

CANADA / JUDGMENT

MB9-12504

COURT

Refugee Appeal Division

DECIDED

9 September 2020

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RAD File No. / No de dossier de la SAR : MB9-12504 MB9-12505 Private Proceeding / Huis clos
Reasons and Decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXX XXXX XXXXXXXXXX XXXX Personnes en cause Appeal considered / heard at Montréal,
Quebec Appel instruit / entendu à Date of decision September 9, 2020 Date de la décision Panel
Me Tammy Tremblay Tribunal Counsel for the persons who are the subject of the appeal Aristide
Koudiatou Mianata Conseil des personnes en cause Designated representative XXXX XXXX XXXX
XXXX Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS
FOR DECISION OVERVIEW

- [1] I dismiss the appeal.
- [2] The principal appellant, XXXX XXXX XXXX XXXX, who was appointed as the designated representative of her minor daughter, XXXX XXXX (the minor appellant), is appealing against the decision of the Refugee Protection Division (RPD) that rejected her refugee protection claim.
- [3] The principal appellant is a citizen of Haiti. Her daughter is an American citizen. The principal appellant claims that she was persecuted by the Parti haïtien Tèt Kalé [Haitian Tèt Kalé Party] (PHTK) for her political opinions in Haiti from XXXX to XXXX 2014. She left Haiti permanently in XXXX 2014, and moved to the United States, where she lived until she came to Canada in XXXX 2017.
- [4] The RPD concluded that the principal appellant lacked credibility on key points in her refugee protection claim. It also concluded that there was no residual risk if she were to return to Haiti. The principal appellant did not raise any particular fear regarding the minor appellant, other than a prospective separation if the minor appellant were to move back to the United States. The RPD referred to the established case law, according to which the protection of the family unit is not part of its mandate, to conclude that it had not been established that there would be a serious possibility of persecution or harm to the minor appellant if she were to return to the United States.
- [5] The principal appellant criticizes the RPD for not believing her testimony that her family had been threatened after she left Haiti simply because she did not indicate those incidents in her Basis of Claim Form (BOC Form) as she thought that it was necessary for her to write

about the problems experienced by others than herself in that form. The principal appellant maintains that the RPD tested her on her knowledge of politics, then carefully analyzed her, and finally drew negative credibility inferences. Lastly, the principal appellant claims that the RPD should have analyzed her daughter's fear if she were to return to Haiti.

[6] The determinative issue in this appeal is the principal appellant's credibility.

ANALYSIS

[7] My role is to examine all of the evidence and establish whether the RPD's decision was correct.¹ The RPD was correct to conclude that the principal appellant was not credible

[8] The RPD concluded that the principal appellant lacked credibility for the following reasons.

- There is no mention on her Basis of Claim Form (BOC Form) of threats against and visits made to her family members following her departure.
 - There were contradictions in her testimony that she had been the XXXX for Mr. XXXX electoral campaign from XXXX 2014 to XXXX XXXX XXXX 2014, and that on XXXX XXXX, 2014, Mr. XXXX allegedly joined the PHTK, the party that she has been allegedly afraid of since XXXX 2014.
 - She had no knowledge of the party or the leader of the party that won the municipal elections.
 - She had no knowledge of the party or the leader of the party that won the parliamentary elections in the XXXX electoral district.
 - She adjusted her testimony when she was confronted with her knowledge of the political system.
 - Her behaviour was inconsistent with that of a person fearing for her life because she returned to Haiti after staying in the United States for one month, although she claims that she was persecuted in her country.
 - She provided a vague and laboured testimony about her duties, given that she allegedly founded her own political party, the XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX [XXXX XXXX XXXX XXXX XXXX XXXX XXXX] (XXXX).
- [9] In this decision, I will simply review the RPD's decisions that are challenged by the principal appellant. That said, I reviewed all of the conclusions in the RPD's decision and they are correct. Omission to include visits made to and threats made against family members in the BOC Form

- [10] The RPD drew a negative inference regarding the principal appellant's credibility because she omitted to include important information regarding her refugee protection claim in her BOC Form, namely that her family members were visited and threatened by individuals looking for her four times between 2015 and 2017.
- [11] To ensure that the principal appellant's arguments about this omission are reported faithfully, I am reproducing, as they appear, the paragraphs in her memorandum addressing this issue. [translation]
5. The RPD began the analysis of the appellant's credibility by stating that it noted that there was no mention of those visits made to and threats made against the appellant's family members in her Basis of Claim Form (BOC Form);
 6. When the RPD asked for explanations on this point, the appellant testified that she is the one who fled and she did not see why she would describe the problems experienced by her family members since they were still in Haiti;
 7. The RPD rejected the appellant's explanations and drew a negative inference from this "significant" omission, which undermined the principal appellant's credibility;
 8. However, during her testimony, the appellant confirmed at the start of the hearing that her BOC Form was complete, true and correct, and no correction or amendment was required. Consequently, when the appellant testified that she did not see why she would write about the problems experienced by her family members, she truly believed that her BOC Form was complete.
 9. However, it is acknowledged that a refugee protection claimant's testimony benefits from a presumption of truth, unless there is a reason to doubt its truthfulness.
 10. Consequently, the RPD did not believe the allegations of visits made to and threats made against the appellant's family members that occurred on XXXX XXXX XXXX 2015, in XXXX 2016, and on XXXX XXXX, 2016, because the appellant truthfully testified that she did not believe that she had to write about the problems experienced by her family. In this regard, the RPD's decision is unreasonable.
- [12] With all due respect, the explanation during the hearing and in the principal appellant's memorandum, namely that she did not think that she had to write about the problems experienced by her family, is not valid. First, the RPD did not criticize her for this reason, but rather for not including in her BOC Form significant facts that are directly related to her refugee protection claim and her prospective risk if she were to return to Haiti. The appellant's other explanation during the hearing, namely that she did not have any reason to mention her family members as they were still living in Haiti, does not explain the significant omission either. As the RPD reminded the principal appellant during the hearing, the BOC Form specifically asks refugee protection claimants to include any threat, ill-treatment or harm they or their family members have experienced. This omission is very significant because it relates to the prospective risk to which the principal appellant is

exposed in Haiti, a country that she left in 2014. The omission is also significant because her family allegedly received threats from the agents of persecution whom the principal appellant allegedly fears and because they are apparently looking for her. I note that the principal appellant testified that she was informed of those threats as early as 2015, well before she completed her BOC Form. Lastly, I note that a lawyer helped the principal appellant to complete her form and she signed the document in XXXX 2017, after most of the visits and threats had occurred. The contradictions in the principal appellant's testimony

- [13] The RPD found several significant contradictions between the principal appellant's testimony and the documentary evidence, which she was unable to explain. In her memorandum, the principal appellant maintains that the RPD allegedly [translation] "tested her political knowledge" and "was satisfied with drawing negative inferences about the appellant's credibility and found her testimony not credible when she did not have the right answer." She adds that the RPD allegedly attributed too much importance to "peripheral issues that were not fundamental to the very essence of the refugee protection claim."
- [14] As the case law cited by the principal appellant indicates, the credibility concerns of the RPD or the Refugee Appeal Division (RAD) regarding a claimant must focus on significant elements of their refugee protection claim, and this is what the RPD limited itself to in its decision, for the following reasons.
- [15] First, the RPD carried out a substantial analysis of the appellant's refugee protection claim and focused on the core aspects of the refugee protection claim in its analysis. The negative inferences drawn by the RPD about the principal appellant's credibility concern the very basis of the refugee protection claim. With respect to the omission that was already addressed, the RPD's conclusions focused on the risk of persecution for the appellant if she were to return to Haiti. This is a significant element, because past persecution is not sufficient to obtain refugee status; the refugee protection claimant must establish a future risk of persecution or harm. The numerous contradictions noted by the RPD in the principal appellant's testimony concern the appellant's political involvement, namely the very reason why she claims she had to leave Haiti. For example, during the hearing, the appellant contradicted herself by testifying that from XXXX 2014 to XXXX XXXX, 2014, she was the XXXX of the campaign to elect Mr. XXXX to represent the XXXX electoral district, and later testified that on XXXX XXXX XXXX 2014, Mr. XXXX allegedly joined the PHTK, the party she had allegedly been afraid of since XXXX 2014. When the RPD asked her to explain this contradiction, the appellant merely replied that she was still a member of the XXXX after Mr. XXXX left to join the PHTK. This answer in no way explains her testimony that she was the XXXX of Mr. XXXX election campaign until XXXX XXXX XXXX 2014, whereas he had left the party XXXX XXXX earlier.

- [16] With regards to the argument that the analysis of the principal appellant's refugee protection claim was limited to her political knowledge, it must be noted that this was not the case, because the numerous credibility issues already mentioned and those that follow are not related to her political knowledge. I am of the opinion that in this case, it was open to the RPD to question the appellant about her political knowledge, because
- she claims that she fled persecution not only because of her political opinions, but also because of her political involvement;
 - she claims that she was the XXXX of a candidate's election campaign during the 2014 elections;
 - she claims that she was the XXXX XXXX of the XXXX;
 - she was allegedly selected as a XXXX candidate for the commune of XXXX during the 2014 elections; and
 - she says that she was perceived as a political opponent by the PHTK because of her political involvement.
- [17] Considering the appellant's statements regarding her political involvement, the RAD would have expected the principal appellant to provide correct answers to the RPD's simple questions regarding her knowledge of politics in Haiti, such as who XXXX XXXX XXXX during the last XXXX XXXX for XXXX district. The RPD correctly rebutted the presumption of truthfulness
- [18] The RPD did not err in rebutting the presumption of truthfulness. While there is a presumption that a sworn testimony is true, this presumption can be rebutted. In Maldonado,² the Federal Court of Appeal teaches that when a claimant's evidence contains an omission, as well as significant contradictions and discrepancies, as is the case here, the presumption of truthfulness is rebutted and the panel is justified in making negative credibility findings.
- [19] The RPD had good reasons to doubt the truthfulness of the principal appellant's testimony, in particular because
- She failed to include essential information on significant events in her written account;
 - She contradicted herself several times during her testimony;
 - She did not seem to understand the electoral system or know the candidates in an election during which she was allegedly the president of the election campaign for one of the candidates;
 - She did not have a good explanation for her failure to do so;
 - Her testimony was confused, especially when she was confronted with her lack of knowledge of the political system in Haiti; and

- After leaving Haiti on XXXX XXXX, 2014, for the United States, she voluntarily returned to Haiti XXXX XXXX later without any valid reason for doing so, despite her claim that she has a fear of being persecuted there, which is inconsistent with the behaviour of an individual seeking refugee protection.
- [20] All these factors also undermine the appellant's credibility to such a degree that they rebut the presumption of truthfulness.
- [21] The RPD did not err by concluding that the appellant is not credible. The minor appellant's refugee protection claim
- [22] The principal appellant argues that the RPD should have analyzed her daughter's fear if she were to return to Haiti. I disagree with this argument since the minor appellant is not a citizen of that country.
- [23] Following my own independent analysis of the record, I conclude that the appellants did not establish that the minor appellant would face persecution or would be subjected to a risk to her life if she had to move back to her country of citizenship, the United States of America. Consequently, I conclude that the RPD made the appropriate decision by rejecting the minor appellant's refugee protection claim.

CONCLUSION

- [24] I dismiss the appeal and confirm the RPD's determination that the appellants are neither Convention refugees nor persons in need of protection. Tammy Tremblay Me Tammy Tremblay September 9, 2020 Date IRB translation Original language: French 1 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93; Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145. 2 Maldonado v. Canada (Minister of Employment and Immigration), [1980] 2 F.C. 302 (C.A.).

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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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