

CANADA / JUDGMENT

MB9-05505

COURT

Refugee Appeal Division

DECIDED

16 March 2020

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RAD File No. / No de dossier de la SAR : MB9-05505 MB9-05506 / MB9-05507 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 March 16, 2020 Date de la décision Panel Me Murielle Henri Tribunal Counsel for the persons who are the subject of the appeal Rachel Benaroch 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] XXXX XXXX (principal appellant), XXXX XXXX XXXX and XXXX XXXX XXXX (associate appellants) are all citizens of Haiti.
- [2] In Haiti, the principal appellant was an XXXX and worked for the International Organization for Migration (IOM). In this role, he was sent to work in various neighbourhoods. In XXXX 2013, he started having problems. At that time, he had gone to work at a worksite in Tibois, near Grande-Ravine, where the gang leader demanded kickbacks so he could enter the area. The male appellant refused. As a result, he was threatened with death and the gang leader barred him from returning to the worksite. In XXXX 2014, he went to work on a worksite in Cité-Soleil. When he arrived there, the gang leader told him that the worksite would continue without him and that if he returned he would be killed. Between XXXX 2014 and XXXX 2015, he was in the United States, waiting for the situation to calm down. He returned to Haiti but the contracts were still in areas where he had received the death threats. He was in the United States between XXXX and XXXX XXXX XXXX 2015. He later returned to Haiti to find work in other areas but he did not find anything. He left Haiti on XXXX XXXX XXXX 2016. He lived in the United States until he arrived in Canada in XXXX 2017.
- [3] The Refugee Protection Division (RPD) found, on March 7, 2019, that the male appellant was credible but that he had an internal flight alternative (IFA) in XXXX or XXXX XXXX XXXX XXXX. In his memorandum, the male appellant argues that the IFA is not reasonable.

DETERMINATION

- [4] I allow the appeal. The RPD erred in its analysis of the IFA. ADMISSIBILITY OF EVIDENCE SUBMITTED ON APPEAL
- [5] To support their appeal, the appellants submitted two new pieces of evidence. The two articles are dated after the hearing held before the RPD. However, they do not meet the criteria set out in Raza¹ and Singh² in terms of relevance. As a result, I do not accept these articles as new evidence. DECISION REGARDING AN ORAL HEARING BEFORE THE REFUGEE APPEAL DIVISION
- [6] No evidence submitted was determined to be admissible. The request for an oral hearing is denied.

ANALYSIS

- [7] My role is to review all of the evidence and determine whether the RPD made the correct decision.³ After carrying out an independent analysis of the record, I am of the view that the determinative issue is the IFA and, in particular, its second prong, which is the reasonableness test.
- [8] The RPD found that the principal appellant was credible but that he had an IFA in Haiti. The male appellant argues that the RPD erred in arriving at the conclusion that he had an IFA in XXXX XXXX XXXXorXXXX XXXX.
- [9] I am of the view that the RPD's conclusions regarding the appropriateness of the IFA are not correct.
- [10] The IFA test includes two prongs.⁴ Once the issue of the IFA is raised and a possible IFA has been identified, it is up to the refugee protection claimant to establish the following: (1) On a balance of probabilities, he faces a serious risk of persecution in the area of the country where an IFA exists or he would be subjected to a personal risk to his life, a risk of cruel and unusual treatment or punishment, or a risk, believed on substantial grounds to exist, of torture, in the IFA; (2) It is unreasonable or unduly harsh, given all the circumstances, for him to move to the suggested IFA location. First prong: The internal flight alternative is safe
- [11] The appellants did not make any submissions regarding the RPD's conclusions in terms of the first prong of the test. I have reviewed the RPD's conclusions and I did not find any errors. As a result, I adopt these findings and I conclude that there is no serious possibility of persecution for the appellants in XXXX XXXX XXXXorXXXX XXXX. Second prong: The internal flight alternative is unreasonable

- [12] The RPD concluded that the appellants did not lack resources or family support in Haiti.⁵ The RPD stated that the male appellant had a house in XXXX, which is rented, that his family lives peacefully in Port-au-Prince, and that the female appellant has three brothers in Haiti (in XXXXandXXXX XXXX XXXX). One of them is a XXXX and another works in a XXXX. In their memorandum, the appellants allege that the IFA is unreasonable because the male appellant would not be able to find employment.
- [13] I have reviewed the RPD's conclusions and I conclude that the RPD erred.
- [14] In its decision, the RPD did not take into account the fact that the male appellant stated at the hearing that he was the one who helped his family when he worked and that his father and siblings do not work.⁶ Moreover, I do not see the link between his family living peacefully in Port-au-Prince and the male appellant's IFA in XXXXorXXXX XXXX XXXX XXXX. Moreover, the RPD stated that the female appellant has brothers in XXXXandXXXX XXXX XXXX. A listening of the recording reveals that the female appellant did not mention having a brother in XXXX XXXX.⁷ Moreover, the fact that her family is in Port-au-Prince (XXXX) and that two of her brothers work does not provide substance to the analysis the RPD should have done. This information is not related to the appellants' IFA in XXXXor XXXX XXXX XXXX. The RPD had to analyze, as part of the second prong, whether it was reasonable for the appellants to live in XXXXorXXXX XXXX XXXX XXXX. In my view, the RPD did not use relevant information to conclude that the IFA was reasonable.
- [15] At the hearing, the RPD asked the male appellant what would prevent him from living elsewhere. The male appellant replied that he could live in places other than Port-au-Prince but that criminals took the right to work away from him.⁸ He added that he tried to find work in other places but was unsuccessful.⁹ He tried to get contracts as a contractor in the provincial cities but this did not work out.¹⁰ When asked by the RPD whether he tried to find another job, he stated that it was difficult to find work in the private sector.¹¹ In his memorandum, the male appellant repeats that he could live in places other than Port-au-Prince but that he would have to stay home and would not be able to work because, when he was in Haiti, he was not able to find work in his field outside the large urban centres that are controlled by the gangs.
- [16] The male appellant's inability to find a suitable job in his professional field may or may not make the IFA unreasonable. The male appellant testified that he tried finding another job in Haiti but was unsuccessful.
- [17] The documentary evidence on Haiti indicates that the unemployment rate is very high. Haiti is currently the poorest country in the Western hemisphere, with close to 60% of the population living below the poverty line and 41% being unemployed.¹² Two-thirds of the population is affected by unemployment or under-employment. World Bank data shows that, in rural areas, 71% of jobs are in agriculture.¹³ The average monthly income in rural areas is 2,320 gourdes (Can\$32.19) compared to 11,230 gourdes (Can\$155.84) in Port-au-Prince.

- [18] The record shows that the male appellant is an XXXX and that he has worked in this field for 13 years. He is the father of several children, whose needs he must meet. The suggested IFA means that he would have to live in a rural area where 71% of jobs are in agriculture, a field that he is unfamiliar with, and where incomes are four times lower than in Port-au-Prince. Therefore, I am of the view that the male appellant would not be able to resume his employment or support his family in the IFA locations.
- [19] Thus, in my view, the appellant has shown, on a balance of probabilities, that the IFA is unreasonable.

CONCLUSION

- [20] In accordance with paragraph 111(1)(b) of the Immigration and Refugee Protection Act, the RAD sets aside the RPD's determination and substitutes its own determination, namely, that the appellants are persons in need of protection.
- [21] The appeal is allowed. (Signed) "Murielle Henri" Me Murielle Henri March 16, 2020 Date IRB translation Original language: French 1 Raza v. Canada (Citizenship and Immigration), 2007 FCA 385. 2 Singh v. M.C.I., 2016 FCA 96. 3 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93; Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145. 4 Thirunavukkarasu v. M.E.I., 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (C.A.). 5 RPD-1, RPD record, paragraph 13 of the RPD decision, p. 8. 6 Recording of the hearing held before the RPD on February 14, 2019, at approximately 01:24. 7 Recording of the hearing held before the RPD on February 14, 2019, at approximately 01:26. 8 Recording of the hearing held before the RPD on February 14, 2019, at approximately 00:57. 9 Recording of the hearing held before the RPD on February 14, 2019, at approximately 00:34. 10 Recording of the hearing held before the RPD on February 14, 2019, at approximately 00:50. 11 Recording of the hearing held before the RPD on February 14, 2019, at approximately 00:54. 12 RPD-1, National Documentation Package on Haiti, July 20, 2018, Tab 1.7: Haiti. The World Factbook, pp. 10 to 11. 13 Ibid., Haiti Tab 1.15: Profile of the economic situation, including employment and the impact of remittances; ability to find employment in both urban and rural areas (2017-September 2019), pp. 5 to 8.

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