

CANADA / JUDGMENT

MB9-06656

COURT

Refugee Appeal Division

DECIDED

27 February 2020

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RAD File No. / No de dossier de la SAR : MB9-06656 MB9-06657 Private Proceeding / Huis clos
Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXX XXXXXXXXXX XXXX XXXX XXXX Personnes en cause Appeal considered / heard at Montréal,
QC Appel instruit / entendu à Date of decision February 27, 2020 Date de la décision Panel
Mokhtar Lamani Tribunal Counsel for the persons who are the subject of the appeal Jean Fils-
Aime 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 (principal appellant), a citizen of Haiti, and her minor daughter XXXX
XXXX XXXX XXXX (associate appellant), a citizen of the United States, are appealing against
the decision of the Refugee Protection Division (RPD), rendered on March 19, 2019, to reject
their claims for refugee protection for reasons of credibility.
- [2] The appellants allege that the RPD erred in its findings. They are asking the Refugee Appeal
Division (RAD) to allow their appeal and to recognize them as Convention refugees or as
persons in need of protection.¹
- [3] They are submitting no new evidence and are not asking for an oral hearing before the RAD.
- [4] The determinative issue for the RAD is whether the RPD erred in its assessment of the
appellants' credibility.

DETERMINATION

- [5] The RAD confirms the RPD's determination and dismisses the appeal.

BACKGROUND

- [6] According to the principal appellant's Basis of Claim Form (BOC Form), she claims that, in
2009, her stepmother (her father's wife) attempted to poison her. She did not complain to the
authorities; she moved, but the persecution continued.
- [7] Five years later, she left Haiti for the United States.

- [8] The principal appellant allegedly remained in the United States from XXXX XXXX, 2014, until XXXX XXXX, 2017, but did not seek asylum because she was afraid of refoulement.
- [9] On XXXX XXXX, 2017, she crossed the Canadian border illegally with her daughter, who had been born in the United States, and claimed refugee protection in Canada. STANDARD OF REVIEW
- [10] The RAD reviews RPD decisions by applying the correctness standard, after conducting its own analysis of the record. The exception to this rule is when the RPD enjoys a meaningful advantage in its assessment of credibility.² The role of the RAD is to determine whether the RPD indeed committed errors, as the appellants contend.
- [11] In this case, the RAD applied the correctness standard.

ANALYSIS

- [12] The RPD drew numerous adverse credibility findings, specifically because of inconsistencies; omissions; confused, evasive and incoherent testimony; and contradictions between the evidence and the testimony.
- [13] The appellants submitted a one-page memorandum (about fifteen lines),³ with no precise arguments and written in general terms, with no kind of appropriate explanation of the RPD's errors. They mention errors in paragraphs 8, 9, 13, 18 and 19 of the RPD's reasons.⁴ Paragraphs 8 and 9 of the RPD's reasons: inconsistency in the dates of the start of the relationship between the father and his wife
- [14] In paragraph 8, the RPD finds that the principal appellant is not credible. In paragraph 9, the RPD explains the first inconsistency it noted, between the principal appellant's testimony, which places the start of the relationship between her father and his wife in 2009, and a document that she herself had submitted to corroborate her allegations,⁵ which places the start of that relationship in 2008.
- [15] The appellants argue that [translation] "a basic knowledge of Haitian reality would completely sweep away the supposed contradiction that the member sees between the start of the official relationship and the start of the real relationship."
- [16] The RAD cannot subscribe to the appellants' opinion.
- [17] In fact, having heard the recording of the hearing, the RAD observes that the RPD questioned the principal appellant about that inconsistency⁶ and that her reply was evasive: [translation] "you don't get to know a person like that to start with."

- [18] In the next paragraphs of its reasons (10 and 11), the RPD took the trouble to explain why it rejects the principal appellant's explanation. The reasons are clear and easy to understand; they are detailed and thorough, and they are a precise reflection of the principal appellant's testimony at the hearing. They are not in error. Paragraph 13: Did the father leave the family home on April 9, 2009, or in March 2011?
- [19] The RPD noted an inconsistency in the principal appellant's oral testimony: she claims that her father left the house two days after her stepmother tried to poison her, on April 7, 2009. However, at the start of the hearing, replying to a question as to whether her father still lived with his wife, she stated that her father had left in March 2011, because his wife had tried to poison him too.
- [20] The RPD questioned the principal appellant about this contradiction. She explained that her father had left his wife on April 9, 2009, but that he had left her little sister in the care of the woman. This required him to go to the house to bring money and make sure his daughter was cared for.
- [21] The appellants argue that: [translation] the member sees an inconsistency in the fact that my client's father was able to leave her little sister in the care of a woman who was looking to poison my client and her father.... A basic knowledge of Haitian reality would make it clearly understood that the little sister was not the target of the poisoning in question; the targets were my client and her father.
- [22] The RAD does not agree with the appellants' counsel.
- [23] His opinion in no way addresses the RPD's concerns as to the principal appellant's contradiction about the different dates she provided for the father's departure from the family home.
- [24] Then, when the RPD gave the principal appellant the opportunity to explain the contradiction in her testimony, she brought up stories that were not mentioned in her BOC Form and that, in a number of aspects, lacked common sense and logic, even plausibility. This included the explanation of leaving the little sister for two years with a woman who had tried to kill her and her father. The RPD was right to conclude that this further undermines the principal appellant's credibility. Consequently, it did not err. Paragraphs 18 and 19: is the principal appellant a Protestant or a voodooist?
- [25] The RPD noted an omission in the principal appellant's BOC Form that: [translation] completely destroys her credibility. The claimant testified at the hearing that her former stepmother wanted to kill her and her father because of the house. But then, she alleged that her father's former wife wanted to kill her because she refused to go to church and was following in the footsteps of her mother, who was part of a voodoo group.⁷

- [26] The RPD noted that the principal appellant mentioned in her BOC Form that she was a Protestant, a Baptist. She did not mention that she was a voodooist, or that she was following in the footsteps of her mother, who was part of a voodoo group. It questioned the principal appellant about those omissions.
- [27] The principal appellant stated that she had been in shock and that she did not have the time to write everything down in her BOC Form.
- [28] Once again, the appellants are of the opinion that a basic knowledge of Haitian reality would make the omission understandable.
- [29] The RAD cannot subscribe to that argument by the appellants' counsel.
- [30] First, the RPD clearly pointed out to the principal appellant that she had plenty of time to make changes to her BOC Form.
- [31] Second, while listening to the recording of the hearing, the RAD noted that, at the start of the hearing, when the RPD asked the principal appellant whether she had any changes to add, she stated that she did and specified July 7, 2009, as the date when the attempt to poison her was made. The RPD persevered, and asked if there were any further changes. The principal appellant answered "yes" and added a new allegation, this one of attempted rape.⁸ She never tried to amend her religious beliefs in her BOC Form. It was only during the hearing that she brought up being a voodooist like her mother, giving that as the reason for the attempted poisoning.
- [32] Finally, the appellants' counsel was surprised that the RPD should see a contradiction in the fact that his client was claiming to be a voodooist without having stated it in her BOC Form. The RAD observed that, during his submissions at the end of the RPD hearing,⁹ counsel reserved a major part of his argument for an explanation of the conflict between Christianity and Voodoo in Haiti, in order to request that the RPD grant Canada's protection to his client, a voodooist like her mother, on the grounds of religious persecution.
- [33] The RAD does not believe the appellants' version of this point. An omission of that kind, on a matter that should have been central to the claim for refugee protection, together with the delay in mentioning it in the hearing, undermine the appellants' credibility.
- [34] The RPD was right to reject the appellants' explanation; its finding is correct. The RPD's other findings
- [35] The RAD sees no error in the many other conclusions that the RPD drew during its analysis, and which the appellants are not challenging.
- [36] The appellants are also not challenging the RPD's finding with respect to the child, who is American. That finding is correct.

- [37] With such inconsistent and confusing testimony throughout the hearing, the RAD is of the opinion that the RPD was perfectly justified in having serious doubts as to the fear alleged by the principal appellant.
- [38] In the end, the RAD is of the opinion that the appellants' criticisms are not well-founded and reaches the conclusion that the appellants have not been able to show a serious possibility of persecution or, on a balance of probabilities, that they would be subjected to a risk to their lives or a risk of cruel and unusual punishment or treatment if the principal appellant were to return to Haiti or if the associate appellant were to return to the United States.
- [39] The RAD finds that the RPD decision is correct.

CONCLUSION

- [40] The RAD dismisses the appeal and confirms the RPD's determination that the appellants are neither Convention refugees nor persons in need of protection. Mokhtar Lamani Mokhtar Lamani February 27, 2020 Date IRB translation Original language: French 1 Appellant's record, Appellant's memorandum, Section IV, Decision sought, p. 11 of the digital record. 2 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93. 3 Appellant's record, Appellant's record form, Section II, 2.1 Explain the errors that constitute the grounds for the appeal, p. 2. 4 Ibid. p. 3. 5 Refugee Protection Division (RPD) record, Document 4, P-1: handwritten letter from the appellant's father. 6 Recording of the RPD hearing, from 1.48.18 to 1.51.16. 7 RPD reasons, para. 18. 8 Recording of the hearing, from 00.19.00 to 00.30.00. 9 Ibid., from 2.40.00 to 2.52.00.

RAD File No. / No de dossier de la SAR : MB9-06656 MB9-06657 RAD.25.02 (January 2020)
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Commission de l'immigration et du statut de réfugié du Canada Section d'appel des réfugiés
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