

CANADA / JUDGMENT

TB9-15337

COURT

Refugee Appeal Division

DECIDED

17 November 2020

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RAD File / Dossier de la SAR : TB9-15337 TB9-15338 Private Proceeding / Huis clos Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXX XXXXXXXX XXXX XXXX Personnes en cause Appeal considered / heard at Toronto, ON Appel instruit / entendu à Date of decision November 17, 2020 Date de la décision Panel Cynthia Pay Tribunal Counsel for the persons who are the subject of the appeal Adrienne C. Smith 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] This decision is about XXXX XXXX XXXX and her son XXXX XXXX XXXX (XXXX and XXXX/ the principal and associate Appellants), who are both citizens of Jamaica. They claim to be Convention refugees or persons in need of protection based on alleged threats from a gunman who shot the principal Appellant during her duties while she was working as a XXXX XXXX in Jamaica. They are appealing a decision of the Refugee Protection Division (RPD) denying their claims on the basis of its finding that there is no nexus between their alleged persecution and a Convention ground; and further, that they are not persons in need of protection because they did not establish that they were personally targeted rather than merely subject to a generalized risk in Jamaica. They argue that the RPD erred in this finding and that they face a personalized risk in Jamaica.
- [2] Based on my review, I find that the RPD did not err in its overall finding that the Appellants have not established that they are Convention refugees or persons in need of protection, as I find that there is insufficient evidence to establish that they are personally targeted rather than subject to a generalized risk in Jamaica. DECISION
- [3] After considering their arguments and all of the evidence, I dismiss the Appellants' appeals and confirm the determination of the RPD that they are not Convention refugees or persons in need of protection.

BACKGROUND

- [4] The Principal Appellant claims that she was shot by an unknown gunman while working as a XXXX XXXX in Jamaica on XXXX XXXX, 2015. She fears that the gunman, who is unknown and was never found by the police, will target her and her son as her family member because she could be a potential witness against him, and because it was reported to her

that the gunman said that he "should've killed the girl" after the incident.¹ She claims that after the incident she took time off to recover from her injuries and also moved to Kingston to stay with her sister and to hide from potential retribution from the gunman. As she claims that she and her son continued to live in fear after this incident, she travelled to Canada in XXXX 2017 to look into her options, returned briefly to Jamaica, and then returned here in XXXX 2017 with her son, where they made refugee claims in February 2018.

- [5] The Appellants' claims were heard by the RPD in April 2019. In its reasons dated May 16, 2019, the RPD denied their claims on the basis that there was no nexus between the alleged incident and a Convention ground; and that they were not persons in need of protection under section 97 of Immigration and Refugee Protection Act (IRPA) because they were subject to a generalized risk of crime rather than a personalized one. It found that the principal Appellant as a XXXX XXXX was part of a group facing a generalized risk. It found that there was no personalized risk to her, as there were no escalating threats or reprisals against her, and she was able to work as a XXXX XXXX and remain in Jamaica for two years without further incident. It further found that she omitted the claimed threat made by the gunman from her Basis of Claim (BOC) form, diminishing its credibility; and that there was inconsistent evidence regarding who was first shot in the incident with the gunman. It found that the documentary evidence supported the principal Appellant's claim that she was shot and that XXXX XXXX are targeted, but not that she and her son face a personalized risk.
- [6] The Appellants argue that the RPD erred, as the alleged threat and objective country condition evidence shows that gangs are revered in Jamaica and are a serious safety concern; that the RPD should not have made a negative credibility finding based on the principal Appellant's omission of the alleged threat from her BOC form; that even a single, isolated threat can be sufficient to establish that they are persons in need of protection; and that the RPD erred in failing to consider that she did not face further incidents because she was off work for a few months and was also living in Kingston to hide from the gunman. Further, they argue that the inconsistency in the evidence regarding who was shot first was irrelevant to the question of whether they are persons in need of protection. They do not present new evidence or request an oral hearing, and do not challenge the RPD's finding that there was no connection to or nexus between their allegations and a ground covered in the United Nations Convention Relating to the Status of Refugees.² I will therefore only deal with the issue of whether or not they are persons in need of protection under s.97 of the IRPA. ROLE OF THE REFUGEE APPEAL DIVISION (RAD)
- [7] As held by the Federal Court of Appeal in Huruglica,³ the RAD must review RPD decisions on a correctness standard with respect to questions of law and findings of fact (and mixed fact and law) which raise no issue regarding the credibility of oral evidence. Deference may be required when the RPD is in an advantageous position with respect to the assessment of evidence. In this appeal, I was able to review and clearly understand the record, including the recording of the hearing. I therefore do not find that the RPD was in an advantageous position in assessing the evidence, and I do not apply a deferential standard.

ANALYSIS

- [8] The Appellants argue that they face a personalized risk because the principal Appellant would be viewed as a threat to the gunman, as she was identifiable and could testify against him if he were charged, and because she claims that a fellow XXXX XXXX XXXX told her that the gunman apparently said that he "should've killed the girl."
- [9] Based on my review, I find that they have not established on a balance of probabilities that they face a personalized risk.
- [10] Paragraph 97(1)(b) of the IRPA states that a person in need of protection is someone who would personally face a risk to their life or of cruel and unusual treatment or punishment that is not faced generally by other individuals. If the risk is not personal and is faced generally by other individuals in or from that country, they will not be a person in need of protection under s. 97.4
- [11] I find that the claimed threat from the gunman is insufficient to establish that the Appellants face a personalized risk. Although the principal Appellant faced an inherently increased risk stemming from her work as a XXXX XXXX, I find, based on the evidence before me, that this increased risk is one faced generally by all XXXX XXXX working in Jamaica, and has not been established to be personalized toward the Appellants. The gunman is unknown and has not been identified or found by the police. I determine that the Appellants' claim that the gunman made a threat that he "should've killed the girl" is insufficient to establish a personalized threat, or that she is at any specific risk. The claimed threat is a vague and third or fourth-hand report, and based on a rumour heard by another XXXX, rather than a direct one received by the Appellants. I find that these factors diminish the reliability of the evidence of this claimed threat.
- [12] I also find that the fact that the principal Appellant did not include this alleged threat in her Basis of Claim form further diminishes its credibility, as it is a central and important allegation. I agree with the RPD in rejecting the principal Appellant's explanation that she omitted the threat from her BOC because it was hearsay, and that she planned to elaborate on her claim at the hearing. The case cited by the Appellant in support of her argument that the RPD erred, McKenzie,⁵ can be distinguished, as that case dealt with a negative inference made on the basis of an amendment to the claimant's BOC as well as the issue of evolving and non-linear self-acceptance of a person's sexual orientation. In the Appellants' case, however, the RPD made a negative inference on the basis of a significant omission from the principal Appellant's BOC, not on the basis of an amendment to her BOC. I find that the RPD did not err in doing so and agree that this significant omission diminishes the credibility of the Appellants' claim of a personalized risk. Even if the RPD erred in this finding, however, it remains the case that the allegation of this threat is vague and the evidence of it, as a third-hand rumour, is weak.

- [13] The Appellants argue that the objective country condition evidence shows that gangs are revered and that they are a source of safety concerns in Jamaica. Even if this is the case, however, this does not establish a personalized risk.
- [14] The Appellants argue that repeated threats or escalation are not required to show that they are personally targeted, and that an isolated threat can be sufficient to establish a personalized risk, citing the Correa case in support of their argument.⁶ While I agree that a single incident or isolated threat could be sufficient to establish a personalized risk, the application of this principle depends on the fact situation of each case. In the Correa case, the claimant faced direct threats including incidents of extortion and a kidnapping attempt, which were found in that specific case to amount to a personalized risk. In contrast, in the Appellants' case, the principal Appellant was shot in the course of her work as a XXXX XXXX. As noted above, I recognize that XXXX work is inherently dangerous, and all XXXX XXXX face a heightened risk; however, the Appellants have not established that the principal Appellant was specifically targeted in this shooting, and have not established on a balance of probabilities that they face a personalized risk in the context of the principal Appellant's work as a XXXX XXXX. She faced no other threat or attacks after this incident, except for an alleged rumour that the unknown gunman had said that he "should've killed the girl." I find that the principal Appellant has failed to establish a forward-facing risk of harm with evidence that would establish on a balance of probabilities that the gunman is interested in pursuing her. In addition, both the principal Appellant and her son testified that he had not received any threats or been subject to any attacks.⁷
- [15] The Appellants also argue that the RPD erred in considering the principal Appellant's explanation for why she did not face further harm after the shooting incident; namely, that she took a few months off work to recover from her injuries, and because she had moved to Kingston to stay with family to avoid the gunman. Even if the RPD erred in failing to consider this explanation for the lack of further incidents after the shooting, I find that there is still very sparse evidence that the Appellants are specifically and personally targeted by the unknown gunman. Even if I do not make a negative inference from the lack of further incidents after the shooting, as this could be explained by the principal Appellant's time off work and move to Kingston, the fact remains that there were no further incidents or threats, which even if not used as the basis of a negative inference, is still not supportive in establishing the Appellants' claim that they are personally targeted or that they are persons in need of protection.
- [16] In addition, the Appellants argue that the RPD's finding of inconsistency in the evidence regarding who was shot first was irrelevant to their fear of returning to Jamaica. I agree, but find that this issue is not fatal to the RPD's overall finding that the Appellants have not established that they are personally targeted for harm. As discussed above, the main evidence provided by the Appellants is the alleged threat by the unknown gunman that he "should've killed the girl," which I have found to be vague and to be of limited reliability because it is an indirect and third-hand rumour, and was omitted by the principal Appellant

from her BOC, which further undermines its credibility.

- [17] I recognize and acknowledge that the shooting incident was violent and traumatizing for the Appellants, and that my decision will be disappointing for them. I want to stress that my decision is based on the fact that they have not met the legal test for protection under the legislation, and is not meant to diminish the impact that this violent incident has had on them.

CONCLUSION

- [18] On the basis of the findings outlined above, I dismiss the appeal and confirm the RPD's determination that the Appellants are not Convention refugees or persons in need of protection pursuant to paragraph 111(1)(a) of the IRPA. (signed) Cynthia Pay Cynthia Pay November 17, 2020 Date 1 RPD Hearing Recording, April 10, 2019, at approx. 0:46-0:47, 1:04. 2 United Nations Convention Relating to the Status of Refugees, Geneva, 1951, United Nations, Treaty Series, vol. 189, p. 137. 3 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93 (CanLII), [2016] 4 FCR 157. 4 Correa v. Canada (Citizenship and Immigration), 2014 FC 252 (CanLII). 5 McKenzie v. Canada (Citizenship and Immigration), 2019 FC 555 (CanLII). 6 Correa v. Canada (Citizenship and Immigration), 2014 FC 252 (CanLII). 7 RPD Hearing Recording, April 10, 2019, at approx. 1:39, 1:43.

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