

CANADA / JUDGMENT

MB9-02689

COURT

Refugee Appeal Division

DECIDED

5 March 2020

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RAD File No. / No de dossier de la SAR : MB9-02689 MB9-02690 Private Proceeding / Huis clos
Reasons and Decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXXXXXXXX XXXX XXXX XXXX Personnes en cause Appeal considered / heard at Montréal,
Quebec Appel instruit / entendu à Date of decision March 5, 2020 Date de la décision Panel
Mokhtar Lamani Tribunal Counsel for the persons who are the subject of the appeal François
Jean Denis 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) and her minor daughter XXXX XXXX XXXX XXXX
(associate appellant), citizens of Haiti, are appealing against the decision of the Refugee
Protection Division (RPD) dated January 15, 2019, rejecting their claims for refugee
protection.
- [2] The appellants allege that the RPD erred in its conclusions. They are asking the Refugee
Appeal Division (RAD) to allow their appeal and recognize them as Convention refugees or
persons in need of protection or to refer the matter to the RPD for re-determination.¹
- [3] They are not submitting any new evidence or requesting that an oral hearing be held before
the RAD.
- [4] The determinative issue for the RAD is whether the RPD erred in its assessment of the
appellants' prospective risk in Haiti.

DETERMINATION

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

BACKGROUND

- [6] According to the Basis of Claim Form (BOC Form), the principal appellant left Haiti with her
daughter XXXX (associate appellant) on XXXX XXXX XXXX 2014, for the United States,
leaving her husband and four other children in her country of origin.

- [7] She claims that on XXXX XXXX XXXX 2017, armed criminals took over land that she owned in Haiti. Her husband filed a complaint on XXXX XXXX XXXX 2017. He received a call from the criminals telling him that they planned to keep the land, that they would kill all those named on the property title and that they were waiting for his wife (the principal appellant) to return in order to kidnap, rape and kill her.
- [8] Her husband advised her to not return to the country and to seek protection from the United States. Realizing that the asylum granting system is no longer fair since President Trump's election, she decided to cross the Canadian border illegally and seek Canada's protection.
- [9] She alleges that while she was writing her account (BOC Form), her husband informed her that the entire family was living in hiding after the criminals visited their home on XXXX XXXX XXXX 2017, to carry out their plan. They fled and are laying low; the husband can no longer work and the children no longer attend school.
- [10] On XXXX XXXX XXXX 2017, the appellants crossed the border and sought refugee protection in Canada. STANDARD OF REVIEW
- [11] The RAD reviews RPD decisions by applying the correctness standard of review after conducting its own analysis of the record. The exception to this rule is where the RPD enjoys a meaningful advantage with respect to the credibility assessment.² That said, the RAD's role is to determine whether the RPD has in fact erred, as alleged by the appellants.
- [12] The RAD applied the correctness standard in this case.

ANALYSIS

- [13] Aside from general grievances without any relevant or specific arguments regarding the errors committed by the RPD, that is, being overzealous in conducting a microscopic examination of the evidence, failing to consider the evidence in its entirety, minimizing the appellants' fear,³ being too quick to apply North American logic and reasoning, being over-vigilant and breaching the principle of natural justice,⁴ the appellants submitted three specific criticisms against the RPD decision: * Prospective risk alleged by the principal appellant (points A and B below); * The appellants' surrender of their ownership rights (point C); and * The risk of persecution as a Haitian woman (point D).
- [14] The RPD raised concerns as to the prospective risk that the principal appellant claims she fears in Haiti⁵ and therefore concluded that it does not believe, [translation] "on a balance of probabilities, that the criminals want to, either on the day of the oral hearing or in the future, kill the claimant and her husband for land they had already stolen."⁶ A) Non-existence of calls involving threats or attacks against the husband

- [15] The RPD raised inconsistencies between the principal appellant's account and testimony regarding the prospective risk alleged. The appellant mentioned in her written account and oral testimony that her husband had received a call involving death threats on XXXX XXXX XXXX 2017.
- [16] During the oral hearing, the appellant stated that the criminals were actively looking for her husband. However, she also acknowledged that since the XXXX XXXX XXXX 2017, call, her husband received no further threatening calls, even though he did not change telephone numbers.⁷
- [17] The RPD also noted that the principal appellant had explained that her husband and family were not targeted by any attacks during this entire period, despite the allegation that the criminals went to their home and asked people if the husband was there, whereas they were in a location approximately an hour and a half away from the main home, based on the principal appellant's explanations.⁸
- [18] The appellants submit that the RPD [translation] "does not understand why the criminals did not call the husband, did not attack the principal appellant's husband, who lives approximately an hour and a half from the main home that the family fled. In the panel's eyes, this shows that there is no prospective risk."
- [19] They are of the opinion that: The RPD did truly err. First, the principal appellant cannot explain the criminals' behaviour. She gave reasonable explanations for the facts. Her husband kept his telephone number because he cannot leave in order to change his number. Keeping the same telephone number does not mean using the number. She then specified that the criminals were actively looking for her husband. The panel does not believe this because organized criminals should be able to easily find him an hour and a half from the home he fled.⁹
- [20] The RAD does not agree with the appellants' arguments.
- [21] The RPD rightly explained in its reasons that it believes the principal appellant regarding the fact that the criminals are still near the land they took over, but that this is not sufficient to believe, on a balance of probabilities, that they are actively looking for them in order to kill them.¹⁰
- [22] The RPD correctly concluded that this is an inconsistency since, on the one hand, the appellant testified that the criminals are organized and conduct investigations, but, in reality, they do not take action to reach their target.

- [23] The RAD notes that the appellants' claim that the husband could not leave his hiding place to change telephone numbers and that keeping the same number does not mean using it is not satisfactory. He was, in fact, in contact with the outside world because the principal appellant acknowledged during the hearing¹¹ that she is the only source of financial support for her family, that she transferred money through her cousin and that she has regular, constant calls with her husband.
- [24] The RPD also asked the appellant to explain why she claims that she and her husband are still at risk of being killed by the criminals, even though they already took over their land and have not visited her husband, who still lives in Haiti. Her response that these are organized gangs and that if they want to do something, they will investigate to get it done, is not satisfactory.
- [25] The RPD correctly concluded that this is conjecture; it is one thing to think that if criminals want to kill them, they will investigate in order to do it, but it is another thing to actually show that they are conducting such an investigation. On XXXX XXXX XXXX 2017, when the criminals wanted to attack the husband, they called him directly.¹²
- [26] The RAD is therefore of the opinion that the RPD's conclusion is correct. B) Do the criminals want to kill the appellants in the future?
- [27] The appellants submit that [translation] "the RPD really exaggerated by concluding that it does not believe that the criminals want to kill the appellants now or in the future. This is a gratuitous statement because the facts available to it argue against this claim."¹³
- [28] They cite Natynczyk¹⁴ to argue that the RPD erred because since the criminals demonstrated a continuation of their search, it follows that the criminals' intention to kill members of the family is very clear and obvious.
- [29] The RAD disagrees.
- [30] In Natynczyk, as mentioned in the appellants' memorandum, the Court pointed out that, even though the well-foundedness of the fear of persecution must be assessed prospectively when the refugee protection claimant bases his claim on past incidents, these must be assessed by the Board because "past persecution is one of the most effective means of showing that a fear of future persecution is objectively well-founded." When the refugee protection claimant can establish that he was the victim of persecution for a long time, there may be reason to believe that this situation could still exist.
- [31] The RAD fully agrees with this statement made by counsel for the appellants, but that is not the case for the latter: * The threats and attacks against the family are limited to a single telephone call and just one attack. Both took place in XXXX 2017, when the criminals took over the land. * The husband and the other family members still live in Haiti, and the appellants confirmed during the oral hearing that no calls involving threats or a physical attack were made since the loss of their land. * Since the RPD hearing, which took place on December 18, 2018, the appellants submitted no new evidence to the RAD, in the current

appeal, reporting new threats and likely to corroborate the allegations that acts of persecution were carried out by the criminals against the family.

- [32] The RPD did not err in concluding that it did not believe, on a balance of probabilities, that the criminals want to, either on the day of the hearing or in the future, kill the principal appellant and her family for land they had already stolen.¹⁵ C) The appellants' surrender of the land to have peace
- [33] Based on the case law,¹⁶ the RPD is of the opinion that the female claimant can surrender her land if that eliminates the circumstances making her and her family feel like their life is threatened and that it is not unreasonable for the female claimant and her husband to abandon their land before she can be considered a person in need of protection in another country. The appellant testified that this was undeveloped land owned by her since 2010; it is therefore not her main property.¹⁷
- [34] The appellants are of the view that there is no doubt that the principal appellant and her husband want to abandon the land to have peace, but how do they let the criminals know their intention. The criminals continue their efforts because they want to keep the land and, by killing the owners, they rightfully know that no heir will bother them. The danger exists and will continue to exist for the appellants even if they surrender the land, to which the family no longer has any attachment.¹⁸
- [35] The RAD analyzed the entire record and listened to the recording of the oral hearing; nowhere do the appellants inform the RPD of their intention to surrender the land in order to have peace or that they had taken steps, contacts or actions in that regard.
- [36] Counsel for the appellants stated that it is his view that the RPD cannot ask the family to give the criminals the property titles.¹⁹
- [37] The RAD is of the opinion that it is not up to the RPD to define the ways and means for the appellants to surrender their land, if that is their wish as stated in their memorandum, since this is their own burden and their own responsibility. The RPD did not err in its conclusion. D) The risk of persecution as a Haitian woman
- [38] The RPD concluded that the principal appellant failed to meet her burden of proving that there is a serious possibility of gender-based persecution for her or her daughter, as a woman living in Haiti.²⁰
- [39] The appellants submit that this RPD conclusion is erroneous and cite various tabs from the National Documentation Package (NDP) on Haiti relating to the situation faced by Haitian women. It is their view that the RPD assessment undermines the principal appellant's objective fear of being raped.²¹

- [40] It is worth pointing out the following excerpt from Dezameau²² on the analysis of risks as a woman under section 96 of the Immigration and Refugee Protection Act (IRPA): This is not to say that membership in a particular social group is sufficient to result in a finding of persecution. The evidence provided by the applicant must still satisfy the Board that there is a risk of harm which is sufficiently serious and whose occurrence is [translation] "more than a mere possibility."
- [41] Also, in Josile,²³ the Federal Court states that the panel must consider a set of factors relevant to the appellant's situation, including Chairperson's Guideline 4. The female appellant's particular circumstances must also be analyzed.
- [42] The RPD concluded that neither the principal appellant's profile nor that of her minor daughter corresponds to that of a woman who will face a serious possibility of gender-based persecution if she were to return to Haiti, since she testified that she lives with her husband, children and mother.
- [43] The appellant stated that she is afraid of being raped. As part of its independent assessment of the appeal record, the RAD points out that the documentary evidence in the NDP available at the time that the present appeal was perfected and in the most recent NDP on Haiti²⁴ confirms that gender-based violence is an ongoing problem in Haiti.²⁵ However, according to the documentation, "there are several groups that are particularly affected, including women who have been displaced since the 2010 earthquake, women from lesbian, gay, bisexual and transgender (LGBT) communities, and girls."²⁶ Another document states that gender-based violence increased considerably after the earthquake due to greater poverty and a disastrous housing situation.²⁷
- [44] The RAD points out that the principal appellant, born in XXXX, lived in Haiti until 2014, that is, for a period of 40 years, and did not allege being a victim of violence or mistreatment based on her gender, aside from the attack on her home on XXXX XXXX XXXX 2017, while she was in the United States.
- [45] Moreover, she did not allege being a victim of domestic violence at the hands of her husband, who remained in Haiti, or any male members of her family.
- [46] As the RPD emphasized in its reasons,²⁸ the principal appellant lives with her husband, children and mother. She worked as a XXXX and her husband as a XXXX, while their children attended school, before the alleged incident involving the attack on the home. They did not live in a shantytown, but rather in a house, and owned an additional piece of land. As a result, they cannot be considered a poor family living in an impoverished neighbourhood, as described in the documentary evidence.
- [47] The RAD concludes that the principal appellant failed to show any factor or circumstance that could suggest that there is a reasonable possibility of her being subjected to violence because she is a woman in Haiti.

- [48] Consequently, the RPD did not err in concluding that nothing in the record suggests that the principal appellant's profile is similar to that of the women and girls described in the objective documentation as being vulnerable to gender-based persecution and that she does not face a serious possibility of persecution because of her membership in the particular social group of Haitian women.
- [49] Lastly, counsel for the appellants submits that they are entitled to Canada's protection pursuant to subsection 97(1) of the IRPA²⁹ and cites Portillo³⁰ to conclude that [translation] "[f]or these reasons, the Consultant's Office respectfully submits that the panel committed errors in assessing the appellant's credibility and that these errors require the RAD's intervention."³¹
- [50] In paragraphs 9 through 13 of its reasons, the RPD explains that it did not note contradictions, inconsistencies, omissions or unlikely elements that would lead it to not believe the alleged events and that the oral testimony was credible. This being said, it is not the role of the RAD to conduct a de novo review of refugee protection claims, but instead to determine whether the RPD did in fact err, as alleged by the appellants.
- [51] The RPD determination is correct and the appeal is dismissed.

CONCLUSION

- [52] The RAD dismisses the appeal and confirms the determination that the appellants are neither Convention refugees nor persons in need of protection. Mokhtar Lamani Mokhtar Lamani March 5, 2020 Date IRB translation Original language: French 1 Appellant's memorandum, Section 5, Office comments and conclusion, p. 7. 2 Canada (MCI) v. Huruglica, 2016 FCA 93, Rozas Del Solar v. Canada (MCI), 2018 FC 1145. 3 Appellants' memorandum, Section 2, p. 2. 4 Ibid. second and third paragraphs, p. 1. 5 Refugee Protection Division (RPD) reasons, para. 14. 6 Ibid. para. 18. 7 Ibid. para. 15. 8 Ibid. para. 16. 9 Appellants' memorandum, paras. (a) and (b), pp. 2 and 3. 10 RPD reasons, para. 17. 11 Recording of the hearing before the RPD, minute 1:09:00. 12 RPD reasons, para. 15. 13 Appellants' memorandum, para. (c), pp. 3 and 4. 14 Natynczyk v. Canada (Minister of Citizenship and Immigration), 2004 FC 914. 15 RPD reasons, para. 18. 16 Kenguruka, Jean-Pierre v. Canada (Minister of Citizenship and Immigration), 2014 FC 895. 17 RPD reasons, paras. 22 and 23. 18 Appellants' memorandum, para. (d), p. 4. 19 Ibid. 20 RPD reasons, para. 28. 21 Appellants' memorandum, pp. 4 and 5. 22 Dezameau v. Canada (Minister of Citizenship and Immigration), 2010 FC 559. 23 Josile v. Canada (Minister of Citizenship and Immigration), 2011 FC 39. 24 National Documentation Package on Haiti dated July 20, 2018. 25 Ibid. Tab 2.2: Haiti. Amnesty International: The State of the World's Human Rights. Amnesty International, February 22, 2018. 26 Ibid. Tab 5.1: Haiti. Social Institutions and Gender Index 2014. Organisation for Economic Co-operation and Development. November 28, 2014. 27 Ibid. Tab 5.10: Concluding observations on the combined eighth and ninth periodic reports of Haiti. United Nations. Committee on the Elimination of Discrimination against Women. March 9, 2016. CEDAW/C/HTI/CO/8-9. 28 RPD reasons, para. 27. 29

Appellants' memorandum, Section 4, p. 5. 30 Portillo v. Canada (MCI) 2012 FC 678. 31
Appellants' memorandum, second-last paragraph, p. 6.

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