those delivery people could not work elsewhere, for another company, or that they could not be self-employed. These two claims are not mutually exclusive.

- [11] Unlike the RPD, I find that when confronted with this inconsistency, the male appellant was not confused and did not try to embellish his account. Rather, he was trying to explain to the RPD that it was not an inconsistency, but that it was possible for a person to be fired by a company and go on to do the same job, either by working for another company or by being self-employed. The male appellant tried to explain this in different ways, including by stating that the people who were threatening him [translation] "generally worked"1 as delivery people. The RPD seems to have understood this, as it answered [translation] "Alright."2
- [12] After this, the RPD stated that the male appellant was not credible regarding the telephone calls he received that warned him not to go to Cayes and Cap-Haïtien, because the RPD could [translation] "only be surprised that this kind of information would reach the claimant." The RPD added that these calls were all the more unlikely, as the delivery people "did not lose their source of income."
- [13] The issues with these findings are that they were partly influenced by the erroneous conclusion that the delivery people had not lost their job, and that the RPD did not state why it was [translation] "surprised" by this element of the male appellant's account. A decision maker cannot determine whether or not to allow a refugee protection claim on the basis that they were surprised and found, without argument or reasoning, that something was unlikely.
- [14] The RPD should have based its findings regarding the male appellant's credibility on the entirety of his record, including his testimony, which I found to be credible as it was straightforward, spontaneous and sufficiently detailed for me to conclude that there is a reasonable possibility that the male appellant and certain members of his family would be subjected to a risk to their lives if they were to return to Haiti.
- [15] Consequently, the RPD erred when it found that the principal male appellant was not credible. The Refugee Protection Division erred when it rejected the male appellant's evidence
- [16] As stated above, the RPD misunderstood the principal appellant's detailed written and oral testimonies, and drew unfounded negative inference regarding his credibility. Afterwards, the RPD further misinterpreted the documentary evidence provided by the male appellant.
- [17] For instance, the RPD rejected many documents, such as the employment confirmation letter and the police complaints, on the basis of [translation] "credibility issues raised by the panel," therefore using erroneous findings. In my opinion, the male appellant provided reasonable explanations for why the employment confirmation letter does not mention the threats he received. He asked for the letter before the incidents that lead him to leave his country, therefore before he was threatened. The letter is also an updated version of another employment confirmation letter.3 The male appellant also submitted additional evidence corroborating his claims regarding the threats he allegedly received. In this context, I accept the male appellant's explanation that he did not feel the need to ask for a third letter to add a

mention of the threats. And although it was not mentioned during the hearing, I find it plausible that a person who fears for their life would not want to attract attention by asking for documents corroborating his account, especially as, in the male appellant's case, he already had several documents, including police complaints.

- [18] After this, the RPD continued to use its erroneous conclusion that the delivery people did not lose their job to reject a statement on the incidents from the male appellant's friend, as well as the two police complaints filed by the male appellant. Even if there had been an unexplained inconsistency, the RPD was required to assess the evidence on the record before making its findings, especially regarding the police complaints that confirm the appellants' claims.
- [19] Consequently, the RPD incorrectly assessed the evidence or failed to consider it. The prospective risk
- [20] In my opinion, on a balance of probabilities, the appellants would be personally subjected to a danger of torture, a risk to their lives or a risk of cruel and unusual treatment or punishment if they were to return to Haiti.
- [21] Although the male appellant does not make any arguments to this effect in his memorandum, his testimony⁴ and the evidence on the record show that the fired delivery people are still looking for him.
- [22] The objective evidence shows that revenge is a common occurrence in Haiti and that the people who report criminals to the police are "particularly targeted." The appellants' profile corresponds to the profile of people who are targeted, as described in the objective evidence.⁵ The state's ability or motivation to protect the appellants
- [23] In this case, the appellants complained to the authorities after they were threatened. The male appellant's testimony and the evidence submitted indicate that the death threats towards the male appellant and his family continued, even after their arrival in Canada.
- [24] The documentary evidence indicates that the Haitian police force is too small and lacks the resources and equipment to respond to crime in Haiti. The documentary evidence also mentions that doubts have been repeatedly raised as to whether the national police force is able to guarantee the security needed to protect citizens. Moreover, the documentary evidence indicates that the population outside of the capital does not have access to basic police services.⁶ These elements, among others, are evidence that Haiti is unable to protect people who, like the appellants, have been threatened by criminals after reporting them. For these reasons, the male appellant persuaded me that, on a balance of probabilities, state protection is inadequate in this case. Internal flight alternative
- [25] Although the male appellant does not submit any argument to this effect in his memorandum, his testimony and the evidence on the record indicates that the XXXX delivery people who were fired are still looking for him and that it would be unsafe and unreasonable for him to settle somewhere else in Haiti. As the appellants explained at the

hearing, the fired delivery people found them after they had fled to Croix-des-Bouquets, and this is what led to them leaving Haiti. For these reasons, the male appellant has no internal flight alternative in Haiti.

- [26] In summary, I conclude that the appellants established, through credible evidence, that, on a balance of probabilities, they would be personally subjected to a danger of torture, a risk to their lives or a risk of cruel and unusual treatment or punishment in Haiti. The minor associate appellant born in the United States
- [27] The RPD's determination that the minor appellant born in the United States is not a person in need of protection, which the appellants did not challenge, is correct. The appellants submitted no evidence regarding the minor appellant's fear in the United States. Therefore, it could not be established that she could be persecuted in the United States or that she would be personally subjected to a danger of torture or a risk to her life or a risk of cruel and unusual treatment or punishment.

CONCLUSION

- [28] For these reasons, I confirm the RPD's determination regarding XXXX XXXX XXXX, namely that she is not a person in need of protection. The appeal is dismissed in her case.
- [29] However, I set aside the determination of the RPD and substitute the determination that, in my opinion, should have been made with respect to XXXX XXXX XXXX, XXXX XXXX XXXX and XXXX XXXX XXXX, namely that they are persons in need of protection. (signed)
"Tammy Tremblay" Me Tammy Tremblay January 10, 2020 Date 1 Minute 02:03 of the recording of the Refugee Protection Division (RPD) hearing on April 1, 2019. 2 Minute 02:04 of the recording of the RPD hearing on April 1, 2019. 3 Minute 00:52 of the recording of the RPD hearing on April 1, 2019. 4 Minute 01:59 of the recording of the RPD hearing on April 1, 2019. 5 National Documentation Package (NDP), Haiti, September 30, 2019, Tab 7.6: Acts of revenge committed by gangs or by other organized crime entities; ability of gangs or other organized crime entities to track down their targets, including those who return to Haiti after a long absence, Immigration and Refugee Board of Canada. July 3, 2018, p. 3. 6 Ibid., Tab 7.1, HTI106116.FE, The security situation, including crime and kidnappings; measures taken by the government and other stakeholders to fight crime (2014-June 2018), Immigration and Refugee Board of Canada, June 19, 2018, p. 11-12; and Tab 7.2: Haïti : La situation sécuritaire [Haiti: the security situation], France. Office français de protection des réfugiés et apatrides, August 29, 2016, p. 11

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Refugee Appeal Division Commission de l'immigration et du statut de réfugié du Canada Section
d'appel des réfugiés RAD.25.02 (April 4, 2019) Disponible en français

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