

CANADA / JUDGMENT

MB9-07008

COURT

Refugee Appeal Division

DECIDED

21 February 2020

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RAD File No. / No de dossier de la SAR : MB9-07008 MB9-07009 / MB9-07010 Private Proceeding / Huis clos Reasons and Decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXXXXXXXX XXXX XXXX XXXXXXXXXX XXXX XXXX Personnes en cause Appeal considered / heard at Ottawa, Ontario Appel instruit / entendu à Date of decision February 21, 2020 Date de la décision Panel Me Tammy Tremblay Tribunal Counsel for the persons who are the subject of the appeal Aristide Koudiatou Mianata Conseil des personnes en cause Designated representative XXXX XXXX Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION OVERVIEW

- [1] The principal appellant, XXXX XXXX, his spouse XXXX XXXX XXXX (associate appellant), and their minor daughter XXXX XXXX XXXX (minor appellant) are citizens of Haiti and are appealing against the decision of the Refugee Protection Division (RPD) that they are neither refugees nor persons in need of protection.
- [2] The male appellant claims to be persecuted for his political opinion because of his membership in the XXXX XXXX XXXX XXXX XXXX political party. The associate appellant states that she fears that she and her daughter would be persecuted on the basis of their membership in the particular social group of Haitian women.
- [3] The RPD rejected the male appellant's refugee protection claim because it did not find him to be credible regarding the essential elements of his refugee protection claim. With regard to the associate appellant, the RPD rejected her claim because she failed to establish that there was a serious possibility that she would be persecuted because of her gender.
- [4] The determinative issue in this case is the principal appellant's credibility.

DETERMINATION

- [5] I dismiss the appeal. The RPD was correct in determining that the appellants are neither Convention refugees nor persons in need of protection.

ANALYSIS

- [6] I conducted an independent analysis of all the evidence on the record, after carefully listening to the hearing, so as to form my own opinion on this refugee protection claim in order to determine whether the decision rendered by the RPD is correct. The RPD did not breach the principle of natural justice
- [7] In their memorandum, the appellants argue that the RPD breached the principle of natural justice by instructing the male appellant, at the beginning of the hearing, to answer to the best of his knowledge, but by then drawing negative inferences when he could not provide it with an answer.¹
- [8] Giving an instruction at the start of the hearing, that is, expecting that a refugee protection claimant answer questions to the best of their knowledge does not prevent the RPD from drawing negative inferences when an individual is unable to answer questions pertaining to elements that are central to their refugee protection claim.
- [9] For example, the male appellant, who characterizes his political involvement as financial contributions that he allegedly made to the XXXX party, was unable to provide [translation] "even an estimate of the total donations made to the XXXX party over two years."² However, according to the appellant, it is precisely because of those donations that the Lavalas party's criminals would persecute him. It was therefore open to the RPD to draw a negative inference with respect to the male appellant's credibility on that basis, and this will be addressed in the part of this decision that addresses credibility.
- [10] I also listened to the hearing recording and read the RPD's decision, and I noted no evidence that the appellants were denied natural justice or procedural fairness. Over the course of the hearing, the RPD member asked relevant open-ended questions, and appropriate follow-up questions were asked, with the male appellant being given multiple opportunities to establish the elements of his refugee protection claim. The appellants' argument that the RPD breached the principle of natural justice is not supported by the evidence and is rejected.
- [11] The RPD did not breach the principle of natural justice. The RPD properly applied Guideline 4
- [12] In their memorandum, the appellants argue that the RPD had an obligation to assess the associate appellant's prospective fear by considering Guideline 4 on Women Refugee Claimants Fearing Gender-Related Persecution. The appellants do not explain how the RPD allegedly failed to fulfil its obligation, other than by the fact that nowhere does the RPD state that it considered the Guideline and that there is no evidence of its analysis in this regard.

- [13] I reviewed the record, and the RPD's analysis indicates that the RPD was sensitive to the principles set out in Guideline 4, even though it does not directly refer to it in its decision.³ For example, even though it finds that the associate appellant is not credible with regard to the threats she claims to have received, the RPD analyzes her profile to determine whether it could be established that she would be a vulnerable person likely to be subjected to persecution because of her gender, if she returned to Haiti.
- [14] The RPD did not fail to fulfil its obligation to consider Guideline 4. The RPD correctly assessed the male appellant's credibility
- [15] The appellants submit that the fact that the RPD believed that, in 2014, during a demonstration, some young individuals (whom the male appellant believes were members of the Lavalas party), allegedly pulled a knife on him [translation] "amounts to saying that the male appellant was credible." I cannot agree with this argument because the fact that the RPD believed a portion of the male appellant's testimony does not necessarily mean that it believed his entire testimony or that this necessarily establishes his refugee protection claim. Furthermore, with regard to the demonstration in 2004, the RPD concluded that the male appellant had not been targeted for his political opinion, but that he had rather been in the wrong place at the wrong time.
- [16] The appellants argue that the RPD's conclusion that the male appellant failed to establish a prospective risk in relation to that incident should have been based on his credibility, because, at the start of the hearing, the RPD stated that the determinative issue was credibility. This argument is unfounded; although the RPD believed part of the male appellant's story, it does not believe his entire story. Specifically, the RPD did not find the male appellant to be credible with regard to his prospective risk.
- [17] The appellants add that in drawing a conclusion on the prospective risk, the panel failed to justify its decision in explicit terms. In my opinion and for the reasons that follow, the findings concerning the appellants' credibility are correct. The male appellant failed to demonstrate that he played a role within the XXXX party
- [18] In their memorandum, the appellants submit that the male appellant's testimony that he does not remember how much money he allegedly donated to the XXXX between XXXX 2015 and XXXX 2017 was reasonable. The appellants add that the RPD drew a negative inference without explaining how that amount would have established that the male appellant was or was not a member of the XXXX.
- [19] The reason why the RPD gave weight to the financial contribution amounts that the male appellant claims to have made to the XXXX is simple and is clearly explained in the RPD's decision: the male appellant bases his involvement in that political party on them. In his Basis of Claim Form (BOC Form), the male appellant states that because he could not donate any time to the XXXX party, he contributed by donating money. In this context, the issue of whether a refugee protection claimant can provide an estimate of the donations he made to a political party is not a peripheral element. The RPD correctly concluded that a merchant

who bases his political involvement on his financial contributions would be able to estimate the amount of money he donated to a political party over a given period.

- [20] In their memorandum, the appellants argue that the RPD lumps together the male appellant's XXXX membership and his role as a financial contributor and they recall that [translation] "the male appellant alleges to have been persecuted by reason of his membership in the XXXX," not for his donations. The problem is that in his BOC Form, the male appellant states that he never joined a political party,⁴ that he took little time for the party, and that he contributed to the party by donating money⁵ because he had no time to be hands on. At the hearing, the male appellant stated that he never went to the party's meetings or activities and that his role was to fund the XXXX. The RPD did not lump anything together: the evidence in both the appellant's testimony and BOC Form indicates that he was not a party member and that [translation] "his membership in the XXXX" was limited to making donations from time to time. In this context, the fact that the male appellant could not answer simple questions such as providing an estimate of the donations he allegedly made over a given period undermines his credibility.
- [21] The RPD's findings regarding the male appellant's credibility are based on multiple elements that the RPD correctly identified as undermining the male appellant's credibility, including: [translation]
- a. The male appellant's contradictory responses during the hearing regarding his loaning his vehicle to the party: when the RPD asked him how people outside of the party could have known that he was a XXXX supporter, when his involvement was limited to financial contributions, the male appellant responded that he had been making cars available to the party since the 2010-2011 elections. When the RPD asked him how many times he had loaned his car since 2010, the male appellant did not answer the question. When the RPD asked put the question to him another way, by asking him whether he could specify the period during which he was lending his car, the male appellant replied [translation] "since 2015," contradicting the testimony he had just given, without explanation. In the absence of a valid explanation, the RPD correctly drew a negative inference with respect to the male appellant's credibility.
 - b. In addition, in his BOC Form, the male appellant is very specific as to how he contributed to the party's resources, but fails to mention that he loaned his vehicle to the XXXX. In my opinion, this omission is significant because it concerns an element that would have enabled the male appellant to establish why he would be threatened. The RPD was correct in concluding that this is a major omission concerning an essential element in the male appellant's refugee protection claim, which undermines his credibility.
 - c. The male appellant's inability to provide an estimate of the number of threatening calls he received, as for the approximate amount donated, is a factor that undermines his credibility. I am of the opinion that the male appellant did not need to provide a specific number, but that he is not credible as a person who states that he left his country because he is

threatened but cannot provide even an order of magnitude of the number of threats he apparently received. The RPD was correct in drawing a negative inference regarding the male appellant's credibility in that regard.

- d. Like the RPD, I cannot give any weight to Exhibit D-2, which according to the male appellant's testimony, is a letter written by someone he does not know and with whom he had no dealings.
- [22] The RPD correctly concluded that the male appellant failed to demonstrate, on a balance of probabilities, that the allegations concerning his political involvement are true. The RPD correctly analyzed the evidence presented by the male appellant
- [23] In their memorandum, the appellants indicate that the RPD [translation] "could have begun by analyzing the evidence presented by the male appellant before requiring other testimonial or documentary evidence." Here, the appellants are referring to the RPD's conclusion that it would have been reasonable to expect that the cousin, XXXX, would provide a letter of support. This argument is unfounded because the RPD analyzed the evidence presented by the male appellant and did not [translation] "require any other" evidence. Rather, the RPD concluded the following: in addition to not being credible regarding his involvement in the party, there are no elements on the male appellant's record to conclude that he was involved in the XXXX. In other words, the RPD drew a negative inference with regard to the lack of a letter of support from the cousin, XXXX, because it had major concerns as to the male appellant's credibility, which are clearly set out in para. 14 of the decision.
- [24] At the hearing, the RPD noted that the male appellant obtained a letter from someone he does not know through his cousin XXXX, but that he had not asked the latter to write a letter on his behalf. The RPD concluded that it would have been reasonable to believe that his cousin, who now lives in Canada, who held an official position in the party, who knows his story and who is in contact with him, would write him a letter of support. I add that over the course of his testimony, the male appellant mentioned his cousin XXXX when he had trouble answering the RPD's questions: he was unaware of the frequency of the party's activities because his cousin XXXX was the one who kept him informed, it was through XXXX that he made donations, only his cousin XXXX was aware of his donations to the XXXX, he did not know who used his car or even how his car was used when he lent it to the party because it was his cousin XXXX who made all the arrangements.
- [25] In this context and considering the above-mentioned elements undermining the male appellant's credibility, the RPD correctly drew a negative inference from the fact that the male appellant did not ask his cousin for a letter. In addition, I note that the male appellant contradicted himself during that part of his testimony, which the RPD described as [translation] "confusing and circular." At the hearing, the RPD asked him multiple times whether he had asked XXXX for a letter of support, but the male appellant either did not answer or dodged the question, for example, by stating that XXXX knows everything about

his involvement in the party. It was only when his counsel intervened to put the question to him that the male appellant replied that he had asked XXXX to write him a letter. A few questions later, when the RPD asked him where the letter was, the male appellant contradicted himself, stating that he did not ask for a letter. This inconsistency undermines the male appellant's credibility.

- [26] Lastly, the appellants submit that the RPD conducted a microscopic analysis of their refugee protection claim, without providing any explanation or indication as to what they are referring to. In my opinion, this argument is unfounded because, both at the hearing and in its decision, the RPD focused its analysis on the elements of the appellants' refugee protection claim to establish whether or not they are refugees or persons in need of protection.
- [27] The RPD correctly analyzed the evidence.
- [28] The accumulation of contradictions, inconsistencies and omissions in the male appellant's testimony regarding elements central to his refugee protection claim, without any satisfactory explanations, leads to the finding that he is not credible with respect to his fear of persecution should he return to Haiti.
- [29] The appellants argue that the RPD erred in failing to consider section 97 of the Immigration and Refugee Protection Act (IRPA) in its decision. Because I do not find the male appellant to be credible with respect to the statements made in his BOC Form and because there is no basis in the evidence for conducting an analysis under section 97, there is no need to carry out a separate analysis in this regard. Processing of the refugee protection claims of the associate appellant and the minor appellant
- [30] In their memorandum, the appellants submit that the RPD did not carry out a detailed analysis of the associate appellant's refugee protection claim and did not at all analyze the minor appellant's refugee protection claim. The appellants do not seem to challenge the RPD's findings regarding the associate appellant's credibility.
- [31] Contrary to what the appellants state in their memorandum, the RPD asked the associate appellant questions about what she feared about returning to Haiti. However, the RPD drew negative inferences because the female appellant was unable to answer, was vague in her responses (by identifying, for example, her agents of persecution as [translation] "the criminals"), or responded by stating that the information was in her husband's statement. However, it was already established that the male appellant was not credible. At the hearing, as well as on appeal, no evidence was submitted regarding the fear of the associate appellant or the minor appellant in Haiti.

- [32] In its decision, the RPD correctly concluded that the associate appellant failed to demonstrate that she was threatened, among other things, because she was unable to provide a timeline for the threats or to explain how she would have been the target of the threats she claims to have received. The same conclusion applies to the minor appellant because no evidence was submitted concerning a fear that she would have in Haiti, other than the evidence submitted by her mother and father that was not found to be credible.
- [33] The RPD analyzed the associate appellant's claim from the perspective of her membership in the particular social group of Haitian women, despite not finding her to be credible. The RPD's conclusion, which I consider to be correct, is that the associate appellant does not have the profile of a vulnerable woman, and there is no serious possibility that she would be persecuted because of her gender. Of course, according to the documentary evidence, violence against women is endemic in that country. However, I do not interpret this evidence as meaning that all Haitian women face a serious possibility of being subjected to violence. The scope of the risk they are subjected to depends on their circumstances, and the RPD was not wrong to point out that the associate appellant was not among women who are particularly vulnerable in Haiti. The same is true for her daughter. They would both enjoy the support and resources of the male appellant who, according to his testimony, has sufficient means to financially support a political party.
- [34] The RPD did not err in rejecting the refugee protection claim of the associate appellant and minor appellant.

CONCLUSION

- [35] The Refugee Appeal Division dismisses the appeal and confirms the determination of the RPD that the appellants are neither Convention refugees nor persons in need of protection. (signed) "Tammy Tremblay" Me Tammy Tremblay February 21, 2020 Date IRB translation Original language: French 1 At 00:05 of the recording of the RPD hearing on February 14, 2019. 2 RPD-1, Refugee Protection Division (RPD) record, RPD reasons, paragraph 10, p. 6. 3 The RPD does not need to specifically cite the Guideline in its reasons; what matters is to be able to ascertain whether or not the Guideline has been applied. Accordingly, the RPD must demonstrate a special knowledge of gender-related persecution and that it applied the knowledge in an understanding and sensitive manner in the decisions it renders. See, among others, *Keleta v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 56, paras. 14-15 ; *Silva Lopez v. Canada (Citizenship and Immigration)*, 2012 FC 1444, para. 10; *Castro Gutierrez v. Canada (Citizenship and Immigration)*, 2007 FC 1192, para. 6). 4 RPD-1, RPD record, Basis of Claim Form (schedule) para. 7, p. 22 5 Ibid., paras. 14 and 15, p 23

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