

CANADA / JUDGMENT

MB9-03804

COURT

Refugee Appeal Division

DECIDED

12 February 2020

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RAD File No. / No du dossier de la SAR : MB9-03804 MB9-03805 Private Proceeding / Huis clos
Reasons and Decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXX XXXX XXXX XXXX Personnes en cause Appeal considered / heard at Montréal, QC Appel
instruit / entendu à Date of decision February 12, 2020 Date de la décision Panel Me Toni Jedid
Tribunal Counsel for the persons who are the subject of the appeal Me François Dostaler 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 (principal appellant), a Haitian citizen, and her daughter XXXX XXXX XXXX
XXXX (associate appellant), an American citizen, are appealing against the decision of the
Refugee Protection Division (RPD) rejecting their respective refugee protection claims based
on a lack of credibility and a lack of fear of persecution, by the associate appellant, in the
United States.
- [2] The appellants allege that the RPD's decision lacks consistency and intelligibility. They
allege a fear of returning to their respective countries of nationality.
- [3] The determinative issue is whether the RPD erred in its assessment of the principal
appellant's credibility and the associate appellant's fear of the United States.
- [4] I am of the opinion that the RPD did not err. I conclude that the appeal is dismissed.
FACTUAL BACKGROUND

- [5] The principal appellant alleges that she is a member of the Mouvement Action Socialiste
(MAS) [socialist action movement] and that she is persecuted by the member and associates
of the winning party, Parti haïtien Tèt Kalé (PHTK), in the XXXX XXXX XXXX XXXX XXXX
XXXX XXXX commune. On XXXX XXXX, 2015, she allegedly received threatening telephone
calls. On XXXX XXXX, 2015, three criminals allegedly broke into her home, but she was able
to run away. On XXXX XXXX, 2016, during XXXX XXXX XXXX XXXX XXXX XXXX XXXX
XXXX XXXX, her name was allegedly added to a list of persons to be executed. Her uncle
and aunt had to flee the country for Brazil. She alleges that her mother and sister sought
refuge in the city of XXXX and that one of her sisters was kidnapped on XXXX XXXX, 2018,
by criminals. ROLE OF THE REFUGEE APPEAL DIVISION

- [6] In accordance with Huruglica¹ and Rozas del Solar,² I have conducted my own analysis of all the evidence, including the audio recording, and I have applied the correctness standard of review.

ANALYSIS

- [7] First, I want to note that the RAD was informed that the appellants are no longer represented by the former counsel and that the current counsel is the individual representing them in this appeal. In this respect, the RAD provided the new counsel with an extension from January 24, 2020, to February 11, 2020, to make additional submissions, if necessary. The RAD has not received additional submissions in this respect. Incident on XXXX XXXX, 2015
- [8] At the hearing, the principal appellant stated that she left her home after criminals broke into it, to hide for three months at the home of her cousin, who lived in XXXX.³ Confronted with her BOC Form, which indicates that she did not move to another part of her country, she declared that she did not stay in XXXX very long, that she only stayed there for three months.⁴
- [9] The RPD did not accept the principal appellant's explanations, and found that the three month period is a significant amount of time and that refuge in that region is a key element that should have been indicated in the written account.
- [10] In her appeal memorandum, the principal appellant alleges that her refuge in XXXX was not significant, because it was not definitive, and so she did not mention it in her written account.
- [11] I note that at question 2(d) of her BOC Form, "Did you move to another part of your country to seek safety?" the principal appellant answered "No." However, at the hearing, when asked about the incident on XXXX XXXX, 2015, the principal appellant stated that she left her home after criminals had broken into it and that she hid for three months at her cousin's home in XXXX. The principal appellant's testimony therefore reveals that she left her home after this incident to hide from agents of persecution, or to hide in another part of her country. Her testimony contradicts the allegations in her BOC Form. With respect, I do not agree with the principal appellant, who alleges that her three-month stay in XXXX was not significant, although she herself alleges that she changed residences to hide. Furthermore, the three-month period is considerable. The RPD's finding in this regard is correct.
- [12] In its decision, the RPD raised another significant omission in the principal appellant's account regarding that same incident. At the hearing, the principal appellant stated that her mother and sisters were kicked by criminals during the XXXX 2015 break-in. She added that there had been 10 to 15 visits to her home since her departure in order to find her.⁵ When confronted with these omissions in the account, she stated that she knew that she would be asked about this and that she only provided the key points and not the details.⁶

- [13] The RPD did not accept the principal appellant's explanations and found that the instructions in the BOC Form are clear in that any harm, mistreatment or threats faced by the principal appellant or her family must be reported. The RPD found that the mistreatment faced by the principal appellant's family does not constitute details but, on the contrary, key elements of the account. The RPD found that these omissions significantly undermine the principal appellant's credibility.
- [14] In her appeal memorandum, the principal appellant admits that the threats or mistreatment should be indicated in the BOC Form but adds that the confused state of refugee protection claimants often causes details to be forgotten or omitted so that they are clarified at the hearing. She submits that the RPD did not seem to clearly establish which were [translation] "relevant elements" in this refugee protection claim and the probative value they should be granted. She submits that the RPD should have considered her explanations, which are not patently unreasonable.
- [15] With respect, I do not agree with the principal appellant. First, I note that the principal appellant did not present any evidence of a medical or psychological nature concerning her psychological state and her ability to testify at the hearing. As such, the principal appellant's nervousness and emotional situation do not satisfactorily justify the significant omissions raised by the RPD. Consequently, I do not agree with her claim that the RPD failed to consider her emotional situation.
- [16] With respect to the XXXX XXXX, 2015, incident, which was the trigger, the principal appellant alleges that she was able to escape an attempt on her life by criminals who entered her home. At the hearing, she declared that her mother and sisters were beaten during that event and that, in addition, these criminals visited her home 10 to 15 times after she left, in order to find her. I find that these allegations, omitted from the account, are relevant and key because they emphasize the motivation of the agents of persecution to look for the principal appellant. These allegations are therefore not details, as alleged by the principal appellant and should have been included in the written account in the BOC Form. The RPD's unfavourable finding on the principal appellant's credibility, by reason of these omissions, is correct. All the evidence
- [17] In her appeal memorandum, the principal appellant alleges that the RPD's failure to consider all the evidence is such that its decision lacks justification and intelligibility.
- [18] With respect, I do not agree with the principal appellant and I find that, in the absence of evidence to the contrary, the RPD is presumed to have considered all the evidence. According to the RPD's decision, it considered the evidence on the record and the objective documentary evidence. I note that the RPD examined the evidence submitted in support of the refugee protection claim, including the excerpt from the minutes,⁷ and found that it was not sufficient to address the numerous contradictions and omissions in the written account. The excerpt from the minutes indicates that the principal appellant's mother stated that her daughter had been kidnapped and that her other daughter (the principal appellant)

managed to escape an attempt on her life. I am of the opinion that the RPD did not err by not granting probative value to this evidence that contains inconsistent allegations with the principal appellant's account and testimony.

- [19] In addition, the RPD examined the evidence on the record to find that the principal appellant would not be alone in Haiti, having testified that she has family, two brothers and two sisters in XXXX, as well as her mother in XXXX. The RPD found that the principal appellant would not be without a place to live or a male presence.
- [20] I note that the RPD's other unfavourable findings regarding the principal appellant's credibility and the prospective risk are not contested in the appeal memorandum and I do not see where the RPD erred regarding the credibility of her allegations of fear. Associate appellant ? American citizen
- [21] The associate appellant, a minor child, is a citizen of the United States. Despite the principal appellant's allegation that the American government will deport her daughter, no evidence was submitted before the RPD against the United States.
- [22] The RPD found that the principal appellant did not submit any evidence in support of her allegation regarding the deportation of her minor child, and it found nothing in this regard in the objective documentary evidence. The RPD found that it was not established that the associate appellant would face a reasonable fear of persecution, a danger of torture, a risk to her life or a risk of cruel and unusual treatment or punishment.
- [23] Although not challenged by the principal appellant in her appeal memorandum, I find that the RPD did not err by finding that it was not established that there was a serious possibility of persecution on one of the five grounds of the Convention or that it was likely that the associate appellant would be subjected to one of the risks set out in section 97 of the IRPA should she return to her country of citizenship, the United States.

CONCLUSION

- [24] For these reasons, I confirm the RPD's determination that the appellants are not "Convention refugees" or "persons in need of protection" within the meaning of section 97 of the IRPA.
- [25] The appeal is dismissed. Toni Jedid Me Toni Jedid February 12, 2020 Date IRB translation Original language: French 1 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93 (CanLII). 2 Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145 (CanLII) and supra, endnote 1. 3 Audio recording of hearing, 01.19.20. 4 Audio recording of hearing, 01.21.19. 5 Audio recording of hearing, 01.29.40. 6 Audio recording of hearing, 01.35.18. 7 Refugee Protection Division record, document 6- Exhibit P-3: Excerpt from the minutes of the registry dated December 3, 2018.

RAD File No. / No de dossier de la SAR : MB9-03804 MB9-03805 RAD.25.02 (April 4, 2019)
Disponible en français 7 Immigration and Refugee Board of Canada Refugee Appeal Division
Commission de l'immigration et du statut de réfugié du Canada Section d'appel des réfugiés
RAD.25.02 (April 4, 2019) Disponible en français

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Prepared on 26 October 2026 · Esheria