

CANADA / JUDGMENT

MB9-14199

COURT

Refugee Protection Division

DECIDED

23 September 2020

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RPD File No. / No de dossier de la SPR : MB9-14199

MB9-14249 / MB9-14267

UCI / IUC : XXXX XXXXXXXXXX/XXXX

Private Proceeding / Huis clos

Reasons and Decision ? Motifs et décision

Claimant(s)

XXXX XXXX XXXXXXXXXX XXXX XXXXXXXXXX XXXX

Demandeur(e)(s) d'asile

Date(s) of hearing

September 1, 2020

Date(s) de l'audience

Place of hearing

Montréal, Quebec

Lieu de l'audience

Date of decision

and reasons

September 23, 2020

Date de la décision

et des motifs

Panel

Lise Pénisson

Tribunal

Counsel for the claimant(s)

Dalila Akrouir

Conseil(s) du (de la/des)

demandeur(e)(s) d'asile

Designated representative

XXXX XXXX

Représentant(e) désigné(e)

Counsel for the Minister

N/A

Conseil du (de la) ministre

REASONS FOR DECISION

INTRODUCTION

- [1] The claimants, XXXX XXXX (the principal claimant), XXXX XXXX (the co-claimant and the principal claimant's husband) and their daughter, XXXX XXXX (the minor claimant), are all citizens of Algeria. They are claiming refugee protection under section 96 and subsection 97(1) of the Immigration and Refugee Protection Act.
- [2] At the hearing, the principal claimant agreed to act as the minor claimant's designated representative.
- [3] The panel took into account, both at the hearing and in its decision, Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution.¹

SUMMARY OF ALLEGATIONS

- [4] The claimants' allegations are fully set out in their Basis of Claim Forms² (BOC Forms).
- [5] In summary, the principal claimant alleges a fear of being mistreated by her brother and her uncles because she enjoyed some freedom in her marriage and therefore did not conform to the traditional role imposed by her brother and uncles. She also fears being forced to separate from the co-claimant for the same reasons.
- [6] During the hearing, the co-claimant stated that he fears being forced by his wife's uncles to be separated from the female claimants, because they all fled Algeria and in doing so brought dishonour to their families.

- [7] The principal claimant and the co-claimant fear that the minor claimant will be raised in accordance with their families' traditional and religious precepts, and mistreated.
- [8] More specifically, the principal claimant alleges that she was raised in a conservative family that adheres to traditions and that she was frequently mistreated by family members, in particular one of her uncles.
- [9] After her marriage, the principal claimant continued to be harassed and watched by her family and her in-laws, who demanded that she stay confined at home and not work.
- [10] In XXXX, during her pregnancy, the female claimant was forced to do heavy household chores, which made her pregnancy difficult.
- [11] Beginning at the age of one, the minor claimant was mistreated by both families, who demanded that she start wearing the veil at the age of four and be enrolled in a Quranic school.
- [12] In 2017, the claimants fled to Bejaïa, but conflicts arose and the families demanded that the claimants return to Algiers.
- [13] With their visas, the claimants left Algeria on XXXX XXXX XXXX 2019, and arrived in Canada the same day.
- [14] Their refugee protection claims were referred to the Refugee Protection Division (RPD) on XXXX XXXX XXXX 2019.

DETERMINATION

- [15] After reviewing all of the evidence, including the claimants' testimonies, the panel concludes that the claimants have failed to establish that they would face a serious possibility of persecution on a Convention ground or that, on a balance of probabilities, they would be personally subjected to a danger of torture, a risk to their lives, or a risk of cruel and unusual treatment or punishment, if they were to return to their country.
- [16] This determination is based on the reasons presented below.

ANALYSIS

Identity

- [17] The claimants' identities were established, on a balance of probabilities, by means of copies of their passports filed in evidence.³

Section 96 or subsection 97(1) of the Immigration and Refugee Protection Act

- [18] Given that the principal claimant alleges a fear of being mistreated by her family members and in-laws because her lifestyle does not conform to family traditions, the panel is of the view that her allegations raise a nexus to one of the five Convention grounds, namely membership in the particular social group of women in Algeria.
- [19] The panel is of the opinion that the co-claimant's fears, which stem from his wife's lifestyle which does not conform to family traditions and from their flight to Canada, raise a nexus to a Convention ground, namely the particular social group of the family.
- [20] Lastly, in the panel's opinion, given that the minor claimant fears that a stringent upbringing would be imposed in the event of her parents' forced separation, her allegations also raise a nexus to a Convention ground, namely the particular social group of the family.

Credibility**Mistreatment of the principal claimant and the minor claimant**

- [21] The panel finds it credible that the female claimant was raised in a conservative family that adheres to traditions; however, the panel did not find the female claimant credible regarding the mistreatment she suffered following her marriage (2015-2019), for the following reasons.
- [22] In the panel's opinion, the female claimant's testimony was confusing and, in some areas, inconsistent regarding the mistreatment she allegedly suffered.
- [23] For example, when she was asked to describe the problems she had with her uncles, she explained that her uncles had insulted her and beaten her so badly that she had passed out. When asked if her uncles had physically assaulted her following her marriage, the female claimant testified that they had before her marriage, but after her marriage, they had insulted her and did not allow her to go to the hospital to get her daughter vaccinated. Then, the female claimant stated that had suffered a hemorrhage in XXXX 2016 after meeting with her uncle, who her beaten her [translation] "badly with his hands" and chased her into the street. Following this incident, she allegedly went to the hospital. When the panel noted that the female claimant had stated earlier that her uncles no longer beat her following her marriage, the female claimant reiterated that her uncles had beaten both her and the minor claimant. Next, she stated the following: [translation] "Before I was married, it was violent, but after that, it was less violent, they insulted me and pushed me." When asked if the hospital had given her a document following her injuries, the female claimant replied that she had not told the doctor that she had run. The panel then asked the principal claimant to clarify her statement because she had explained earlier that she was also beaten during that incident. The female claimant adjusted her testimony and stated that her hemorrhage had resulted from her running and from the beating she had suffered. The panel then asked why this incident was not mentioned in her written account. The female claimant testified that she had chosen to mention the [translation] "main facts" and wanted to wait until the

hearing to tell her entire story. The panel pointed out that this was a significant event, since she had been injured and had been taken to the hospital. The female claimant replied that she had mentioned in her written account that she had had a miscarriage six months after getting married and that she had intended to describe the XXXX 2016 incident at the hearing.

- [24] In the panel's opinion, the female claimant did not reasonably explain the inconsistencies in her statements regarding her uncles' actions. The panel considers that there is an important distinction between, on the one hand, insulting and pushing the female claimant and, on the other hand, chasing her and beating her [translation] "badly with his hands." In addition, the panel is of the opinion that the female claimant adjusted her testimony when the panel asked her to clarify her testimony regarding her statements to the doctor at the hospital. Moreover, in the panel's view, the female claimant did not reasonably explain why she omitted the attack in XXXX 2016 from her BOC Form. The panel is of the opinion that this is a significant event, since it occurred after her marriage, when she was pregnant with her daughter and, during this incident, one of her uncles allegedly chased her into the street and [translation] "beat her badly with his hands." At the beginning of the hearing, the female claimant confirmed to the panel that she had read her BOC Form in its entirety and that the information it contained was complete, true and correct. When the female claimant completed her BOC Form, the instructions stated that she must include "everything that is important."⁴ The fact that the female claimant mentioned another event in her account, namely a miscarriage six months into her marriage, does not adequately explain why she would not also have included the incident in XXXX 2016. In fact, the panel notes that the miscarriage she disclosed in her written account did not occur because of a beating by her uncles, but because of [translation] "stress, pressure and forced labour," according to her written account. Therefore, the circumstances surrounding this incident are different from the circumstances the female claimant described with respect to the incident in XXXX 2016.
- [25] In its analysis of the inconsistencies in the female claimant's testimony at the hearing and the omission from her written account of an event that occurred in XXXX 2016, the panel considered Guideline 4 and the possibility that the family context of mistreatment the female claimant described may have affected her testimony. However, the panel notes that, during the hearing, the female claimant showed no hesitation when testifying about the mistreatment she allegedly suffered. Furthermore, the female claimant did not submit any medical documents stating that she may be suffering from battered woman syndrome, which could potentially have shed light on some of the discrepancies between her written account and her testimony at the hearing.
- [26] Consequently, based on the inconsistencies in the female claimant's testimony regarding the assault she allegedly experienced in XXXX 2016 and the omission of this event from her written account, the panel draws a negative inference regarding the allegations of mistreatment.

Their stay in Bejaïa

- [27] In the panel's opinion, the claimants' testimonies were not credible regarding their stay in Bejaïa, for the following reasons.
- [28] In their written account, the claimants allege that they decided to flee to Béjaïa to hide in XXXX 2017. At the hearing, the co-claimant stated that one of his wife's uncles, a police officer, visited him in Algiers, lost his temper and threatened him, which triggered his decision to leave for Béjaïa in XXXX 2018. He also testified that the claimants remained in Bejaïa until XXXX 2019 and then travelled back and forth between Algiers and Bejaïa to prepare for their trip and to get the minor claimant vaccinated. Then, because this uncle did not accept their move to Bejaïa, he allegedly travelled to Bejaïa in XXXX 2018 to demand that they return to Algiers. For her part, the principal claimant testified that they had left for Béjaïa in 2017, then changed her statement and testified that they had left in 2019, and finally, that it was actually in 2018. She also stated that she had travelled back and forth to Algiers for medical appointments. When asked to explain to the panel why, in their written account, the claimants alleged that they had left for Bejaïa in XXXX 2017, not in 2018, the principal claimant stated that they had wanted to go to Béjaïa in 2017, but they had [translation] "travelled back and forth." The panel then asked why their stay in Béjaïa, which the claimants described at the hearing and which allegedly lasted six months, from XXXX 2018 to XXXX 2019, was not mentioned in their BOC Forms. The female claimant repeated the following: [translation] "I travelled back and forth between Algiers and Bejaïa."
- [29] The panel is not satisfied with the female claimant's explanations regarding the discrepancy between her written account and the claimants' statements at the hearing. While the panel is aware that it can be difficult to reconstruct a sequence of events, the panel notes that the claimants' written account mentions the date of XXXX 2017 and specifies that the claimants went [translation] "to hide in Bejaïa," but does not refer to any trips back and forth between the cities of Algiers and Béjaïa. In addition, this account does not mention a six-month stay at the home of the co-claimant's parents from XXXX 2018 to XXXX 2019. More importantly, the written account makes no mention of the uncle, a police officer, going to their home in Algiers and making the threats that triggered their flight to Béjaïa, nor does it mention this uncle going to Béjaïa to demand that they return to Algiers.
- [30] In the panel's opinion, the omissions noted relate to key elements since they go to the heart of the claimants' decision [translation] "to hide in Béjaïa" and the fact that the threats continued in Béjaïa, where they were hiding. At the beginning of the hearing, the claimants confirmed to the panel that they had read their BOC Forms in their entirety and that the information they contained was complete, true and correct. When the claimants filled out their BOC Forms, the instructions stated that they were to include "everything that is important."⁵

- [31] The panel draws a negative inference regarding the credibility of the claimants' allegations about their stay in Béjaïa because of the discrepancies between their statements at the hearing and their BOC Forms, and because of significant omissions from their BOC Forms.
- [32] Therefore, for all of the reasons set out above, including the omissions and discrepancies between the claimants' statements and their BOC Forms, which were not reasonably explained, the panel does not find credible the claimants' allegations about the mistreatment the female claimants suffered and about the threats made by the principal claimant's uncles.
- [33] Since the panel does not believe the claimants' allegations, it also does not believe the minor claimant's allegations regarding the mistreatment and the threats of a religious and conservative upbringing.

Delay in leaving the country

- [34] The claimants left Algeria on XXXX XXXX XXXX 2019. However, they applied for Canadian visitor's visas in XXXX 2017, and these were issued in XXXX 2017.
- [35] The panel asked the co-claimant about the reasons behind the application for a tourist visa in XXXX 2017. He replied that, as a gift, one of the principal claimant's uncles had given them a trip to New Brunswick, where he lives. However, the claimants did not leave then because [translation] "they were not ready."
- [36] In 2018, the co-claimant took steps to apply for a student visa for Canada after they decided to flee the country. He received a confirmation of his application in XXXX 2018 and the Quebec acceptance certificate in XXXX 2018, but the visa was refused in XXXX 2018.
- [37] In XXXX 2019, the male claimant was refused a US visa.⁶ When asked about this, the co-claimant stated that he had talked about his situation with a cousin living in the US, who had told him that moving to the US could perhaps be a solution. He added the following: [translation] "I just wanted a solution for myself, my goal was to flee, it was either the US or Canada."
- [38] The principal claimant testified that she began to fear for her life and her daughter's life when she turned XXXX XXXX old, that is, around XXXX XXXX. For his part, the co-claimant stated that his fear began [translation] "when [his] daughter was XXXX XXXXorXXXX XXXX XXXX old," that is, in XXXX XXXXtoXXXX XXXX XXXX.
- [39] The panel then asked why the claimants had not taken the first opportunity to leave their country at the end of 2017 or even in mid-2018, when they already had visas for Canada. The principal claimant answered: [translation] "When we left for Béjaïa, we thought that he would leave us alone, that's when we decided to leave." The panel noted that, earlier in the hearing, the principal claimant had stated that she had been mistreated by her uncles, before and after her marriage, chased and beaten by one of her uncles in XXXX 2016, and hit by her brother when she was pregnant. She also stated that her uncles had attacked her daughter. In response to the panel, the principal claimant explained that she had not yet

completed her postpartum medical appointments: [translation] "I did not like the idea of leaving without a full recovery; I had given birth, I wasn't resting."

- [40] The panel does not find the principal claimant's explanations reasonable. When the principal claimant allegedly began fearing for her life, the claimants already had Canadian visas and the support in Canada of an uncle who had given them the trip as a gift. While the panel is aware that medical follow-ups and rest after a difficult delivery are significant elements, it is nevertheless of the opinion that the alleged mistreatment, in particular of the minor claimant, is equally important, if not more so, with regard to the potential impact of this mistreatment on the claimants. Moreover, the female claimant clearly stated that she began fearing for her life as early as XXXX 2017 and that, in 2018, she could no longer tolerate [translation] "the climate of terror" her daughter was living in. Lastly, the claimants testified that, although they were [translation] "hiding" in Bejaïa, the female claimant's uncles found them and continued to pressure them to move back to Algiers.
- [41] In addition, the panel questions the decision to take steps to obtain two other visas, in 2018 and 2019, respectively, as the claimants already had visas for Canada issued in XXXX 2017.
- [42] The panel does not accept the co-claimant's explanations as to why he took steps to obtain a student visa and a visa for the US when he had had the means to leave Algeria since XXXX 2017. It is reasonable to expect individuals fearing for their lives to take the first available opportunity to leave the country.
- [43] Therefore, for all the reasons noted above, the panel is of the opinion that the claimants' behaviour is inconsistent with that of people fearing for their lives. Consequently, the panel draws a negative inference from that behaviour regarding the claimants' overall credibility.

Delay in claiming refugee protection in Canada

- [44] The claimants arrived in Canada on XXXX XXXX XXXX 2019, and their refugee protection claims were referred to the RPD on XXXX XXXX XXXX 2019. The panel is aware that the two-and-a-half-month delay between their arrival in Canada and their refugee protection claims is not, in itself, significant. However, in its analysis below, the panel took various elements into account.
- [45] When the co-claimant was asked earlier in the hearing about his intentions when the claimants arrived in Canada, he stated that the [translation] "only thing running through his mind" was to flee and that he wanted to "protect his family." When asked whether he had looked into the possibility of claiming protection in Canada, the co-claimant stated that he was unaware that Canada [translation] "offered protection." When asked to explain how he had looked into the possibility of claiming protection in Canada, he stated that one of his friends who was living in Canada, with whom he had been in touch from Algeria, had told him that Canada could protect them. The co-claimant then did some research and found a lawyer. When asked whether he had contacted his friend from Algeria to tell him about his situation, the co-claimant stated that he had in fact contacted him, that he had told him

[translation] "some things" but not all of the details because he was "stressed." The panel asked him if he had taken any steps to look into refugee protection in Canada after arriving in this country and before contacting his friend who lived here, that is, between XXXX and XXXX 2019. The co-claimant answered no. When the panel asked him to elaborate, the male claimant stated that he was unaware of that possibility and that his only objective was to flee his country. He added that it was not until a few months after they arrived in Canada, as their legal stay was ending, that the claimants became [translation] "stressed" and therefore contacted their friend living in Canada for information.

- [46] The panel does not consider the co-claimant's explanations reasonable with respect to his lack of effort to look into the possibility of claiming refugee protection in Canada. The claimants testified that they began to fear for their lives toward the XXXX of 2017 in the principal claimant's case, and around XXXX XXXX or XXXX XXXX 2018 in the co-claimant's case. The co-claimant also argued that he had left for Canada in order to [translation] "protect his family." Through his many attempts to obtain a tourist visa and a student visa for Canada, as well as a US visa, the co-claimant demonstrated that he was able to take steps to look into how to stay in foreign countries. The male claimant also stated that he had been informed that he could not stay in Canada for more than six months. It is therefore reasonable to expect that the claimants would have made efforts to look into refugee protection in Canada upon their arrival in this country. In addition, the claimants stated that they had an uncle and a friend living in Canada, with whom they had already been in contact from Algeria. It is therefore reasonable to believe that the claimants would have taken the necessary steps to contact them before leaving, or upon arriving in Canada, to explore their options for staying in Canada.
- [47] In light of the foregoing, the panel draws a negative inference from the claimants' lack of efforts after arriving in Canada to look into the possibility of seeking protection here.
- [48] The panel concludes that this is an additional, though not determinative, ground that supports its finding that the claimants are not credible.
- [49] Therefore, for all of the reasons outlined above, including the omissions and discrepancies, as well as the claimants' delay in leaving their country, the panel finds the claimants not credible and concludes that they have not established that they would face a serious possibility of persecution by reason of their behaviour that does not conform to family traditions, or that, on a balance of probabilities, 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, should they return to their country.

CONCLUSION

- [50] For all of these reasons, the panel determines that the claimants, XXXX XXXX XXXX XXXX XXXX and XXXX XXXX, are neither "Convention refugees" nor "persons in need of protection."

DETERMINATION

[51] Consequently, the panel rejects the refugee protection claims made by XXXX XXXX XXXX
XXXX XXXXandXXXX XXXX XXXX.

Lise Pénisson

September 23, 2020

IRB translation

Original language: French

1 Immigration and Refugee Board of Canada (IRB). Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution. Guideline issued by IRB pursuant to subsection 65(3) of the Immigration Act. Effective November 13, 1996.

2 Document 2 - Basis of Claim Form (BOC Form).

3 Document 1 - Information package provided by the Canada Border Services Agency (CBSA) and/or Immigration, Refugees and Citizenship Canada (IRCC): Passport.

4 Document 2 - BOC Form, page 2.

5 Document 2 - BOC Form, page 2.

6 Document 1 - Information package provided by the CBSA/IRCC.

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Immigration and Refugee

Board of Canada

Refugee Protection Division

Commission de l'immigration

et du statut de réfugié du Canada

Section de la protection des réfugiés

RPD.29.01 (October 4, 2019)

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RPD File No. / No de dossier de la SPR : MB9-14199

MB9-14249 / MB9-14267

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Prepared on 25 October 2026 · Esheria