

CANADA / JUDGMENT

MB9-13069

COURT

Refugee Appeal Division

DECIDED

16 September 2020

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RAD File No / No de dossier de la SAR : MB9-13069 MB9-13070 Private Proceeding / Huis clos
Reasons and Decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXXXXXX XXXX XXXX Personnes en cause Appeal considered / heard at Montréal, QC Appel
instruit / entendu à Date of decision September 16, 2020 Date de la décision Panel Me Richard
Sheitoyan Tribunal Counsel for the persons who are the subject of the appeal Me Patrizia Ruscio
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] I dismiss the appeal. XXXX XXXX is a citizen of Haiti. Her minor daughter, XXXX XXXX XXXX, for whom Ms. XXXX is the designated representative, is a citizen of Brazil.
- [2] Ms. XXXX alleges that her maternal uncle is threatening to kill her over a property inheritance issue. In XXXX 2013, her mother was allegedly killed by some men sent by her uncle, prompting Ms. XXXX to flee to Brazil in XXXX of the same year. In Brazil, she reportedly gave birth to her minor daughter and acquired permanent residence. She allegedly left Brazil for the United States in XXXX 2016 and arrived there in XXXX 2017. Given the American political context, she apparently came to Canada in XXXX of the same year where she claimed refugee protection.
- [3] The Minister of Public Safety Canada (Minister) intervened in the matter, arguing that Ms. XXXX should be excluded under Article 1E of the Convention because of her status in Brazil.
- [4] The Refugee Protection Division (RPD) determined that Ms. XXXX is neither a Convention refugee nor a person in need of protection under section 98 of the Immigration and Refugee Protection Act (IRPA).
- [5] The appeal memorandum argues that the decision is unintelligible in that it concludes that she is excluded under Article 1E of the Convention and that she is neither a Convention refugee nor a person in need of protection. It is argued that, in so concluding, neither the relevant elements nor the probative value to be given to them were established.
- [6] The determinative issue is credibility.

DETERMINATION

- [7] I dismiss the appeal. The RPD correctly determined that the appellants are neither Convention refugees nor persons in need of protection.

ANALYSIS

- [8] My role is to review all the evidence and determine whether the RPD's decision is correct.¹
- [9] The RPD determined that Ms. XXXX is neither a Convention refugee nor a person in need of protection under section 98 of the IRPA.
- [10] The permanent residence status she acknowledges having held in Brazil expired due to her being absent from the country for more than two years without justification. The RPD's review of the documentary evidence² led it to determine that the discretionary assessment of the reasonableness of the potentially acceptable justifications for regaining her status did not support the retention of said status.
- [11] As her status had expired on the date of the hearing, Ms. XXXX did not have a status in Brazil substantially similar to that of Brazilian nationals.
- [12] The RPD then reviewed the criteria set out in Zeng.³ However, since the determinative issue is credibility, I consider that this aspect must be reviewed before the criteria set out in Zeng. A finding that credibility was undermined would not carry a serious possibility of persecution or, on a balance of probabilities, a serious possibility of being subjected to a risk to her life, or a risk of cruel and unusual treatment or punishment or a danger of torture should she return to her country of origin. In the absence of risk for the appellant in her country of origin, considering the possibility of asylum elsewhere is purely academic.
- Alleged risk in Haiti
- [13] The RPD considered that Ms. XXXX did not demonstrate, on a balance of probabilities, that she faced a risk to her life in Haiti at the time of the hearing. It noted numerous contradictions, namely:
- the date of her grandmother's death, which triggered the alleged problems;
 - her explanations regarding where she was when her mother was murdered;
 - how she found out about it;
 - the cause of her mother's death;
 - the lack of documentary evidence regarding the deaths of her mother and grandmother; and
 - numerous spelling mistakes in the excerpt from the registry minutes.
- a) Date of her grandmother's death

- [14] Ms. XXXX testified that her grandmother allegedly passed away in 2014. When confronted with the contradiction that her mother reportedly died in 2013 because of the conflict over the estate, Ms. XXXX stated that her grandmother instead died in 2011. Having no evidence of this death, she was also unable to explain her error concerning the year of the death.
- [15] It is understandable that the chronology may be confusing. However, without going into details, there is still reason to be able to situate the death that caused the problems in relation to her own mother's death. In addition, such a blatant contradiction and the lack of correlative elements with regard to the date of death or explanations for the confusion leaves one questioning whether it occurred when it is alleged to have occurred. Its singular significance lies in the fact that the rest of the problems stem from it.
- [16] Thus, the RPD's conclusion regarding Ms. XXXX's undermined credibility and the lack of a balance of probabilities with respect to her grandmother's death is correct. Explanations about where she was when her mother was murdered
- [17] Her mother, with whom she lived, was reportedly murdered in the middle of the night. Ms. XXXX was allegedly absent, as she had gone out. No clarification was made to explain why she was absent that night, namely, where she was, when she returned home, and how she found out about the death. The fact that specific questions on a particularly significant event were evaded allowed the RPD to correctly find that Ms. XXXX's credibility was undermined. How she found out about it
- [18] Ms. XXXX was unable to state how she found out about her mother's death. Asked several times, she merely repeated that people in the neighbourhood had found her. She and her mother lived together, and she had gone out on that fateful night. The fact that she knew of the tragedy but was unable to provide details as to how she found out about it raises questions. At the very least, she should be able to remember the peripheral details about how she was informed. Her testimony simply reiterated general facts that are not specific to her experience.
- [19] The RPD gave Ms. XXXX several opportunities to clarify her general statements, but she was unable to provide any clarification with regard to the events she allegedly experienced. I consider that the RPD's finding that Ms. XXXX's credibility was undermined is correct. Cause of her mother's death
- [20] What is even more surprising is that Ms. XXXX contradicted herself regarding the cause of her mother's death. According to the written account, her mother was XXXX XXXX XXXX XXXX XXXX XXXX. The excerpt from the registry minutes of the peace court XXXX XXXX XXXX XXXX XXXX submitted into evidence as Exhibit P-2, notes the lifeless body of Ms. XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX.
- [21] When confronted with this contradiction, Ms. XXXX was unable to explain the contradiction. Her mother's murder is a significant event. The fact that she recalled the cause of death incorrectly, contradicting a document that is meant to be objective evidence

could not be satisfactorily explained. As this is a material fact deeply affecting Ms. XXXX, it is inconceivable that she could be so confused. The RPD's finding that credibility was undermined is correct. Lack of documentary evidence regarding the death of her mother and grandmother

- [22] The lack of evidence of her grandmother's death is explained by the fact that her uncle, the main agent of persecution, allegedly had these documents in his possession. The impossibility of obtaining it is satisfactory, but does not, however, help Ms. XXXX explain her unjustified uncertainty regarding when her grandmother died.
- [23] The explanations for the lack of evidence of her mother's death are incongruous. Alleging that she lost the evidence when it fell somewhere, she explained that she could not obtain a copy because she did not have the original. The lax explanation is unsatisfactory and is compounded by the fact that no steps were taken with the authorities to remedy the situation.
- [24] Considering the contradictions between her testimony and the evidence submitted regarding the cause of death, there is reason to question the real cause of death or even its occurrence. The RPD was correct in concluding that the explanations for the contradictory evidence and the lack of additional evidence and steps to obtain any, further undermined Ms. XXXX's credibility with regard to the occurrence of the murder. Numerous spelling mistakes in the excerpt from the registry minutes
- [25] The numerous spelling mistakes found in the excerpt from the registry minutes are unexplained. Since the document comes from a third party, Ms. XXXX cannot be blamed for them. However, it is important to keep in mind that the panel has the opportunity to see many similar documents and may point out its spelling discrepancies, prepared for official purposes by educated professionals. The RPD was correct to give it little probative value, considering the other credibility issues with regard to the cause of death.
- [26] According to Ms. XXXX, her uncle, who was engaged in a dispute related to a property succession, was behind her persecution in Haiti. She:
- contradicted herself on the date of her grandmother's death and was unable to provide any details to explain this;
 - was unable to explain the personal circumstances that would explain her absence from the home she shared with her mother on the night when her mother was allegedly murdered;
 - was also unable to explain how she personally came to learn of the murder; and
 - testified about the causes of death, which are contradicted by an excerpt from the registry minutes that is unusually riddled with spelling mistakes, without being able to explain such a blatant contradiction.

- [27] For these reasons, the RPD's determination with regard to Ms. XXXX's credibility is correct and demonstrates the lack of a serious possibility that, should she be removed to Haiti, she would be persecuted or, on a balance of probabilities, subjected to a risk to her life, a risk of cruel and unusual treatment or punishment or a danger of torture.
- [28] In light of the foregoing, it seems unnecessary for me to go over the review of the criteria set out in Zeng or to determine any exclusion under Article 1E of the Convention.
- [29] Despite this conclusion, the RPD also considered the serious possibility of persecution by reason of her membership in the particular social group of women living in Haiti. According to the evidence, Ms. XXXX has family still living in Haiti. No evidence was put forward to demonstrate that she is part of the particularly vulnerable groups of women in Haiti, namely, displaced women, those who are members of the LGBT community, or girls. The RPD's conclusion that Ms. XXXX did not demonstrate that there is a serious possibility that she would be persecuted because of her gender is correct. The minor child
- [30] As the designated representative of her minor child, Ms. XXXX confirmed that she understood the role she was asked to play for her child. As the minor child is a Brazilian citizen by birth, Ms. XXXX was asked about the risk her daughter would be subjected to, should she return to Brazil. Apart from generalities, Ms. XXXX was unable to recount any element that would demonstrate a serious possibility of persecution or, on a balance of probabilities, a risk to her life, a risk of cruel and unusual treatment or punishment or a danger of torture.
- [31] In addition, despite the generalities put forward by Ms. XXXX to explain the danger that her daughter would face in Brazil, it appears from her testimony that her daughter's father, whom Ms. XXXX met in Brazil, allegedly still lives there.
- [32] The RPD's conclusion is correct. Ms. XXXX did not demonstrate that, should she return to Brazil, the minor child would face a serious possibility of persecution or, on a balance of probabilities, be subjected to a risk to her life, a risk of cruel and unusual treatment or punishment, or a danger of torture.

CONCLUSION

- [33] I dismiss the appeal and confirm the RPD's determination that the appellants are neither Convention refugees nor persons in need of protection. (signed) Me Richard Sheitoyan
Richard Sheitoyan September 16, 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 Archive - National Documentation Package, Haiti, March 29, 2019, Tab 14.11: 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... Immigration and Refugee Board of Canada. June 21, 2018. ZZZ106127.FE. 3 Canada (Citizenship and Immigration) v. Zeng, [2011] 4 FCR 3, 2010 FCA 118 (CanLII).

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Commission de l'immigration et du statut de réfugié du Canada Section d'appel des réfugiés
RAD.25.02 (January 2020) Disponible en français

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