

CANADA / JUDGMENT

TB9-07413

COURT

Refugee Appeal Division

DECIDED

14 February 2020

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RAD File / Dossier de la SAR : TB9-07413 TB9-07414 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 February 14, 2020 Date de la décision Panel E. Bobkin Tribunal Counsel for the persons who are the subject of the appeal N/A 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] These are my reasons for dismissing the appeal brought by XXXX XXXX XXXX (the Principal Appellant) and her daughter, XXXX XXXX XXXX (the Minor Appellant). I am confirming the decision of the Refugee Protection Division (RPD) that the Appellants are neither Convention refugees nor persons in need of protection. I concur with the RPD that the Appellants have not established a claim for protection against the Netherlands, a country in which they both have or are entitled to citizenship.
- [2] The Appellants came to Canada from Hungary, where they are both citizens. They allege persecution there because the Minor Appellant is half-black. The Principal Appellant is also a citizen of the Netherlands by marriage through her ex-husband. The Minor Appellant is entitled to citizenship in the Netherlands through her mother. The Principal Appellant lived in the Netherlands from 1999 to 2015 and alleges that, in the Netherlands, she was in an abusive relationship with her ex-husband which ended in 2014. The Principal Appellant is remarried to a Ghanaian citizen who is the father of the Minor Appellant and who resides in Ghana. Both Appellants are entitled to Ghanaian citizenship on this basis.
- [3] The Appellants were unrepresented before the RPD and are unrepresented on appeal. THE RPD'S DECISION
- [4] The RPD rejected the Appellants' claims. The RPD considered three countries of reference in the claim: the Netherlands, Hungary and Ghana.
- [5] With regard to the Netherlands, the RPD found that the Principal Appellant has citizenship in the Netherlands, and the Minor Appellant has the right to citizenship there through her mother. The RPD found that the Appellants had not established a forward-facing risk in the Netherlands. Although the Principal Appellant alleged a risk from her ex-husband, the RPD

concluded that this was not established because the Principal Appellant had lived in Amsterdam from 2014 to 2015 after her divorce and had not had problems with her ex-husband. Additionally, two of her children continued to reside with the ex-husband without incident, and the ex-husband had moved to a different city. In the alternative, the RPD found that the Appellants had access to adequate state protection in the Netherlands because the Principal Appellant's past experience was that the police provided her a place in a safe house, and the courts facilitated removing her husband from the matrimonial home and granting her a divorce. Moreover, the RPD considered that the documentary evidence showed that adequate state protection was available to the Appellants.

- [6] With regard to Hungary, the RPD accepted that the Minor Appellant had faced discrimination in accessing healthcare on the basis of her ethnicity; however, the RPD found that the discrimination did not amount to persecution on a forward-facing basis. With regard to Ghana, the RPD concluded that the Appellants had not put forward a risk in Ghana but rather stated that they could not go there because the Principal Appellant's husband could not financially provide for them and that this did not constitute a risk from which protection could be granted. THE APPELLANTS' ARGUMENTS
- [7] The Appellants argue that the RPD erred in two ways.
- [8] First, the Appellants argue that the RPD erred in assessing the risk in Hungary. The Appellants argue that the RPD failed to consider the risk of discrimination cumulatively and how this could amount to persecution.
- [9] Second, the Appellants argue that the RPD erred by breaching their right to procedural fairness by failing to follow the guidelines necessary to accommodate the Principal Appellant as a survivor of domestic violence and also as a self-represented litigant.
- [10] The Appellants did not submit new evidence. Reviewing the record, it is not clear whether they requested an oral hearing or not. However, if a request was made, it is denied. I cannot hold an oral hearing, as there is no new evidence on appeal, which is required to hold an oral hearing. SCOPE OF THE REFUGEE APPEAL DIVISION'S (RAD'S) REVIEW
- [11] Generally, I must review a decision of the RPD on a standard of correctness. There is an exception to this, where the RAD defers to the RPD if the RPD had a meaningful advantage in assessing the credibility of oral evidence. I do not find this case falls into the exception. Therefore, I will be looking at whether the RPD's decision was correct.

ANALYSIS

- [12] I will address the issues as follows:
- (a) The RPD's conclusion on persecution in Hungary is not determinative of the appeal;
 - (b) The Appellants have not established a breach of procedural fairness which warrants a re-hearing of their claim; and

- (c) The RPD's decision is correct because the Appellants have not established a claim against the Netherlands. The RPD's conclusion on persecution in Hungary is not determinative of the appeal
- [13] The Appellants argue that the RPD did not assess the forward-looking risk of persecution in Hungary based on race and instead focused only on the instances of discrimination previously faced rather than considering the risk of discrimination "maturing into persecution." The Appellants argue that the documents show that they would face a risk on the basis of the Minor Appellant's race in Hungary.¹
- [14] I find that this argument is not determinative, and therefore I will not address it. The Appellants agree that they are or have the right to citizenship in the Netherlands. The Appellants have not contested the RPD's finding that they could acquire citizenship in Ghana. The law is clear that refugee claimants must make a claim against all countries in which they have citizenship or in which they have the right to citizenship (which is in their control).² Therefore, even if I found that the RPD erred in concluding that the Appellants did not have a risk in Hungary, this would not change the outcome of the appeal. As I will explain below, I find that the RPD correctly concluded that the Appellants had not established a claim against the Netherlands. Therefore, even if they had a claim against Hungary, the appeal cannot be allowed on this basis. The Appellants have not established a breach of procedural fairness which warrants a rehearing of their claim
- [15] The Appellants argue that the RPD breached their right to procedural fairness by failing to properly follow Immigration and Refugee Board (IRB) guidelines on vulnerable persons as they relate to women who have suffered gender-based violence and self-represented persons. They argue that the Principal Appellant is a vulnerable person and that proper accommodations were not taken for her. They further argue that the process was not properly explained to the Principal Appellant as a self-represented party. They ask for a new hearing on this basis.³
- [16] I do not find these arguments warrant a new hearing. The Principal Appellant's status as a survivor of gender-based violence
- [17] The RPD accepted the Appellants as credible and accepted that the Principal Appellant had suffered abuse from her ex-husband. However, beyond this, the Appellants have misunderstood the guidelines. The Appellants argue that the Principal Appellant is a vulnerable person because she suffered gender-based violence. However, this is based upon a misunderstanding of the Board's guidelines.
- [18] The Appellants reference Guideline 8 which deals with vulnerable persons. As the Appellants argue, the guideline states that women who have suffered gender-related persecution may be vulnerable persons.⁴ However, this is not the definition of a vulnerable person, and vulnerable person status is not automatically conferred on women who have suffered gender-related persecution. The guideline defines a vulnerable person as "individuals whose ability to present their case before the IRB is severely impaired."⁵

Reviewing the record, I do not find the Principal Appellant to be such a person. I listened to the recording of the hearing. The Principal Appellant understood what was happening throughout. She was able to discuss what documents she had, translation issues, and she was able to identify when she needed clarification, for example, asking what an exhibit was.⁶ Furthermore, throughout her testimony, she was able to articulate herself well and did not appear to have trouble understanding questions. I find insufficient evidence to conclude that the Principal Appellant meets the definition of a vulnerable person. Therefore, I find the RPD did not err by failing to grant her accommodations as such.

- [19] However, there are guidelines specifically relating to women fearing gender-related persecution. Although the Appellants did not reference this guideline, I considered it and whether the RPD failed to adhere to it. I find no evidence that the RPD did not comply with this guideline. The guideline on women fearing gender-related persecution sets out that gender can be a ground for Convention protection and also sets out a framework for considering such claims.⁷ The RPD explicitly considered the risk of gender-based violence in looking at the claim against the Netherlands. The guideline also sets out procedurally that women refugee claims face specific difficulties in demonstrating their claims are credible. This was not an issue here, as the RPD did not make an adverse credibility finding.
- [20] The overall thrust of the guideline is that members must be sensitive to the unique circumstances and difficulties faced by women refugee claimants who fear gender-related persecution. I find that the RPD was duly sensitive to these circumstances. The tone of the questioning was sensitive and thoughtful. The RPD Member took time to ensure that she understood the Principal Appellant's testimony. The Member also ensured, as much as possible, that the Principal Appellant was comfortable in the hearing room.⁸ Therefore, I find that the RPD did not breach procedural fairness as it relates to the Principal Appellant's status as a woman who has faced gender-based violence. Unrepresented Parties
- [21] With regard to the Principal Appellant's status as a self-represented litigant, the Appellants again argue that this renders her a vulnerable person. The Appellants also argue that the RPD did not clearly explain to the Principal Appellant what the "expectation for a refugee claim or claim for protection are" and that it was clear that the Principal Appellant needed further information because she used the term "immigrant" rather than refugee.⁹
- [22] As above, the Appellants are correct that the Board's guideline on vulnerable persons states that self-represented people may be vulnerable persons.¹⁰ However, as with women fearing gender-based harm, this is not automatic.¹¹ For the same reasons stated above, I do not find that the Principal Appellant met the test for a vulnerable person.

- [23] The Board does not have specific guidelines about self-represented persons. However, in the guideline on vulnerable persons, the following is stated: Self-represented persons are entitled to the same procedural safeguards as those who are represented, and the IRB will endeavour to ensure that the process outlined in this guideline is both accessible and understandable to these persons. The IRB will take extra care to ensure that self-represented vulnerable persons can participate as meaningfully as possible in their own hearings.¹²
- [24] In addition, in the guideline on conducting a hearing, the following is stated: Generally speaking, the RPD will make allowances for self-represented claimants who are unfamiliar with the RPD's processes and rules. Claimants identified as particularly vulnerable will be treated with special sensitivity. The RPD may apply Guideline 8: Guideline on Procedures with Respect to Vulnerable Persons Appearing Before the IRB and identify as vulnerable those refugee claimants whose ability to present their case is severely impaired.¹³
- [25] Therefore, even if a self-represented person is not a vulnerable person, as defined in Guideline 8, the Board recognizes that the RPD should take extra care in determining these claims to ensure that these individuals can participate properly.
- [26] In this case, I find some evidence that the RPD Member attempted to ensure that the Principal Appellant could understand and meaningfully participate in her refugee hearing. For example, the RPD Member made sure that the Principal Appellant knew what documents were before the Panel and also that the Principal Appellant had copies of documents which were submitted. Further, the RPD was more relaxed about the rules for late disclosure given that the Principal Appellant was unrepresented.
- [27] Additionally, while the Appellants point to the fact that the Principal Appellant used the word "immigrant" instead of refugee as evidence that the RPD did not properly explain the process, I do not find this example shows that the Principal Appellant did not understand the purpose of the hearing.¹⁴ Reviewing the recording, it is clear that, while the Principal Appellant used the word "immigrant", she also said that she brought her daughter to Canada to seek protection.¹⁵ Moreover, the RPD did not find against the Principal Appellant because she used the term "immigrant". Therefore, I do not find this example shows that the Principal Appellant required further explanation of the expectations. The Principal Appellant understood she had to show her daughter required protection, and the RPD did not fault the Principal Appellant for her use of terminology.
- [28] However, I find that the RPD could have done more to assist the Principal Appellant in understanding the hearing process. For example, I note that the RPD did not explain technical terms such as state protection to the Appellant. Additionally, the RPD did not provide the Appellant an opportunity to make submissions at the end of the hearing, and it did not explain what could be contained in submissions. Rather, the RPD simply afforded the Principal Appellant the opportunity to say anything else that she wanted to. These were failings on the part of the Member.

- [29] Despite these failings, reviewing the record, I find that, even if the RPD had done these things, the same decision would have been reached. Therefore, even if I found this to be a breach of procedural fairness, no purpose would be served in sending the matter back to the RPD for redetermination.¹⁶ This is because, as I will explain below, the RPD's decision is correct, and the Appellants have not established a risk in the Netherlands. The RPD's decision is correct because the Appellants have not established a claim against the Netherlands
- [30] The RPD concluded that the Principal Appellant has citizenship in the Netherlands and that the Minor Appellant has the right to this citizenship. The Appellants have not contested this finding. Reviewing the record, I see no error in this finding.¹⁷
- [31] The RPD concluded that the Appellants did not have a forward-facing risk in the Netherlands. In making this conclusion, the RPD found that the Principal Appellant divorced her husband in February 2014 and that, since that time, he kept his distance from her. The RPD further found that the ex-husband had moved to a different city than that where the Principal Appellant previously resided in the Netherlands. The RPD also noted that the ex-husband cared for two of the Principal Appellant's older children, and there had not been an issue with this. Based upon this, the RPD concluded that the ex-husband would not continue to seek the Appellants out, if they returned to the Netherlands.
- [32] The Appellants have not challenged these findings. Reviewing the record, I see no error in them. The Principal Appellant testified that there were no issues for her children who resided with her ex-husband, and he had not attacked her since their divorce but rather kept his distance and that she had not needed the police since the divorce.¹⁸ The Principal Appellant indicates that she left the Netherlands in XXXX 2015, over a year after the divorce.¹⁹ Moreover, there is no evidence that the Appellants have had any problems with the ex-husband since the Principal Appellant left the Netherlands over four years ago. Given this evidence, I concur with the RPD. I find that the Appellants have not established more than a mere possibility of persecution from the ex-husband on the basis of gender or family status. I also find that they have not established a risk of torture, or a risk to life, or a risk of cruel and unusual treatment or punishment, on a balance of probabilities.
- [33] For these reasons, I concur with the RPD's conclusion that the Appellants have not established a claim against the Netherlands. I note that the RPD also found that there was state protection in the Netherlands for the Appellants. The Appellants have not challenged this finding, and, reviewing the record, I see no error in it.
- [34] I recognize that the Appellants are again self-represented before the RAD. However, they have not pointed to any errors in the substance of the decision about the Netherlands. They have not explained how better understanding the terminology would have changed the outcome. Given my jurisdiction to conduct an independent assessment, I find there is no error in the conclusion and no reason to return this matter to the RPD. I have looked at the record thoroughly, despite the Appellants' failure to point to errors, because they are

unrepresented. While the Appellants' circumstances are sympathetic, I have no jurisdiction to consider humanitarian and compassionate grounds. Therefore, the RPD's conclusion is confirmed.

CONCLUSION

[35] The RAD dismisses the appeal and confirms the decision of the RPD that the Appellants are neither Convention refugees nor persons in need of protection, pursuant to paragraph 111(1)(a) of the Immigration and Refugee Protection Act (IRPA). (signed) "E. Bobkin" E. Bobkin February 14, 2020 Date 1 Exhibit P-2, Appellants' Record, at pp. 20-22. 2 Tretsetsang, Chime v. M.C.I. (F.C.A, no. A-260-15), Ryer, Webb, Rennie (dissenting), June 9, 2016, 2016 FCA 175. 3 Exhibit P-2, Appellants' Record, at pp. 22-25. 4 Guideline 8: Procedures with Respect to Vulnerable Persons Appearing Before the IRB: Guideline issued by the Chairperson, pursuant to paragraph 159(1)(h) of the IRPA, IRB, Ottawa, effective: December 15, 2006, amended: December 15, 2012, section 2.1. 5 Guideline 8, section 2.1. 6 Oral testimony, from 00:00:00 to 00:11:37. 7 Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution: Update, Guideline Issued by the Chairperson, pursuant to Subsection 65(3) of the Immigration Act, IRB, Ottawa, November 13, 1996, as continued in effect by the Chairperson on June 28, 2002, under the authority found in paragraph 159(1)(h) of the IRPA. 8 See for example oral testimony, from 00:55:00 to 00:56:54. 9 Exhibit P-2, Appellants' Record, at pp. 24-25. 10 Guideline 8, section 2.1. 11 Guideline 8, section 2.1. 12 Guideline 8, section 13.1. 13 Guideline 7: Concerning Preparation and Conduct of a Hearing in the Refugee Protection Division: Guideline issued by the Chairperson, pursuant to paragraph 159(1)(h) of the IRPA, effective date: December 15, 2006, Amended December 15, 2012, section 1.3. 14 Exhibit P-2, Appellants' Record, at p. 24. 15 Oral testimony, from 00:58:53 to 01:05:40. 16 Mobil Oil Canada Ltd. v. Canada-Newfoundland Offshore Petroleum Board, [1994] 1 S.C.R. 202, pp. 228-229. 17 Oral testimony, from 00:22:33 to 00:27:41. 18 Oral testimony, from 00:37:17 to 00:40:04. 19 Exhibit RPD-1, RPD Record, at p. 68.

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