

CANADA / JUDGMENT

MB9-08973

COURT

Refugee Appeal Division

DECIDED

9 January 2020

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RAD File No. / No de dossier de la SAR : MB9-08973 MB9-08974 / MB9-08975 / MB9-08976
MB9-08977 / MB9-08978 Private Proceeding / Huis clos Reasons and Decision ? Motifs et décision
Persons who are the subject of the appeal XXXX XXXX XXXXXXXXXX XXXX XXXX XXXXXXXXXX
XXXX XXXXXXXXXX XXXX XXXXXXXXXX XXXX XXXXXXXXXX XXXX XXXX Personnes en cause Appeal
considered / heard at Montréal, Quebec Appel instruit / entendu à Date of decision January 9,
2020 Date de la décision Panel Marie-Lyne Thibault Tribunal Counsel for the persons who are the
subject of the appeal N/A 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 male appellant) and his spouse XXXX XXXX XXXX (the female appellant) are citizens of Haiti. Their children, XXXX XXXX XXXX, XXXX XXXX, XXXX XXXX, and XXXX XXXX (the minor appellants), are citizens of the United States. They are appealing against the Refugee Protection Division (RPD) decision.
- [2] The appellants fear that, if they were to return to Haiti, they would face retribution from criminals associated with the Lavalas party who demanded money from the male appellant on a construction site and threatened him.
- [3] The minor appellants fear that they would be separated from their parents if they were to return to the United States.
- [4] The RPD rejected the adult appellants' refugee protection claims on the basis that their credibility was undermined with respect to their account. It drew this conclusion from an inconsistency, an omission in their Basis of Claim Forms (BOC Forms) and behaviour that was inconsistent with the alleged risk.
- [5] As for the minor appellants, the RPD concluded that there was no serious possibility of persecution or risk that they would be personally subjected to a danger of torture or a risk to their lives or a risk of cruel and unusual treatment or punishment if they were to return to the United States.

- [6] The appellants claim that the RPD erred in its assessment of their credibility and of the risk they would face if they were to return to Haiti. They claim that, as the RPD failed to consider all of the evidence, its decision therefore lacks justification and intelligibility.
- [7] The Refugee Appeal Division (RAD) conducted an independent assessment of the evidence. It listened to the recording of the hearing and applied the correctness standard of review.¹
- [8] For the reasons set out below, the RAD concludes that the RPD's decision is correct. The appellants' credibility is undermined with respect to their account.
- [9] The appeal is dismissed.

BACKGROUND

- [10] The male appellant's BOC Form2 contains the appellants' allegations. Here is a summary: * On XXXX XXXX, 2007, the male appellant was overseeing a construction site when he was approached by a group of men. The men told him there were contribution rules on the value of the contracts obtained. The male appellant replied that he had already paid what he owed to the government, but the men told him that it was for his safety. * XXXX weeks later, the male appellant received a telephone call asking him for money for his own safety. He answered that he did not need it. The criminals called him again XXXX week later. * On XXXX XXXX, 2007, the male appellant was robbed. * On XXXX XXXX, 2007, the male appellant was robbed again by criminals wearing Lavalas shirts. He filed a complaint to the police and decided to sleep at a neighbour's house. * On XXXX XXXX XXXX 2007, criminals broke into the male appellant's house. They gave his family an ultimatum: they had XXXX month to hand the male appellant over to them. * The appellant then fled to his cousin's house. Feeling like the police were not following up on this and unable to keep working as a contractor, the male appellant left Haiti for the Dominican Republic on XXXX XXXX XXXX 2007. He then went to the United States.
- [11] As for the female appellant, she testified that she left Haiti in XXXX 2008.³

ANALYSIS

The appellants' credibility has been undermined with respect to their account

- [12] The RAD concludes that the RPD did not err when it found that the adult appellants' testimony created credibility issues.
- [13] The appellants' claims are as follows: * The RPD put too much emphasis on the male appellant's failure to disclose in his BOC Form that the criminals were armed during the XXXX XXXX, 2007, incident. * The RPD erred when it concluded that their behaviour was inconsistent with the alleged risk, despite the fact that the appellants provided satisfactory explanations. * The RPD erred by concluding that the fact that the male appellant's brothers allegedly did not have any issues with the criminals, despite having worked in the construction industry, represents an inconsistency. * The RPD's decision was neither

coherent nor intelligible, because it did not consider the entirety of the evidence and failed to establish the elements that were relevant to the case, as well as the probative value these elements should be given.

- [14] The RAD is of the opinion that the RPD was right to draw a negative credibility finding from the omission in the BOC Form and from behaviour that was inconsistent with the alleged risk, in this case a risk to life. Although the RPD's conclusions are enough to find that the appellants are not credible, the RAD notes other issues that cast further doubt on the entirety of the account. As explained below, the RAD also noted contradictions between the male appellant's BOC Form and his testimony, as well as between the male appellant's testimony and the female appellant's testimony. The appellants' credibility is undermined with respect to the XXXX XXXX, 2007, incident
- [15] The RAD concludes that the RPD did not err by drawing a negative credibility finding from the fact that, in his BOC Form,⁴ the appellant failed to mention that the criminals who approached him on XXXX XXXX, 2007, threatened him while drawing their weapons.
- [16] The appellants submit that the male appellant simply forgot to mention in his BOC Form that the criminals were armed during the XXXX XXXX XXXX 2007, incident. The RPD should have accepted this explanation, which was not patently unreasonable.
- [17] Contrary to the appellants' claim, the male appellant did not spontaneously state that the criminals were armed when he was questioned about the circumstances of the XXXX XXXX XXXX 2007, incident. Rather, the male appellant stated that the criminals had threatened to stop the construction.⁵ He then stated that the criminals called him two weeks later.⁶ It was only when the RPD asked him a second time if the criminals had said anything else during this incident that the male appellant stated that the criminals had drawn their weapons.⁷ This constitutes an adjustment of testimony.
- [18] As for the reasons why he did not indicate in his BOC Form that the criminals were armed- the male appellant avoided the question by stating that he had only written that that was the first incident.⁸ He was asked again to explain the omission and stated that there was no particular reason.⁹ This explanation is not satisfactory. For one thing, the male appellant made an effort to mention in his BOC Form that the criminals were armed during the XXXX XXXX and XXXX XXXX XXXX 2007, incidents.¹⁰ Furthermore, the RAD is of the opinion that there is an important distinction between the gravity of an incident in which criminals ask for a financial contribution and threaten to stop the construction, and that of an incident in which the criminals ask for this contribution while brandishing weapons. The RAD would have expected the male appellant to state at the first opportunity- namely, in his BOC Form and when questioned about the circumstances of the XXXX XXXX, 2007, incident- that the criminals were armed and that they threatened him while showing their weapons.

- [19] Moreover, the female appellant's testimony concerning the XXXX XXXX, 2007, incident was particularly vague and evasive. She claimed to have been present during this incident.¹¹ Although she stated that she saw armed men talking to her husband, the female appellant was unable to estimate how many criminals were present.¹² The RAD draws a negative inference from the female appellant's vague and evasive testimony.
- [20] Considering the above, the RAD finds that the appellants' credibility is undermined with respect to the XXXX XXXX, 2007, incident, which is their account's starting point.
- [21] Moreover, the RAD is of the opinion that the appellants behaved in a manner that is inconsistent with the alleged risk. The appellants' credibility is undermined by behaviour that is inconsistent with the alleged risk and by inconsistencies
- [22] The RAD concludes that the RPD did not err when concluding that the appellants' behaviour is inconsistent with the alleged risk.
- [23] The appellants submit that the RPD erred in concluding that their behaviour was inconsistent with a risk to their lives. They claim that the RPD should have accepted their explanations that they slept at a neighbour's house after the second extortion incident, that the male appellant stopped all of his construction work after XXXX 2007 and that the female appellant was always very careful when returning to Gonaïves.
- [24] In the RAD's opinion, the appellants' explanations are not satisfactory.
- [25] After the male appellant left Haiti, the female appellant went back and forth between Cap-Haïtien, where she had fled, and her house. The fact that the female appellant needed some personal items and that she was careful do not constitute a satisfactory explanation, considering the fact that the appellants feared for their lives and that the criminals had already gone to their house. This behaviour is inconsistent with a threat to life and undermines the appellants' credibility with respect to their allegations of a risk in Haiti.
- [26] The RAD also notes that the appellants' testimonies concerning the female appellant's returns to Gonaïves are inconsistent. The male appellant stated that the female appellant had not gone back to their house after he himself left Haiti in XXXX 2007.¹³ However, the female appellant had previously stated that she had gone back to Gonaïves after the male appellant had left.¹⁴ When asked to explain this contradiction, the male appellant stated that he did not know that the female appellant had gone back to Gonaïves after he had left.¹⁵ The female appellant, for her part, gave a vague and evasive testimony explaining that she did not hear from her husband for two weeks after he left for the United States.¹⁶ In the RAD's opinion, the fact that they did not talk for XXXX weeks does not explain why, after all these years, the female appellant had not told her husband that she had repeatedly returned to their house. This contradiction further undermines the appellants' account.
- [27] As for the steps the appellants took to protect themselves, the RPD concluded that by waiting before taking these steps after they had been threatened in XXXX 2007, the appellants acted in a manner that was inconsistent with the alleged risk. This conclusion is correct. The RAD

considered the testimonies. According to the female appellant's testimony, it was the XXXX XXXX, 2007, incident that led them to leave Haiti.¹⁷ Moreover, the male appellant testified that he started to fear for his life after the incident on XXXX XXXX, 2007.¹⁸ Yet the male appellant's BOC Form indicates that it was only after the XXXX XXXX, 2007, incident that he took steps to protect himself, namely by sleeping at a neighbour's house.¹⁹ The fact that the male appellant failed to take steps to protect himself before XXXX 2007, when he had been afraid for his safety since XXXX XXXX, 2007, is inconsistent with the alleged risk. This undermines the appellants' credibility with respect to their allegations of a risk to their lives.

[28] The RAD also notes a contradiction regarding the point at which the male appellant stopped his construction work. At the hearing, the appellant was asked to explain what he had done to protect himself. He stated that he had not gone back to the construction site since XXXX XXXX XXXX 2007.²⁰ This is not what he wrote in his BOC Form. His BOC Form instead suggests that he stopped his construction work after fleeing to his cousin's house, in XXXX 2007, or after hiding in his neighbour's house in XXXX 2007.²¹ This interpretation is corroborated by the information in the appellants' memorandum, namely that the male appellant stopped all his construction work in XXXX 2007.²² The RAD draws a negative inference from the contradiction raised regarding the point at which the male appellant stopped his construction work. The credibility of the account is therefore further undermined.

[29] Furthermore, the RAD is of the opinion that the female appellant's testimony was vague and evasive on the topic of the period of time they spent at their neighbour's house. She claimed it was [translation] "a short time," and "not a very long time."²³ She was unable to state whether she and the male appellant had spent over a week there, or if they had stayed approximately two weeks, or any other length of time.²⁴ Instead, she asked the RPD to ask the male appellant, as she did not remember.²⁵ The RAD acknowledges that over 10 years have passed since the incidents. The passage of time can certainly explain why the female appellant would not be able to provide a precise answer. However, the RAD would have expected the female appellant to be able to provide an approximate length of time, considering the seriousness of the situation-she had to leave her home and hide at a neighbour's house. The RAD draws a negative inference from the female appellant's vague and evasive testimony.

[30] In light of the above, the RAD concludes that the RPD's decision is correct and finds that the appellants' credibility is undermined.

[31] Moreover, the RAD notes another contradiction that further undermines the credibility of the account. The appellants' credibility is undermined with respect to the threatening telephone calls

[32] The RAD noted a contradiction between the male appellant's BOC Form and his testimony with respect to when he allegedly received a second telephone call from the criminals. In his BOC Form, he states that the criminals called him XXXX weeks after the XXXX XXXX,

2007, incident, and that they called him again XXXX week later.²⁶ However, in his testimony, the male appellant claimed that the criminals called him back that very day, and that he did not speak to them again afterwards.²⁷ According to his testimony, the next incident was the one that took place on XXXX XXXX, 2007.²⁸ The RAD draws a negative inference from this contradiction.

- [33] In light of the above, the RAD does not believe the appellants' account. Consequently, the RAD will not address the appellants' arguments with respect to the criminals' actions towards the male appellant's brothers, or with respect to the fact that claimants are not required to corroborate their testimonies. The minor appellants have not established a serious possibility of persecution or demonstrated the existence of a risk if they were to return to the United States
- [34] It is unclear whether the appellants are challenging the RPD's conclusion that the minor appellants would not be subjected to any risk or danger if they were to return to the United States. In their memorandum, the appellants summarize the RPD's conclusions regarding the absence of risk for the minor appellants; after this, they claim that the RPD [translation] "clearly does not seem to establish the 'relevant elements' of this case and what probative value they should be given." ²⁹ The RAD does not know if this argument is related to the conclusion that there would be no risk for the minor appellants if they were to return to the United States, or if this argument concerns the entirety of the RPD's reasons. Nevertheless, the RAD notes that what the appellants fear upon the minor appellants' return to the United States is being separated. This is what the RPD considered. The RPD concluded that there is no evidence of a serious possibility of persecution in the United States. The RPD also concluded that there is no evidence demonstrating, on a balance of probabilities, that the minor appellants would be personally subjected to a danger of torture or to a risk to their lives or a risk of cruel and unusual treatment or punishment. The RAD does not see any error in this conclusion.
- [35] Considering the above, the RAD concludes that the RPD's decision is correct. The appellants have not established that there is a serious possibility of persecution or demonstrated, on a balance of probabilities, that they would be personally subjected to a danger of torture, to a risk to their lives or to a risk of cruel and unusual treatment or punishment if they were to return to Haiti. Moreover, the minor appellants have not established that there is a serious possibility of persecution or demonstrated, on a balance of probabilities, that they would be personally subjected to a danger of torture, to a risk to their lives or to a risk of cruel and unusual treatment or punishment if they were to return to the United States.

DETERMINATION

- [36] The RAD dismisses the appeal. The RAD confirms the RPD's determination that XXXX XXXX, XXXX XXXX XXXX, XXXX XXXX XXXX, XXXX XXXX, XXXX XXXX and XXXX XXXX are neither "Convention refugees" pursuant to section 96 of the Immigration and Refugee Protection Act (IRPA), nor "persons in need of protection" pursuant to section 97 of the IRPA.

Marie-Lyne Thibault Marie-Lyne Thibault January 9, 2020 Date IRB translation Original language: French 1 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93. 2 RPD-1, Refugee Protection Division (RPD) record, Basis of Claim Form (BOC Form) of XXXX XXXX, amended written account, April 11, 2017, p. 12-24. 3 Recording of hearing at approximately 01:13:20. 4 Supra endnote 2, BOC Form, p. 22. 5 Recording of hearing at approximately 01:21:00. 6 Recording of hearing at approximately 01:21:30. 7 Recording of hearing at approximately 01:22:30. 8 Recording of hearing at approximately 01:25:00. 9 Recording of hearing at approximately 01:26:00. 10 Supra endnote 2, BOC Form, p. 22. 11 Recording of hearing at approximately 01:02:45. 12 Recording of hearing at approximately 01:05:30. 13 Recording of hearing at approximately 1:46:45. 14 Recording of hearing at approximately 1:16:00. 15 Recording of hearing at approximately 01:49:00. 16 Recording of hearing at approximately 01:50:30. 17 Recording of hearing at approximately 00:56:30 and at approximately 01:02:00. 18 Recording of hearing at approximately 00:53:20 and at approximately 01:28:50. 19 Supra endnote 2, BOC Form, p. 22. 20 Recording of hearing at approximately 01:32:30. 21 Supra endnote 2, BOC Form, p. 23. 22 P-2, Appellant's record, Memorandum, p. 19, para. 13. 23 Recording of hearing at approximately 01:09:00. 24 Recording of hearing at approximately 01:10:00. 25 Recording of hearing at approximately 01:12:15. 26 Supra endnote 2, BOC Form, p. 22. 27 Recording of hearing at approximately 02:35:00. 28 Supra endnote 2, BOC Form, p. 22. 29 Supra endnote 22, Memorandum, p. 20, para. 27.

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