

CANADA / JUDGMENT

MB9-28563

COURT

Refugee Appeal Division

DECIDED

17 December 2020

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RAD File No. / No de dossier de la SAR : MB9-28563 Private Proceeding / Huis clos Reasons and Decision - Motifs et décision Person who is the subject of the appeal XXXX XXXX Personne en cause Appeal considered / heard at Montréal, Quebec Appel instruit / entendu à Date of decision December 17, 2020 Date de la décision Panel Me Miriam McLeod Tribunal Counsel for the person who is the subject of the appeal Jean-François Seguy Conseil de la personne en cause Designated representative N/A Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre
REASONS FOR DECISION OVERVIEW

- [1] XXXX XXXX (appellant) is a citizen of Haiti who fears the killers of his daughter, a member of a student rights organization, who was allegedly killed following her participation in a meeting held at the XXXX courthouse on XXXX XXXX XXXX 2012-a meeting at which the appellant accompanied his daughter. The Refugee Protection Division (RPD) rejected the appellant's refugee protection claim because it found that his allegations were not credible. The RPD noted omissions between the appellant's testimony and his written account, as well as between his testimony and the excerpt from the court minutes, and irregularities in the death certificate submitted in evidence by the appellant. On appeal, the appellant argues that the RPD erred because there are reasonable explanations for the omissions noted by the RPD in its decision, as well as for the irregularities that the RPD noted in the documents he submitted in support of his claim. The Refugee Appeal Division (RAD) concludes that the RPD did not err in finding that the appellant's allegations were not credible.

DETERMINATION

- [2] The RAD dismisses the appeal. The RPD was correct in determining that the appellant is neither a Convention refugee nor a person in need of protection.

ANALYSIS

- [3] The RAD must conduct a probing, thorough, comprehensive and independent assessment of the evidence submitted in light of on the appellant's arguments on appeal.¹ In this case, the RAD listened to the recording and applied the correctness standard. Credibility Failure to request assistance from the authorities

- [4] The RAD is of the opinion that the RPD did not err in drawing a negative credibility inference from the fact that the appellant failed to mention in his written account that he had requested assistance from the authorities in Haiti after the incident in which he alleges that his daughter was killed by criminals. The RPD had to ask the appellant three times to explain the omission.² Finally, the third time, he replied that [translation] "the account was given separately and it explained why I'm being persecuted. The report came after-in other words, not everything was done at the same time. I filed the report after XXXX death."³ The RAD agrees with the RPD that the appellant's response confirms rather than explains the omission. The RPD notes in its decision that the appellant also does not state in his Basis of Claim Form (BOC Form) that he requested assistance from the authorities in Haiti, since he checked the "No" box in response to the question about whether he had asked the authorities for assistance.⁴
- [5] On appeal, the appellant argues that he submitted into evidence an excerpt from the registry minutes as part of his record and that this is proof that he requested assistance from the authorities.⁵ However, the RAD notes that the appellant prepared his written account and BOC Form in 2017 and submitted the excerpt from the registry minutes to the RPD in 2019. If the form, account, and documents had been submitted to the RPD at approximately the same time or within a few months of each other, the RAD would be willing to accept this argument. However, the RAD notes that the forms and written account were submitted more than two years before the appellant submitted the excerpt from the registry minutes. The RAD is of the opinion that the time lag between his statement that he did not request assistance from the Haitian authorities and the submission of the document demonstrating that he did in fact do so renders this argument untenable. For the RAD, submitting a document two years later cannot erase the fact that this information was not provided two years earlier.
- [6] On appeal, the appellant also argues that he does not speak French. Consequently, he states that he himself does not know what is written in his BOC Form and that the omission should therefore not be held against him.⁶ However, the RAD notes that the appellant's BOC Form is signed by someone who attests that they interpreted the entire document and its attachments to the appellant from French to Creole and that the appellant signed the BOC Form in the section where he attests that the form and all attached documents were interpreted to him.⁷ In addition, at the hearing, the appellant stated that the BOC Form and all the attached documents had been interpreted to him and that the information in the BOC Form is complete, true and correct.⁸ The RAD can therefore not accept this argument either.
- [7] Lastly, on appeal, the appellant states that given his lack of education, it was his former counsel's responsibility to indicate in the written account that he had requested assistance from the Haitian authorities and to point out to the RPD the error in his BOC Form, where he checked the "No" box in response to the question about whether he had asked the authorities for assistance.⁹ The RAD also cannot accept this argument, which is essentially an allegation of ineffective or incompetent representation by his former counsel. The

appellant did not raise any breach of duty by his former counsel at the RPD hearing; he did not provide documents or make submissions to the RAD to establish that a breach occurred, and he did not follow the steps to do so, which are detailed in the Immigration and Refugee Board of Canada (IRB) Practice Notice-Allegations Against Former Counsel.¹⁰ Therefore, the RAD cannot accept the arguments concerning his former counsel's alleged breaches. In addition, the RAD notes that at the beginning of the hearing, the appellant's former counsel brought to the attention of the RPD some date errors in the BOC Form and he stated that these were all changes that were brought to his attention.¹¹

- [8] The RAD is of the opinion that asking for assistance from the authorities is an important part of his claim and the questions in the BOC Form clearly ask whether the claimants asked for assistance from the authorities. The appellant clearly answered "No" in his BOC Form and makes no mention of asking for assistance from the authorities in his written account. Stating at the hearing that he had asked for assistance from authorities-which contradicts his response in the BOC Form and makes his written account incomplete-undermines the general credibility of his allegations. Omission of the fact that his wife was allegedly [translation] "brutally" beaten
- [9] The RAD is of the opinion that the RPD did not err in noting that the appellant did not inform the Haitian authorities that the criminals brutally beat his wife when they showed up at his house on the night his daughter was allegedly killed by them. This information is missing from the statement made in the excerpt from the registry minutes following the incident where the criminals showed up at their house.¹² When the RPD confronted the appellant about the fact that this information is missing from the excerpt, the appellant responded that it was his wife who had stated that.¹³ The RPD repeated the question and the appellant responded that he had not made that statement and that the authorities were at his house to document the incident.¹⁴ Again, the RAD finds that the appellant did not explain the omission.
- [10] The RPD noted that the appellant testified at the hearing that after fleeing the house, he went to hide at a neighbour's house and that he called his wife that same night to find out what had happened. He testified that his wife told him that the criminals had killed their daughter and that they had [translation] "brutally" beaten his wife, which he also states in his written account. The RAD agrees with the RPD that the fact that his wife was severely beaten in the same incident is significant, and the fact that he included this information in his written account and in his testimony at the hearing shows that the appellant himself recognized this information as significant.
- [11] On appeal, the appellant argues that he went to the authorities to report that his daughter had been killed and that, under the circumstances, it is understandable that he would forget to mention that his wife had been beaten, as this information is less important than the fact that his daughter was killed.¹⁵ The RAD notes that the appellant did not provide this explanation at the hearing. In addition, the appellant described in his written account and at the hearing that his wife was [translation] "brutally beaten." While the RAD understands that

the appellant could have been distressed about his daughter's murder, at the same time, it is difficult to understand how the appellant could have forgotten to mention to the clerk what happened to his wife given that he described it as brutal. In addition, the appellant testified that he had the clerk come to his house to document the incident, and he stated at the hearing that his wife and their children were at home. Consequently, with his wife at the scene when the clerk documented the incident, the RAD finds that omitting what happened to his wife from his statement-especially since he mentions his wife in the statement-undermines the credibility of his allegations in this regard. The RAD therefore concludes that the RPD did not err in drawing a negative credibility inference from this omission.

[12] In addition to the above, the RAD notes that in the same statement to the Haitian authorities, the appellant stated that unidentified individuals broke into his house, asked for the appellant and that [translation] "when they could not find me, they killed XXXX XXXX."¹⁶ However, the RAD notes that during his testimony, the appellant alleged that the criminals asked for him and his daughter,¹⁷ that he did not state that the criminals were after the appellant and that when they found that he was not there, they killed his daughter. The appellant explained to the RPD that he thought the criminals were targeting his daughter because she was the XXXX of the XXXXpour XXXXdesXXXX XXXXen XXXX XXXX XXXX XXXX [XXXXtoXXXX XXXX XXXX XXXX],¹⁸ because she was an activist for student rights and the community,¹⁹ and because she attended the meeting of XXXX XXXX XXXX 2012, where she essentially said that guns cannot fix all of Haiti's problems-which the Magistrate, who organized the meeting, did not like at all, and so he asked his daughter to leave the room.²⁰ When the RPD asked why the appellant was targeted by these same criminals, he stated that he used to accompany his daughter to meetings and that he was present with her at the meeting of XXXX XXXX XXXX 2012.²¹ The RAD is of the opinion that the inconsistency between his testimony and the statement about what happened when the criminals arrived at the house undermines the credibility of the appellant's allegations concerning the events of the night in question. Death certificate

[13] The RPD drew the appellant's attention to several problematic aspects of the death certificate he submitted into evidence in support of his allegation that his daughter is deceased.²² It noted that the document states that the daughter was an [translation] "XXXX," which the appellant also acknowledged was odd, and he did not understand why this term was used for a deceased person. The RAD finds this to be the least of the problematic aspects. The RPD noted that it contained numerous mistakes and other typographical errors. At the hearing, it noted that the certificate states [translation] "DEATH CERTIFICATE OF: XXXX XXXX" and that the document repeats [translation] "died on died on" in the header. In its decision, the RPD notes that the town of XXXX XXXX where the appellant and his family resided at the time of the incident, is misspelled each time it is mentioned in the document, for example "XXXX" and "XXXX." In the decision, the RPD also notes that a document number is missing from the document after it states [translation] "In witness whereof, given death certificate no." At the hearing, the RPD further noted that the document indicates that the individual who appeared signed it, but there is no signature of such person on the

document. The RPD also noted that the document states [translation] "Having read this certificate, we signed it with the individual," followed immediately by [translation] "Having read this certificate, we signed it unwitnessed." The RPD noted that the appellant could not explain these problems, simply stating that he did not know why there were these problems.

- [14] On appeal, the appellant submits that civil status documents from Haiti often contain errors and that they are often false or invalid but they record actual facts and that the RPD should have taken this information into account.²³ The RAD notes that when the RPD drew the appellant's attention to the various problems it found in the document, the appellant repeatedly stated that he was not the author of the document. The RAD is of the opinion that that there is no evidence on the record to support a finding that the appellant knowingly obtained a fraudulent document to prove his daughter's death. However, even if the RAD accepts the appellant's arguments in this regard, this does not give the document probative value. The fact remains that there are many problems with the document. The RAD is of the opinion that because of the multiple problems on the very face of it, the RAD cannot rely on the information contained in the document. The RAD does not hold the appellant responsible for the problems with the document, but the fact remains that it cannot give any weight to this document due to the aforementioned problems with it. Exhibit P-7
- [15] Due to the credibility issues raised by the RPD concerning the appellant's allegations about the incident of XXXX XXXX XXXX 2012, the RPD gave no weight to the complaint filed as Exhibit P-7.²⁴ This document is the peace court report following an incident involving another of the appellant's daughters that occurred on XXXX XXXX XXXX 2019.²⁵ In this document, the incident of XXXX XXXX XXXX 2012, is referred to in detail and the complainant states that the incident of XXXX XXXX XXXX 2019, is related to it. Since the RPD did not believe the appellant's allegations about the incident of XXXX XXXX XXXX 2012, as a result of the credibility issues addressed in its decision,²⁶ it concluded that it could not believe that the incident of XXXX XXXX XXXX 2019, had occurred either.²⁷ In deciding not to give weight to Exhibit P-7, the RPD considered that the document was falsified.²⁸ The RAD agrees with the RPD that the document (Exhibit P-7) lists XXXX XXXX XXXX 2012, as the date the appellant's daughter was allegedly killed, but the "XXXX" in the number XXXX is smeared, which changes XXXX XXXX to XXXX XXXX XXXX 2012. On appeal, the appellant does not understand why [translation] "such a correction" causes the document to lose all its weight.²⁹ However, the RAD is of the opinion that the RPD pointed out that the document was altered, not corrected, and the RAD agrees. The alteration of the date is not an official correction of the document; it looks more like an effort to hide the error in the date. On appeal, the appellant states that he does not know who made this correction or why or when.³⁰ The RPD nevertheless decided not to give weight to the document both because of the credibility issues regarding the appellant's allegations about the incident of XXXX XXXX XXXX 2012, which are repeated in Exhibit P-7, and the fact that the date in the document concerning that incident, which allegedly triggered the incident of XXXX XXXX XXXX 2019, was altered.³¹ The alteration of the date of the XXXX 2012 incident calls into question when the alleged XXXX 2012 incident occurred as well-was it XXXX XXXX or XXXX XXXX?-and this

adds to the credibility issues concerning the incident of XXXX 2012. Since the appellant left Haiti on XXXX XXXX XXXX 2012, the RAD considers the timing of the XXXX incident important. The RAD agrees that these two elements together mean that Exhibit P-7 cannot be given probative value. Credibility findings

- [16] Due to the credibility issues raised by the RPD and confirmed by the RAD in this decision, the RAD concludes that the RPD did not err in concluding that the appellant failed to discharge his burden of establishing, on a balance of probabilities, the credibility of his allegations. Consequently, he has not established that there is a serious possibility of persecution on a Convention ground or that, on a balance of probabilities, he would be personally subjected to a danger of torture, a risk to his life or a risk of cruel and unusual treatment or punishment if he were to return to Haiti.

CONCLUSION

- [17] The RAD dismisses the appeal and confirms the RPD's determination that the appellant is neither a Convention refugee nor a person in need of protection. (signed) Miriam McLeod Me Miriam McLeod December 17, 2020 Date IRB translation Original language: French 1 Minister of Citizenship and Immigration v. Huruglica, 2016 FCA 93. 2 Recording of the hearing before the Refugee Protection Division (RPD) on October 15, 2019, at 59:34, 1:02:20, 1:04:55. 3 Recording of the RPD hearing at 1:08:40-1:09:15. 4RPD record, RPD decision, p. X, at para. X and RPD record, Basis of Claim Form (BOC Form), p. 13 at question 2c). 5 P-2, appellant's record, appellant's memorandum, at pp. 8-9, at paras. 6-7. 6 P-2, appellant's record, appellant's memorandum, at pp. 8-9, at para. 7. 7 SPR-1, RPD record, BOC Form, at p. 21. 8 Recording of the hearing before the RPD on October 15, 2019, from 14:41 to 15:10. 9 P-2, appellant's record, appellant's memorandum, at pp. 8-9, at paras. 6-7. 10 Available at: <https://irb-cisr.gc.ca/en/legal-policy/procedures/Pages/allegations-former-counsel.aspx> 11 Recording of the hearing before the RPD on October 15, 2019, from 12:00 (the errors) to 14:15 (no other errors were brought to my attention). 12 SPR-1, RPD record, p. 82. 13 Recording of the hearing before the RPD on October 15, 2019, at 1:26:46. 14 Recording of the hearing before the RPD on October 15, 2019, at 1:27:03. 15 P-2, appellant's record, appellant's memorandum, at p. 9, at para. 8. 16 SPR-1, RPD record, p. 82 17 Recording of the hearing before the RPD on October 15, 2019, at 29:47, from 41:26 to 43:07. 18 Recording of the hearing before the RPD on October 15, 2019, from 1:52:48 to 1:53:18. 19 Recording of the hearing before the RPD on October 15, 2019, from 40:39 to 43:07. 20 Recording of the hearing before the RPD on October 15, 2019, from 27:38 to 29:47. 21 Recording of the hearing before the RPD on October 15, 2019, from 41:55 to 43:07. 22 SPR-1, RPD record, RPD decision, at p. 8, at para. 9. 23 P-2, appellant's record, appellant's memorandum, at p. 9, at para. 10. 24 SPR-1, RPD record, RPD decision, at p. 7, at para. 8. 25 SPR-1, RPD record, p. 81. 26 SPR-1, RPD record, RPD decision, at p. 8, at para. 8. 27 SPR-1, RPD record, RPD decision, at p. 9, at para. 11. 28 SPR-1, RPD record, RPD decision, at p. 9, at para. 11. 29 P-2, appellant's record, appellant's memorandum, at pp. 10-11, at para. 14. 30 Ibid. 31 SPR-1, RPD record, RPD decision, at pp. 8-9, at paras. 8, 11.

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Prepared on 27 October 2026 · Esheria