

CANADA / JUDGMENT

MB9-08736

COURT

Refugee Appeal Division

DECIDED

17 January 2020

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RAD File No. / No de dossier de la SAR : MB9-08736 MB9-08737 / MB9-08738 Private Proceeding / Huis clos Reasons and Decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXX XXXXXXXXXX XXXX XXXX XXXXXXXXXX XXXX Personnes en cause Appeal considered / heard at Montréal, Quebec Appel instruit / entendu à Date of decision January 17, 2020 Date de la décision Panel Me Martine Durocher Tribunal Counsel for the persons who are the subject of the appeal N/A Conseil des personnes en cause Designated representative XXXX XXXX XXXX Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION OVERVIEW

- [1] XXXX XXXX XXXX (the principal appellant) is a citizen of Haiti. XXXX XXXX XXXX and XXXX XXXX (the minor associate appellants) are American citizens. They are appealing the Refugee Protection Division (RPD) decision dated March 5, 2019.
- [2] The determinative issue before the Refugee Appeal Division (RAD) is the same as it was before the RPD, that is, the principal appellant's credibility.
- [3] The principal appellant is alleging that she faces a risk to her life and that she would be personally subjected to a risk of cruel and unusual treatment or punishment under subparagraph 97(1)(b)(ii) of the Immigration and Refugee Protection Act (IRPA). This allegation is based on the threats she supposedly received from a group of criminals following her refusal to provide them with free cellphones when she was a salesperson for a telecommunications company called Haitel, in Cap-Haïtien. The RPD also analyzed the application of section 96 of the IRPA to the principal appellant's situation, despite the lack of any allegation in this respect in the Basis of Claim Form (BOC Form).
- [4] On appeal, there is no allegation regarding the refugee protection claims of the minor associate appellants.

DETERMINATION

- [5] I dismiss the appeal. I confirm the RPD's findings that the principal appellant lacked credibility as to her allegations of a personal and prospective risk under section 97 of the IRPA. Moreover, the principal appellant did not provide sufficient evidence to support her allegation that she faced a serious possibility of persecution as a member of the category of

vulnerable women in Haiti under section 96 of the IRPA. I also confirm the RPD's determination concerning the minor associate appellants. THE ROLE OF THE REFUGEE APPEAL DIVISION

- [6] I will review the decision of the RPD on a standard of correctness, after conducting an independent assessment of all the evidence before me.¹

ANALYSIS

- [7] The principal appellant was a XXXX XXXX in Cap-Haïtien. She alleged that in March 2012, she was threatened by criminals armed with a revolver who wanted to get free telephones. After that incident, she fled to Port-au-Prince where she stayed for four months. Then, she returned to Cap-Haïtien to start her own XXXX XXXX with some associates. On July 20, 2012, she was summoned to the police station. The detective informed her that they had received an anonymous call to the effect that she was reportedly the target of a murder plot. She then noticed five criminals outside the police station whom she reportedly recognized from when they had visited the shop where she worked. She made the connection between the threat and the incident of March 2012. The RPD concluded that this last allegation had not been established owing to her lack of credibility, having found her testimony on the matter to be vague and lacking in spontaneity.² The RPD added that the female appellant was unable to provide further details about the incident, and merely repeated the account found in her BOC Form.³
- [8] Before the RAD, the principal appellant reiterates that she could not explain the presence of the criminals at the police station. She states that she made the connection between the presence of those criminals at the station and the warning from the police officers. She also maintains that she believed it was not important to specify in her BOC Form that her family members continued to receive threats. She asserts that, contrary to the RPD's findings, she was personally threatened because of her job and the high crime rate in Haiti. She submits that according to Maldonado, she had no obligation to provide evidence to corroborate her testimony. She claims that the facts about which she testified benefit from the presumption of truthfulness.⁴
- [9] After carefully listening to the audio recording and analyzing the evidence on the record, I agree with the RPD's conclusion, but based on a different analysis. In my view, the female appellant provided all the information she had about the police summons of July 20, 2012. That information is very limited: the police warned her that they had received an anonymous call to the effect that there was apparently a plot to murder her. The police gave her no other information. She speculated as to possible connections between the anonymous call and the group of young men she allegedly noticed outside the police station at that moment. The female appellant's conclusion is hypothetical. It is difficult to reconcile the presence-and therefore, the identification-of those who made the alleged threats with the anonymous nature of the call reporting the plot. If those who made the threats had been identified, the threats would not have been referred to as [translation] anonymous. There is

no obligation on the part of the RAD to accept speculative allegations by the appellant as true.⁵ Even though she states that she recognized some of those young men, I am not satisfied on a balance of probabilities that the alleged threat came from the criminals who had threatened her four months earlier. This conclusion impacts the analysis of the prospective risk, below. The lack of a basis for a prospective risk under section 97 of the IRPA

- [10] The RPD found that the female appellant adjusted her testimony regarding the existence of the threats against her in telephone calls to her husband and her friends, given that she was unable to provide a reasonable explanation for why these threats did not appear in her BOC Form. The female appellant submits that she did not know it was important to mention this in her account, and submits that the attestation of employment from Haitel provided corroboration that demonstrates the truthfulness of her allegations.
- [11] I agree with RPD's analysis. During her testimony, the female appellant seemed confused as to the frequency and nature of the threats those people received. I am therefore not satisfied on a balance of probabilities that they really occurred. Furthermore, it is not clear that the alleged threats came from the criminals in question or that they allegedly want to kill the female appellant. She stated that when the criminals called her husband, they demanded telephones because [translation] "they knew I sold them." Given that it was not established that the murder plot of July 2012 came from the same criminals as those involved in the incident in March 2012, I am not satisfied that the alleged threats recently received by her husband and her friends are connected to the same group of criminals.
- [12] I also agree with the RPD's finding that the attestation of employment confirms only that the female appellant worked for Haitel, which was not called into doubt. However, this attestation does not include anything about the threats against the female appellant's life and safety.
- [13] I therefore confirm that the RPD's analysis is correct. The principal refugee protection claimant's allegations that she would face a risk to her life should she return to Haiti have not been established on a balance of probabilities. The alleged risk is not different than the generalized risk faced by Haitians
- [14] On appeal, the principal appellant submits that, contrary to the RPD's conclusion, she would be subjected to a personal risk because of her former job and the crime related to that job.
- [15] Following a review of the oral and documentary evidence, I agree with the RPD's analysis. The female appellant was targeted by a criminal act because she was a cellphone salesperson, not on a personal basis. XXXX XXXX do not constitute a particular social group that can be linked to persecution for a Convention reason.⁶ Additionally, like the RPD, I am of the opinion that she was subjected to the sort of crime faced by the Haitian population as a whole in the current situation.⁷ Under subparagraph 97(1)(b)(ii) of the IRPA, a generalized risk of crime faced by the entire population of a country cannot be the basis of a refugee protection claim.⁸ The serious possibility of gender-based persecution against the female

appellant was not established

- [16] I am of the view that the RPD's conclusion that the principal appellant does not fall within the category of women who are vulnerable to gender-based violence in Haiti is correct.⁹ The female appellant states in her memorandum that the Chairperson's Guideline 4 [translation] "was taken into consideration, but was disregarded," but does not submit any argument to explain her position.¹⁰ As the RPD noted, should she return to Haiti, the female appellant will be in the presence of her husband, her parents and her brothers. Therefore, she would not be alone and she would not be left without protection or shelter if she had to return to her country.¹¹
- [17] Therefore, I find that the RPD correctly concluded that there is no serious possibility that the principal appellant would be persecuted by reason of her membership in the particular social group of women under section 96 of the IRPA. The minor associate appellants are not refugees
- [18] The memorandum of appeal contains no arguments against the RPD's finding that the principal appellant's minor children are not refugees within the meaning of the IRPA. As they are both American citizens, the female appellant testified that she did not fear for the protection of her children's rights in the United States. In her BOC Form, she alleges that there is [translation] "child confinement." Given the lack of evidence on the record to that effect, I conclude that the minor appellants are not refugees within the meaning of section 96 of the IRPA. Furthermore, the record mentions no basis on which they would be personally subjected to a risk or a danger under subsection 97(1) of the IRPA.

CONCLUSION

- [19] I dismiss the appeal and confirm the determination of the RPD that the appellants are neither Convention refugees nor persons in need of protection, pursuant to paragraph 111(1) (a) of the IRPA. (signed) Martine Durocher Me Martine Durocher January 17, 2020 Date IRB translation Original language: French 1 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93. 2 RPD decision, para. 17. 3 Ibid. 4 Appellant's memorandum, pp. 14-16, Argumentation section. 5 Hercules, Pedro, Monge v. M.C.I. (F.C.T.D., No. IMM-1196-93), Gibson, August 25, 1993. 6 Rizkallah v. Canada (Minister of Employment and Immigration) (1992), 156 N.R. 1 (F.C.A.). 7 National Documentation Package, Haiti, September 30, 2019, Tab 10.2: Crime, including protection available against crime and the effectiveness of that protection, particularly in Port-au-Prince, Cap-Haïtien, Jérémie, Les Cayes and Gonaïves. 8 Prophete, Ralph v. M C.I. (F.C., No. IMM-3077-07), Justice Tremblay-Lamer, March 12, 2008; 2008 FC 331. 9 RPD decision, paras. 26-29. 10 Appellant's memorandum, p. 12, para. 17. 11 RPD decision, para. 27. Chairperson's Guideline 4.

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Prepared on 26 October 2026 · Esheria