

CANADA / JUDGMENT

MB9-02092

COURT

Refugee Appeal Division

DECIDED

20 February 2020

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RAD File No. / No de dossier de la SAR : MB9-02092 MB9-02093 / MB9-02094 Private Proceeding / Huis clos Reasons and Decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXXXXXXXXX XXXX Personnes en cause Appeal considered / heard at Ottawa, ON Appel instruit / entendu à Date of decision February 20, 2020 Date de la décision Panel Me Murielle Henri Tribunal Counsel for the persons who are the subject of the appeal Walid Ayadi Conseil des personnes en cause Designated representative XXXX XXXX XXXX Représentant(e) désigné(e) Counsel for the Minister N.A. Conseil du ministre REASONS FOR DECISION OVERVIEW

- [1] The principal appellant, XXXX XXXX XXXX, and the associate appellant, XXXX XXXX XXXX, are citizens of Haiti. They allege a fear for their lives if they had to return there. The minor associate appellant, XXXX XXXX, is a citizen of Brazil. She alleges a fear for her life and of persecution should she return to Brazil.
- [2] Since 2001, the principal appellant has experienced reprisals on the part of his aunt, who wants to take a piece of land belonging to him. On December 31, 2013, the aunt sent criminals to murder the principal appellant and his family. On XXXX XXXX XXXX XXXX, the male appellant left Haiti for Brazil. In December 2015, the male appellant's mother was assaulted by criminals wanting to know where the male appellant was. In Brazil, he started a family with the associate appellant, and they had the minor associate appellant. The associate appellant bases her fear on that of the principal appellant. The minor appellant also bases her fear on that of the principal appellant, but alleges a fear for her life and of persecution in Brazil due to her race and her origins. In XXXX 2016, they left Brazil and visited the United States before claiming refugee protection in Canada in August 2017.
- [3] On December 4, 2018, the Refugee Protection Division (RPD) rejected the refugee protection claim because the appellants were not credible and the minor appellant would neither be persecuted nor at risk if she returned to Brazil. On appeal, the appellants allege that the RPD erred in its analysis of their credibility and its assessment of the evidence.

DETERMINATION

- [4] After completing an independent analysis of the case, I confirm the RPD's determination: the appellants are neither Convention refugees nor persons in need of protection under paragraph 111(1)(a) of the Immigration and Refugee Protection Act (IRPA).

ANALYSIS

- [5] My role is to review all of the evidence and determine whether the RPD made the correct decision.¹ After completing an independent analysis of the record, I am of the opinion that the determinative issue is the appellants' credibility and the risk of returning for the minor appellant. Contradictions and omissions Decision to leave the country
- [6] In its decision, the RPD concluded that there was a contradiction in the male appellant's testimony regarding who made the decision that he must leave the country. In his memorandum, the male appellant alleges that he provided a plausible and consistent explanation and that there is no contradiction. He maintains that he stated that the decision to leave the country was made by his mother and his brother, but that it was thanks to his friends' money that he was able to leave Haiti.
- [7] I agree with the male appellant.
- [8] At his hearing, the male appellant stated that his friends got together and helped him t leave Haiti.² He also stated that it was friends who played soccer who helped him leave. After this response, the RPD questioned the male appellant to determine when his friends decided that he had to leave the country, and the male appellant replied XXXX XXXX. Next, the RPD replied, [translation] "So, your friends tell you on XXXX XXXX that you must leave, and you leave the same day?" and the male appellant answered yes.
- [9] In my opinion, there was confusion during the conversation. In addition, I am of the opinion that knowing who made the decision is not an important issue because it has no incidence on the key elements of his refugee protection claim, that is, the land dispute pitting him against his aunt.
- [10] Consequently, I am of the opinion that the RPD erred by concluding that there had been a contradiction. Brother as a target
- [11] In its decision, the RPD drew a negative inference from the fact that the male appellant failed to mention in his testimony that his brother was also targeted by his aunt. In his memorandum, the male appellant stipulates that he clearly stated in his account that his aunt tried to murder his oldest brother.
- [12] In his Basis of Claim Form (BOC Form), under question 2a), the male appellant states that his paternal aunt tried to murder him and his older brother. Moreover, under 2c), he writes: one day when the threat was obvious, she sent masked criminals to attack me and my brother. In his testimony, however, the male appellant stated that he was the only one

targeted by his aunt, because he was the one opposing his aunt.³ In addition, his written statement includes the following: [translation] "A few months after my big brother became seriously ill, we were told in the Haitian culture that it was our aunt who is trying to kill him using fetishism."⁴ When confronted with this contradiction, the male appellant replied that he did not fill out the BOC Form, a friend had done it.

- [13] Although he did not fill out his BOC Form and write his written statement, it is clearly stated at the end of the written statement that the individual translated Mr. XXXX words from Creole to French. In addition, it is written in two separate documents, the BOC Form and the written statement, that his brother was also targeted by his aunt. Therefore, there is no explanation for his friend writing that three times in two separate documents. Moreover, after filling out his BOC Form and making his written statement, the male appellant filed an amended statement. Therefore, after making his initial statement, the male appellant had the opportunity to reread the documents and, at that time, he would have seen that the documents contained false information. Yet no changes were made to that effect.
- [14] Consequently, I am of the opinion that the RPD did not err when it determined that this contradiction undermines the male appellant's credibility. Fear
- [15] In its decision, the RPD found that, in failing to mention the police and his aunt in her letter of support, the male appellant's mother undermines his credibility. In his memorandum, the male appellant states that this was a safety and precautionary measure his mother took. Lastly, he maintains that this omission should not be considered so important that it undermines his credibility.
- [16] Unlike the RPD, I am of the opinion that it is the mother's omission, the fact that she did not specify that the male appellant feared his aunt, that undermines the male appellant's credibility. In fact, the letter of support includes the following: [translation] "Some criminals, I don't know their names or where they come from, were looking for my son. The criminals formed an organized gang and they would leave messages." Therefore, the letter refers only to the criminals and not the aunt. However, I would have expected the mother to allude to the aunt in her letter, because according to the male appellant, the aunt was the one causing him problems. In addition, I do not accept the explanation that this was a precautionary measure, because I do not see how that would secure any form of safety for the male appellant's mother.
- [17] Therefore, I am of the opinion that the fact that the mother did not allude in her letter to the male appellant's aunt and that his aunt was trying to murder him, undermines the male appellant's credibility. Relationship with his brother
- [18] In its decision, the RPD found that the male appellant was not credible about the fact that he had no longer been in contact with his brother since 2016. In his memorandum, the male appellant maintains that the RPD drew an erroneous inference that it was not at liberty to make.

- [19] I agree with the male appellant.
- [20] In paragraph 38 of its decision, the RPD found that [translation] "the lack of information does not seem truthful and paints a disturbing picture as presented by the principal refugee protection claimant." After listening to the hearing, I am of the opinion that the RPD did not have sufficient information to reach this conclusion. It asked only two questions of the male appellant, that is, where his brothers live and when was the last time he spoke with them. The male appellant replied that he did not know and 2016, respectively. In my opinion, therefore, the RPD's decision is not correct, for based on my assessment, there was insufficient evidence on the record for the RPD to draw the conclusion it drew.
- [21] Consequently, the RPD erred by finding that the male appellant's lack of information about his brother does not seem truthful. However, I am of the opinion that the lack of information about the brother is not important, because it has no impact on the key elements of the refugee protection claim. Rejection of corroborating evidence
- [22] In its decision, the RPD found that the documents filed into evidence, that is, the certificate and the land surveyor's plans, cannot be used to support the male appellant's allegation that his life is in danger due to a land dispute caused by irregularities in the documents. The male appellant maintains that it is unfair that the RPD rejected this corroborating evidence and dismissed their probative value and weight under the pretext of lack of credibility.
- [23] I do not agree with this allegation.
- [24] The male appellant maintains that the reason his aunt never simply took the land is because his mother began to build on the property and the construction remains unfinished. However, he fails to mention that there are dwellings on the property in the surveyor's plans and the certificate. Indeed, the documents filed into evidence do not mention the dwellings. Questioned by the RPD about this inconsistency, the male appellant replied that the plans were drawn up on paper and were not a photograph of the property.
- [25] I cannot accept this explanation. The goal of surveyor's plans is to show both the foundations and buildings. However, the male appellant stated that five dwellings had been under construction since his father had passed away. Therefore, I would expect this to appear in the surveyor's plans. However, the plans contain no mention of buildings.⁵ This is a major inconsistency that is central to the appellants' refugee protection claim, that is, his aunt cannot simply take his land because construction is underway on it.
- [26] Therefore, the RPD committed no error in finding that the documents filed into evidence cannot be used to support the male appellant's allegation that his life is threatened due to a land dispute.
- [27] In sum, I am of the opinion that the appellants are not credible with respect to their allegation that the principal appellant's aunt is threatening their lives. Microscopic analysis

- [28] In his memorandum, the male appellant alleges that the RPD erred in its decision by rejecting his refugee protection claim based on elements that are not central to his claim, that do not seem important enough and that do not relate to sufficiently relevant elements to justify an unfavourable determination.
- [29] Upon reading the decision, I note that there are only two elements the RPD took into consideration and that are not central to his claim, that is, the contradiction regarding who made the decision that the male appellant should leave the country and the fact that he is no longer in contact with his brother. Nevertheless, overall, the RPD took into consideration key elements to determine that the male appellant was not credible, that is, the fact that his letter of support does not mention that his aunt is trying to murder him and that there was a contradiction about his brother being targeted, and the corroborating evidence that was rejected. These elements are directly linked to his fear in Haiti.
- [30] Consequently, I am of the opinion that the RPD did not complete a microscopic analysis of key elements in the refugee protection claim.
- [31] In sum, in light of the foregoing, I am of the opinion that the appellants failed to demonstrate that there is a serious possibility of persecution or, on a balance of probabilities, that they would be at risk if they returned to Haiti. Because the minor associate appellant is partially basing her refugee protection claim on the principal appellant's, I draw the same conclusion in her case. The minor associate appellant
- [32] In its decision, the RPD found that the minor appellant can avail herself of state protection in Brazil. In the memorandum, the appellants maintain that the RPD erred by concluding that she would no longer be persecuted and would face no risk if she returned to Brazil.
- [33] I do not agree with the appellants' allegation. Persecution
- [34] To question 2j) in her BOC Form, the female appellant answered: [translation] "There is no threat for my child, but she is only two years old and she should be with us and we have no one else we can leave her with." Therefore, there was no alleged fear. On appeal, the appellants state that the documentary evidence demonstrates that Afro-Brazilians are more victims of murder and of marginalization. I therefore understand that the minor appellant fears being persecuted due to her race and her Haitian origin.
- [35] The documentary evidence in the National Documentation Package (NDP) indicates that Brazil is a diverse, mixed-race country. The report of the special rapporteur on minority issues shows that the situation for Afro-Brazilians is complex and that each case must be assessed taking into account its specific context. The documentary evidence also indicates that a large percentage, if not the majority, of Brazilians identify with a category other than white.⁶ Moreover, the evidence filed on appeal by the appellants states that violence in Brazil is often perpetrated against young Black men from the favelas who are poor and recruited by criminal organizations that sell drugs. However, this does not match the minor appellant's profile.

- [36] Besides the documentary evidence and statements in the memorandum that Blacks face discrimination, the appellants failed to file specific evidence regarding their daughter's fear in Brazil. However, documentary evidence alone cannot support the conclusion that there would be a serious possibility of persecution or risk in the event of a return there. The child's best interest
- [37] The appellants also allege that separating the minor appellant from her parents would amount to cruel and unusual punishment under paragraph 97(1)(b) of the IRPA. In their opinion, entrusting her to foster care would have negative effects on her, and they maintain that the best interests of the child should be taken into consideration.
- [38] In assessing her prospective risk in returning to Brazil, I took into consideration the minor appellant's personal profile and specific situation. When the RPD made its decision, the female appellant was three years old. She is in Canada with her parents, who are Haitian citizens and do not have permanent status in Canada. Therefore, granting status to the female appellant would not mean she would stay with her parents. In addition, the Federal Court declared the following in *Teluwo*:⁷ The Applicants have always alleged and continue to argue that their risk is tied to their daughter's. They argue that they would face cruel and unusual punishment or treatment by their being returned to Nigeria while leaving their daughter in Canada for treatment. I find it difficult to imagine that family separation alone would arise to this level.
- [39] Lastly, it is important to note that the IRPA does not confer to the RAD the power to render decisions based on humanitarian and compassionate considerations. The RAD's role is to decide whether a refugee protection claimant would face a serious possibility of persecution, or if, on a balance of probabilities, they would be subjected to cruel and unusual treatment or punishment or a danger of torture in the event that they returned to their country of citizenship. Consequently, the RAD is not the appropriate forum.
- [40] Lastly, the appellants cite *Cheung*,⁸ which recognizes that poor children can be considered refugees for belonging to a particular social group because they will be deprived of education, health care, sustenance and protection. Given the indifference of the government, this would therefore expose the child to malnourishment, crime, drugs and prostitution. We do not, however, have the same reading of this decision. What the court recognized is that women in China who have more than one child, and who thereby face forced sterilization, form a social group. It had nothing to do with poor children. Moreover, the appellants failed to demonstrate that if the minor appellant returned to Brazil, she would be deprived of education, healthcare, sustenance and protection.
- [41] After analyzing the documentary evidence, I found there was no evidence to show, on a balance of probabilities, that if she returns to Brazil, the minor appellant would be personally subjected to a danger of torture, a risk to her life or a risk of cruel and unusual treatment or punishment, or that there is a serious possibility of persecution due to her race or nationality or membership in a particular social group.

[42] In sum, I am of the opinion that the RPD did not err when it determined that the minor appellant is neither a refugee nor a person in need of protection.

CONCLUSION

[43] I confirm the determination that the appellants are neither Convention refugees nor persons in need of protection under paragraph 111(1)(a) of the IRPA.

[44] The appeal is dismissed. (signed) Murielle Henri Murielle Henri February 20, 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 Transcript of hearing before the Refugee Protection Division (RPD) on October 11, 2018, p. 50. 3 Transcript of hearing before the RPD on October 11, 2018, pp. 65 and 66. 4 RPD-1, RPD record, Exhibit D-2, Statement by Mr. Elie, p. 152. 5 Ibid., Exhibit D-7, Certificate and surveyor's plans, pp. 138-139. 6 RPD-1, RPD record, Exhibit 3, National Documentation Package on Brazil, April 30, 2018, Tab 2.1 Brazil: Brazil. Country Reports on Human Rights Practices for 2017, United States. Department of State, April 20, 2018. 7 Teluwo v. Canada (Citizenship and Immigration), 2016 FC 1274 (CanLII). 8 Cheung v. Canada (Minister of Employment and Immigration), 1993 CanLII 2946 (FCA).

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