

CANADA / JUDGMENT

MB9-07923

COURT

Refugee Appeal Division

DECIDED

28 January 2020

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RAD File No. / N° de dossier de la SAR : MB9-07923 MB9-07924 / MB9-07925 Private Proceeding / Huis clos Reasons and Decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXXXXXXXX XXXX XXXXXXXXXX XXXX XXXX Personnes en cause Appeal considered / heard at Ottawa, Ontario Appel instruit / entendu à Date of decision January 28, 2020 Date de la décision Panel Me Murielle Henri Tribunal Counsel for the persons who are the subject of the appeal François Jean Denis 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, his wife, XXXX XXXX, and their son, XXXX XXXX XXXX, the associate appellants, are citizens of Haiti. They are alleging that if they were to return to Haiti, they fear that they would be killed by the criminals who took over their land. The associate appellants are basing their fear on the principal appellant's fear.
- [2] After living in Brazil for several years, the principal appellant and his wife returned to Haiti in 2014 and bought a piece of land. In XXXX 2014, the principal appellant went back to Brazil; however, after experiencing discrimination, he went to the United States in XXXX 2016. The female associate appellant left Haiti in XXXX 2016 to join the principal appellant in the United States in XXXX 2016. After arriving in the United States in 2016, they learned that criminals had settled on their land and that the criminals vowed to kill them if they returned to Haiti.
- [3] On April 1, 2019, the Refugee Protection Division (RPD) rejected the refugee protection claim on the grounds that the appellants are not credible.
- [4] The appellants are appealing against the decision and are alleging that the RPD erred in its credibility analysis, had a selective approach, and failed to do an in-depth analysis of their refugee protection claim.

DETERMINATION

- [5] After analyzing the entire record, I am of the opinion that the appellants are neither Convention refugees pursuant to section 96 nor persons in need of protection pursuant to section 97 of the Immigration and Refugee Protection Act (IRPA).

ANALYSIS

Inconsistencies surrounding the property title certificates

- [6] The RPD concluded that the principal appellant was not credible because the property title certificate contained errors regarding the date that the land was purchased. In the memorandum, the appellant argues that the year 2013 written in the property title certificate is an error. Furthermore, they allege that the RPD applied North American logic and reasoning, failing to consider the problems in the Haitian justice system. In this regard, they cite the National Documentation Package (NDP) on Haiti that states that documents contain several errors.
- [7] I am of the opinion that the RPD did not err.
- [8] Contrary to the RPD, I am of the opinion that it is plausible that an error could have crept into the document, especially since this allegation is supported by the documentary evidence on this country, which reports that in Haiti, several errors are made in official documents. However, it is the principal appellant's explanation as to why XXXX XXXX XXXX 2013, is written as the date on the notarial act that is not plausible. When the RPD asked him why there are two documents for the land purchase, the principal appellant answered that the first document was the former owner's purchase document and that it was given to them so that they could make their own. When confronted with the fact that their names appear on the document that he identified as belonging to the former owner, the principal appellant answered that their names are on the document because they asked for it to be released. The principal appellant was once again asked why he had a document dated 2013 and he reiterated that this was the former owner's document. When the RPD pointed out that his name was written on the document, he stated that that is how it is in Haiti. The RPD then mentioned that the document was dated XXXX XXXX, 2013, and that in 2013, he was in Brazil, to which the principal appellant answered that the first owner had purchased the land in 2013. The RPD then confronted the principal appellant with the fact that the document made no reference to the former owner purchasing the land, but rather, it was a sale proposal between him and the former owner. The principal appellant stated that it was the notary who did it that way and that was all that he knew. It was not until after the RPD mentioned that it was a document for the land survey and not a document for the land purchase that the principal appellant stated that it must have been an error.
- [9] I cannot accept the principal appellant's explanations. It appears that the principal appellant provided several reasons to explain the date, XXXX 2013, before mentioning that it was an error. These reasons were all found to be implausible. Furthermore, the principal appellant adjusted his testimony as the panel was questioning him, failed to provide a plausible explanation at first, and stated that this was an error only after he realized that the panel had not accepted any of his explanations; this undermines his credibility. Criminals on the land

- [10] The RPD found that the principal appellant was not credible because he failed to present evidence that the criminals had settled on his land, although he stated at the hearing that his sister had filed a complaint and that there was a report from the justice of the peace. In his memorandum, the principal appellant argues that the RPD erred because this one factor cannot undermine his credibility since his testimony is more significant than the document itself.
- [11] I agree with the principal appellant.
- [12] It has been consistently held that testimony may be sufficient and that the presence of documents corroborating the testimony is not a requirement.¹ Additionally, the RPD stated that the principal appellant appeared to be surprised when asked whether he had a copy of the complaint. Therefore, I am of the opinion that the principal appellant's response that he did not think to request a copy is plausible.
- [13] Consequently, the RPD erred. Omission
- [14] In its decision, the RPD found that the female associate appellant's failure to mention that she was in Haiti when the criminals took over the land undermined her credibility. The memorandum states that in Question 2 of her Basis of Claim Form, the female associate appellant declared that she left the country on XXXX 23, 2016. The criminals took over the land in XXXX 2016; thus, it stands to reason that the female associate appellant was in the country when these events took place.
- [15] I agree with the female associate appellant.
- [16] The female associate appellant never explicitly stated that she was in Haiti when the criminals took the land; she implied it when she stated that she left Haiti in XXXX 2016.
- [17] As a result, I am of the opinion that the RPD erred. Lack of rigour in assessing the principal appellant's credibility
- [18] In his memorandum, the principal appellant argues that the panel conducted a microscopic analysis of the evidence and focused on insignificant details rather than on what was essential. In this regard, he submits case law stating that the inconsistencies must be significant and determinative to the claim.
- [19] I do not agree with this argument.
- [20] The principal appellant failed to specify at what point the questions became microscopic. However, pursuant to paragraph 3(3)(g) of the Refugee Appeal Division Rules (RAD Rules), the onus is on him to present complete and detailed submissions regarding the errors that were allegedly committed. Nevertheless, I listened to audio recording, as well as read the reasons for the decision and I did not find that the RPD lacked rigour when assessing his credibility.

- [21] The omissions raised by the RPD are significant and determinative. In fact, I am of the opinion that the inconsistency in the property title certificates is significant and determinative because it proves when the principal appellant became the owner of the land and proves whether the incidents that he states he experienced are true. For example, the principal appellant submitted a notarized document dated in 2013. However, he states that in 2013, he was in Brazil and had not bought the land yet. Therefore, this inconsistency, which the principal appellant failed to explain in a satisfactory manner, results in his credibility being undermined.
- [22] After analyzing all of the evidence on the record, as well as the RPD decision, I am of the opinion that the omission raised by the RPD is determinative. In fact, a document indicates that in 2013, he was in Haiti; however, he stated that he was in Brazil during this time. This puts the genuineness of the document into question and consequently, the veracity of the principal appellant's statements regarding his fear in Haiti.
- [23] In light of the above, I am of the opinion that the principal appellant failed to demonstrate that, on a balance of probabilities, there would be a risk if they were to return to Haiti.
- [24] I draw the same conclusion with regard to the associate appellants, who are basing their fear on the principal appellant's fear. Prospective fear as a woman
- [25] In its decision, the RPD concluded that the female associate appellant failed to demonstrate that, as a woman, she would be at risk if they were to return to Haiti. The memorandum states that the female appellants had already been targeted by criminals who came to their neighbourhood; therefore, their profile shows that they are very vulnerable. Furthermore, the NDP on Haiti reports that there is a generalized risk of rape and that it is not limited to women who do not have education, who live alone in a tent, who are in precarious economic situations, or those who are allegedly alone. The NDP also reports that even in the presence of certain family members, the risk is still real for female appellants who would not have enough support to deal with cases of rape.
- [26] Although I recognize that the situation of women described in the general documentation on Haiti can be concerning with regard to the risk of being a rape victim, I am of the opinion that this evidence is insufficient to conclude that the simple fact that being a woman in Haiti exposes her to a well-founded fear of persecution. Furthermore, the female associate appellant never expressed a fear in this regard, other than her fear toward the criminals who had taken over her land.² However, this fear was found not to be credible.
- [27] The framework of analysis suggested by Guideline 4 states that "[t]he gender-defined group cannot be defined solely by the fact that its members share common persecution."³ In *Dezameau*, Justice Pinard states: This is not to say that membership in a particular social group is sufficient to result in a finding of persecution. The evidence provided by the applicant must still satisfy the Board that there is a risk of harm that is sufficiently serious and whose occurrence is "more than a mere possibility."⁴

- [28] The documentary evidence found in the NDP on Haiti regarding the situation of women in this country clearly indicates that violence against women is widespread, chronic, and systematic.⁵ In Haiti, violence against women that is of a sexual nature is described as being "...deeply embedded in Haitian social life."⁶ Sources also declare that the Haitian justice system favours impunity, including matters concerning violence against women.⁷ Several documents in the NDP also reveal that, in Haiti, elderly women and minors are particularly vulnerable.⁸
- [29] From the record, I note that the female associate appellant is 33 years old, she is married, and her in-laws, as well as her family, are in Haiti. When she lived in Haiti, she lived in XXXX XXXX XXXX and stayed in XXXX. Therefore, if she were to return to Haiti, she would have a masculine presence and she would have a roof over her head because of her family. Consequently, she would not find herself in a vulnerable situation.
- [30] In light of the above, I conclude that the female associate appellant's profile is not that of a woman with no support or guidance, without a roof over her head or a male presence.
- [31] In the circumstances, given the documentary evidence and the female associate appellant's situation, I am of the opinion that, in light of her profile, there is no serious possibility that she will be persecuted in connection with her membership in a particular social group.
- [32] In closing, I am of the opinion that the RPD did not err when it concluded that the female appellant failed to establish a serious possibility of persecution in Haiti.

CONCLUSION

- [33] I confirm the determination that the appellants are neither Convention refugees nor persons in need of protection pursuant to paragraph 111(1)(a) of the IRPA.
- [34] The appeal is dismissed. (signed) "Murielle Henri" Murielle Henri January 28, 2020 Date 1 Ovakimoglu Aran v. M.E.I. (F.C.A., A-247-83). 2 Recording of the hearing before the Refugee Protection Division (RPD) on February 19, 2019, at approximately 01:38:00. 3 Chairperson's Guideline 4 of the Immigration and Refugee Board of Canada. Guidelines issued by the Chairperson pursuant to subsection 65(3) of the Immigration Act: Women Refugee Claimants Fearing Gender-Related Persecution. Effective November 13, 1996. 4 Dezameau, Elmancia v. M.C.I. (F.C. No. IMM-4396-09) 2010 FC 559. 5 RPD-1, RPD record, Document 3, National Documentation Package on Haiti, July 20, 2018, Tab 5.3, HTI105161.FE: Violence against women, including sexual violence; state protection and support services (2012-June 2016), Immigration and Refugee Board of Canada, December 15, 2016. 6Ibid., Tab 1.8: Republic of Haiti. Country of Origin Information Paper, Interuniversity Institute for Research and Development, August 2017. 7 Ibid., Tab 5.3, HTI105161.FE: Violence against women, including sexual violence; state protection and support services (2012-June 2016), Immigration and Refugee Board of Canada, December 15, 2016. 8 Ibid., Tab 2.5: Rapport de mission en République d'Haïti du 26 mars au 7 avril 2017, France. Office français de protection des réfugiés et apatrides, September 15, 2017, p. 53.

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Prepared on 25 October 2026 · Esheria