

CANADA / JUDGMENT

MB9-05336

COURT

Refugee Appeal Division

DECIDED

3 January 2020

Research copy typeset by Esheria. Not court-issued or certified. A source URL was not supplied in the case record.

RAD File No. / N° de dossier de la SAR : MB9-05336 MB9-05337 / MB9-05338 Private Proceeding / Huis clos Reasons and Decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXXXXXXXXX XXXX XXXXXXXXXXX XXXX Personnes en cause Appeal considered / heard at Ottawa, Ontario Appel instruit / entendu à Date of decision January 3, 2020 Date de la décision Panel Me Murielle Henri Tribunal Counsel for the persons who are the subject of the appeal Jamal Addine Fraygui 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, the principal appellant, and her spouse, XXXX XXXX, the associate appellant, are citizens of Haiti. Their son, XXXX XXXX, the minor associate appellant, is a citizen of the United States.
- [2] The principal appellant claims that she fears her uncle should she return to Haiti, because he wants to take her inheritance. On January 22, 2016, he came to her house with a machete and threatened to kill her. She hid in Archayais for a few days. On February 6, 2016, she heard someone knock on her door while she was sleeping. She saw her uncle and she ran away. She went back to Archayais and stayed there until her departure. On XXXX XXXX XXXX 2016, she went to the United States, and then on XXXX XXXX XXXX 2017, she arrived in Canada and claimed refugee protection.
- [3] The associate appellant alleges that he fears the Fanmi Lavalas political party because of his political opinion. He states that several Lavalas party members and their thugs asked him to join their group and he refused. On XXXX XXXX, 2008, they came to his house and threatened to kill him. That same day, he left Haiti and went to the Dominican Republic, but the thugs tracked him down. In XXXX 2009, he went to the United States, and then on XXXX XXXX XXXX 2017, he arrived in Canada and claimed refugee protection.
- [4] The minor associated appellant does not allege any fear in the United States.
- [5] On February 20, 2019, the Refugee Protection Division (RPD), rejected their claim for refugee protection on the ground that they were not credible with regard to their fear in Haiti because the evidence contained significant contradictions, discrepancies, inconsistencies and omissions that were not reasonably explained. It concluded that the minor associate

appellant has no fear in the United States. The appellants are appealing the decision and allege that the RPD erred in its assessment of their credibility. DETERMINATION OF THE APPEAL

- [6] The appeal is dismissed. The appellants are neither "Convention refugees" nor "persons in need of protection."

ANALYSIS

Principal appellant Omission

- [7] In its decision, the RPD found that the female appellant was not credible because she failed to mention that her uncle had threatened her on January 22, 2016. In her memorandum, the female appellant states that she did not think it was necessary to talk about the incident of January 22, 2016, because she had already mentioned it at the beginning of the hearing. Furthermore, she alleges that she thought the questions were about other events that are not connected to that land.
- [8] I do not agree with the female appellant's explanations.
- [9] During the hearing, the RPD asked her if she had had other problems in Haiti, aside from the incident of February 6, 2016, and then specifically asked her if she had had other problems in Haiti with her uncle, other than the incident of February 6, 2016. The principal appellant answered [translation] "no, there was never any problem, he just wanted to kill me because of the land."¹ When the RPD specifically asked again if there were other incidents related to the land other than that of February 6, 2016, the female appellant answered that there were other things, but they were unrelated to the land. Therefore, the female appellant's explanation that she did not think the questions were related to the land when the RPD specifically asked her [translation] "if there were other incidents related to the land," is not satisfactory. Furthermore, although the female appellant mentioned the date of January 22, 2016, at the beginning of the hearing, she only referred to that date when the RPD asked her when her problems started.² At that point, she did not talk about what had happened, she only mentioned the date.
- [10] Furthermore, in her memorandum, the female appellant alleges that during the hearing she stated that, for her, the incident of February 6, 2016, was the most important one, and that even if the RPD had a different opinion about which of the two incidents was more important, this is not sufficient to undermine her credibility.
- [11] Although it may be a matter of opinion, the RPD did not ask the female appellant to specify the most important incident, but rather, if there had been other incidents related to the land, and she answered no. Therefore, I am of the opinion that the female appellant was unable to provide a satisfactory answer as to why she did not mention that there was an event other than the one in February 2016.

- [12] Consequently, the RPD did not err in finding that the female appellant's failure to mention the incident of January 22, 2016, undermines her credibility. Date of possession of land
- [13] In its decision, the RPD found that the female appellant was not credible, because the notarial deed for the land was signed in 2011. Therefore, she became the owner of the land in 2011, and not 2014, as indicated in her Basis of Claim Form (BOC Form). In the memorandum, the female appellant maintains that she was not with her father when the notarial deed was signed in 2011, and that she had to complete documents in 2014 to finalize the land transfer and thus, it was only in 2014 that she became the owner.
- [14] I do not accept the female appellant's allegation.
- [15] The notarial deed clearly indicates that she became the owner in 2011.³ The deed was signed on July 14, 2011, and registered on July 17, 2014. Although it is recognized that testimony alone may be sufficient, in this case it appears that the female appellant provided a notarized document that contradicts her testimony that she became the owner in 2014. Furthermore, she did not provide a satisfactory explanation demonstrating that, on a balance of probabilities, she became the owner in 2014.
- [16] Therefore, I am of the opinion that the RPD did not err in finding that the contradiction regarding an essential element of the claim, that is the acquisition of the land, undermines her credibility. Documentary evidence
- [17] In its decision, the RPD did not give any weight to the notarial deed that demonstrates she is the owner, nor to the father's land-related documents that demonstrate he has been the owner for several years. In her memorandum, the female appellant alleges that the RPD erred in not giving any weight to these documents that support her claim.
- [18] I agree with this allegation in part.
- [19] I share the RPD's opinion that the father's land-related documents do not demonstrate that the female appellant became the owner in 2014. Therefore, the RPD's decision to not give them any weight is correct.
- [20] However, the RPD did err in not giving weight to the notarial deed from 2011. I have analyzed the deed and nothing leads me to doubt its authenticity. Nonetheless, this does not change the fact that the female appellant failed to demonstrate, on a balance of probabilities, that the land transfer occurred in 2014.
- [21] In sum, after analyzing the entire record, I find that the principal appellant is not credible. Associate appellant Number of events
- [22] In its decision, the RPD found that the associate appellant was not credible because he did not mention in his BOC Form that he had been the victim of Lavalas party members several times. In the memorandum, the associate appellant explains that he is not very educated and that he thought he could add that at the hearing.

- [23] In reading the associate appellant's BOC Form, I note that it states [translation] "on several occasions, Lavalas party members and their thugs asked me to join their group and I always refused. On November 7, 2008, they came to my home and threatened to kill me because I refused to join their organization. They said that time was my last chance." These excerpts from the BOC Form demonstrate that the thugs approached the male appellant on several occasions.
- [24] However, the male appellant's credibility is undermined by his explanations for why he did not indicate the dates of the other events. When questioned by the RPD about why he did not mention the other incidents that occurred on November 5, 7, and 10, 2018, in his BOC Form, the male appellant answered that he did not understand French very well. When confronted by the fact that he had received help from an interpreter, the male appellant first answered that he had not been able to finish his story, and then he stated that he did not want it to be too long.
- [25] I share the RPD's opinion that these explanations are not plausible because, not only did he have help from an interpreter, his written account is very short, and mentioning the other dates would have meant adding a few more lines at most. Furthermore, when the RPD asked him on what date his problems began, the male appellant answered November 17, 2008. This contradicts his testimony that the thugs threatened him before November 17, 2008, on November 5, 7, and 10.
- [26] Consequently, I am of the opinion that the RPD did not err in finding that this important omission about events in which he was allegedly beaten and received death threats undermines his credibility. Location of the incident of November 17, 2008
- [27] The RPD found that the associate appellant was not credible because there was a contradiction about where the incident of November 17, 2008, occurred: in his BOC Form he states that he was at home, and at the hearing he stated that he was at work. In the memorandum, the associate appellant admits there was a contradiction, but claims that it was an oversight when he wrote the account.
- [28] I do not accept the male appellant's explanation.
- [29] At the hearing, the male appellant mentioned that the thugs threatened him at work on November 17, 2008. When the RPD countered that he had indicated in his BOC Form that he had been threatened at home, the male appellant answered that the thugs had gone to his home, but because he was not there, they went to his workplace to threaten him. However, in his BOC Form, the incident is described as follows [translation] "On November 17, 2008, they came to my home and threatened to kill me because I refused to join their organization." There is no mention that the male appellant was not at home or that they went to his workplace to threaten him, nor is there any explanation as to why the male appellant wrote that they went to his home to threaten him when, according to his statements, this happened at his workplace. Furthermore, at the beginning of the hearing, his counsel asked him if he had any changes to make regarding his father's date of death and

he answered no. This question demonstrates that the male appellant had reviewed his BOC Form before the hearing. Therefore, if it was an error, as he claims in his memorandum, he could have changed it at that point. However, he did not do so.

- [30] Therefore, I am of the opinion that the RPD did not err in finding that the male appellant adjusted his testimony, which undermines his credibility. Reasons for the altercations
- [31] The RPD concluded that the associate appellant was not credible because, when questioned about why the thugs were after him, he stated that it was to take the truck he drove and did not mention that it was because he refused to become a Lavalas party member. In the memorandum, the male appellant maintains that he does not have a high level of education and that it was difficult for him to understand the point of certain questions. Furthermore, he alleges that at the beginning of the hearing he stated that the thugs' actions were motivated by his refusal to join their group.
- [32] I do not agree with these allegations.
- [33] I counted, and the RPD asked the male appellant 10 times and in different ways about why the thugs were after him. Each time, he answered that it was to take the truck and his money. I am of the opinion that the male appellant's level of education has nothing to do with how he answered. Regardless of how educated he is, he should have been able to answer the RPD's simple question about why the thugs were after him. The RPD gave the male appellant an opportunity to answer that question, it asked it in different ways and, every time, the answer remained the same: they wanted to take his truck. I am therefore of the opinion that if the thugs were after the male appellant for political reasons, the male appellant would have mentioned it at least once when the RPD questioned him specifically about the events that took place in November 2008. This was not the case.
- [34] At paragraph 41 of his memorandum, the male appellant alleges that he stated that the primary reason for their assault was a reaction to his refusal to join their group. I read the hearing transcript and at the beginning of the hearing, the RPD asked him whom he feared, and the male appellant mentioned the Lavalas thugs. The RPD then asked him why and the male appellant answered that they wanted him to join their group, but he refused.⁴ Therefore, he did mention the reason why he feared the Lavalas thugs. However, when the RPD asked him specifically why the thugs went after him in September and November 2018, he did not mention that it was for political reasons or to have him join the party: he stated that it was to steal the truck and then to steal his money.⁵ Furthermore, when the RPD asked him if there were any other reasons, he answered no.⁶
- [35] Consequently, I am of the opinion that the RPD did not err in finding that this undermines the associate appellant's credibility.
- [36] In sum, after analyzing the entire record, I find that the associate appellant is not credible.
Minor associate appellant

- [37] The minor child was born in the United States. In the memorandum, there are no arguments about the RPD decision concerning him.
- [38] After analyzing the entire record, I am of the opinion that the RPD's decision to reject his refugee protection claim is correct. Principle of fundamental rights
- [39] In the memorandum, it is alleged that the RPD erred because the principles of fundamental rights were violated.
- [40] In reading the decision and the hearing transcript, I found no evidence that the principles of fundamental rights were violated. Furthermore, the appellants did not specify which principle of fundamental rights was violated. I am therefore of the opinion that this allegation is without merit.
- [41] In light of all of the foregoing, I am of the opinion that the appellants did not establish a serious possibility of persecution, nor did they demonstrate, on a balance of probabilities, the existence of a risk under subsection 97(1) of the Immigration and Refugee Protection Act (IRPA).

CONCLUSION

- [42] Pursuant to paragraph 111(1)(a) of the IRPA, I confirm the determination that the appellants are neither Convention refugees nor persons in need of protection.
- [43] The appeal is dismissed. (signed) "Murielle Henri" Murielle Henri January 3, 2020 IRB translation Original language: French Date 1 Transcript of the RPD hearing of November 15, 2018, p. 58. 2 Transcript of the RPD hearing of November 15, 2018, p. 54. 3 SPR-1, RPD record, Notorial deed., p. 202 4 Transcript of the RPD hearing of November 15, 2018, pp. 10-11 5 Ibid., p. 14 and following 6 Ibid., p. 21.

RAD File No. / N° de dossier de la SAR : MB9-05336 MB9-05337 / MB9-05338 RAD.25.02 (April 4, 2019) Disponible en français 9 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

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

CASE PAGE <https://chat.esheria.ai/case-law/canada/Credibilityassessment-refugee-appeal-division-2020--6a40c3c04cf2c72690fb5f7b>

A source URL was not supplied in the case record. Consult the court's original record before reliance.

Prepared on 26 October 2026 · Esheria