

CANADA / JUDGMENT

MB9-03288

COURT

Refugee Appeal Division

DECIDED

16 January 2020

Research copy typeset by Esheria. Not court-issued or certified. A source URL was not supplied in the case record.

RAD File No. / No de dossier de la SAR : MB9-03288 MB9-03289 Private Proceeding / Huis clos
Reasons and Decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXXXXXXX XXXX XXXX Personnes en cause Appeal considered / heard at Montréal, Quebec
Appel instruit / entendu à Date of decision January 16, 2020 Date de la décision Panel Me Toni
Jedid Tribunal Counsel for the persons who are the subject of the appeal Me Jean Robert Cadet
Conseil des personnes 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 (principal appellant) and his spouse, XXXX XXXX XXXX (associate appellant), citizens of Haiti, are appealing against the decision of the Refugee Protection Division (RPD) rejecting their refugee protection claim based on a lack of credibility.
- [2] The appellants allege a fear of persecution in Haiti by reason of their political opinion.
- [3] The determinative issues are: * Did the RPD err in assessing the appellants' credibility? * Is there an internal flight alternative in Haiti? * Did the appellants rebut the presumption of state protection?
- [4] Having analyzed the entire record, I conclude that the appellants delivered credible testimony with respect to the determinative aspects of their refugee protection claim, that there is no internal flight alternative and that they rebutted the presumption of state protection. The Refugee Appeal Division (RAD) allows the appeal, sets aside the RPD's determination and substitutes its own determination that the appellants are Convention refugees. FACTUAL BACKGROUND
- [5] The associate appellant's claim is based on the allegations in the Basis of Claim Form (BOC Form) of the principal appellant, who alleges a fear of persecution by reason of his political opinion. In his written account, he describes himself as someone who is involved in politics, proud of his opinions and positions, and who contributes to the overall progress of the region in which he lived in St-Marc. He writes that he often contributed to the different activities organized by the Pitit Dessalines party, especially during the CASEC elections. Members of an opposition party allegedly threatened him and, on February 10, 2017, set fire to his store located at the back of his property. The appellants allege that they left the region to move to Port-au-Prince but that the threats continued. They therefore left their country

for the United States, then for Canada, where they claimed refugee protection in XXXX 2017. While they were in Canada, a friend of the principal appellant informed them that he was still receiving threats. NEW EVIDENCE AND REQUEST FOR A HEARING

- [6] In support of their appeal memorandum, the appellants filed new evidence: the results of the legislative elections of January 29, 2017.¹ I note that there is nothing in the evidence to explain how this meets the criteria in subsection 110(4) of the Immigration and Refugee Protection Act (IRPA), and I am of the opinion that, therefore, this evidence is not admissible. The RAD cannot hold a hearing when it is of the opinion that the evidence is not admissible. Since it is not, the request for a hearing is denied. ROLE OF THE REFUGEE APPEAL DIVISION
- [7] In accordance with *Huruglica*² and *Rozas del Solar*,³ I have conducted my own analysis of all the evidence, including the audio recording of the hearing, and I have applied the correctness standard of review.

ANALYSIS

Platform structure

- [8] The RPD was of the opinion that the principal appellant showed little or no knowledge of the political group he allegedly supported publicly and for which he alleges having actively advocated. The RPD drew a negative inference from the fact that the principal appellant attended numerous meetings and that he knows virtually nothing about the party. It found that his overall credibility with respect to his being an engaged political activist was seriously undermined.
- [9] In his appeal memorandum, the principal appellant submits that the RPD erred in finding that he was not credible. He submits that he was not a member, but a supporter. At his hearing, he explained why the party or political organization is called Pitit Dessalines. He also testified that it is a party that fights corruption and promotes change in Haiti. Not only did he acknowledge that Moïse Jean-Charles is the party leader, he also testified that he had been a mayor and subsequently senator before running for president and that he ranked third in the elections of November 20, 2016. He submits that his testimony that he publicly supported the party is reliable. According to his explanations at the hearing, he would announce meetings in the sector, put up photos of the leader on request and let the party use the yard of his home for various meetings.
- [10] In my view, the RPD erred in weighing the facts and assessing the appellants' credibility. When asked by the RPD to describe the objectives of the Pitit Dessalines platform and his activities within this political group, the principal appellant testified in a spontaneous and detailed manner, without any contradictions. Apart from his lack of knowledge about the political platform which, in my opinion, is not determinative, he explained that he would participate in the political platform's activities twice a week, invite people into the sector to take part in meetings in his private yard and post photographs of the group's leader on walls

and trees. In his view, the platform's main objectives are anti-corruption politics and development of the country's sectors.

- [11] In paragraph 8 of its decision, the RPD writes the following: [Translation] ... When asked to describe what he knows about this group, he answered that the party is led by Moïse Jean Charles, without further detail. When asked to specify if he knew anything else, he answered no.
- [12] I disagree with the RPD because, apart from his lack of knowledge about this political platform, the principal appellant testified about the previous positions held by the platform leader, Mr. Moïse, namely, mayor and senator. Furthermore, he testified in a straightforward and clear manner about the dates of the presidential election and the results of the legislative elections. Despite the principal appellant's lack of knowledge about the platform's structure, I am of the opinion that he demonstrated knowledge that is consistent with his role within the organization, namely, his political activities, identifying the leader, the leader's previous positions and the party's main objective, namely, anti-corruption and development in the country. Therefore, I am of the opinion that the appellants are credible and that the RPD's finding in this regard is incorrect. Party office
- [13] The RPD questioned the principal appellant about where the members gathered, and he stated at the hearing that the party did not have an office and that he was the only one in the organization who had a fenced yard. When confronted with the party letter he produced,⁴ which clearly shows the party's office address in St-Marc, the principal appellant answered in the affirmative and added that the meetings were held at his home. The RPD did not accept that explanation, as there was still a contradiction, and this aspect of the written account is important. It found that this again undermined the principal appellant's credibility.
- [14] In his appeal memorandum, the principal appellant submits having clearly stated at the hearing that the party did not have an office in the sector, not the city of Saint-Marc. He submits that he lived in Cité Saintard and the office was on Avenue Jean Jacques Dessalines. Therefore, the office was not in the same sector as his place of residence, although both places are in the same city. He submits that the RPD did not ask any questions to attempt to define the size of the two locations and did not seek to understand whether both locations could accommodate the same number of people at meetings because, according to his testimony, his yard could accommodate up to approximately 70 people. He submits that his testimony was consistent and that the RPD should have considered all the evidence. He adds that he testified under oath and that he therefore benefits from the presumption that he is telling the truth.
- [15] I note that, when he was confronted with the letter, the principal appellant testified without hesitation that the Dessalines platform does not have an office in his sector, which is why his private yard was suggested or offered for the meetings. The principal appellant's residence is one sector among others that make up the city of St-Marc. Although the platform office is in

the city of St-Marc, the evidence shows that it does not have another office in the sector in which the principal appellant lives. In my view, the principal appellant's explanation is satisfactory and the RPD should have taken it into account. Letter of "platform Desalin"? election results

- [16] The RPD confronted the principal appellant with the platform letter⁵ which reveals that the store fire was allegedly set by [translation] "thugs, to enjoy their victory following the publication of the results of the January 29, 2017, elections." The RPD was of the opinion that the principal appellant testified that the presidential election had been held in November 2016. Confronted with this contradiction, the principal appellant explained that January 29, 2017, was the date on which the election results were announced. The RPD did not accept that explanation and was of the opinion that, according to the evidence, on January 29, 2017, the partial legislative elections were held, not the November 2016 presidential election results—results that were in fact announced as early as November 2016. The RPD drew a negative inference concerning the principal appellant's overall credibility based on his ignorance of very important facts related to the political party, which he claims to strongly support and advocate for.
- [17] In his appeal memorandum, the principal appellant submits that the party letter was ignored by the RPD, as it cited the document only partially while failing to define the context. He submits that this evidence has full probative value. He submits that the RPD erred because, on January 29, 2017, the preliminary results for the Artibonite Department local elections in the commune of Saint-Marc were indeed announced. He simply testified that these were the results of 2017, without specifying whether they were the results of the November 2016 presidential election. He submits that all the evidence and his reliable testimony concerning the results of January 29, 2017, show only minor contradictions that cannot negatively affect his overall record.
- [18] I note that the principal appellant indeed testified that the election results were announced on January 29, 2017. The principal appellant did not state that they were the results of the presidential election. The RPD did not question the principal appellant to know which results he was referring to: Was it the results of the presidential election or the legislative elections? Given the consistency of the principal appellant's testimony concerning the platform letter and given the evidence, I am of the opinion that there is no real contradiction. Excerpt from the minutes of the registry
- [19] The principal appellant submitted into evidence a report prepared by a justice of the peace.⁶ The RPD was of the opinion that the facts in the report differed from the principal appellant's testimony and written account. First, he allegedly told the justice of the peace that he was a member of the Pitit Dessalines party, whereas at the hearing he testified that he was a supporter, not a member. Confronted with this contradiction, he stated that it was the justice of the peace's error. The RPD did not accept that explanation, as the evidence clearly shows that the justice of the peace was repeating the statement of the principal appellant, who declared before him that he was a member of the party. Faced with this

contradiction, which was not explained to the RPD's satisfaction, it found that this once again undermined the principal appellant's overall credibility. In addition, the RPD was surprised to find in the evidence on the record a report prepared by a judicial police officer, whereas in his written account he alleges that he did not file a complaint. The principal appellant provided his explanation, but the RPD did not accept it and found that it seriously undermined his credibility, especially since it is an important element of his claim.

- [20] In his appeal memorandum, the principal appellant submits that he backed his party as a supporter, which is why he did not have any other explanations in response to the RPD's concerns other than the fact that it was the justice of the peace's error. He submits that drawing a negative inference as to his overall credibility based on that fact amounts to believing that the RPD made a selective reading of the evidence in his claim. As for seeking police protection, he clearly states at question 2(c) of the BOC Form that he was afraid to seek police protection. He adds that, in his written account, while he did use the expression [translation] "police," it referred to the different units of the Haitian police. He submits that a justice of the peace is a judicial police officer who is not part of law enforcement. He submits that there are two types of complaints-one that may be filed with the police at a police station or substation and the other that may be filed before a justice of the peace. He submits that, in his case, he merely noted the errors of a justice of the peace but that were was no complaint, as no summons followed justice of the peace's report.
- [21] In my opinion, the RPD conducted a microscopic assessment of this evidence. The RPD confronted the principal appellant with his statement before the justice of the peace that he was a platform "member", whereas he alleged in his written account and testified that he was a supporter. In my view, the RPD should have considered all the evidence corroborating the principal appellant's allegations. I am willing to believe the principal appellant concerning the error in the report, which, in my opinion, is not fatal to the point of depriving the document of its probative value.
- [22] As for the complaint to the police, I am of the opinion that the RPD erred by not accepting the principal appellant's explanation. As he explained at the hearing, there are two types of processes with regards to the filing of a complaint and the justice of the peace report. The principal appellant stated both in his written account and at the hearing that he did not file a complaint with the police out of fear. However, he did ask a justice of the peace to come make a report so that he could keep it as evidence. I agree with the principal appellant that these two processes are different. The report states the following: [Translation] ... We, XXXX
XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX
XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX
XXXX XXXX XXXX XXXX for this jurisdiction, assisted by XXXX XXXX XXXX XXXX XXXX
XXXX XXXX XXXX

- [23] In my view, the term "judicial police officer" does not mean that the principal appellant filed a complaint with the police. The signature at the end of the document is included in the space providing the name of the signatory and his position, "Justice of the Peace." This leads to the conclusion that the principal appellant's testimony is consistent with this piece of evidence and with the allegations in his written account.
- [24] As for the associate appellant, I note that her refugee protection claim is based on the allegations in her spouse's BOC Form and it is my view that, as a family member, she has a well-founded fear of persecution due to her spouse's problems. I therefore conclude that the appellants established the evidence in support of their fear. Internal flight alternative and state protection
- [25] The documentary evidence is clear to the effect that state protection in Haiti is inadequate and that the police is unable to protect the majority of citizens.⁷ It also states that the police has committed abuses against Pitit Dessalines militants.⁸
- [26] The principal appellant states that he left his sector to seek refuge in Port-au-Prince and continued to receive threatening phone calls. The RPD did not explore any other internal flight alternatives. Considering that the PHTK is the governing party and that one of the individuals threatening the appellants occupies an important position within the party, I conclude that they would have an interest in and the means to track them down in any of Haiti's large cities. Therefore, I conclude that, in this case, there is no internal flight alternative available to the appellants.

CONCLUSION

- [27] The appeal is allowed. Pursuant to paragraph 111(1)(b) of the IRPA, the RAD sets aside the determination of the RPD and substitutes its own determination that the appellants are Convention refugees. Toni Jedid Me Toni Jedid January 16, 2020 Date IRB translation Original language: French 1 Appellants' memorandum, Exhibit P-6, page 102. 2 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93 (CanLII). 3 Rozas del Solar c. Canada (Citizenship and Immigration), 2018 FC 1145 (CanLII) and supra, endnote 1. 4 RPD record, list of the refugee protection claimant's documents, Exhibit C-3, written declaration of the "Platform Pitit Desalin" platform, dated February 13, 2017. 5 Ibid. 6 Supra, endnote 4, Exhibit C-2: Excerpt of the minutes of the Saint-Marc Tribunal Registry. 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... Immigration and Refugee Board of Canada. June 17, 2019. HTI106306.FE. 8 National Documentation Package, Haiti, September 30, 2019, Tab 4.19: The Pitit Dessalines [Pitit Desalin] political platform, including its establishment, structure, founding members and leaders, as well as its program; whether the platform issues membership cards; whether the party's candidates ran in municipal... Immigration and Refugee Board of Canada. July 22, 2016. HTI105579.FE.

RAD File No. / No de dossier de la SAR : MB9-03288 MB9-03289 RAD.25.02 (April 4, 2019)
Disponible en français 9 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) Disponible en français

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

CASE PAGE <https://chat.esheria.ai/case-law/canada/credibilityassessment-refugee-appeal-division-2020--6a40c3bf4cf2c72690fb5cbf>

A source URL was not supplied in the case record. Consult the court's original record before reliance.

Prepared on 24 October 2026 · Esheria