

CANADA / JUDGMENT

MB9-21001

COURT

Refugee Appeal Division

DECIDED

27 January 2020

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RAD File No. / No de dossier de la SAR : MB9-21001

MB9-21002 / MB9-21003

Private Proceeding / Huis clos

Reasons and Decision ? Motifs et décision

Persons who are the subject of the appeal

XXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX

Personnes en cause

Appeal considered / heard at

Montréal, Quebec

Appel instruit / entendu à

Date of decision

January 27, 2020

Date de la décision

Panel

Me Zofia Przybytkowski

Tribunal

Counsel for the persons who are the subject of the appeal

Yolande Robillard

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] The female appellant, XXXX XXXX XXXX, and her son, XXXX XXXX XXXX, are citizens of Haiti. The female appellant's other son, XXXX XXXX XXXX, is a citizen of the United States. The female appellant fears being attacked or killed if she were to return to her country because she worked at the XXXX XXXX of Haiti and had reported employees who committed fraud. These people were fired and began to threaten her and her family. They also sent criminals to find her.
- [2] The Refugee Protection Division (RPD) rejected the female appellant's refugee protection claim and that of her children. The RPD found that the female appellant's credibility was undermined by contradictions and implausibilities in her testimony. The RPD also rejected XXXX refugee protection claim because the appellant stated that he had no problems in his country of nationality, the United States.
- [3] The female appellant submits that the RPD made findings on her credibility based on speculation. She contests the implausibilities raised by the RPD. She also criticizes the RPD for failing to consider the objective documentary evidence, which corroborates her allegations, or the documents she submitted into evidence to support her claim.
- [4] I performed an independent analysis of the evidence, taking into consideration the record of the Refugee Appeal Division (RAD) and of the RPD, including the recording of the hearing before the RPD. The female appellant submitted two new documents into evidence with her appeal, but I concluded that they were inadmissible and did not consider them.

DETERMINATION

- [5] The appeals of XXXX XXXX XXXX and XXXX XXXX XXXX are allowed. The determinative issue is the credibility of the female appellant's testimony. I conclude that the RPD erred when it identified implausibilities in the female appellant's story and drew conclusions on non-determinative contradictions. As the female appellant also demonstrated that her children had been threatened, I conclude that her Haitian citizen son also faces a risk to his life in his country of nationality.

- [6] XXXX XXXX XXXX appeal is dismissed. As a citizen of the United States, he failed to demonstrate that he faces a serious possibility of persecution or, on a balance of probabilities, a risk to his life or a risk of cruel and unusual treatment or punishment in his country of nationality.

ANALYSIS

The new evidence is inadmissible

- [7] The RPD decision is dated August 20, 2019. The female appellant submits the following new evidence:
- A-1: A letter rejecting a visitor visa application addressed to XXXX XXXX XXXX, the female appellant's husband, dated XXXX XXXX, 2017;
 - A-2: A letter rejecting a visitor visa application addressed to XXXX XXXX XXXX, the female appellant's husband, dated XXXX XXXX, 2017.
- [8] I must determine whether the documents meet the requirements of subsection 110(4) of the Immigration and Refugee Protection Act (the Act)¹ and the criteria defined by case law.²
- [9] The two documents are dated before the RPD decision. The female appellant explains that she is submitting this evidence to re-establish her credibility. The RPD found that the female appellant's credibility was undermined overall because she gave changing responses regarding the reasons for the rejection of her husband's visa applications. I will examine this RPD finding later in my analysis.
- [10] However, the RPD explicitly questioned the female appellant on this matter. The female appellant knew then that the RPD was trying to obtain this information. There is no indication that the female appellant could not ask the RPD during the hearing if she could submit them before the decision was made. The female appellant failed to demonstrate that these documents were not accessible to her or that the circumstances prevented her from submitting them before the RPD decision was made.

- [11] I conclude that these documents are inadmissible based on the criteria set forth by the Act.

The Refugee Protection Division erred in assessing the credibility of the female appellant's allegations

- [12] The RPD concluded that the female appellant lacked credibility for the following reasons:
- The female appellant changed her testimony regarding the reasons for the rejection of her husband's visa application.
 - The female appellant continued to live in the same home and work in the same place until XXXX XXXX, whereas the threats began on XXXX XXXX, 2018.

- The RPD found it implausible that people who had lost their job through their own fault would become killers and go after the female appellant.
 - The RPD found it implausible that the dismissed employees had political connections, but that this did not prevent them from losing their job.
- [13] The female appellant contests most of these findings as speculative, and I agree with her. I find that the female appellant's testimony is credible and supported by corroborating evidence.

The rejection of the visa application is not a determinative element

- [14] The female appellant explained that her husband remained in Haiti because he had no visa to come to Canada since his application had been rejected. Questioned about the rejection date, she could not remember exactly, but nonetheless stated that it was in 2017, before the threats began.
- [15] The RPD asked the female appellant why her husband's application had been rejected. At first, the female appellant said that she did not know. The RPD pressed, and the female appellant then stated that she believed it was because the officer did not believe that her husband would return to Haiti at the end of his stay and that he did not have enough financial means.
- [16] The RPD concluded that this change in response is material and undermines her credibility because the female appellant alleges that the entire family is threatened. However, the RPD did not explain why a change in the female appellant's testimony regarding the reason for the rejection is material. The important part, in my opinion, is that the female appellant explained why her husband did not accompany her to Canada, which was because his visa application had been rejected. The reason for this rejection is not determinative.
- [17] Perhaps it would have been preferable for the female appellant to refrain from speculating and merely state that she did not know the exact reason for the rejection. However, I note that the RPD was insistent in its questioning and therefore encouraged the female appellant to speculate, later criticizing her for contradicting herself. The RPD erred in doing so.
- [18] The RPD also found that [translation] "[this] undermines her overall credibility." It is my view that this finding is vague. The RPD suggested that based on this change in response regarding the rejection of a visa application, it considers none of the female appellant's allegations to be credible.
- [19] I conclude that the RPD therefore erred. A change in response regarding the reason for the rejection of a visa application is not sufficiently determinative to undermine her credibility as to the other alleged events.

The Refugee Protection Division erred in its analysis of the time it took the female appellant to move

- [20] The RPD criticized the female appellant for having continued to live in the same home and work in the same place between XXXX XXXX, 2018, the date on which the threats began, and XXXX XXXX, 2018.
- [21] After listening to the female appellant's testimony, I note that the RPD mainly questioned the female appellant as to why the criminals had waited until XXXX XXXX, 2018, to come to her workplace, when they had been dismissed on XXXX XXXX and could have [translation] "easily" found her beforehand.
- [22] The RPD thus assumes that the criminals knew the female appellant's home address, which was never established. The RPD therefore again encouraged the female appellant to speculate about her aggressors' intentions. The female appellant tried to explain that she first received threats through text messages, suggesting that perhaps they wanted to frighten her first. The RPD again pressed to find out why the criminals would make [translation] "empty threats" when they could show up at her home.
- [23] Pressed by the RPD as to why the criminals had not come to the female appellant's home earlier, she replied as follows: [translation] "[i]t is not for me to say that they could have come after me on that date because I do not make plans for them." The female appellant thus states that she is unable to speculate or get into her aggressors' head.
- [24] However, this did not stop the RPD from continuing to question the female appellant about the criminals' intentions. The female appellant explained that she barely left her home and that she did not work until XXXX XXXX because of demonstrations that were happening all around Haiti at the time. The RPD then confronted the female appellant about the fact that there were criminals on the street and that they could have come to her home. The female appellant could not provide a response. The RPD found that this undermined her credibility. I conclude that this is an error.
- [25] I conclude that the RPD erred by asking questions based on assumptions and encouraging the female appellant to speculate. The responses that the female appellant provided are consistent with her written account and contain no contradictions. Negative credibility findings should therefore not be made.
- [26] The female appellant explained that she had stopped working and moved on XXXX XXXX, after criminals came to her workplace looking for her. They were clearly not empty threats, as the RPD claimed. The RPD also never called into question the allegations that the criminals came to the female appellant's workplace on XXXX XXXX and then her home on XXXX XXXX.

The Refugee Protection Division erred by finding other implausibilities

- [27] The RPD found that the story of vengeance on which the female appellant's claim is based is not in itself credible. It found it implausible that people who lost their job through their own fault would want the female appellant dead. I do not agree and conclude that this is an error on the part of the RPD.
- [28] The implausibility criterion dictates that findings of implausibility "should be made only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant."³
- [29] In a country where the economic situation is precarious, where good jobs are scarce and/or where there is a certain culture of revenge,⁴ this is not a clear implausibility, as required by the case law.
- [30] The RPD added that it does not believe that people who wanted to get back at the female appellant for losing their job would become killers. However, that is not what the female appellant alleged. She stated that these four former employees did not personally come to her workplace to find her. They sent criminals.
- [31] When the female appellant explained that these dismissed employees had connections with criminalized gangs and politicians, the RPD confronted her with the fact that these connections had not prevented them from losing their job. The RPD found this implausible. I conclude that this is also an error.
- [32] The female appellant clearly explained that political connections had enabled these people to obtain a good job with the XXXX XXXX. She specified, however, that the XXXX XXXX director did not tolerate corruption. It is not implausible for the XXXX XXXX director not to be influenced by these employees' connections when they commit fraud.

The Refugee Protection Division erred by failing to analyze the documents submitted into evidence

- [33] The RPD did not analyze the documents submitted into evidence by the female appellant to support her allegations. More specifically, the female appellant supported her allegations with a copy of two complaints⁵ that she had filed with the police as well as the report from the justice of the peace ordered by her husband when criminals vandalized their home. She also provided a copy of messages containing threats against her and her family.⁶
- [34] I conclude that this is an error by the RPD. The RPD provides no explanation as to its reasons for giving no probative value to these documents, simply stating that it did not find the female appellant's story credible.
- [35] The case law does not allow for corroborating evidence to be rejected based solely on an unfavourable credibility finding.⁷

- [36] Having examined the documents during my independent analysis of the record, I see nothing there that contradicts the female appellant's story or that makes me doubt their authenticity. I conclude that they have significant probative value and support the female appellant's allegations.

The minor child is also targeted by the threats

- [37] The content of the threats and the female appellant's testimony reveals that her son XXXX is also subject to the reprisals targeting the female appellant. He therefore faces the same risk as the female appellant.

There is no state protection or internal flight alternative

- [38] The female appellant testified that she twice filed a complaint with the police. The police did not follow up on these complaints, and the criminals continued to threaten her. The documentary evidence confirms that the police continue to have difficulty protecting the public and that police officers themselves are targeted by criminals.⁸
- [39] With respect to the internal flight alternative, the female appellant explained that her job is such that people she does not know can recognize her because she worked with the public. Her last name also makes her memorable and easily recognizable. Lastly, the documentary evidence indicates that criminals can use word of mouth to find someone.⁹ I conclude that the female appellant does not have a reasonable internal flight alternative.

The decision of the Refugee Protection Division regarding the claim of the minor with US citizenship is correct

- [40] The RPD is responsible for examining every claimant's refugee protection claim based on his or her country of nationality. Since XXXX does not have the same nationality as his mother, the result for the two claims may differ.
- [41] The female appellant acknowledged in her testimony that her son XXXX has no problems in the United States. She does not challenge, on appeal, the RPD's conclusion regarding her son XXXX.
- [42] I conclude that the RPD's determination regarding XXXX is correct. He failed to establish that he faces a serious possibility of persecution or, on a balance of probabilities, a risk to his life or a risk of cruel and unusual treatment or punishment in the United States.

CONCLUSION

- [43] I therefore conclude that appellants XXXX XXXX XXXX and XXXX XXXX XXXX established that they face, on a balance of probabilities, a risk to their life or a risk of cruel and unusual treatment or punishment in Haiti. They are therefore persons in need of protection. Their appeal is allowed.

[44] I conclude that the RPD did not err in determining that appellant XXXX XXXX XXXX is not a Convention refugee or a person in need of protection as a citizen of the United States. His appeal is dismissed.

Zofia Przybytkowski

Me Zofia Przybytkowski

January 27, 2020

Date

IRB translation

Original language: French

1 Subsection 110(4) of the Immigration and Refugee Protection Act: "On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection."

2 Canada (Citizenship and Immigration) v. Singh, 2016 FCA 96; Raza v. Canada (Minister of Citizenship and Immigration), 2007 FCA 385.

3 Valtchev v. Canada (Minister of Citizenship and Immigration), [2001] FCA 1131 (F.C.T.D.), para. 7.

4 National Documentation Package (NDP), Haiti, September 30, 2019, Tab 7.6: Acts of revenge committed by gangs or by other organized crime entities; ability of gangs or other organized crime entities to track down their targets, including those who return to Haiti after a . . . Immigration and Refugee Board of Canada. 3 July 2018. HTI106117.FE.

5 Exhibit C-1, Refugee Protection Division (RPD) record, pp. 211-212, and Exhibit C-3, RPD record, pp. 222-223.

6 Exhibit C-2, RPD record, pp. 213-219.

7 Valdeblanquez Ortiz v. Canada (Citizenship and Immigration), 2017 FC 410, para. 30.

8 NDP, 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 . . . Immigration and Refugee Board of Canada. 17 June 2019. HTI106306.FE.

9 Idem, endnote 4.

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RAD.25.02 (April 4, 2019)

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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 (April 4, 2019)

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