

CANADA / JUDGMENT

MB9-01948

COURT

Refugee Appeal Division

DECIDED

14 February 2020

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RAD File / Dossier de la SAR : MB9-01948 MB9-01949 / MB9-01950 / MB9-01951 MB9-01952 Private Proceeding / Huis clos Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXX XXXXXXXXXXX XXXX XXXXXXXXXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX Personnes en cause Appeal considered / heard at Montreal, QC Appel instruit / entendu à Date of decision February 14, 2020 Date de la décision Panel Guerlain Guerrier Tribunal Counsel for the persons who are the subject of the appeal Jeffrey Platt 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] The Principal Appellant, XXXX XXXX XXXX, her daughter XXXX XXXX, and her son, XXXX XXXX XXXX, are citizens of Haiti. Her sons XXXX XXXX XXXX XXXX and XXXX XXXX XXXX are citizens of the United States of America (US). They all appealed the decision of the Refugee Protection Division (RPD), dated December 18, 2018, rejecting their claims for refugee protection.
- [2] In her Basis of Claim form (BoC), the Principal Appellant alleges that her brother-in-law threatened her and her children with a machete. He came to her house and broke all of their things and also attacked her while she was at work.
- [3] The Principal Appellant alleges that her brother-in-law is jealous of her success as a XXXX. He is pursuing her because he thinks she has money. The Appellants fear that their lives may be at risk if they return to Haiti. Moreover, the Principal Appellant and her daughter fear widespread physical and sexual violence against Haitian women.
- [4] The Appellants stated that these cumulative threats led them to leave Haiti in XXXX 2008. They obtained a temporary protection status (TPS) in the US, and arrived in Canada on XXXX XXXX, 2017.
- [5] The RPD accepted as credible that the Principal Appellant was a XXXX and that her family was attacked by her brother-in-law. However, it found that, on the balance of probabilities, the Appellants had not established that they would be subjected to a prospective risk under section 97 of Immigration and Refugee Protection Act (IRPA). The RPD also found that the evidence did not credibly establish that the female Appellants would face any prospective

risk of a serious possibility of persecution or serious harm, under section 96 of IRPA, if they were to return to Haiti. Regarding the US-born Appellants, who are American citizens, the RDP found that they are not "Convention refugees" nor "persons in need of protection".

- [6] The Appellants challenged the RPD's findings. However, they put forward no arguments in relation to the American children's claims.
- [7] The determinative issue in this case is prospective risk. For the reasons that follow, the appeal is denied. I find that the RPD did not err in any of its findings in this case. In particular, it correctly found that the evidence did not establish any prospective (forward-looking) risk of a serious possibility of persecution or the likelihood of any of the kinds of harm that would make the Appellants persons in need of protection if they were to return to Haiti. I also agree with the RPD's uncontested findings in relation to the American children's asylum claims. **ROLE OF THE RAD**
- [8] The Refugee Appeal Division (RAD) reviews decisions of the RPD on a standard of correctness after conducting an independent assessment of the evidence before it.¹ The exception to this rule is that the RAD may apply a deferential standard in some circumstances.² I have conducted my own independent assessment of all of the evidence in this case, including the audio-recording of the hearing. Unless specifically stated and explained below, I have applied a correctness standard in this case.

ANALYSIS

No error regarding the American children's asylum claims

- [9] As noted above, the Appellants presented no arguments to contest the RDP's rejection of the American children's refugee claims. I find the RPD did not err in rejecting these claims. The RPD's conclusion was correct. No error in assessing the Appellants' prospective risk with regard to their brother-in-law/uncle
- [10] The Appellants argue that the RPD erred in finding that a forward-looking risk did not exist. The past acts of "persecution" are inherently likely to occur again in the future. Counsel notes that the RPD did not question the credibility of the Appellants, nor dispute their narratives. Although the Principal Appellant is unaware of her brother-in-law's whereabouts, she believes he may still be in Haiti. It would therefore be "dangerous" to assume that he no longer poses a threat. Furthermore, the uncertainty itself generates a reasonable fear of persecution that is wrongly ignored by the RPD.
- [11] I note that in using the word "persecution", the argument is presented as if the Appellants' risk was based on section 96 of the Act. Such is not the case. The Appellants testified that their brother-in-law/uncle assaulted them on two occasions and destroyed their property because he was jealous of her financial success. That type of behaviour does not constitute persecution under section 96 of the Act, it is a common crime. Furthermore, the Principal Appellant and her children, in this specific context, are not members of a particular social

group within the meaning of the Convention.

- [12] I agree with the RPD that the Appellants have not established, on a balance of probabilities, that they would face a prospective risk of harm that would make them persons in need of protection if they were to return to Haiti today. The Principal Appellant has met her brother-in-law in 1997 and he never attacked her until 2007. She could not explain what prompted the assault at that specific moment. At the time of the assault, the Principal Appellant had been a single parent and XXXX for many years (at least four). Since fleeing to XXXX, and eventually to the US and Canada, the Principal Appellant has had no contact with her brother-in-law. The events alleged in this case occurred more than twelve years ago. Moreover, the Appellants do not know if the brother-in-law/uncle is still alive, if he still resides in Haiti or if he still harbours hostile feelings towards them.
- [13] I acknowledge the Appellants' fear and agree that one cannot assume that the brother-in-law/uncle no longer poses a threat. Nevertheless, the onus is on the Appellants to establish the prospective risk. Considering the lack of any evidence of continuing interest from the agent of persecution, I find that they have not established, on a balance of probabilities, a prospective risk of harm emanating from their brother-in-law/uncle. The RPD's conclusion is correct. No serious possibility of gender-related persecution
- [14] In considering this appeal, I have had to consider the principles set out in the Chairperson's Gender Guidelines.³
- [15] The Principal Appellant and her daughter argue that the RPD erred in finding that they had failed to establish they would face a serious risk of gender-based persecution if they returned to Haiti. In particular, the Appellants argue that the RPD erred in relying upon the presence of family members in Haiti and the personal qualities of the Principal Appellant and her daughter - resourcefulness, strength, independence, fluency in multiple languages - to determine that they would not face a serious possibility of persecution in Haiti. Instead, the key factors should have been the absence of state protection and the large number of violent sexual acts committed against Haitian women.
- [16] While the Federal Court and the RAD have recognized that Haitian women constitute a particular social group within the meaning of the Convention, membership in a particular social group on its own is insufficient to result in a finding of persecution. The evidence provided by the Appellant must demonstrate that there is a risk of persecution whose occurrence is "more than a mere possibility".⁴ In examining whether a woman faces a serious possibility of persecution if she were to return to Haiti, the Federal Court has found that it is necessary to examine the particular situation of the claimant as well as the most up-to-date country conditions. ⁵ In particular, the Court has accepted the importance of the following as some of the relevant factors to consider: the existence or non-existence of state protection, geographical location, and the claimant's personal situation (whether she would be accompanied by a spouse or living with family).⁶

- [17] I agree with the Appellants that the state protection is lacking in Haiti and that a large number of violent acts are committed against Haitian women. That is why they constitute a particular social group. However, the onus is on the Appellants to prove that their specific situation, not merely the general situation in the country, reaches the threshold of a serious possibility of being the victim of gender-based persecution. Unfortunately, the Appellants provided no evidence specific to themselves, to support their claims of gender-based persecution. There is no evidence that the Principal Appellant or her daughter were ever victims of gender-based persecution while they were residing in Haiti. No evidence of gender-based persecution against the Principal Appellant's sisters was introduced, although they have lived in Haiti continuously. Also, no allegations of conjugal violence were raised in this case. In addition, the Appellant and her daughter have a profile that reduces their vulnerability to gender-based persecution according to the National Documentary Package (NDP) of Haiti⁷. They are self-sufficient, have marketable skills, and are surrounded by family members.
- [18] For these reasons, I find that the Principal Appellant and her daughter failed to establish a serious risk of gender-based persecution. The conclusion of the RPD is correct. The perception of wealth of the members of the Haitian diaspora is insufficient to grant asylum
- [19] The Appellants' representative argues that in addition to the prospective risk related to the perception of wealth emanating from having lived abroad, the Appellants also face a specific risk linked to their brother-in-law/uncle who could be emboldened by this perception and renew his attacks.
- [20] I disagree. This argument is speculative. Other than the events that took place more than a decade ago, no evidence regarding the state of mind or the mere existence of the agent of persecution was presented. The specific risk raised by the Appellants brother-in-law/uncle has been assessed above at paragraph 12 and found wanting. I find that the brother-in-law/uncle does not represent a personalized risk to the Appellants as returning members of the diaspora.
- [21] Regarding the general state of insecurity in Haiti, it is insufficient to make the Appellants Convention refugees or persons in need of protection. The general state of insecurity and the risk of criminality do not establish a nexus to the Convention. As returning members of the diaspora, any risk to which the Appellants might be subjected personally in relation to this general state of insecurity is the same risk faced generally by other "rich" people in Haiti⁸.
- [22] I accept that there exists a general state of insecurity in Haiti, but this is not enough to establish that the Appellants are either Convention refugees or persons in need of protection. The conclusion of the RPD is correct.

CONCLUSION

The RAD dismisses the appeal and confirms the decision of the RPD that the Appellants are neither Convention refugees nor persons in need of protection, pursuant to section 111(1)(a) of the Immigration and Refugee Protection Act (IRPA). Guerlain Guerrier Guerlain Guerrier February 14, 2020 Date GG/in 1 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93. 2 Rozas Del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145. 3 Immigration and Refugee Board of Canada, Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution, 13 November 1996. 4 Dezameau v. Canada (Citizenship and Immigration), 2010 FC 559 at para. 29. 5 Josile v. Canada (Citizenship and Immigration), 2011 FC 39 at para. 38. 6 Ibid at para. 39. 7 National Documentation Package, Haiti, 30 September, 2019, Tab 5.3 : Violence, including sexual violence, against women; state protection and support services (2017-June 2019) 8 See Cius v. Canada (Citizenship and Immigration), 2008 FC 1 or Prophète v. Canada (Citizenship and Immigration), 2008 FC 331

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