

CANADA / JUDGMENT

TB9-05305

COURT

Refugee Appeal Division

DECIDED

31 July 2020

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RAD File / Dossier de la SAR : TB9-05305 TB9-05306 / TB9-05307 Private Proceeding / Huis clos
Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX
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XXXX Persons en cause Appeal considered / heard at Toronto, ON Appel instruit / entendu à
Date of decision July 31, 2020 Date de la décision Panel Sasha Kiran Cragg-Gore Tribunal Counsel
for the persons who are the subject of the appeal Stephanie K. Fung 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 (the Principal Appellant), XXXX XXXX (the Male Appellant) and XXXX XXXX
XXXX (the Minor Appellant) are citizens of Guyana who were born XXXX XXXX. They XXXX
XXXX XXXX XXXX XXXX and allege that they were the victims of robberies, most recently in
XXXX XXXX XXXX. They also allege ill-treatment and discrimination due to their Chinese
ethnicity. They XXXX XXXX XXXX XXXX XXXX and allege that they participated in an
underground Christian church before claiming refugee status in XXXX XXXX XXXX. They
travelled to Canada before their claim in XXXX XXXX XXXX was finalized and claimed
refugee status here.
- [2] The Refugee Protection Division (RPD) rejected their claim and made the following main
findings:
- The Appellants' only country of reference is Guyana;
 - The XXXX robbery is not established as the Appellants gave contradictory evidence about
the number of perpetrators and omitted the entire incident from their Basis of Claim (BOC)
form;
 - The XXXX robbery is not established as the Appellants failed to reasonably explain why they
did not obtain a copy of the medical report and testified inconsistently about whether a
police report was filed;

- d. Crime and robberies are common in Guyana and even if the Appellants face this risk upon return, they have not established that ethnicity is a motivating factor and there is no nexus to the Convention;
 - e. The risk of crime and robberies is a generalized risk faced by everyone in Guyana.
- [3] The Appellants contest this decision. They are now asking the Refugee Appeal Division (RAD) to substitute the decision of the RPD and recognize them as Convention refugees or persons in need of protection. Alternatively, they ask that the RAD refer the matter back to the RPD for redetermination. They have not requested an oral hearing nor have they submitted new evidence on appeal. The Appellants' main arguments on appeal are as follows:
- a. The Appellants reasonably explained why they did not mention the XXXX robbery in their BOC and why they did not report the XXXX robbery to the police;
 - b. The police report was prepared by a friend and he might have made a mistake in describing how many perpetrators participated in the XXXX robbery;
 - c. The RPD should have focused on the evidence corroborating the XXXX robbery rather than the Appellants' failure to obtain a medical report;
 - d. The RPD failed to consider incidents of discrimination and harassment that were motivated by the Appellants' ethnicity. DECISION
- [4] I dismiss the appeal. I agree with the RPD that XXXX XXXX XXXX XXXX robberies are not established due to various omissions and contradictions in the evidence. The risk of crime and robberies is not related to the Appellants' ethnicity and this risk is generalized. While the Appellants may face a degree of discrimination and harassment in Guyana due to their Chinese ethnicity, and I agree that the RPD erred in considering this, it does not cumulatively rise to the level of persecution.

ANALYSIS

- [5] My role is to look at all the evidence and decide if the RPD made the correct decision.¹ Guyana is the only country of reference
- [6] The RPD concluded that Guyana is the only country of reference and citizenship for the Appellants. The Appellants testified to being Guyanese citizens and XXXX does not allow dual citizenship. This has not been contested by the Appellants and I agree with the RPD's analysis of this issue. Robbery in 2013 is not established
- [7] I agree with the RPD that the 2013 robbery is not established due to a contradiction in the number of perpetrators and the omission of this incident from the Appellants' BOC.

- [8] The police report corroborating this incident indicates that seven perpetrators participated in the robbery while the Appellants testified that there were only two of them. When asked to explain at the hearing, the Appellants said they do not speak English and that they did not know why the police report said there were seven. The Appellants now argue that the friend who assisted the Appellants in filing the police report might have made a mistake.
- [9] The RPD also noted that this incident is omitted from the Appellants' BOCs and rejected the Appellants' explanation that the incident was not important enough to mention in their BOCs because it was important enough to report to the police. The Appellants reiterate this explanation on appeal and point to the fact that there were no injuries and that it was not the main incident that drove them out of the country.
- [10] I agree with the RPD that the above contradiction and omission are serious and central enough to draw a negative credibility inference, and conclude that the XXXX robbery did not occur as alleged. Not only was there no mention of this incident in their narrative of events, there was a major difference between the police report that they themselves submitted and their testimony. I reject the Appellants' explanation that the friend that assisted them made a mistake. If the Appellants were able to prepare detailed narratives, XXXX XXXX XXXX in Guyana, mount refugee claims in both XXXX XXXX XXXX and Canada and obtain a number of corroborating documents in English, I do not accept that they simply obtained and submitted this police report without being aware of its contents.
- [11] I also agree with the RPD that being robbed at gun point and reporting the robbery to the police, the only time they alleged going to the police, is central enough to the Appellants' story to make a negative credibility inference due to its' omission. When these credibility issues are considered together, I conclude, just like the RPD, that the XXXX robbery is not established.
- [12] I also note that the police report says that the perpetrators were armed and that they also stole jewelry while neither of these facts were mentioned in the Appellants' testimony despite the open questions asked by the member at the hearing about this incident. These observations flow from the very same document that the RPD and the Appellants have pointed me to and I do not find that the Appellants would be surprised by these observations. For this reason, I have found them not to entail new issues on appeal but rather represent related credibility issues. They form part of my independent assessment and further support my conclusion that this incident is not established. Contradictory testimony about filing police report following robbery XXXX XXXX
- [13] I agree with the RPD that the Appellants provided contradictory testimony about whether or not they filed a police report XXXX XXXX in response to clear and deliberate questioning by the RPD. The Appellants do not contest this finding.
- [14] The Principal Appellant first said that a police report was not filed as they had already turned their minds to leaving the country and that they only went to the police once after the XXXX robbery. The Male Appellant then indicated that a police report was indeed filed. The

RPD member, perhaps sensing the possibility of confusion, repeated the year XXXX three times in her follow-up questions about the police report. Every time, the Male Appellant confirmed that yes, a police report had been filed in XXXX. He even twice included the year XXXX in his responses about the police report. With the testimony of the Principal Appellant to the effect that a single police report was filed in XXXX, he changed his testimony to indicate that a police report was not filed in XXXX.

- [15] This drawn out exchange was clear and cannot be explained by a misunderstanding. I agree with the RPD that the Appellants provided contradictory testimony about whether or not a police report was filed. Absence of medical report corroborating injuries sustained from robbery in XXXX is valid credibility concern
- [16] The RPD also made a negative credibility inference due to the Appellants' failure to provide a copy of the medical report corroborating the injuries allegedly sustained from the XXXX robbery. The Appellants argue that the RPD should have focused on the evidence available rather than the absence of a particular piece of evidence, and that even if they obtained one, it is not a central aspect of their claim. The RPD correctly made a negative credibility inference for the following reasons.
- [17] The Appellants alleged that they were beaten to the point of serious bleeding and that the Male Appellant fainted. They allege that they went to the hospital, that the Male Appellant got an x-ray and that they even obtained a medical report which they proceeded to throw away. When asked why they did not attempt to get another copy of the report, the Principal Appellant indicated that the environment in Guyana is bad and that the hospital may not have a record. Like the RPD, I am left wondering why the Appellants would go through the work of getting a copy of a police report but not attempt to get a copy of this medical report, particularly when they had the document at one point.
- [18] I do not agree with the Appellants that this document is not central. They allege having sustained serious injuries and the Male Appellant alleges receiving significant medical intervention in the form of an x-ray. They even allege having had a copy of this report at one point. Given all of this, their explanation for not trying to obtain a copy is not reasonable and I, like the RPD, make a negative credibility inference.
- [19] While the Appellants are correct in pointing out that the RPD needs to also look at the evidence before it, not just what is missing, there is nothing other than the Appellants' BOC and testimony to corroborate this incident. Given the contradictory testimony about whether or not a police report was filed and the failure to reasonably explain why the Appellants did not try to obtain a copy of the medical report, I find that the RPD did not err in concluding that this incident is not established. Failure to report robbery XXXX XXXX to the police is not a credibility concern but issue is not determinative

- [20] The RPD also found that the failure to report the XXXX robbery to the police affects the Appellants' credibility. The Appellants argue that it was reasonable not to report it given that the police did nothing the previous time they reported an incident in XXXX. While I tend to agree with the Appellants, since I have found that neither incident is established, this does not affect my overall conclusions and findings above. The Appellants face a generalized risk of crime and are not persons in need of protection
- [21] I have found, as did the RPD, that the two main robberies alleged by the Appellants did not happen on a balance of probabilities. Crime rates in Guyana are high² and I agree with the RPD that while the Appellants may be victims of crime if they return, there is insufficient evidence before me that these potential crimes would be ethnically motivated.
- [22] In order to fully address this question, I disclosed the most recent National Documentation Package (NDP) that was not before the RPD³ and directed the Appellants to provide submissions specifically on a document which describes the situation of ethnic Chinese individuals in Guyana.⁴ The Appellants provided further submissions which have been considered below.⁵
- [23] The Appellants argue that any robberies of XXXX XXXX are related to the underlying anti-Chinese sentiment in Guyana. However, the document referred to above clearly states that all sorts of businesses are robbed and multiple sources, including representatives of the police and international sources cited in the document, maintain that incidents of violence are not ethnically motivated. I acknowledge that some local news sources have stated that Chinese businesses are being targeted, but I prefer the police and international sources which rely on statistics to analyse crimes in a more systematic manner. I also note that while there is a degree of resentment of Chinese individuals in Guyana, there is minimal harassment and no systemic discrimination against this minority.⁶
- [24] The risk of robberies must then be considered under section 97 of the Immigration and Refugee Protection Act (IRPA) as there is no nexus to the Convention. The Appellants have not established previous incidents personally targeting them nor any reason for them to be personally targeted in the future. What is more, the risk of robberies is faced by all citizens in Guyana. For these reasons, I agree with the RPD that the risk they face is generalized and that they are not facing personal targeting. For these reasons, I agree with the RPD that they are not persons in need of protection. The discrimination or harassment faced by the Appellants due to their Chinese ethnicity does not rise to the level of persecution
- [25] The Appellants also argue that the RPD failed to consider that the Principal Appellant described facing systemic discrimination by having stones thrown at her in the streets due to her Chinese ethnicity. I acknowledge that there is a degree of discrimination against the Chinese minority in Guyana and I accept that this incident happened. I also agree with the Appellants that the RPD should have considered this.

[26] However, one incident of discrimination or harassment does not rise to the level of persecution. No other incidents were alleged and the country conditions clearly indicate that there is no systemic or widespread discrimination or harassment of Chinese individuals in Guyana.⁷ I also note that Chinese persons are not denied social services.⁸ For these reasons, I find that the Appellants would not face a serious possibility of persecution due to their Chinese ethnicity if they were to return to Guyana.

CONCLUSION

[27] The main allegations of the Appellants are not established. They face a generalized risk of crime and the discrimination they may face upon return does not amount to persecution. For all of these reasons, I conclude, like the RPD did, that the Appellants are not Convention refugees nor persons in need of protection. I dismiss the appeal. (signed) Sasha Kiran Cragg-Gore Sasha Kiran Cragg-Gore July 31, 2020 Date 1Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93; Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145. 2 National Documentation Package (NDP) for Guyana (November, 29 2019), Item 7.1, Response to Information Request (RIR) GUY104576.E, Immigration and Refugee Board of Canada, 15 October 2013. 3 Exhibit RAD-2, Member Directions and Disclosure, March 17, 2020. 4 Exhibit RAD-2, Member Directions and Disclosure, March 17, 2020, NDP for Guyana (November 29, 2019), Item 13.2, RIR GUY106225.E, Immigration and Refugee Board of Canada, 14 January 2019. 5 Exhibit P-3, Response to Member Directions, Dated March 31, 2020. 6 Exhibit RAD-2, Member Directions and Disclosure, March 17, 2020, NDP for Guyana (November 29, 2019), Item 13.2, RIR GUY106225.E, Immigration and Refugee Board of Canada, 14 January 2019. 7 Ibid. 8 Ibid.

RAD File / Dossier de la SAR : TB9-05305 TB9-05306 / TB9-05307 RAD.25.02 (January, 2020)
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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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Prepared on 26 October 2026 · Esheria