

CANADA / JUDGMENT

MB9-07503

COURT

Refugee Appeal Division

DECIDED

21 February 2020

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RAD File No. / No de dossier de la SAR : MB9-07503 MB9-07504 / MB9-07505 Private Proceeding / Huis clos Reasons and Decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXX XXXXXXXXXXX XXXX XXXXXXXXXXX XXXX Personnes en cause Appeal considered / heard at Ottawa, Ontario Appel instruit / entendu à Date of decision February 21, 2020 Date de la décision Panel Me Tammy Tremblay Tribunal Counsel for the persons who are the subject of the appeal Jean Fils-Aime 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 her children, XXXX XXXX and XXXX XXXX (the associated appellants), claim that they fear for their lives in Haiti, which is their country of origin. The principal appellant, who was a merchant in Haiti, states that members from a criminal gang shot at her car after she had refused to give them money.
- [2] The Refugee Protection Division (RPD) rejected the appellants' refugee protection claim. It found that the principal appellant was not credible because there were omissions, contradictions and inconsistencies in her testimony.
- [3] In this appeal, the determinative issue for the Refugee Appeal Division is the principal appellant's credibility.

DETERMINATION

- [4] I dismiss the appeal. The RPD was correct in determining that the appellants are neither Convention refugees nor persons in need of protection.

ANALYSIS

- [5] My role is to review all the evidence and to determine whether the RPD decision is correct.¹
- [6] In their appeal memorandum, the appellants claim that:
 - The RPD decision is [translation] "based exclusively" on the appellant's credibility;
 - The RPD [translation] "alleges that the appellant is not credible because of the so-called contradictions in her testimony;"

- The RPD [translation] "finds other contradictions in the police report;"
 - [Translation] "Simply knowing the reality in Haiti would wipe out the alleged contradictions that the member perceives in the testimony" of the appellant; and
 - The RPD [translation] "sees contradictions where there are none."²
- [7] First, the RPD's finding concerning the principal appellant's credibility is not a [translation] "claim," but rather a finding based on the evidence on the record. Even if I understand that the appellants are challenging the RPD's finding on the principal appellant's credibility, their memorandum does not identify which errors the RPD reportedly made. The appellants simply list the numbers of paragraphs 11, 13, 18 and 21 that contain errors in their opinion, but there is no argument in their memorandum. However, the onus was on the appellants to establish that the RPD erred in its decision.
- [8] After an independent review of the evidence, I am of the opinion that the RPD did not err and that the appellants failed to establish that the omissions, inconsistencies and contradictions noted by the RPD are incorrect (paragraph 11 of the RPD decision). In my opinion, the problems raised by the RPD are related to central elements of their refugee protection claims, specifically:
- The contradiction between the principal appellant's Basis of Claim Form (BOC Form) that she did not file a complaint with the police after her car was shot at, her testimony during the hearing and the documentary evidence filed on the record indicating that she allegedly filed a complaint with the police;
 - The failure to include in her BOC Form why the principal appellant was reportedly targeted by the criminals; and
 - The inconsistency between the shooting that the appellant apparently suffered and the hardship that ensued (paragraphs 13 and 18 of the RPD decision).
- [9] In my opinion, and for the same reasons that the RPD indicates in its decision, when confronted with these contradictions, omissions and inconsistencies, the principal appellant was unable to explain them adequately.³
- [10] As a result, I am of the opinion that the RPD's conclusions, namely, that the principal appellant failed to establish that there is a serious possibility of persecution for her and her other two family members or that they would be 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 had to return to Haiti, are correct.
- [11] For these reasons, I conclude that the appellants failed to establish a serious possibility of persecution 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 had to return to Haiti.

CONCLUSION

[12] I dismiss the appeal and confirm the RPD's determination that the appellants are neither Convention refugees nor persons in need of protection. (signed) "Tammy Tremblay" Me Tammy Tremblay February 21, 2020 Date 1Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93; Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145. 2 P-2, the appellant's record, the appellant's memorandum, p. 7, question 2.1. 3 RPD-1, RPD record, RPD reasons, paragraphs 18 and 21, pp. 13 and 14.

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