

CANADA / JUDGMENT

MB9-04259

COURT

Refugee Appeal Division

DECIDED

21 January 2020

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RAD File No. / No de dossier de la SAR : MB9-04259 MB9-04260 Private Proceeding / Huis clos
Reasons and Decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXX XXXXXXXXXX XXXX XXXX Personnes en cause Appeal considered / heard at Montréal,
Quebec Appel instruit / entendu à Date of decision January 21, 2020 Date de la décision Panel
Mokhtar Lamani Tribunal Counsel for the persons who are the subject of the appeal Me Cristian
Roa-Riveros 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 (principal appellant) and his spouse, XXXX XXXX XXXX (associate appellant), citizens of Haiti, are appealing against a decision of the Refugee Protection Division (RPD) dated February 11, 2019, rejecting their refugee protection claims for lack of credibility.
- [2] The appellants allege that the RPD erred in its conclusions. They are asking the Refugee Appeal Division (RAD) to allow their appeal, grant them a de novo hearing before a differently constituted panel and render any other decision considered to be fair and equitable.¹
- [3] The appellants did not submit any new evidence and are not requesting a hearing before the RAD.

DETERMINATION

- [4] The RAD confirms the RPD's determination and dismisses the appeal.

BACKGROUND

- [5] According to their Basis of Claim Form (BOC Form), the appellants fear one XXXX XXXX XXXX XXXX who was dismissed on October 10, 2009, after working as an employee in the female appellant's XXXX XXXX XXXX
- [6] The individual named XXXX XXXX XXXX would hide out every day in front of the appellant's store to observe her. Feeling threatened, Ms. XXXX XXXX XXXX ended up abandoning the store on November 6, 2009.

- [7] On XXXX XXXX, 2009, the female appellant moved to the United States alone. Her husband joined her on XXXX XXXX XXXX 2011.
- [8] They moved to and worked in the United States for a little over six years without applying for asylum. On XXXX XXXX, 2017, they decided to illegally cross the Canadian border and claim protection in Canada.
- [9] The RPD concluded that the appellants had not established that there was 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, to a risk to their lives or to a risk of cruel and unusual treatment or punishment if they were to return to their country.²
- [10] The appellants submit that the issues are: A) Is the claim analysis complete? B) Is the credibility analysis reasonable?
- [11] The determinative issue in this case is whether the RPD erred in its assessment of the appellants' credibility. STANDARD OF REVIEW
- [12] The RAD reviews RPD decisions by applying the correctness standard of review after conducting its own analysis of the record. The exception to this rule concerns situations where the RPD enjoys a meaningful advantage when assessing credibility.⁴ That said, the RAD's role is to determine whether, as the appellants submit, the RPD did indeed err.
- [13] The RAD applied the correctness standard of review in this case.

ANALYSIS

Is the analysis of the associate appellant's refugee protection claim incomplete?

- [14] The appellants submit that the RPD did not consider the allegations regarding the fear of persecution based on the female appellant's membership in the particular social group of women who live alone in Haiti.⁵ Consequently, they are of the opinion that the RPD's analysis is incomplete and that its conclusion is unfounded.
- [15] The appellants cite the case law and documentary evidence concerning violence against women in Haiti and criticize the RPD for failing to conduct an analysis under section 96 of the Immigration and Refugee Protection Act (IRPA) in the case of the female appellant.
- [16] The RAD is of the opinion that violence against women is widespread in Haiti. The documentary evidence in the National Documentation Package⁶ (NDP) refers to specific categories of women who are more likely to suffer harm.
- [17] According to Tab 5.4 of the NDP on Haiti, women are particularly affected by the fragile socioeconomic situation; employment and access to housing are difficult for women who live alone; women meet their needs with help from their family community; and family and social networks are very important.

- [18] Women with little education who live alone are at greater risk, as are women who live in shantytowns or precarious dwellings. In the RAD's opinion, the female appellant is not a member of any of the vulnerable categories identified in the package. In the event of a return, she would have a spouse and extended family in Haiti to protect her. She did not claim that she would end up destitute in informal housing.
- [19] Therefore, the female appellant had the burden of establishing that there is a serious possibility of persecution or that she would be subjected to a danger of torture, to a risk to her life or to a risk of cruel and unusual treatment or punishment, which she failed to do.
- [20] In the RAD's view, the female appellant did not demonstrate a serious possibility of persecution because she is a woman within the meaning of section 96 of the IRPA and did not present any new evidence within the meaning of paragraph 97(1)(b) of the IRPA.
- [21] In addition, the RAD notes that the female appellant did not express having a fear of persecution by reason of her gender, either in her written account or in her BOC Form or at the hearing.
- [22] Both the Guidelines and the case law⁷ establish that women can be considered a particular social group within the meaning of the Convention. However, membership in the particular social group of women is not sufficient to result in a finding of a serious possibility of persecution on that ground.⁸
- [23] The documentary evidence states that the situation is particularly difficult in Haiti for women who are homeless, who live in displaced persons camps following the earthquake or who live in extremely impoverished neighbourhoods near urban centres such as Port-au-Prince.⁹
- [24] In Josile,¹⁰ the Federal Court emphasized the importance of considering the appellant's personal situation of each-the conditions in which they live or will live and the family circle.
- [25] The RAD is of the opinion that the RPD did not err in analyzing the female appellant's claim solely under section 97 of the IRPA. Is the analysis of the appellants' credibility reasonable?
- [26] The appellants submit that the RPD's analysis of their credibility is unreasonable.¹¹ They criticize the RPD for being overzealous in identifying factors that undermine their credibility and that it was rigid and insensitive to the appellants' problems.¹²
- [27] Beyond general grievances without any specific arguments-too much attention to minor details, a microscopic and unreasonable analysis, a minimization of the appellants' fear, overzealousness during the hearing, over-vigilance or a credibility analysis conducted like a memory test-the appellants submitted three specific criticisms against the RPD's decision. Namely, the RPD's failure to give the appellants the opportunity to provide explanations and justification, followed by an analysis marred by errors of procedural fairness and, lastly, the probative value of the documentary evidence filed by the appellants.¹³

- [28] The RAD disagrees with the appellants' arguments.
- [29] The RPD had major concerns regarding the appellants' credibility. It raised significant contradictions and inconsistencies in the evidence provided by the appellants that was not explained to the RPD's satisfaction. In fact, the appellants acknowledge these problems in their memorandum at paragraph 37: [translation] "The panel certainly raised some credibility issues that are understandable and even reasonable, but we cannot help but firmly believe that its analysis is marred by unjustified errors."
- [30] Furthermore, as an example of the associate appellant's vague and evasive testimony, when the RPD questioned her about the date on which she decided to dismiss her employee XXXX XXXX (the agent of persecution), the RPD was unable to obtain an answer, despite the fact that this question was posed several times throughout the hearing. The question was even posed by counsel at the beginning of his submissions, without obtaining a specific answer.
- [31] On the other hand, and contrary to subparagraphs 3(3)(g)(i) and (ii) of the RAD Rules, the appellants' memorandum does not include full and detailed submissions regarding errors that are the grounds of appeal or where the errors are located in the RPD's reasons, in the transcript or in the recording.
- [32] As for procedural fairness and the failure to give the appellants the opportunity to provide explanations, the RAD disagrees with those arguments. The RAD reviewed the entire record and listened to the complete recording of the hearing. Throughout, the member was courteous and professional, made sure that the appellants understood the questions and kept repeating them when the appellants' statements seemed inconsistent.
- [33] The RAD notes that the appellants' answers were evasive and marred by a number of omissions and contradictions. This is clearly a case in which one may conclude that the appellants' behaviour shows a lack of subjective fear or that it is inconsistent with that of a person who truly fears for their life.
- [34] Where procedural fairness is concerned, consideration must be given as to whether the principles of natural justice were complied with, taking into account the specific context of the case in question.¹⁴
- [35] The purpose of procedural fairness is to ensure that the claimant understands the proceedings, has a reasonable opportunity to tender any evidence that supports their claim and is given a chance to persuade the RPD that their claim is well-founded.¹⁵
- [36] All these principles were complied with in this case. The RPD's decision is correct. The RPD did not breach the principle of natural justice or procedural fairness.
- [37] Lastly, concerning the rejection of the documentation presented by the appellants,¹⁶ the RPD concluded that neither of the two first documents—a complaint to the police and an excerpt from the minutes of the registry for the events of December 7 and 8, 2009—state that

the agent of persecution, XXXX XXXX XXXX, is the author of the acts committed. The RPD concluded that they had no probative value because they establish only an act of vandalism. The third document, a patent certificate, was delivered to a business called XXXX XXXX XXXX but does not contain any reference to the appellants' names. The RPD assigns it no weight.

- [38] As established by the case law, the RPD can reach a conclusion regarding the weight to assign to a document after having assessed its credibility or probative value or both.¹⁷ Furthermore, it is open to the RPD not to give evidentiary weight to documents based on underlying elements found not to be credible.¹⁸
- [39] The documentary evidence is not assessed in isolation from the overall claim and, where the claimant's personal testimony is not credible, it is reasonable for the RPD to have credibility concerns with the supporting documentary evidence and to accord it only minimal weight.¹⁹
- [40] In the RAD's opinion, the RPD's conclusion in this regard is correct.
- [41] Therefore, the RAD concludes that the RPD's determination must be upheld. The RPD rendered the correct decision in the circumstances, given that non-credible testimony concerning central elements of the claim was evident throughout the questioning. The RPD's other conclusions
- [42] The other conclusions drawn by the RPD were not contested, in particular the failure to apply for asylum in the United States while the appellants were living there for a period of more than six years²⁰ before arriving in Canada, as well as the internal flight alternative in the city of Cap-Haïtien, the male appellant having twice stated that he did not face any risk in moving back to that city.²¹ After analysis, the RAD considers these conclusions to be correct.
- [43] The appellants did not establish their credibility or demonstrate that they would face a serious possibility of persecution should they return to their country of origin, Haiti. They also did not establish, on a balance of probabilities, that they would be subjected to a risk to their lives or to a risk of cruel and unusual treatment or punishment.
- [44] Pursuant to paragraph 111(1)(a) of the IRPA, the RAD dismisses the appeal and confirms the RPD's determination that the appellants are neither Convention refugees nor persons in need of protection. Mokhtar Lamani Mokhtar Lamani January 21, 2020 Date IRB translation Original language: French 1 Appellants' memorandum, Conclusion, page 6. 2 RPD reasons, para. 2. 3 Appellants' memorandum, Submissions. 4 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93. 5 Appellants' memorandum, paras. 12 to 24. 6 National Documentation Package, Haiti, September 30, 2019, Tab 5.3: Violence, including sexual violence, against women; state protection and support services (2017-June 2019). Immigration and Refugee Board of Canada. June 14, 2019. HTI106291.FE. 7 Dezameau v. Canada (Citizenship and Immigration), 2010 FC 559, paras. 34 to 36. 8 Ibid., para. 29. 9

National Documentation Package, Haiti, September 30, 2019, Tab 5.12: Haïti : Les violences faites aux femmes. Office français de protection des réfugiés et apatrides (OFPRA). January 9, 2017. 10 Josile v. Canada (Citizenship and Immigration), 2010 FC 559. 11 Appellants' memorandum, para. 25. 12 Ibid. paras. 26 to 31. 13 Ibid. paras. 33 to 38. 14 Ching v. Canada (Citizenship and Immigration), 2015 FC 725, paragraph 75. 15 Nemeth v. Canada (Citizenship and Immigration), 2003 FCT 590, paragraph 10. 16 Appellants' memorandum, paragraphs 33, 34 and 35. (Exhibits C-2, C-3 and C-4 of the RPD record). 17 Magonza v. Canada (Citizenship and Immigration), No. IMM-1506-18, Grammond, January 7, 2019; 2019 FC 14, paragraphs 27 to 31. 18 Lawani v. Canada (Citizenship and Immigration), No. IMM-21-18, Gascon, September 17, 2018; 2018 FC 924 19 Ogaulu v. Canada (Citizenship and Immigration), No. IMM-3862-18, McDonald, April 30, 2019; 2019 FC 547, paragraph 26. 20 RPD reasons, para. 13. 21 Ibid. para. 14.

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RAD.25.02 (April 4, 2019) Disponible en français

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Prepared on 26 October 2026 · Esheria