

CANADA / JUDGMENT

MB9-08742

COURT

Refugee Appeal Division

DECIDED

17 February 2020

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RAD File No. / No de dossier de la SAR : MB9-08742 MB9-08743 Private Proceeding / Huis clos
Reasons and Decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXXXXXX XXXX Personnes en cause Appeal considered / heard at Montréal, QC Appel instruit /
entendu à Date of decision February 17, 2020 Date de la décision Panel Mokhtar Lamani Tribunal
Counsel for the persons who are the subject of the appeal Me Jean-François Seguy Conseil des
personnes en cause Designated representative XXXX XXXX Représentant(e) désigné(e) Counsel
for the Minister N/A Conseil du ministre REASONS AND DECISION OVERVIEW

- [1] XXXX XXXX (the principal appellant) is a citizen of Haiti and her son XXXX XXXX (the associate appellant) is a citizen of Haiti and Brazil.
- a. The principal appellant alleges that she fled Haiti in 2014 because of her sexual orientation.
 - b. The appellants state that the Refugee Protection Division (RPD), which rejected their refugee protection claim for credibility reasons, erred in its analysis of their refugee protection claim. They are asking the Refugee Appeal Division (RAD) to set aside the RPD's determination and to grant them refugee protection.
 - c. The issue in this case is whether the RPD erred in its assessment of the appellants' credibility.
 - d. The appellants did not submit any new evidence and did not request an oral RAD hearing.
 - e. The determinative issue for both the RAD and RPD is the appellants' credibility.

DETERMINATION

- [2] The RAD dismisses the appeal. The RPD did not err in determining that the appellants were not Convention refugee or persons in need of protection.

BACKGROUND

- [3] The principal appellant submitted an amended account before the RPD hearing and specifically asked to withdraw from her record all other accounts already submitted. 1According to this account, XXXX XXXX started a romantic relationship with XXXX, a female friend, on October 12, 2012. A friend of her partner's husband saw the two women kissing in a public place and informed her partner's husband.
- [4] At the hearing, the RPD asked the principal appellant about the major contradictions concerning the location of the attack on June 8, 2014, which forms the basis of her subjective fear, in the original account and the amended account.2
- [5] On June 1, 2014, another friend of the husband saw the two women kissing on a public beach. He informed XXXX husband, and XXXX denied everything.
- [6] On June 8, 2014, the principal appellant went to the home of her lover, XXXX. However, XXXX husband, who was joined by a number of men armed with sticks and machetes, wanted to kill her. She managed to flee and hide.
- [7] Since she could not obtain help from the authorities, she decided to travel to the Dominican Republic and then to Brazil on XXXX XXXX XXXX 2014.
- [8] In Brazil, the principal appellant, without her husband's knowledge, started another romantic relationship with a person named XXXX.
- [9] In July 2016, her husband discovered her relationship with XXXX, attacked her and threatened to kill her. She decided to flee with her child, who was born in Brazil. She travelled through a number of countries and she reached the United States on XXXX XXXX XXXX 2016.
- [10] She claimed asylum in the United States. However, on XXXX XXXX XXXX 2017, without waiting for the response from the American authorities, she illegally crossed the Canadian border and claimed refugee protection in Canada.
- [11] The minister submitted a notice of intervention3 asking that XXXX XXXX be considered a person described in section 98 of the Immigration and Refugee Protection Act (IRPA) and that her refugee protection claim be rejected, since her name is on the list of 43,871 Haitians granted permanent residence by the Brazilian government.
- [12] In its reasons, the RPD concluded that the evidence on the record was not enough to exclude the claimant under Article 1E of the Convention. The RPD decided to analyze her fear in relation to her country of reference, Haiti.4

ANALYSIS

- [13] The RAD's role is to review all the evidence and to establish whether the RPD's decision is correct.5

- [14] The RPD found that the appellants lack credibility with regard to the allegations that form the basis of their refugee protection claim given the many contradictions and inconsistencies in their testimony. The panel does not believe that the principal appellant is bisexual or a lesbian or that she would be perceived as such.⁶
- [15] The RPD found that the accumulation of credibility issues raised at the hearing irreparably undermined the principal appellant's credibility and that she failed to demonstrate, on a balance of probabilities, her sexual orientation, her mistreatment in Haiti and her subjective fear.
- [16] The principal appellant states that the RPD's rejection of her refugee protection claim [translation] "stems from the RPD's clear desire to reject her claim, because the reasons for the rejection of her refugee protection claim are fanciful and baseless. Contrary to the panel's statements, the appellant is of the opinion that her testimony was spontaneous, consistent and credible."⁷
- [17] The principal appellant describes the contradictions in her testimony as minor and attributes them to the stress of testifying. She alleges that the RPD gave too much weight to insignificant factors.
- [18] After conducting an independent analysis of the evidence, listening to the recording and reading the transcript of the RPD hearing, and taking into consideration Chairperson's Guideline 9: Proceedings Before the Immigration and Refugee Board of Canada Involving Sexual Orientation and Gender Identity and Expression, and Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution, the RAD agrees with the RPD's finding regarding the principal appellant's credibility. Confusion between XXXX (lover from Brazil) and XXXX (lover from Haiti)
- [19] When the RPD asked the appellant whom she feared in Haiti, she referred to the husband of her lover XXXX. The RPD considered this a contradiction that negatively affected the appellant's testimony. According to her oral testimony, XXXX was her partner in Brazil and not in Haiti.⁸
- [20] The principal appellant states that the RPD erred in considering [translation] "that this constituted a contradiction and that this alleged contradiction undermined the appellant's credibility."⁹ She is of the opinion that she had just [translation] "given credible, sincere, consistent and spontaneous testimony regarding this relationship [with XXXX]. It was the first question about Haiti. Her credibility could not be undermined by her statement that she feared XXXX husband instead of XXXX husband."¹⁰
- [21] Although it considered that there could have been a simple mix-up, the RAD does not agree that the appellant's testimony was credible, sincere, consistent and spontaneous. As stated below, the testimony was confusing, evasive and inconsistent, and even meandering and shifting.

- [22] The RPD asked about the appellant's fear in Haiti after a lengthy period of questioning regarding her history in Brazil, which was not conclusive or satisfactory. For the RPD, this factor therefore undermined the appellant's credibility. However, the RPD did not consider this factor determinative. It identified a number of other credibility issues concerning her fear in Haiti. Contradictions and inconsistencies regarding the appellant's sexual orientation
- [23] The RPD concluded that the appellant provided few details regarding her sexual orientation in her testimony, which undermined her credibility.¹¹
- [24] The principal appellant states that she explained that, when she was 14 years old, she had feelings and sensations when she saw women go past her, but that she refrained from approaching them.¹² She wondered [translation] "regardless of whether a person is attracted to a man or a woman at the age of 14...what did the panel want a person of that age to feel and sense and what description would have satisfied the panel."¹³
- [25] The RAD disagrees with the appellant's arguments.
- [26] First, neither the RPD's questions nor its conclusions concerned the description of the feelings or sensations of a 14-year-old person. The RPD, while assessing the credibility of a refugee protection claimant, is entitled to ask the questions that it considers useful, for a proper and fair credibility assessment.
- [27] As demonstrated by the following exchange,¹⁴ the appellant's vague and confusing explanations regarding the discovery of her sexual orientation raised doubts for the RPD. BY THE MEMBER
- Tell me when you realized that you were attracted to women? BY THE CLAIMANT
 - At one point, I felt attracted to women. I was 14 years old. BY THE MEMBER
 - 14 years old. Do you remember the moment when you realized that you were attracted to women? BY THE CLAIMANT
 - Yes. I can tell you that when I saw a girl go past me at the time, I felt an attraction. However, I had a bad feeling since I was young. I refrained from approaching the woman, but I had the feeling. The sensation. BY THE MEMBER
 - Can you tell me about the exact moment when you realized it? BY THE CLAIMANT
 - I had the feeling. I had the relationship, as I just told you. It was in me. I had the sensation in me. I had this attraction in me. However, since I was young, I refrained from approaching a woman. BY THE MEMBER
 - And, from leaving. When was the first time that you dated a woman? BY THE CLAIMANT
 - The first time was on October 12, 2012.

- [28] The RAD, like the RPD, considers the explanations vague and the RPD's conclusion correct. Duration of the romantic relationship with XXXX (three years or less than two years)
- [29] The RPD concluded that the principal appellant's contradiction in her testimony regarding the two durations of her relationship with XXXX undermines her credibility.¹⁵ The appellant testified that the relationship lasted three years and then less than two years (from October 12, 2012, to June 8, 2014).
- [30] The principal appellant believes that the RPD erred in rushing to find a so-called contradiction without considering her explanations.¹⁶ She states that she has a low level of education that does not enable her to do mental math properly. To come up with three years, she counted 2012, 2013 and 2014.¹⁷
- [31] To support this explanation, the appellant also states that she: [translation] ...made the same calculation error a second time at the hearing, which the panel did not note in its decision. The appellant also stated that her relationship with XXXX, which started in late July 2016 and ended on August 10, 2016, lasted two months. The panel should see that the appellant is unable to do mental math and should assess her testimony based on the facts and not on the information that it may have.¹⁸ [Emphasis added]
- [32] The RAD disagrees, after checking the transcript.
- [33] In her explanation, the appellant never stated that her relationship with XXXX lasted two months including July and August, as set out in paragraph 18 of the memorandum, but rather one month, according to the following exchange:¹⁹ BY THE MEMBER
- And, when did your relationship start? BY THE CLAIMANT
 - At the end of July. BY THE MEMBER
 - How long did your relationship last? BY THE CLAIMANT
 - The relationship did not last long because my husband's friend told him about it. BY THE MEMBER
 - So it lasted approximately how long? BY THE CLAIMANT
 - About one month. It started in late July and in August. It ended in August.
- [34] The appellant's level of education alone cannot explain the many critical, serious and significant credibility issues raised at the hearing.
- [35] The Federal Court states that "when the witness has difficulty giving adequate and direct answers, the panel may make a negative credibility finding."²⁰ The RPD's conclusion is correct. Alleged relationship with XXXX

- [36] The RPD asked the principal appellant twice to explain what made her fall in love with XXXX. The RPD was not satisfied with her response, namely, that she liked how she and XXXX worked together, and that XXXX love for her made her love XXXX.²¹
- [37] The appellant states that such general questions do not require specific responses and that she could not know what would satisfy the RPD. She does not see how her response was not satisfactory. She is of the opinion that the RPD erred regarding this point.²²
- [38] The RAD agrees with the appellant. The RPD erred in this conclusion and poorly identified certain credibility issues in the exchange regarding the romantic relationship with XXXX.²³
- [39] However, the RPD's error is not determinative. As a whole, the RPD's other credibility findings are correct and are enough to justify the finding concerning the lack of credibility with regard to the appellant's sexual orientation. Was the appellant's family aware of her sexual orientation?
- [40] The RPD noted a major contradiction in the appellant's oral testimony. She testified that her family did not know about her sexual orientation, then later stated that her family was angry after learning about her [translation] "lesbian activities." This shows that her family knew about the activities.²⁴
- [41] The appellant believes that the RPD tried at all costs to identify contradictions. She states that, at the hearing, she explained that her family did not know about her relationship with her female friend, as is the case in many relationships of this type in Haiti. However, after she had to flee Haiti, her entire family discovered her orientation. Since then, her family members no longer want to see her.²⁵
- [42] The RAD disagrees. The transcript of the hearing demonstrates that the family's knowledge of the principal appellant's sexual orientation was mentioned twice: A) When the member asked her questions:²⁶ BY THE MEMBER
- Your...you went out with, you dated XXXX from 2012 to June 2014. And your family, parents, brothers and sisters did not know about it? BY THE CLAIMANT
 - No. No one. B) When counsel asked her questions:²⁷ BY COUNSEL
 - Your family in Haiti. You stated that you had uncles in Haiti. Aunts. That is it. Are you in contact with them? BY THE CLAIMANT
 - My family members no longer wanted to see me once they were sure that I was engaging in lesbian activities and once the incident took place. They were angry at me.
- [43] The member and the principal appellant had a discussion, then the member and counsel had a discussion. Counsel and the principal appellant stated that no one knew that the two women were in a romantic relationship, but that after the incident on June 8, everyone knew.

- [44] The RPD was correct to reject the appellant's explanation. The appellant could have easily provided detailed responses and explained all the nuances because the RPD's question was short, simple, very clear and direct. The RPD's conclusion is correct.
- [45] The principal appellant states that the RPD also erred in considering that, should she return to Haiti, she could depend on her family,²⁸ and that the RPD erred in its analysis as a whole.²⁹ She refers to case law, documentary evidence and the situation of LGBT people in Haiti to conclude that she not only faces a risk of all sorts of persecution in Haiti, she also faces twice as high a risk of rape as a woman and a bisexual woman. As a bisexual woman, she faces a risk of rape by police officers.³⁰
- [46] The RAD does not share the appellant's view. As previously discussed in the reasons, the contradictions and inconsistencies in her testimony or the contradictions between her testimony and her Basis of Claim Form concern key details in the establishment of her sexual orientation and subjective fear.
- [47] Given such inconsistent and confusing testimony at the hearing, the RAD is of the opinion that it was justified for the RPD to have serious doubts regarding the principal appellant's alleged fear. Since the minor child bases his fear on his mother's fear, that credibility was not established.
- [48] The RAD considers the appellants' criticisms unfounded and concludes that the appellants failed to demonstrate, on a balance of probabilities, that they would be subjected to a risk to their life or a risk of cruel and unusual treatment or punishment should they return to Haiti.
- [49] The RAD concludes that the RPD's decision is correct.

CONCLUSION

- [50] I dismiss the appeal and confirm the RPD's determination that the appellants, XXXX XXXXXXXXX and her minor son XXXX XXXXXXXXX, are not Convention refugees or persons in need of protection. Mokhtar Lamani Mokhtar Lamani February 17, 2020 Date IRB translation Original language: French 1 Refugee Protection Division (RPD) record, amended Basis of Claim Form, digital pages 125 to 127. 2 Transcript of the hearing, page 40. 3 RPD record, Minister's notice, digital pages 144 to 150. 4 RPD's reasons, para. 17. 5 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93; Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145. 6 RPD's reasons, para. 30. 7 Appellant's memorandum, para. 4. 8 RPD's reasons, para. 19. 9 Appellant's memorandum, para. 5. 10 Ibid. para 6. 11 RPD's reasons, paras. 21 and 22. 12 Appellant's memorandum, para. 12. 13 Ibid. para 13. 14 Transcript of the RPD hearing, page 35. 15 RPD's reasons, paras. 24 and 25. 16 Appellant's memorandum, para. 15. 17 Ibid. paras. 16 and 17. 18 Ibid. para. 18. 19 Transcript of the hearing, pages 23 and 24. 20 Gjergo v. Canada (Minister of Citizenship and Immigration), 2004 FC 30, para. 22. 21 RPD's reasons, paras. 26 and 27. 22 Appellant's memorandum, paras. 19 to 22. 23 Transcript of the hearing, pages 36 to 40. 24 RPD's reasons, para. 28. 25 Appellant's memorandum, paras. 23 to 25. 26 Transcript of the hearing, page 44.

27 Ibid. page 47. 28 Appellant's memorandum, paras. 27 to 29. 29 Ibid. para. 30. 30 Ibid. para. 46.

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Prepared on 28 October 2026 · Esheria