

CANADA / JUDGMENT

MB9-29757

COURT

Refugee Appeal Division

DECIDED

17 November 2020

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RAD File No. / No de dossier de la SAR : MB9-29757

Private Proceeding / Huis clos

Reasons and decision - Motifs et décision

Person who is the subject of the appeal

XXXX XXXX XXXX

Personne en cause

Appeal considered / heard at

Montréal, Quebec

Appel instruit / entendu à

Date of decision

November 17, 2020

Date de la décision

Panel

Me Kristine Plouffe-Malette

Tribunal

Counsel for the person who is the subject of the appeal

François Jean Denis

Conseil de la personne en cause

Designated representative

N/A

Représentant(e) désigné(e)

Counsel for the Minister

N/A

Conseil du ministre

REASONS FOR DECISION

OVERVIEW

- [1] XXXX XXXX XXXX (the appellant), a citizen of Haiti, is appealing against the decision of the Refugee Protection Division (RPD) rendered on November 19, 2019, rejecting his claim for refugee protection on the grounds that he is excluded under Article 1E of the Convention and is not a person in need of protection under section 98 of the Immigration and Refugee Protection Act (IRPA).
- [2] The appellant alleges that, in the XXXX of 2014, he was persecuted in Haiti by reason of his political opinion, which is why he left the country and went to Brazil, where he obtained permanent resident status. Due to the discrimination he experienced, he left Brazil and went to the United States and then Canada, where he claimed refugee protection.
- [3] Based on the principles in Zeng, the RPD excluded the appellant from Canada's protection. The appellant is challenging the analysis of the Zeng factors as being excessive, microscopic and selective of details, and is challenging the reasoning adopted by the member, which he describes as North American. The appellant is also arguing that the RPD failed to comment on the probative value of the documents submitted in support of his refugee protection claim.
- [4] After examining the analysis of the Zeng factors conducted by the RPD and addressing the issue of the probative value of the documents submitted in support of the refugee protection claim, the Refugee Appeal Division (RAD) confirms the determination of the RPD. The appellant is excluded from Canada's protection.

BACKGROUND

- [5] In his Basis of Claim Form (BOC Form) and amended written account, the appellant submits that he has been involved in the Haitian political party called Fanmi Lavalas since 2009, as have his father and his brother. During his political involvement, he allegedly spoke publicly on several occasions in order to convince the rural dwellers in his native region, XXXX, to vote for the Lavalas party.
- [6] On XXXX XXXX XXXX 2014, he reportedly put an end to a political meeting because members of an opposing party, the Haitian Tèt Kale Party (PHTK), attacked him by throwing stones and bottles at him. He allegedly filed a complaint with the police who apparently did not follow up on it.

- [7] On XXXX XXXX, 2014, the appellant's brother, XXXX XXXX, was allegedly murdered by members of the PHTK party and his father has apparently been missing since then. Fearing for his life, the appellant left the country and went to the Dominican Republic on XXXX XXXX, 2014. He then allegedly went to Brazil on XXXX XXXX XXXX 2014, where he was granted permanent residency for a period of 10 years.
- [8] One year after arriving in Brazil, on his way out of the subway, the appellant allegedly encountered his opponents, PHTK party members, who apparently confirmed that they were responsible for his brother's death and his father's disappearance.
- [9] The appellant left Brazil on XXXX XXXX XXXX 2016, and lived in the United States for approximately one year. At the hearing, he confirmed that he had applied for asylum there but had not received the outcome before entering Canada in XXXX 2017. He claimed refugee protection here the following September.
- [10] He also stated that criminals were still looking for him in 2017 and 2018, because they had allegedly appeared at his home and threatened his family. While they reportedly attempted to murder another one of his brothers who had remained in Haiti, the criminals had apparently waved around a photograph of the appellant and allegedly accused him of tarnishing the PHTK party's image.

DETERMINATION

- [11] The RPD was correct in determining that the appellant is neither a Convention refugee nor a person in need of protection by reason of his exclusion under Article 1E of the Convention and pursuant to section 98 of the IRPA. The appeal is dismissed.

SCOPE OF THE APPEAL

- [12] In accordance with the principles in *Huruglica*,¹ the RAD carried out an independent assessment of the evidence submitted in support of the appeal, which included listening to the hearing, and it applied the standard of correctness, as the RPD did not enjoy a meaningful advantage with respect to credibility.

ANALYSIS

- [13] Although the appellant is essentially challenging the RPD's analysis of the Zeng factors, the first concern is to address the two allegations concerning procedural fairness and the lack of conclusion on the probative value of the documents.
- [14] First, the appellant argues that the RPD member conducted an excessive, selective analysis of his testimony and adopted North American reasoning, showing no understanding of the stress experienced during the hearing. However, the appellant did not explain or provide examples of these statements in his memorandum, which suggests that there was a breach of procedural fairness. The RAD listened to the hearing and examined the entirety of the record but did not note the type of reasoning and the excessive, selective analysis allegedly

carried out by the member. The RPD attempted to obtain answers to its questions concerning the facts forming the basis of the refugee protection claim. Although the exchange between the appellant and the member was sometimes tense, there was no sign of improper behaviour or reasoning at the hearing or in the decision.

[15] Second, the appellant was correct in arguing that the RPD failed to comment on the probative value of the documents submitted in support of his refugee protection claim. In order to correct this error, the RAD will address the probative value of the documents submitted as part of its subsequent analysis of the exclusion pursuant to Article 1E of the Convention and section 98 of the IRPA.

[16] Article 1E of the Convention and section 98 of the IRPA read as follows:

Article 1E: This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

Section 98: A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.

[17] At paragraph 28 in Zeng, the Federal Court of Appeal² defines the test to be applied to determinations rendered pursuant to Article 1E of the Convention. It reads as follows:

Considering all relevant factors to the date of the hearing, does the claimant have status, substantially similar to that of its nationals, in the third country? If the answer is yes, the claimant is excluded. If the answer is no, the next question is whether the claimant previously had such status and lost it, or had access to such status and failed to acquire it. If the answer is no, the claimant is not excluded under Article 1E. If the answer is yes, the RPD must consider and balance various factors. These include, but are not limited to, the reason for the loss of status (voluntary or involuntary), whether the claimant could return to the third country, the risk the claimant would face in the home country, Canada's international obligations, and any other relevant facts.

[18] Consequently, when rendering a determination pursuant to Article 1E of the Convention, the panel must first determine whether, on the date of the hearing, the claimant-in this case, the appellant-has status, substantially similar to that of its nationals, in a third country-in this case, Brazil. If the answer is no, it must determine whether the claimant had such status and lost it, or whether the claimant could have reacquired such status but failed to take any steps to do so. If the answer is yes, it must analyze and weigh the Zeng factors, which are listed above.

On the date of the hearing before the RPD, the appellant had lost his permanent resident status, which was substantially similar to that of Brazilian nationals

- [19] In his memorandum, the appellant challenges the RPD's conclusion that, on the day of the hearing, he had lost his permanent resident status, which conferred on him rights similar to those of Brazilian nationals.
- [20] The appellant's argument is hard to reconcile with his statement at the hearing, namely, that he had been granted permanent resident status in Brazil for a period of 10 years. He stated that he had applied for this status the same day he arrived in Brazil, on XXXX XXXX, 2014, and that he had allegedly obtained it a year later. In addition, the appellant stated that he had seen his name on a list confirming that permanent residency was granted.³ Like the RPD, the RAD is of the opinion that the appellant obtained permanent resident status in Brazil.
- [21] However, the appellant states that the permanent resident status did not confer on him the same rights as Brazilian nationals. Neither the RPD nor the RAD share this view, as it is now clear from the documentary evidence that permanent resident status in Brazil confers on its holder the same rights as those of Brazilian nationals.
- [22] The documentary evidence demonstrates that permanent residents in Brazil enjoy status substantially similar to that of nationals. For example, the right to travel and re-enter the country, the right to work, the right to study, and access to social services and health care are rights that need to be protected and granted to permanent residents in order to conclude that they enjoy status similar to that of citizens.⁴ The documentary evidence confirms that these rights are granted to permanent residents in Brazil to the same extent as they are to nationals.⁵
- [23] Furthermore, although the appellant claims that he had not received treatment despite going to the hospital and that he had been refused access to education by reason of his origins, he did state that he had the right to travel to Haiti, only to then change his mind, and to work.⁶
- [24] However, on the day of the hearing,⁷ the appellant had been absent from Brazil for more than two years, which, according to the documentary evidence, results in a loss of permanent resident status.⁸ Therefore, like the RPD, the RAD is of the opinion that on the day of the hearing, the appellant had lost the status, substantially similar to that of Brazilian nationals, that he had previously obtained.
- [25] At this stage of the analysis, the appellant has not been excluded and the Zeng factors must be analyzed and weighed.

Analysis of the factors in Zeng

- [26] In accordance with the principles in Zeng, it is important to analyze and weigh the following factors:

* The reason for the loss of status (voluntary or involuntary)

- * Whether the claimant could return to the third country
- * The risk the claimant would face in the home country
- * Canada's international obligations and any other relevant facts

Voluntary loss of permanent resident status

- [27] The appellant claimed that he had lost his status involuntarily, because he had suffered discrimination, confirming that he was unable to move back to Brazil. The appellant argued, in particular, that he had been refused a promotion at work, that he had been unable to travel outside of Brazil and that he had been unable to access health care and education, all because of his Haitian origins, which had subjected him to discriminatory treatment.
- [28] In its reasons, the RPD was sensitive to the situation the appellant had experienced in Brazil. The RAD is following suit. The discrimination against the Haitian community in Brazil and other immigrant communities is documented and the appellant may have experienced it firsthand.⁹ However, he was able to work and obtain housing and food. In addition, contrary to his statement, his permanent resident status conferred on him the right to leave and re-enter the country and to enjoy access to health care and education. Ultimately, the RPD was correct in concluding that the events the appellant experienced in Brazil, even cumulatively, do not amount to persecution within the meaning of Ward.¹⁰ Its conclusion is consistent with the case law.¹¹ With all due respect for the appellant's experience in Brazil, the RAD is of the opinion that the RPD did not err when it concluded that his departure from Brazil was voluntary.

Whether the appellant could return to Brazil

- [29] In his memorandum, the appellant argues that he is unable to return to Brazil because of the discrimination he suffered and because he lost his visa and status due to his departure from the country more than two years ago.
- [30] The RPD did not draw a separate conclusion regarding the factor of whether the appellant could return to Brazil.
- [31] The documentary evidence is in favour of the appellant. It is now well established that Brazilian permanent residents lose their status if they are absent from the country for more than two years without justification. There is nothing in Brazilian law that defines what type of justification is accepted by public authorities to explain a permanent resident's absence.¹² However, there is administrative recourse for a loss of permanent resident status, as well as a right to appeal in the event the recourse is unsuccessful.
- [32] Nevertheless, this information should be read in concert with Article 11 of Interministerial Order No. 10 of 2018, which states the following:

Article 11. The basis for the humanitarian acceptance provided for in this order will be considered null and void if the immigrant leaves Brazil permanently when there is information showing that the immigrant attempted to reside in another country.¹³

[33] Consequently, since the appellant attempted to reside in another country, even if only via his refugee protection claim in Canada, the RAD is of the opinion that, on a balance of probabilities, he would not succeed in satisfactorily justifying his absence from Brazil of more than two years in order to regain his permanent resident status. The website of the consulate in Vancouver features a statement from the Brazilian authorities that supports this conclusion, indicating that if permanent visa holders leave the country for more than two years, their visa will expire and their foreigner identity card will automatically be revoked.¹⁴

[34] Ultimately, on a balance of probabilities, the appellant cannot return to Brazil.

The appellant would not be subject to a risk should he return to Haiti, his country of origin

[35] The RPD concluded that the appellant would not have a well-founded fear of persecution by reason of his political opinion should he return to Haiti, as he failed to give credible testimony regarding his political involvement and the events of September 9 and 20, 2014, involving his brother's death and his father's disappearance.

[36] He argues on appeal that these conclusions are erroneous because they are based on exaggerations. Although he admitted to being hesitant about the circumstances surrounding his brother's death, he claims that he explained them satisfactorily.

[37] The RAD cannot accept the appellant's arguments. First, the RPD was correct in stating that the appellant's testimony was difficult. The RAD notes that the testimony was not only difficult but was also laborious, non-spontaneous and evasive. On several occasions, the appellant did not provide a direct response to the member's questions, which were simple to say the least, obliging her to repeatedly ask for details, clarification and even explanations regarding his responses.

[38] Furthermore, the RPD was correct in concluding that the appellant would not face a serious possibility of persecution by reason of his political opinion should he return to the country.

[39] Like the RPD, the RAD finds that the appellant failed to give credible testimony regarding his political involvement with the Lavalas party. Of course, he may have been a party member: his membership card, issued in 2009, expired since 2011 (Exhibit C-2) and provided as evidence before the RPD, attests to this and was given probative value by the RAD. However, he was unable to provide a spontaneous, specific explanation of his role in the party. He stated that on several occasions, he spoke publicly at gatherings in his community to criticize the actions of the PHTK party. He was unable to provide specific details regarding his statements or actions, although he claims to have been an active advocate of the party since age 16 along with his father and late brother. On several occasions, he repeated that he

had spoken out against the PHTK party members, who are criminals, and that he had echoed the Lavalas party's major ideas during his public speeches. When asked to elaborate on these responses, the appellant repeated them. Furthermore, the RAD notes that the appellant was unable to acknowledge that the Chimères took part in the actions of the Lavalas party, a fact that is well-known and widely reported in the documentary evidence. On the whole, the appellant failed to establish, on a balance of probabilities, his claim that he was an active member of the Lavalas party from 2009 to 2014 to the extent that he spoke publicly in front of large gatherings of over 150 people. The RAD draws a negative inference from the appellant's testimony regarding his political activities, which undermines his credibility.

- [40] In his Basis of Claim Form (BOC Form), the appellant states that he was attacked on XXXX XXXX, 2014, and that his brother died and father disappeared on XXXX XXXX XXXX 2014. The RPD did not believe the appellant's two allegations. For the following reasons, the RAD is of the opinion that the RPD's conclusion is correct.
- [41] The appellant testified that his brother had been murdered by PHTK party supporters on XXXX XXXX XXXX 2014, by reason of his involvement in the Lavalas party. He claimed that he had been in a public place at approximately XXXX XXXX XXXX a.m. when a friend had called him and told him about his brother's murder. She had allegedly called him shortly after hearing the detonations. The police apparently arrived on the scene approximately two hours after the murder.
- [42] In support of his refugee protection claim, the appellant provided an excerpt from the minutes of the XXXX peace court registry, dated XXXX XXXX, 2014, which refers to the alleged murder of his brother (Exhibit C-5), and his brother's death certificate (Exhibit C-4). The RPD asked why Exhibit C-5 makes reference to the appellant summoning the police to the scene of the death as he clearly stated that he had not contacted the police. He claimed that upon their arrival, because it was his brother, he had stated that he had called the police, although that was not true. The RPD also asked why Exhibit C-4 states that his brother died at XXXX a.m. rather than at approximately XXXX a.m., as the appellant claimed that he had been notified shortly after the death at approximately XXXX a.m. The appellant changed his testimony and claimed that his friend had not called him when she had heard the detonations but when she had left her home and had been informed of the appellant's brother's death.
- [43] The RPD was correct in considering these explanations unsatisfactory. The appellant gave evasive, hesitant testimony concerning the alleged death of his brother. When confronted with the above contradictions, he changed his testimony rather than providing satisfactory explanations. As a result, the appellant failed to establish, on a balance of probabilities, that his brother had been murdered by members of the PHTK party on XXXX XXXX, 2014. A negative inference has been drawn, seriously undermining the appellant's credibility.

- [44] Several times during his testimony, the appellant repeated that he had been the one with the problems, specifying that these problems had occurred on XXXX XXXX XXXX 2014. He claimed that he had had to interrupt a public gathering where he was speaking to rural dwellers because of a disturbance caused by PHTK supporters. He then allegedly filed a complaint with the police, which is the reason why he provided as evidence a police report dated XXXX XXXX, 2014, under Exhibit C-3.
- [45] When questioned by the RPD, he was unable to provide a detailed description of what had happened that day, repeating that they had been throwing stones and bottles. Then, when confronted with the police report indicating that the appellant had allegedly received death threats from unidentified armed criminals, as had his father and brother, the appellant confirmed that that was what had happened. When asked to elaborate on his response, he claimed that when they had thrown stones and bottles at him, he had viewed it as a death threat. The RPD did not accept this explanation, nor does the RAD. The police report makes reference to death threats from unidentified criminals, not an assault of stones and bottles thrown by PHTK supporters. The police report and the appellant's testimony describe two completely different events. Ultimately, the appellant failed to establish, on a balance of probabilities, that he had been attacked by PHTK supporters on XXXX XXXX XXXX 2014. This line of testimony conclusively undermines the appellant's credibility.
- [46] In conclusion, like the RPD, the RAD is of the opinion that although the appellant may have been a member of the Lavalas party, he failed to establish, on a balance of probabilities, that he had been an active member, that his brother had died and his father had disappeared by reason of their political actions and that he had been attacked by reason of his political opinion. Given the appellant's lack of credibility with regard to his allegations of fear in Haiti, the RAD further concludes that documents C-3, C-4 and C-5 have no probative value. This conclusion also applies to documents C-6, C-7 and C-8, three written records from the Thomassique peace court registry that document the alleged assaults on his family members by PHTK supporters. The documents were produced in 2017 and 2018, after the appellant's departure. The events that allegedly took place in 2017 and 2018 cannot be accepted as credible due to the lack of credibility attributed to the allegations surrounding the events in 2014.
- [47] Ultimately, the appellant failed to establish, on a balance of probabilities, that he would be subjected to a serious possibility of persecution or would be personally subjected to a danger of torture, to a risk to his life or to a risk of cruel and unusual treatment or punishment if he were to return to Haiti.

Compliance with Canada's international obligations and any other relevant factors

- [48] In his memorandum, the appellant argues that if Canada were to refuse to grant him refugee protection, it would be complicit in the discrimination he suffered and would therefore be in violation of its international obligations.

[49] Given the above conclusions that the discrimination the appellant may have suffered does not amount to persecution and that he failed to establish the existence of a well-founded fear of persecution or that he would be personally subjected, on a balance of probabilities, to a danger or to a risk under subsection 97(1) of the IRPA if he were to return to Haiti, the RAD concludes that Canada's international obligations have been met.

[50] Based on the entirety of the evidence, the RAD concludes that it has considered all of the factors relevant to the review of the appellant's refugee protection claim.

Conclusion regarding the weight of the Zeng factors

[51] Both the RPD panel and the RAD panel must balance all of the factors in Zeng based on the propositions set out therein:

[19]...The Minister and the respondents agreed on a number of basic propositions, each of which I consider to be unassailable. Those propositions are:

? the objectives set out in subsection 3(2) of the IRPA seek, among other things, to provide protection to those who require it and, at the same time, provide a fair and efficient program that maintains the integrity of the system;

? the purpose of Article 1E is to exclude persons who do not need protection;

? asylum shopping is incompatible with the surrogate dimension of international refugee protection;

? Canada must respect its obligations under international law;

? there may be circumstances where the loss of status in the third country is through no fault of a claimant in which case the claimant need not be excluded. 15

[52] The previous analysis revealed that the appellant voluntarily lost his permanent resident status in Brazil. However, from an administrative viewpoint, the appellant cannot move back there because he left more than two years ago, which resulted in the expiry of his visa and resident card. This loss resulted from his search for a better country to reside in rather than from a fear of persecution, a danger of torture, a risk of cruel and unusual treatment or punishment or a risk to his life in Haiti. Therefore, he failed to establish, on a balance of probabilities, that he would need Canada's protection if he were to return to Haiti. As a result, there is no reason to conclude that Canada would be in violation of its international obligations if it refused to grant him protection.

[53] Like the RPD, the RAD notes that the appellant had applied for asylum in the United States but confirmed at the hearing that he did not want to wait for the outcome out of fear of being deported. Furthermore, he purposely did not mention having filed such an application in two places on the forms supporting his Canadian refugee protection claim. When the RPD confronted him on these major omissions, the appellant claimed that he had wished to save this information for his hearing. This statement does not justify the

omissions in any way and was made following a very laborious exchange regarding whether or not he had applied for asylum in the United States. The appellant refused to answer the questions clearly and directly.¹⁶ A negative inference is drawn and the appellant's credibility is undermined. This behaviour further supports the previously drawn conclusions, because, as specifically stated in Zeng, "asylum shopping is incompatible with the surrogate dimension of international refugee protection."

[54] In this case, the analysis of the Zeng factors weighs in favour of excluding the appellant from Canada's protection.

[55] However, before concluding that the appellant is excluded, it is important to analyze whether there is a fear of persecution, a danger of torture, a risk of cruel and unusual treatment or punishment or a risk to his life in Brazil.

The appellant would not be subject to a risk if he were to return to Brazil, his country of residence

[56] In accordance with *Romelus v. Canada* and based on a joint and consistent reading of Article 1E of the Convention and section 98 of the IRPA, an analysis of allegations of fear and risk in the country of residence must be conducted prior to concluding that a refugee protection claimant is excluded from Canada's protection:

[41] The wordings of Article 1E of the Convention and section 98 of the Act and the interaction of those two wordings are not a problem in cases of persons referred to in Article 1E who rely on a fear only in respect of their country of citizenship. These persons are excluded, and the fear in respect of their country of citizenship is not considered since they are protected in their country of permanent residence.

[42] The situation seems to get much trickier when a claimant fulfills the requirements to become a "person referred to" in Article 1E of the Convention, but he or she invokes a fear with regard to his or her country of residence.

[43] The Court has dealt with similar cases and, without specifying its basis, has suggested that the analysis of the fear regarding the country of permanent residence must be made before declaring a person to be referred to in Article 1E (*Omar* at paras 24-25, *Omorogy* at para 61).¹⁷

[57] The appellant alleged that he had suffered racial discrimination in Brazil and that he had also encountered his Haitian political opponents when exiting the subway in Sao Paulo on XXXX XXXX XXXX 2016. They had allegedly told him that since they had managed to get his father and brother, he would be next. The appellant had apparently fled and reportedly no longer went to that part of the city out of fear of encountering them again.

- [58] Although the RAD is sensitive to the appellant's statements regarding the racial discrimination he may have experienced, the previous conclusion that the appellant's situation does not amount to persecution holds true here. The appellant would not be personally subjected to a danger or to a risk if he were to return to Brazil by reason of the racial discrimination he may have experienced.
- [59] In its reasons, the RPD confirmed that it did not believe the incident alleged by the appellant during which he apparently encountered his brother and father's assailants in Brazil, because the appellant did not give credible testimony regarding his allegations of persecution by reason of his political opinion in Haiti. This conclusion is correct: the significant lack of credibility of the appellant's testimony means that he failed to establish, on a balance of probabilities, the existence of his alleged assailants and, a fortiori, that he encountered them when exiting the subway in Brazil. In conclusion, the appellant failed to establish, on a balance of probabilities, that he would be subjected to a serious possibility of persecution or that he would be personally subjected to a danger of torture, to a risk to his life or to a risk of cruel and unusual treatment or punishment if he were to return to Brazil.

Conclusion with regard to exclusion

- [60] After weighing all of the previously analyzed factors, knowing that the appellant failed to establish that he would be subject to any type of risk should he return to Brazil or Haiti, and despite the loss of his permanent resident status in Brazil, the RAD concludes that the RPD's decision to exclude the appellant from Canada's protection under Article 1E of the Convention falls within a range of possible outcomes and is therefore correct.¹⁸

CONCLUSION

- [61] Pursuant to subsection 111(1) of the IRPA, the appeal is dismissed and the determination of the RPD, namely, that the appellant is neither a Convention refugee nor a person in need of protection within the meaning of subsection 97(1) of the IRPA or under section 98 of the IRPA because he is a person referred to in Article 1E of the Convention, is confirmed.

(signed)

Kristine Plouffe-Malette

Me Kristine Plouffe-Malette

November 17, 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 Canada (Citizenship and Immigration) v. Zeng, 2010 FCA 118.

3 Recording of the hearing held before the Refugee Protection Division (RPD) on November 5, 2019, from 6:00 to 13:00, 29:00 to 32:15 and 45:00 to 46:00.

4 Shamlou v. Canada (Minister of Citizenship and Immigration) (1995), 32 Imm. L.R. (2d) 135 (F.C.T.D).

5 SAR-2, National Documentation Package (NDP) on Brazil (September 1, 2020), Tab 3.4: ?Brazil and Haiti: Rights and responsibilities of permanent residents in Brazil; requirements and procedures to obtain permanent residence in Brazil through family reunification (2017-July 2020), Immigration and Refugee Board of Canada (IRB), August 7, 2020, ZZZ200262.E; Tab 3.6: Brazil and Haiti: Foreigner identity cards (Cédula de Identidade de Estrangeiro, CIE) issued to Haitian residents, including the purpose of the information indicated on them (2010-September 2017), IRB, October 17, 2017, ZZZ106003.FE; Tab 3.7: ?Brazil and Haiti: Resident status of Haitian citizens in Brazil, including their rights and responsibilities (2010-September 2017), IRB, August 28, 2020, ZZZ200336.FE.

6 Recording of the hearing held before the RPD on November 5, 2019, from 32:30 to 37:00 and 41:00 to 45:00.

7 Majebi v. Canada (Citizenship and Immigration), 2016 FCA 274.

8 SAR-1, NDP on Brazil (September 1, 2020), Tab 3.8: Whether a permanent resident automatically loses permanent resident status if outside the country for more than two years; recourse available to contest cancellation of permanent resident status (2017-March 2018), IRB, February 14, 2018, BRA106054.FE; Tab 3.9: Brazil and Haiti: Procedure for reacquiring permanent resident status when it has been revoked due to an absence from Brazil for more than two years; whether Haitians who have lost permanent resident status have been able to reacquire it (2017-July 2019), IRB, August 19, 2019, ZZZ106282.FE.

9 SAR-1, NDP on Brazil (September 1, 2020), Tab 3.3: Brazil and Haiti: Situation of Haitians in Brazil, including rights and obligations; permanent resident status; documents issued to Haitians, including Foreigner Identity Cards (Cédula de Identidade de Estrangeiro, CIE); treatment of Haitians in Brazil, including access to employment and education, state protection and support services (2010-June 2018), IRB, August 28, 2020, ZZZ200291.FE; Tab 13.2: Report of the Special Rapporteur on minority issues on her mission to Brazil, United Nations. Human Rights Council, February 9, 2016, A/HRC/31/56/Add.1.

10 Canada (Attorney General) v. Ward, [1993] 2 SCR 689.

11 Noël v. Canada (Citizenship and Immigration), 2018 FC 1062, at paras. 28-30; Simolia v. Canada (Citizenship and Immigration), 2019 FC 1336, at paras. 26-27; Célestin v. Canada (Citizenship and Immigration), 2020 FC 97, at para. 62; Jean-Pierre v. Canada (Citizenship and Immigration), 2020 FC 136, at paras. 31-34; Morissaint v. Canada (Citizenship and Immigration), 2020 FC 413, at para. 19; Joseph v. Canada (Citizenship and Immigration), 2020 FC 839, at para. 4.

12 SAR-1, NDP on Brazil (September 1, 2020), Tab 3.8: Whether a permanent resident automatically loses permanent resident status if outside the country for more than two years; recourse available to contest cancellation of permanent resident status (2017-March 2018).

13 NDP on Brazil (September 1, 2020), Tab 3.9: Brazil and Haiti: Procedure for reacquiring permanent resident status when it has been revoked due to an absence from Brazil for more than two years; whether Haitians who have lost permanent resident status have been able to reacquire it (2017-July 2019), IRB, August 19, 2019, ZZZ106282.FE.

14 Ibid.

15 Canada (Citizenship and Immigration) v. Zeng, 2010 FCA 118, at para. 19.

16 Recording of the hearing held before the RPD on November 5, 2019, from 2:05 to 2:15.

17 Romelus v. Canada (Citizenship and Immigration), 2019 FC 172, at para. 43.

18 Su v. Canada (Citizenship and Immigration), 2019 FC 75.

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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 (January 2020)

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Prepared on 24 October 2026 · Esheria