

CANADA / JUDGMENT

MB9-08838

COURT

Refugee Appeal Division

DECIDED

3 March 2020

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RAD File No. / No de dossier de la SAR : MB9-08838 MB9-08839 Private Proceeding / Huis clos
Reasons and Decision - Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXX XXXX XXXX XXXX XXXX Personnes en cause Appeal considered / heard at Montréal, QC
Appel instruit / entendu à Date of decision March 3, 2020 Date de la décision Panel Me Agnès
Connat Tribunal Counsel for the persons who are the subject of the appeal Me Sophia Hippolyte
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] XXXX XXXX XXXX (the principal appellant) and his adult son, XXXX XXXX XXXX (the appellant), are citizens of Haiti.
- [2] The principal appellant fears for his life because of criminals who attacked him because he was the manager of XXXX XXXX XXXX in Haiti. The appellants entered via Trudeau Airport with Canadian visas on XXXX XXXX, 2018.
- [3] The Refugee Appeal Division (RAD) confirms the determination of the Refugee Protection Division (RPD) that XXXX XXXX XXXX and XXXX XXXX XXXX are not Convention "refugees" or "persons in need of protection." The appeal is dismissed. Decision of the Refugee Protection Division
- [4] Although it found the appellants credible, the RPD concluded that they failed to establish their prospective risk, on a balance of probabilities, if they were to return to Haiti. The RPD was of the opinion that the principal appellant was targeted because of his status as a XXXX. Since he has resigned, he no longer has that status and, consequently, the risk no longer exists. Appellants' arguments
- [5] The appellants argue that the RPD lacked transparency and breached the rules of procedural fairness, and that its decision is arbitrary. Determinative issues that the Refugee Appeal Division must address
- [6] Did the RPD breach procedural fairness?
- [7] Did the appellants credibly establish that, if they returned to Haiti, they would be subjected to a risk to their lives or a risk of cruel and unusual treatment? Role of the Refugee Appeal Division in this appeal

- [8] To determine whether the RPD's decision contains errors, the RAD conducted an independent analysis of the evidence, including that from the hearing, while applying the correctness standard.

ANALYSIS

The Refugee Protection Division did not breach procedural fairness

- [9] The appellants argue that the RPD erred by stating at the start of the hearing that the three determinative issues were credibility, Haitian state protection and an internal flight alternative in Haiti, but its negative decision was not based on any of those three issues. They allege that they had been taken by surprise and that the RPD lacked transparency.
- [10] The RPD's decision is correct and is not tainted by a breach of procedural fairness.
- [11] The appellants' refugee protection claims are based on a risk of harm alleged under subsection 97(1) of the Immigration and Refugee Protection Act. Even though the RPD did not state at the start of the hearing that prospective risk was a determinative issue, the appellants were not taken by surprise because that risk is one of the factors that they must establish, on a balance of probabilities, to be recognized as persons in need of protection. The risk of returning to the country of origin is part of the very definition of person in need of protection and is present in the wording of section 97: A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally [emphasis added]
- [12] Moreover, at the hearing, the appellants had the opportunity to respond to the RPD regarding their prospective risk as the panel asked them specific questions about that risk if they returned to Haiti. For example, the panel asked the principal appellant to explain why the criminals would target him if he returned to XXXX XXXX XXXX XXXX XXXX XXXX and to explain whether the criminals would attack him if he had a different job. In addition, their counsel argued the prospective risk in his final submissions, and therefore was aware that it was an issue under review. The principal appellant, XXXX XXXX XXXX, failed to establish a personal risk of harm if he returned to Haiti
- [13] The RPD found that the appellants were credible and that the attacks that they experienced occurred. The appellants are not disputing that finding and I concur with it.
- [14] The RPD concluded that the principal appellant was targeted because of his status as a XXXX and that, since he no longer has that status, the risk of harm that he is seeking to escape no longer exists.
- [15] The appellants criticize the RPD for conducting a superficial analysis and for not sufficiently justifying its conclusions. They argue that the RPD's decision is based on the following simplistic reasoning: the principal appellant is no longer a XXXX manager, the risk no longer exists, his claim must be rejected. They allege that the facts cited by the RPD

contradict that conclusion and that the appellants should not have to wait for the risk to materialize to obtain protection. They argue that the RPD ignored certain facts when assessing their risk, namely, that the principal appellant's agents of persecution steal and search vehicles, and are still active, even though the principal appellant is no longer a XXXX manager; that the principal appellant's situation is unique and is different from that of other Haitians because he was personally identified as the person who rejected funding applications from groups led by known criminals; and that the principal appellant was attacked three times in the span of six months, which was not a coincidence.

- [16] The RPD erred by limiting its conclusion to the fact that the principal appellant would no longer be a XXXX when he returned. That error does not affect the final outcome that the principal appellant failed to establish the risk of harm and that his life would be at risk if he returned to Haiti.
- [17] As the appellants argue, a refugee protection claimant does not have to wait for the risk to materialize to obtain protection. However, the refugee protection claimant must establish whether, on a balance of probabilities, the risk would exist if he or she returned to their country of citizenship. Therefore, the appellants must establish, on a balance of probabilities, whether the agents of persecution will find and attack them if they return to Haiti.
- [18] In his amended written account, and then at the hearing, the principal appellant testifies that, as the XXXX manager, he decided whether to grant funding to popular organizations, whose members and leaders included criminals. He adds that he was pressured and received telephone threats for certain applications to be prioritized.
- [19] In his written account, the principal appellant states the following regarding the agents of persecution:
- On XXXX XXXX, 2017, two armed individuals on a motorcycle attacked him while he was driving his car. They stole money from him and struck him. In his amended Basis of Claim Form (BOC Form), he adds that the criminals told him [translation] "you are a XXXX manager, you have money on you, hand it over."
 - On XXXX XXXX, 2017, two armed and masked individuals stopped his car. After searching it and not finding any money, they struck him and stated [translation] "the next time we meet and you have nothing, we will kill you." In his amended BOC Form, he adds that the criminals stated [translation] "we know that you are a XXXX manager, the next time we meet and you have nothing on you, we will kill you."
 - On XXXX XXXX, 2018, two armed and masked individuals on a motorcycle tried to intercept the vehicle he was in with the appellant. When he refused to stop, the individuals shot at the car.

- [20] According to the principal appellant's statements, the agents of persecution are known-but unidentified-criminals. The principal appellant gave the names of two possible suspects at the hearing but did not provide any further information about them. He stated that the criminals attacked him personally in the past because he was a XXXX manager and, according to them, he had money. That fact was acknowledged by the RPD and by the RAD. The previous attacks were motivated by his social position. To demonstrate that they are persons in need of protection, the appellants must establish that, if they returned to Haiti, those same criminals would want to locate them, that they would threaten to kill them and that they would have the means to do so. At the hearing, the principal appellant testified that, for him, the only way to protect himself was to resign from his job and look for work in another field, such as non-government organizations, which he did. He himself even stated that if he were no longer the manager of the XXXX XXXX, his life would no longer be at risk.
- [21] However, the RPD erred by failing to analyze the basis of the refugee protection claim, namely, that the principal appellant's risk is based on his past actions and his job as a XXXX XXXX manager, and by concluding that the principal appellant would not face a risk of harm if he no longer had that status. The principal appellant alleges that he would be persecuted if he returned to Haiti because of his past actions as a XXXX manager. Therefore, I analyzed the principal appellant's risk of harm in relation to his past actions as a XXXX manager.
- [22] When the panel asked the principal claimant why he would be targeted if he returned, he stated that they will know that he has come back and they will attack him again, and that he does not know if they would target him if he returned to XXXX XXXX XXXX XXXX XXXX. He could not confirm whether the attacks he suffered were linked to his job. According to him, the three previous attacks, which occurred within the span of seven months, were linked to his work, but he did not explain at any time why the agents of persecution would want to locate him in the future, or if they would have the means to do so. He did not explain how refusing certain funding applications in the past changes the analysis of his prospective risk. Even though the appellants are implying that the criminals would want vengeance, and even when I take into account the culture of vengeance in Haiti and the fact that the criminals are still active, one fact remains: since the principal appellant left, they have not tried to find him or seek vengeance against his family. The appellant's wife still lives in the same location in Haiti, as does as his other son, C. The appellants did not state that their family had been visited by anyone looking for them or that they had received any kinds of threats since their departure. Nothing in the evidence indicates that if the principal appellant returned to Haiti, the agents of persecution would want to look for him, much less have the means to do so.
- [23] For these reasons, I am of the opinion that the principal appellant failed to establish that, on a balance of probabilities, if he returned to Haiti, his life would be threatened by criminals. He would not be subjected to a risk because of his status as a XXXX manager because he no longer has that job. He also failed to establish that that risk would exist because of his past actions as a XXXX manager, specifically his refusal to grant funding to organizations led by known criminals. The appellant, XXXX XXXX XXXX, also failed to establish a personal risk

of harm if he returned to Haiti

- [24] The RPD came to the same conclusion for his son's claim because that claim is based solely on that of the principal appellant.
- [25] The appellant's allegations are based on those of his father, the principal appellant. In his BOC Form, he states that, in addition to the attack on XXXX XXXX, 2018, that he experienced with his father, he was the victim of theft. He did not cite any other facts in support of his refugee protection claim. At the hearing, he acknowledged that the theft could have happened to anyone, which indicates that he was not personally targeted.
- [26] The RPD's conclusion is correct. The appellant failed to establish a risk of harm if he returned to Haiti. The risk of being perceived as wealthy
- [27] The RPD concluded that the appellants risk being perceived as wealthy, but that that risk is no different from that faced by the rest of the population.
- [28] The appellants claim that the RPD erred by likening their risk to that of all wealthy Haitians and that their risk has nothing to do with wealth.
- [29] The RPD's conclusion is correct. The RPD did not liken their risk to that of all wealthy Haitians. It first concluded that the appellants would not face a risk if they returned to Haiti and then added a conclusion regarding the risk that the appellants would be targeted because of their status as wealthy and stated that that risk is generalized.
- [30] The appellants did not state in their BOC Form, in the appeal memorandum or at the hearing that they are facing the risk of being perceived as wealthy. The risk of becoming a victim of crime in Haiti is generalized because of the very high crime rate. That crime manifests itself in many forms, in many areas and for many reasons.¹ Even if the possibility of the appellants being victims increases because they could be perceived as wealthy, that does not mean that their risk is anything other than generalized.
- [31] The RPD's conclusion that the appellants would not, on a balance of probabilities, 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 is correct.

CONCLUSION

- [32] The appeal is dismissed. The RAD confirms the RPD's determination that XXXX XXXX XXXX and XXXX XXXX XXXX are not Convention "refugees" or "persons in need of protection." Agnès Connat Me Agnès Connat March 3, 2020 Date IRB translation Original language: French 1 Archive - National Documentation Package on Haiti, July 20, 2018, Tab 7.2: Haïti : La situation sécuritaire [Haiti: security situation]. France. Office français de protection des réfugiés et apatrides [French office for the protection of refugees and stateless person]. August 29, 2016.

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Commission de l'immigration et du statut de réfugié du Canada Section d'appel des réfugiés
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