CANADA / JUDGMENT

TA6-13249

COURT
Refugee Protection Division

DECIDED
1 June 2009

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RPD File No. / N° de dossier de la SPR : TA6-13249 TA8-06992 Private Proceeding / Huis clos Reasons and Decision ? Motifs et décision Claimant(s) XXXXX XXXXX Demandeur(e)(s) d'asile XXXXX XXXXX XXXXX Date(s) of Hearing 13 May 2009 Date(s) de l'audience Place of Hearing TORONTO, Ontario Lieu de l'audience Date of Decision 1 June 2009 Date de la décision Panel Marc Gobeil Tribunal Counsel for the Claimant(s) Roderick McDowell Barrister and Solicitor Conseil(s) du / de la / des demandeur(e)(s) d'asile Tribunal Officer H. Paulo Agent(e) des tribunaux Designated Representative(s) N/A Représentant(e)(s) désigné(e)(s) Counsel for the Minister N/A Conseil du ministre XXXXX XXXXX (principal claimant), a 35-year-old citizen of Haiti, claims refugee protection pursuant to sections 96 and 97(1) of the Immigration and Refugee Protection Act (IRPA).1 The principal claimant's claim is joined with that of his sister's claim, XXXXX XXXXX XXXXX, pursuant to Rule 49(1) of the Refugee Protection Division Rules as they are members of the same family. Allegations The principal claimant alleges that he joined the Mouvement Chrétien pour une Nouvelle Haïti (MOCHRENHA) party in XXXXX. He attended several meetings and rallies. His first difficulty occurred on XXXXX, 2000, while handing out pamphlets in XXXXX XXXXX. A man approached him asking him to join the Lavalas XXXXX and warned him to stop speaking to the people and handing out flyers or else he would be beaten. Approximately 15 minutes later, four men approached him, including the one who had previously spoken to him. They told him that if he did not join the Lavalas party, he would be beaten or killed. They grabbed his shirt and began punching him. After the elections on XXXXX, 2000, there were widespread demonstrations. He was involved in at least four demonstrations. He was beaten by the police and by Lavalas members at all of these demonstrations. He was involved in a demonstration on XXXXX, 2000. A gang of Lavalas members attacked them. Following this attack, he moved in with his parents in XXXXX. The principal claimant returned to his home in XXXXX on XXXXX, 2000. On XXXXX, 2000, three members of the Chimères forced their way into his house. His cousin was there that evening and the men asked him "where is XXXXX." Before the principal claimant could escape, they proceeded to beat him. As a result of this incident, he decided to leave Haiti. He went to his sister's house the next day in XXXXX, spent several weeks there and left on XXXXX, 2000. Men returned to the principal claimant's house after he left Haiti. One of the neighbours heard them say "he can't stay in hiding forever." The principal claimant's sister (the claimant) alleges that after the Lavalas members entered her brother's house, he came to her house and stayed with her for about two weeks. XXXXX and a group of his friends would come to her house to listen to the radio. After XXXXX left, his friends continued to come around

and listen to the radio. On XXXXX, 2002, five men burst into her home and asked for XXXXX. She informed them that he left. The incident that forced her to leave Haiti occurred on XXXXX, 2002. There had been about one and one-half days of heavy gunfire in the neighbourhood and the people were afraid. At approximately 4 a.m., the claimant and her husband were awakened by banging on the door. Her husband opened the door and they immediately hit her husband. They ransacked the house. One of the men attempted to rape her and began to beat her. After about thirty minutes they left but said they would return.

Determination

The panel considered the claim of the claimant in accordance with the Chairperson's Guidelines regarding Women Refugee Claimants Fearing Gender-Related Persecution2. The panel finds that the principal claimant and the claimant have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that, on a balance of probabilities, they would personally be subjected to a danger of torture or face a risk to life, or a risk of cruel and unusual treatment or punishment, upon return to their country.

Analysis

The principal claimant's identity as a national of Haiti is established through his testimony and the supporting documentation filed, namely, his passport3 and his birth certificate.4 The claimant's identity was established through her testimony and the supporting documents, namely, her passport5 and her birth certificate.6 The panel finds there were a number of inconsistencies in the principal claimant's evidence for which no reasonable explanations were offered. He testified that he was on the street giving away pamphlets when a man approached him, asked him to stop and to join the Lavalas. The man returned afterwards with four other men (for a total of five). The first man hit him and the others began to beat him. However, according to his Personal Information Form (PIF) narrative, four men approached him including the one who previously had spoken to him (for a total of four men). Furthermore, according to his statement given at the port of entry (POE), three men came and beat him severely. He was asked to explain the inconsistencies. He responded that he thinks it was a misinterpretation. The panel does not find this explanation reasonable, and further finds the three different inconsistencies in his story affects his credibility. The panel asked the principal claimant what he did after the XXXXX, 2000 protest. He explained that he moved to XXXXX a few days later. He remained in XXXXX until XXXXX, 2000, and then returned to his home in XXXXX. The panel later questioned him as to when he left XXXXX XXXXX for XXXXX XXXXX, to which he testified "a few weeks." He was informed that he previously testified he left a few days later and now he is testifying he went a few weeks later, and was asked to explain the internal inconsistency. He explained that a few days and a few weeks mean the same to him. The panel does not find this explanation reasonable that someone would consider a few days and a few weeks to be the same and therefore finds, on a balance of probabilities, that this explanation also affects his credibility. The principal claimant testified that he returned to his home on XXXXX, 2000, and that at approximately 3 a.m. on XXXXX, three people came and knocked at his door. His cousin who was visiting at the time

opened the door. The men were trying to force the door. He tried to escape through the back door, but they were already in the house and they caught him. They beat him, as well as his girlfriend and his cousin. The panel asked the principal claimant why they broke into his house. He explained that they were looking for MOCHRENA members and saw him. The panel asked him how the men recognized him. He explained that he used to be on the street all the time and on television. The panel informed the principal claimant that his testimony was inconsistent with his PIF. According to his narrative, three members of the Chimères forced their way into the house and asked his cousin "where is XXXXX?" He was asked to explain the inconsistency. He explained that the men asked this question when they were knocking at the door. The panel informed him that this is incorrect for, according to his PIF, the men were in the house at the time. The principal claimant was asked why he did not mention this information. He hesitated and then responded that he does not know. The panel finds this inconsistency that men purposely entered his house looking for him, cast doubt over the principal claimant's credibility. The panel finds, on a balance of probabilities, that men may have entered his house. Nevertheless, the panel finds that the home invasion was a result of criminal activity for, according to the principal claimant's testimony, there was a lot of shootings in the area that night. In addition, the principal claimant testified that they not only beat him, they also beat his cousin and his girlfriend. Furthermore, the documentary evidence establishes that the levels of politically motivated violence remain low in Haiti,7 criminal violence exceeds by far political violence8 and that violent crime remains rampant in Haiti.9 This finding is further supported by the report made by the Justice of the Peace that the house was the object of "vandalism" committed by "non-identified armed individuals."10 The principal claimant explained that the Justice of the Peace did not give him a copy of the report. The principal claimant's main testimony is that he was persecuted because of his membership to the MOCHRENHA. Although he provided a letter from MOCHRENHA dated XXXXX, 2005, stating that he has been an active member since XXXXX, responsible for training new members,11 he was nevertheless unable to provide much information of the party's platform and ideology with respect to its mandate and objectives. Furthermore, this letter dated after he left the country does not indicate the problems he allegedly had as a result of being a member of the party. The principal claimant explained that he did not ask them for this information. The panel does not find this explanation reasonable, for if the problems he allegedly experienced were a result of his association with the party, this party would have indicated these problems in their letter in support of their member's testimony. Furthermore, as previously mentioned, the documentary evidence establishes that the levels of politically motivated violence remain low in Haiti.12 Furthermore, according to the Justice of the Peace report following the home invasion, the men said, "We will destroy all the members of the Democratic Convergence."13 The principal claimant was asked to explain why the report states Democratic Convergence instead of MOCHRENHA. He explained that MOCHRENHA is part of the Democratic Convergence. The panel informed him that he never testified he was a member of the Democratic Convergence, nor is it indicated in his narrative. The principal claimant was asked to explain. He hesitated and then further explained that even if the Justice of the Peace did not specifically mention he was a member of MOCHRENHA, they knew he was a member of MOCHRENHA. Based on the inconsistencies and credibility issues, the panel finds on a balance

of probabilities that the principal claimant has not satisfied the burden of proof that he was a member of MOCHRENHA, which affects the heart of his claim. As a result of the number of inconsistencies, which were brought to the principal claimant's attention at the hearing, the panel finds him not to be credible and trustworthy. The panel finds the words of MacGuigan, J. A., in the case of Sheikh,14 applicable to this particular claim where he states: ... even without disbelieving every word an applicant has uttered, a ... panel may reasonably find him so lacking in credibility that it concludes there is no credible evidence relevant to his claim. Having considered all of the evidence, the panel determines that the principal claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground. The principal claimant's sister (the claimant) based her claim on her brother's claim, testifying that her problems began as a result of her brother XXXXX. She testified that on XXXXX, 2002, she heard knocking at her door at approximately 4 a.m. Her husband answered the door and two men entered their house. They started beating them and attempted to rape her. The men asked for XXXXX. The panel informed the claimant that she omitted to state in her PIF that the men asked for XXXXX when they invaded her house on XXXXX, 2002, and asked her to explain. She explained that she did not remember to say it. The panel does not find this explanation credible as this goes to the heart of her claim that she fears persecution because she is the principal claimant's sister. There were further credibility concerns with the claimant's testimony. The claimant testified that her husband opened the door and the men came in. The panel questioned why her husband would open the door at 4 a.m. to strangers. She explained they thought it might have been a neighbour in trouble. The panel asked if they questioned who was at the door. She responded that the men did not answer them. The panel remarked to the claimant that, according to her testimony, there was shooting all night in the area, and therefore asked her why they would open their door to someone they did not know, not knowing who was there. She explained that it was because the men were knocking loudly. The panel finds this explanation implausible that a person would open a door to strangers in the middle of the night, especially living in a dangerous neighbourhood where gun shots were heard, without first knowing who these persons are. As a result, the panel finds on a balance of probabilities that the events as testified are not truthful. Regardless, counsel in his observations noted that if the panel finds the principal claimant is not a Convention refugee, then the claimant's claim must fail also. I agree fully with counsel. The panel finds that the claimant has not satisfied the burden of establishing a serious possibility of persecution on a Convention ground. The panel, having found the principal claimant and the claimant not to be Convention refugees, must now determine if they are persons in need in protection in accordance with section 97 of the IRPA. The documentary evidence suggests the human rights situation remained dire with impunity prevailing for most abuses in Haiti15 and the country's security and stability remain fragile.16 The remaining question is whether the claimants' removal to Haiti would subject them personally to a risk to life, or a risk of cruel and unusual treatment or punishment, or whether the risk is one that is faced by the general population of Haiti. The Federal Court in Prophète17 concluded that the risk feared in Haiti was a generalized risk faced by all citizens of Haiti. The panel finds, on a balance of probabilities, that the risk the claimants faced is generalized and one that every person in Haiti faces. The panel finds, on a balance of probabilities, that the claimants would not personally be

subjected to a danger of torture or face a risk to life, or a risk of cruel and unusual treatment or punishment, upon their return to Haiti.

Conclusion

The panel concludes the principal claimant and the claimant are not Convention refugees as they have not satisfied the burden of establishing a serious possibility of persecution on a Convention ground. The panel also finds that the principal claimant and the claimant are not persons in need of protection in that their removal to Haiti would not subject them personally to a risk to life, or to a risk of cruel and unusual treatment or punishment, and in that there are no substantial grounds to believe that their removal to Haiti will subject them personally to a danger of torture. The panel therefore rejects their claims. "Marc Gobeil" Marc Gobeil 1 June 2009 Date REFUGEE PROTECTION DIVISION / POLITICAL OPINION / POLITICAL MOVEMENT / HARASSMENT / FORCED RECRUITMENT / VIOLENCE AGAINST WOMEN / GUIDELINES / GENDER / INCONSISTENCY / GENERALIZED RISK / MALE / FEMALE / NEGATIVE / HAITI 1 As enacted by S.C. 2001, c. 27. 2 Guidelines issued by the Chairperson pursuant to section 65(3) of the Immigration Act, Women Refugee Claimants Fearing Gender-Related Persecution, Immigration and Refugee Board, Ottawa, March 9, 1993; Update, November 13, 1996, as continued in effect by the Chairperson on June 28, 2002, pursuant to section 159(1)(h) of the Immigration and Refugee Protection Act. 3 Exhibit C-2, pp. 1-4. 4 Ibid., pp. 7-8. 5 Exhibit C-12, pp. 1-4. 6 Ibid., p. 5. 7 Exhibit R/A-1, National Documentation Package - Haiti, 16 March 2009, item 2.2, Amnesty International Report 2008 - Haiti. 8 Exhibit C-7, item 2, p. 6, Affidavit of Dr. Cecile Marotte, January 14, 2008. 9 Exhibit C-4, item 6, p. 38, Human Rights Watch, Country Summary - Haiti, January 2008. 10 Exhibit C-16, Archive of Justice of the Peace Report, August 3, 2000. 11 Exhibit C-2, pp. 9-10. 12 Exhibit R/A-1, National Documentation Package - Haiti, 16 March 2009, item 2.2, Amnesty International Report 2008 - Haiti. 13 Exhibit C-16, p. 3. 14 Sheikh v. Canada (Minister of Employment and Immigration), [1990(3 F.C. 238 (C.A.), at 244. 15 Exhibit R/A-1, National Documentation Package -Haiti, 14 March 2008, item 2.2, Amnesty International Report 2008 - Haiti, p. 1. 16 Ibid., item 7.2, Response to Information Request (RIR), Number: HTI102690.FE, 5 February 2008, p. 1. 17 Prophète, Ralph v. M.C.I. (F.C., no. IMM-3077-07), Tremblay-Lamer, March 12, 2008, 2008 FC 331; Prophète v. Canada (Citizenship and Immigration) (F.C.A., no. A-168-08), Létourneau, Blais, Trudel, February 4, 2009, 2009 FCA 31.

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