

CANADA / JUDGMENT

MB9-07926

COURT

Refugee Appeal Division

DECIDED

3 February 2020

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RAD File No. / No de dossier de la SAR : MB9-07926

MB9-07927 / MB9-07928

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 XXXX XXXX XXXX

Personnes en cause

Appeal considered / heard at

Ottawa, ON

Appel instruit / entendu à

Date of decision

February 3, 2020

Date de la décision

Panel

Pascale Aubin

Tribunal

Counsel for the persons who are the subject of the appeal

Angelica Pantiru

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] XXXX XXXX XXXX (principal appellant) and XXXX XXXX XXXX (associate minor male appellant), citizens of Haiti, and XXXX XXXX XXXX XXXX XXXX (associate minor female appellant), an American citizen, are appealing against the decision of the Refugee Protection Division (RPD) dated April 3, 2019, rejecting their refugee protection claims.
- [2] The principal appellant alleges that she fears being raped or killed by criminals who raped her when they robbed her home on July 22, 2017.
- [3] The RPD found that the principal appellant was not credible and their refugee protection claims were rejected.

APPLICABLE STANDARD OF REVIEW

- [4] For questions of fact, mixed fact and law, and law, the Refugee Appeal Division (RAD) applies the standard of correctness. When assessing the credibility of the oral evidence, the RAD may show deference in situations where the RPD enjoyed a meaningful advantage. Unless otherwise stated in my reasons, I applied the correctness standard to all findings.

ANALYSIS

- [5] I am of the opinion that the determinative issue in this case is credibility.
- [6] The RPD noted significant omissions and discrepancies in her testimony and her Basis of Claim Form (BOC Form) as to the allegations of attempted kidnappings and that she was raped and robbed. The RPD concluded that she failed to demonstrate a serious possibility of persecution within the meaning of section 96 of the Immigration and Refugee Protection Act (IRPA) or, on a balance of probabilities, a risk within the meaning of subsection 97(1) of the IRPA were she to return to Haiti.

Credibility

- [7] In her memorandum, the principal appellant argues that the RPD erred in finding that the principal appellant lacked credibility, by ignoring evidence that weighed in her favour and by focusing solely on adverse evidence. The principal appellant submits that, despite a few hang-ups during her testimony, her story is true.

- [8] I cannot accept these arguments. I listened to the hearing recording carefully, and I am of the opinion that the RPD did not err and that its decision is correct. Here is why.

Attempted kidnappings

- [9] The principal appellant argues that the RPD erred in not believing that she was apparently the victim of attempted kidnappings. She argues that the RPD did not consider the Haitian context, but applied Canadian cultural norms. She maintains that when considering the objective evidence, the alleged incidents can be characterized as attempted kidnappings.
- [10] I thoroughly reviewed the National Documentation Package on Haiti, as well as tabs 2.2 and 7.1 noted in the appellants' memorandum, and I cannot accept that the alleged events constitute attempted kidnappings for the reasons that follow.
- [11] The objective documentary evidence reports that kidnappings occur in Haiti and that members of the general population may be kidnapping targets. However, the same evidence indicates that persons targeted by kidnappings are almost exclusively wealthy people who have ties to the diaspora and who often have foreign citizenship or who have lived abroad.¹
- [12] With regard to the first alleged attempted kidnapping, the principal appellant testified that a man had tried to open her car door in the schoolyard; with regard to the second attempt, she testified that she had noticed people with strange faces approaching the school. When the RPD asked her what the individuals had done, she replied that she had thought that they were going to take her and leave with her. When asked what made her think that those individuals wanted to harm her, she explained that a motorcycle had blocked the path of her vehicle.
- [13] I note that the RPD asked several questions to try to understand how those incidents corresponded to attempted kidnappings and it gave the principal appellant every opportunity to make the necessary clarifications, which she did not do. The explanations provided do not explain why the individuals wanted to kidnap her. The principal appellant was unable to identify the individuals or explain their motives. A connection between the events cannot be made from the fact that individuals approached the school, that someone opened her car door and that a motorcycle blocked her vehicle's path. This also does not demonstrate, on a balance of probabilities, that they are the same individuals or that they wanted to kidnap her. I am of the opinion that the principal appellant failed to establish a connection between the various wrongdoings and that she failed to establish that the wrongdoings constituted a risk different from the one generally faced by Haitians. For these reasons, the RPD's finding regarding the lack of credibility of the attempted kidnappings was correct.

- [14] In her BOC Form, the principal appellant states that she tried to notify the police, but that the solutions proposed were not reassuring. The principal appellant argues that this is perfectly consistent with her testimony, during which she explained having spoken with her brother, a justice of the peace, and that the solutions had not reassured her.
- [15] I carefully listened to the recording of the hearing. The RPD asked the principal appellant whether she reported the two incidents in front of the school to the police, and she replied that [translation] "yes verbally, but that she had no evidence to say yes, there, there, there you go."² When asked when she had gone to the police, she testified that it was after all the incidents on July 23, 2017.³ At the hearing, the RPD asked her whether she filed a complaint with the police after the alleged kidnapping incidents, to which she replied no, but that she had recounted the story to her brother, a justice of the peace. The RPD then asked several other questions to understand why she stated in her BOC Form that she tried to notify the police, and she replied that she had tried to speak with the police, but that she spoke with her brother and was satisfied with his response.⁴ Later during the hearing, she stated that she was going to file a complaint, but after speaking with her brother, she changed her mind and did not file a complaint.⁵
- [16] When comparing her testimony with what is stated in her BOC Form, it is obvious that the accounts differ. I cannot accept the appellants' argument that this is a simple misunderstanding because the principal appellant gave three different accounts as to whether she tried to file a complaint with the police following the alleged kidnapping incidents in front of the school. I am of the opinion that the reason for these inconsistencies cannot simply be that, to the principal appellant, [translation] "trying to file a complaint" meant telling her brother, a justice of the peace, about the situation, when her BOC Form states that she [translation] "tried to notify the police, but the solutions proposed by that institution were not reassuring."⁶ In my opinion, this explanation is unsatisfactory.
- [17] I am also of the opinion that after being confronted with this, the principal appellant adjusted her testimony to indicate that, after speaking with her brother and not finding the solutions reassuring, she changed her mind and decided not to file a complaint. I am of the opinion that these inconsistencies undermine her credibility because the alleged kidnapping incidents do not constitute trivial information, but rather elements that are central to her fear of returning to Haiti.

Allegation of rape and robbery on July 22, 2017

- [18] In light of numerous contradictions in her testimony, the RPD concluded that the principal appellant failed to establish that she was raped and robbed on July 22, 2017.
- [19] The principal appellant argues that, given that the RPD accepted the documents (P-1, P-2, P-3 and P-4) as evidence in support of the allegations and that it gave probative value to her evidence, the finding that the principal appellant lacks credibility regarding the incident on July 22, 2017, is contradictory.

- [20] I cannot accept the principal appellant's argument that it is contradictory to find that the alleged incident on July 22, 2017, is not credible when the RPD accepted the exhibits filed as evidence. I note that at paragraph 36 of its reasons, the RPD states that it assessed all the evidence before rendering its decision on the appellants' refugee protection claim. I also note that the RPD questioned the principal appellant about the alleged kidnapping incidents, the rape, the robbery, and the threats received, and it also reviewed the medical certificate, the trip to the clinic and the excerpt from the registry minutes. Even if probative value is given to a document, all the evidence in a refugee protection claim must be examined and analyzed. Consequently, the principal appellant's argument is rejected because I am of the opinion that the RPD examined all the evidence on the record before making a negative credibility finding.
- [21] The principal appellant argues that the RPD erred in concluding that her children, who were 3 and 5 years of age, would have been old enough to untie her and call the police. I agree with the RPD's reasons because, according to the principal appellant's testimony, the children were present and apparently tried to untie her, but could not manage to do so. For these reasons, I am of the opinion that the children displayed some understanding of the situation. The fact that she testified that she did not try to explain to the children what steps to take to call someone is incongruous with the seriousness of the allegations of rape and of having remained in her room all night with her hands bound.
- [22] Although the children are young, I am of the opinion that the 5-year-old child could have followed his mother's instructions. The fact that she did not explain the steps contemplated to free herself or that she also did not try to explain to the children what to do to get help is inconsistent with the behaviour of someone who fears for her life or the lives of her children. For these reasons, like the RPD, I am of the opinion that the principal appellant failed to demonstrate, on a balance of probabilities, that she had been tied up and remained in her room all night.
- [23] The principal appellant argues that it is unreasonable to expect her to be able to explain the criminals' strategies in order to demonstrate the veracity of her story, which is corroborated by the documents filed and the documentary evidence.
- [24] Once more, I cannot accept this argument because the RPD did not ask the principal appellant to explain the criminals' strategies. The RPD rather found that the principal appellant's explanations lacked credibility because she testified that her home was surrounded by a wall, a large, barbed-wired gate, that a guard opens the gate and that the gate cannot be opened without a key, when no damage had been done to the property.
- [25] Furthermore, the RPD did not find it credible that she had not heard the four criminals, who tied up the maid and managed to make it to her room to hold a weapon to her head. I considered the documentary evidence that home invasions continue in the wealthiest and middle-class neighbourhoods. However, considering that the house was very secure, that there were apparently four criminals who held a weapon to her head, I am of the opinion

that the explanation that she had not heard any noise is inconsistent with the description of the forcible entry and home invasion. For these reasons, on a balance of probabilities, I am of the opinion that the principal appellant failed to establish the forcible entry.

- [26] In the memorandum, the principal appellant argues that her testimony is corroborated by the documentary evidence and the documents filed. She maintains that she did not understand what the RPD was asking with regard to how she obtained the excerpt from the registry minutes, and that the RPD could have been clearer in its question. The principal appellant argues that her hesitation in replying has no bearing on the document's genuineness. She points out that she knew what a registry excerpt was, but that she did not understand which document the panel was referring to in its question.
- [27] With regard to the question concerning the excerpt from the registry minutes, after carefully listening to the hearing recording, I note that the RPD asked a specific and clear question as to how the principal appellant obtained the document corresponding to the excerpt from the registry minutes.⁷ The principal appellant then testified that she did not understand the question. I note that the RPD again explained and specified that it was referring to the document that was filed as evidence as the excerpt from the registry minutes. The principal appellant stated that her lawyer was the one who had given it to her. When the RPD asked for the lawyer's name, she stated [translation] "ah, the document," but still failed to answer the question put to her. She then went on to state that she thought it was the documents that immigration had given her that were being referred to.
- [28] After analyzing the document on its face, I have no doubt that the document is a genuine excerpt from the registry minutes. However, in light of the testimony of the principal appellant, who hesitated and who was unable to explain how she obtained the document, on a balance of probabilities, I do not believe the allegations set out in the excerpt from the registry minutes. Considering the principal appellant's testimony that the notes for the excerpt from the registry minutes were taken in front of her and that this is the central incident during which she claims to have been raped and that her maid was also raped,⁸ I would have expected her to provide a clear answer as to how the document was obtained. In addition, I am of the opinion that the RPD's question was clear and that it clearly indicated which document it was referring to. The fact that the principal appellant gave three different explanations as to how she obtained such an important document undermines her credibility. For these reasons, I give no weight to the excerpt from the registry minutes.
- [29] I paid particular attention to the hearing transcript and I noted testimony that was confused, vague and contradictory. At the start of the hearing, naturally, the principal appellant was questioned on the truthfulness of the content of her BOC Form, and she stated that the content was correct. The RPD noted contradictions between her testimony and the BOC Form, the explanations for which were not satisfactory. The RPD also gave the principal appellant every opportunity to make the necessary clarifications, which she also failed to do.

- [30] There is nothing in the principal appellant's testimony that could have led the RPD to conclude that the incidents she referred to establish that she would be personally targeted or that her life would be at risk if she returned to Haiti. As a result, I consider that the principal appellant is not credible and that the RPD's conclusion was correct.

Residual risk

- [31] The RPD analyzed the prospective risk that the principal appellant would face as a woman and concluded that there was no basis in the evidence to establish a serious possibility of persecution if she were to return to Haiti.
- [32] The principal appellant alleges that the factors regarding her subjective fear of being subjected to violence were not properly assessed by the RPD. She argues that she would be a vulnerable person and a target of violence against women in Haiti. She also argues that she would be perceived as wealthy and that the RPD should have taken into account the situation of Haitian women returning from North America after a prolonged absence.
- [33] After assessing all the documentary evidence, while taking into account the principal appellant's personal and family situation and the Immigration and Refugee Board Chairperson's Guideline 4 on Women Refugee Claimants Fearing Gender-Related Persecution⁹ (Guideline), I am of the opinion that the principal appellant failed to establish a serious possibility of gender-related persecution were she to return to Haiti.
- [34] The Guideline on gender-related persecution states that the decision-maker should consider all relevant factors, including the cultural, religious and economic context.
- [35] The framework of analysis set out in the Guideline states that "[t]he gender-defined group cannot be defined solely by the fact that its members share common persecution."¹⁰ In Dezameau,¹¹ Justice Pinard states:

This is not to say that membership in a particular social group is sufficient to result in a finding of persecution. The evidence provided by the applicant must still satisfy the Board that there is a risk of harm that is sufficiently serious and whose occurrence is "more than a mere possibility."¹²

- [36] The principal appellant's situation must therefore be considered objectively, alongside the documentary evidence and the specific facts of the case.
- [37] The documentary evidence states that Haitian women can be victims of many forms of violence, including domestic violence. Several documents report that the high number of violent crimes against women in Haiti is partly the result of the harsh conditions in the wake of the January 2010 earthquake, and they predominantly occur in displaced persons camps.¹³ Additionally, in Haiti, there is a general atmosphere of insecurity for Haitian women. This insecurity is caused by the authorities' inability to prevent and punish attempted murders and sexual assaults of women, lead investigations and compensate for damage caused by these crimes, as well as by a judicial system lacking in independence.¹⁴

- [38] Furthermore, the documentary evidence in the NDP regarding the situation of women in Haiti clearly indicates that violence against women in Haiti is widespread, chronic and systemic.¹⁵ Sexual violence against women in Haiti is described as being [translation] "deeply rooted in Haitian social life."¹⁶ Sources state that the Haitian justice system fosters impunity, including with respect to violence against women.¹⁷
- [39] The RAD is aware of the situation of single women living in Haiti, as described in the NDP.¹⁸ According to this documentary evidence, the women who are most at risk are those who are uneducated, have low incomes and do not have male protection or family support. Yet, the principal appellant submitted no evidence to establish that she could be in a situation similar to that of women who, because of their specific circumstances, are at risk of gender-related persecution. According to her testimony, the principal appellant's personal situation is that she is a 36-year-old educated woman who has worked in several places, notably as a secretary. The principal appellant also has access to housing that is secure.
- [40] At the hearing, the principal appellant stated that her husband still lives in their home and that he is still working. According to the evidence on the record, nothing would prevent the principal appellant or her children from returning to live in the home where her husband is living. According to the case law, the fact that a woman would be living with a man is an element to be taken into consideration.¹⁹ In addition, the documentary evidence does not indicate that living with a husband or a male family member is an important factor in reducing the fear of being subjected to sexual violence, when in fact many women living with their partner are subjected to violence by their spouse. Rather, it indicates that such a male presence may limit the risk of reprisals if the victim files a complaint against her aggressors.²⁰
- [41] In this case, the evidence shows that the principal appellant is married, gets along well with her husband, and expressed no fear of being subjected to violence by him. I note that the principal appellant is an educated and resourceful person who had a good job in Haiti. In her BOC Form, she also states that her husband is an XXXX with a degree who is employed and who still lives in the family residence in Haiti. Her BOC Form also states that several members of her family still live in Haiti. Given her employment history and family network, I conclude that the principal appellant's profile is not that of a woman without roots, connections or family.²¹ Therefore, the appellant's personal situation is not consistent with that of a woman who would be at risk in Haiti.
- [42] The principal appellant stated that she cannot single out anyone whom she fears in particular, but that she fears being killed for being a member of the diaspora and because of people's perception that she is wealthy. However, the Federal Court holds that victims of crime generally fail to establish a nexus between a fear of persecution and one of the grounds set out in the definition of Convention refugee.²² In this case, the perception of wealth is insufficient to sustain that the diaspora constitutes a particular social group. I am therefore of the opinion that the principal appellant's fear stems from the crime in Haiti; she does not fear being persecuted on one of the Convention grounds.

- [43] Although I am aware that a prospective analysis includes a certain level of speculation that does not make it possible to identify the agent of persecution by name, I am of the opinion that the evidence on the record does not lead me to conclude that the principal appellant would face more than a mere possibility of being persecuted. Although I am sensitive to the situation in Haiti, I nevertheless conclude that the evidence on the record is not sufficient and that the principal appellant failed to establish a serious possibility of persecution based on the particular social group of women if she were to return to Haiti.

Minor female associate appellant

- [44] Finally, the minor female associate appellant has US citizenship by birth. As her designated representative, the principal appellant provided no evidence or testimony regarding the fact that the minor female associate appellant allegedly fears being persecuted or that she would be subjected personally to a danger of torture, a risk to her life or a risk of cruel and unusual treatment or punishment in her country of nationality, the United States. The minor female associate appellant is therefore neither a Convention refugee nor a person in need of protection , and the RPD's decision was correct.

Minor male associate appellant

- [45] The minor male associate appellant has Haitian nationality by birth. The claim of the minor male associate appellant was entirely based on the claim of the principal appellant, the designated representative. Because the principal appellant is not credible and also failed to demonstrate a serious possibility that they would be persecuted on one of the Convention grounds or, on a balance of probabilities, that they would be subjected personally to a danger of torture, a risk to their lives or a risk of cruel and unusual treatment or punishment if they returned to Haiti, the minor male associate appellant is neither a Convention refugee nor a person in need of protection.
- [46] In this case, after analyzing all the evidence, including the hearing recording, and after considering the submissions made on appeal, I am of the opinion that the above concerns regarding credibility were sufficient to find that, on a balance of probabilities, the allegations were not credible. That said, I am of the opinion that the appellants did not establish that they face a serious possibility of persecution or that, on a balance of probabilities, they would be subjected personally to a danger of torture, a risk to their lives, or a risk of cruel and unusual treatment or punishment if they had to return to their countries of citizenship. That said, I am of the opinion that the decision to reject the refugee protection claim was correct.

CONCLUSION

[47] Pursuant to paragraph 111(1)(a) of the IRPA, the RAD dismisses the appeal and confirms the determination of the RPD that the appellants are neither Convention refugees nor persons in need of protection.

[48] The appeal is dismissed.

(signed)

"Pascale Aubin"

Pascale Aubin

February 3, 2020

Date

1 National Documentation Package (NDP), July 2018, Tab 7.1.

2 Testimony, 32:00 to 32:15.

3 Testimony, 32:40.

4 Testimony, 32:00 to 37:45.

5 Testimony, 37:00 to 37:45.

6 Basis of Claim Form, page 28.

7 Testimony, 1:15 to 1:18.

8 Ibid.

9 Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution, Immigration and Refugee Board of Canada (IRB), Ottawa, November 13, 1996.

10 Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution, IRB, Ottawa, November 13, 1996.

11 *Dezameau v. Canada* (Citizenship and Immigration), 2010 FC 559 (CanLII).

12 *Dezameau v. Canada* (Citizenship and Immigration), 2010 FC 559 (CanLII).

13 RPD-1, Refugee Protection Division (RPD) record, Exhibit 3, NDP on Haiti, October 20, 2017, Document 2.3, Document 2.7 and Document 2.13.

14 Ibid., Document 2.7.

15 RPD-1, RPD record, Exhibit 3, NDP, Document 5.1, April 30, 2018, Haiti. Social Institutions and Gender Index 2014, Organisation for Economic Co-operation and Development, November 28, 2014, pp. 2 and 3, and Document 5.3, HTI105161.FE, Violence against women, including sexual violence; state protection and support services (2012-June 2016), December 15, 2016, IRB, March 23, 2017, pp. 1 and 2.

16 RPD-1, RPD record, Exhibit 3, NDP, April 30, 2018, Document 5.3, HTI105161.FE, Violence against women, including sexual violence; state protection and support services (2012-June 2016), December 15, 2016, IRB, March 23, 2017.

17 Ibid.

18 NDP, Haiti, Tab 5.1.

19 Josile, supra, endnote 23, paragraph 36. Joseph v. Canada (Minister of Citizenship and Immigration), No. IMM-5386-17, Roussel, June 20, 2018; 2018 FC 638, paragraphs 7, 16 and 17. Néré v. Canada (Minister of Citizenship and Immigration), No. IMM-5278-17, Locke, July 3, 2018; 2018 FC 672, paragraphs 37 and 38.

20 NDP on Haiti, Document 5.12.

21 Supra, endnote 18.

22 Prophète v. Minister of Citizenship and Immigration, 2008 FC 331, confirmed by Prophète v. Minister of Citizenship and Immigration, 2009 FCA 31.

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RAD.25.02 (April 4, 2019)

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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)

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