

CANADA / JUDGMENT

MB9-26576

COURT

Refugee Appeal Division

DECIDED

9 November 2020

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RAD File No. / No de dossier de la SAR : MB9-26576 MB9-26577 / MB9-26578 Private Proceeding / Huis clos Reasons and Decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXXXXXXXX XXXX XXXXXXXXXX XXXX Personnes en cause Appeal considered / heard at Montréal, Quebec Appel instruit / entendu à Date of decision November 9, 2020 Date de la décision Panel Mokhtar Lamani Tribunal Counsel for the persons who are the subject of the appeal François Dostaler 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), his wife XXXX XXXX and their minor daughter XXXX XXXX (associate appellants) are citizens of Haiti. They are appealing the decision of the Refugee Protection Division (RPD) dated October 21, 2019, rejecting their refugee protection claims on the basis of a lack of prospective risk and a lack of credibility with regard to this prospective risk.¹
- [2] The appellants are alleging that the RPD's reasons for decision contain the following errors:
- The RPD erred in its analysis by qualifying the persecution against the appellants as generalized crime.²
 - The RPD applied an erroneous analysis of the appellants' fear that significantly impacted its decision.³
- [3] The appellants are asking the Refugee Appeal Division (RAD) to allow their appeal and to set aside the RPD's determination and recognize them as refugees within the meaning of the United Nations Convention Relating to the Status of Refugees (the Convention⁴).
- [4] The determinative issues for the RAD are generalized risk and a lack of prospective risk.

DETERMINATION

- [5] For the reasons set out below, the appeal is dismissed. The RAD agrees with the RPD's conclusion that the appellants did not establish that there is a serious possibility of persecution on a Convention ground or, on a balance of probabilities, a risk of harm that would make them persons in need of protection in relation to their country of origin, Haiti.

BACKGROUND

- [6] According to his Basis of Claim Form (BOC Form), the principal appellant alleges that in XXXX 2016, when he owned a successful business, XXXX whom he did not know came into the XXXX to demand money.
- [7] On XXXX XXXX, 2017, the same individuals returned to steal from him out of jealousy and shot at his sister-in-law.
- [8] The appellants decided to close their XXXX for one month.
- [9] On XXXX XXXX, the criminals returned and shot at the sister-in-law a second time, fatally hitting her.
- [10] Knowing that the criminals wanted to kill them, the appellants decided to go live with the mother-in-law, but on XXXX XXXX they were found by the criminals, who entered the wrong house (the neighbour's).
- [11] Out of fear, the principal appellant left Haiti for the United States on XXXX XXXX, 2017.
- [12] The principal appellant stayed in the United States until XXXX XXXX, 2017.
- [13] Since he has family members in Canada and [translation] "considering that Prime Minister Trudeau opened the doors to Haitian refugees," he decided to come to Canada.
- [14] The associate appellants, whose allegations are based on those of the principal appellant, joined him in Canada on XXXX XXXX, 2017. STANDARD OF REVIEW
- [15] The RAD reviews RPD decisions by applying the correctness standard after conducting its own analysis of the record. The exception to this rule is where the RPD enjoys a meaningful advantage in assessing credibility.⁵ That being said, the role of the RAD is to determine whether the RPD erred, as alleged by the appellants.
- [16] The RAD applied the correctness standard in the case at hand.

ANALYSIS

- [17] Beyond the general complaints made without providing any specific arguments, namely that the RPD did not consider all the evidence, that it was unreasonable for the RPD to question the appellants' credibility and that it did not even acknowledge the existence of a subjective and objective fear,⁶ the appellants, in general terms, submit three criticisms of the RPD's decision: generalized risk, the RPD's failure to consider the associate appellants' situation, and its failure to consider the evidence on the record.
- [18] The RPD found the appellants' allegations credible.⁷ It stated, however, that past events are not sufficient on their own to establish that there is a future risk, even though this is still a relevant factor that it must take into consideration.

- [19] The RPD concluded that the appellants, who allege that, should they return to Haiti, they would face a real and future objective risk that would put their lives at risk or that would constitute cruel and unusual treatment, did not discharge this burden.⁸
- [20] Considering the documentary evidence on crime in Haiti, the RPD was of the opinion that the risk faced by the appellants, even if it is higher than the risk faced by most Haitians owing to their economic status and their professions, is not at a significantly higher level than that facing the rest of the Haitian population.⁹
- [21] The appellants submit that, on the contrary, their risk is significantly higher than that of the rest of the population given that this is the poorest population in the Americas.¹⁰
- [22] They submit that it is important to be very careful with refugee protection claimants from Haiti and to give them the maximum chance of succeeding in their appeal,¹¹ and they argue that the RPD [translation] "completely disregarded the recommendations in the Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (the Handbook) and the persecution experienced by his family for centuries."¹²
- [23] The appellants cite several paragraphs from the Handbook to support the following:
- Their families suffered an atrocious form of torture.¹³
 - Since the revolt of the slaves, the situation has only worsened with the complicity of the states, which have profited from this form of exploitation.¹⁴
 - The person reviewing the refugee protection claim must do everything in their power to determine the quality of a claimant. They must support them, gain their trust and try to analyze all the facets of the claim. Caution is the rule in the daily life of people who feel persecuted in Haiti.¹⁵
- [24] Finally, the appellants reproduce in their memorandum the full Response to Information Request (RIR) on the security situation in Haiti¹⁶ (six pages), from the website of the Immigration and Refugee Board of Canada (IRB), to support the following:
- The RPD did not give attention to the IRB documentation stating that the situation in Haiti is extremely serious.¹⁷
 - There is nothing in the RPD's decision analyzing the situation for the wife and child, and the member refuses to decide on the fate of the child.¹⁸
- [25] The RAD does not agree.

- [26] The appellants' memorandum is written in general terms, without relevant and specific explanations of the RPD's errors. It reproduces several paragraphs of the Handbook verbatim, the full RIR on the situation in Haiti (6 pages) and a number of paragraphs from the RPD's decision, but it does not explain what the RPD's errors are or the link between the objective evidence cited and the appellants' specific case. Generalized risk
- [27] For a claim to be allowed under paragraph 97(1)(b), the refugee protection claimant must establish that the risk they would face if they returned to Haiti is different from the generalized risk facing all or part of the Haitian population.
- [28] However, that is clearly not the case here. There is no evidence, however minimal, to lead either the RPD or the RAD to believe that the risk the appellants' could face is different from the current risk facing all Haitians, who are at the mercy of the rampant crime in Haiti.
- [29] Considering the alleged facts as well as the documentary evidence establishing that violence is part of daily life in Haiti, the principal appellant was unable to demonstrate that there would be a risk to his life or a risk of cruel and unusual treatment or punishment if he were to return to his country.
- [30] One relevant document is an RIR dated November 29, 2018, concerning the risks facing returnees to Haiti.¹⁹ It states that middle-class and wealthy Haitians are at a greater risk of personally being victims of crime compared to low-income individuals.
- [31] Haitians who have lived abroad are perceived as having access to more resources and, as a result, are more likely to be victims of crime, much like wealthy individuals, even if they are not. Since wealthy individuals can pay for private security services, victims of this type of crime are generally poor people. Residents in low-income, densely populated neighbourhoods are more likely to be victims of crime than residents in wealthier, less densely populated areas. For example, residents in populated areas are 18 times more likely to experience a physical assault and 27 times more likely to experience a sexual assault.
- [32] The level of risk faced by returnees depends on the area where they live or visit. This risk is not exclusive to them and is faced by anyone who appears wealthy and attracts attention. This type of crime is motivated by money and tends to be situational, stemming from a lack of caution at a given time.
- [33] The RPD reviewed the documentary evidence before it and the appellants' risk in the context of their personal situation. It asked the appellants a number of questions to identify the reasons why they fear returning to Haiti. The appellants' responses all gave rise to the same reason: fear of being victims of the crime that exists in Haiti.

- [34] The RAD is of the opinion that the incidents experienced by the appellants are, without a doubt, traumatic events for them, and the RAD sympathizes with the feeling of general insecurity that they expressed throughout the hearing. However, nothing in their testimony indicates that they would be personally subjected to this risk if they were to return to their country.
- [35] The RAD points out that the Federal Court's remarks in *Soimin*²⁰ could easily be applied in this case: The violence feared by the applicant arises from general criminal activity in Haiti, and not the discriminatory targeting of women in particular. The harm feared is criminal in nature and has no nexus to the Convention refugee definition. The generalized risk of a situation in a country must be distinguished from the probable risk to a person on the basis of his or her particular circumstances.
- [36] The RAD is of the opinion that the RPD did not err in concluding that the risk faced by the appellants is a "generalized risk." The Refugee Protection Division's failure to consider the associate appellants' situation
- [37] The appellants criticize the RPD for not addressing the situation of the associate appellants (the principal appellant's wife and minor daughter). The paragraphs in the appellants' memorandum pertaining to them are as follows: [translated as it appears in the French version] 19.- Nothing in the decision analyzes the situation of the wife and child. 20.- On the contrary, at the end of the decision, the member refuses to decide on the fate of the child.
- [38] The RAD cannot accept these baseless criticisms.
- [39] With regard to the wife, the RPD questioned her to the same extent as it did the principal appellant. It explains its reasons that it considered the profile of the adult claimants as XXXX and the problems stemming from their financial situation, along with the situation of their respective families still living in Haiti (paragraphs 16, 17, 18, 24 and 25 of the RPD decision). The majority of the remaining paragraphs are about the two adult appellants.
- [40] With regard to the minor child, in the memorandum the appellants' counsel reproduces, after paragraph 20 (RPD's refusal to decide on the fate of the child), the entirety of paragraph 32 of the RPD's reasons which clearly explains that no specific fear was articulated for the minor daughter, since her refugee protection claim was simply based on her parents' allegations, as they testified at the hearing. Consideration of the evidence on the record
- [41] The appellants criticize the RPD for not taking into consideration the Handbook and the IRB documentation (RIR HTI104872.FE dated June 11, 2014).
- [42] As stated above, the appellants' memorandum merely reproduces at length, word for word, a portion of the first document and the second document in full, without providing any relevant explanation in accordance with paragraphs 3(3)(g)(i) and (ii) of the Refugee Appeal Division Rules.²¹ Uncontested findings

[43] The RPD's findings relating to the prospective risk are not contested. The RAD assessed them and found them to be correct.

[44] The RPD's decision is correct.

CONCLUSION

[45] The RAD reiterates its compassion for the Haitians, who are seeking stability in another country following incidents of violence, theft and assault. However, for refugee status to be granted, the onus is on the appellants to establish that they would be personally subjected to a risk that is different from the situation of generalized crime that exists in Haiti or to a serious possibility of persecution. In this case, the appellants did not discharge their burden.

[46] Pursuant to paragraph 111(1)(a) of the Immigration and Refugee Protection Act, the RAD dismisses the appeal and confirms the RPD's determination that the appellants are not Convention refugees or persons in need of protection. (signed) Mokhtar Lamani Mokhtar Lamani November 9, 2020 Date IRB translation Original language: French 1 SPR-1, Refugee Protection Division (RPD) record, RPD reasons, para. 10. 2 P-2, appellants' record, appellants' memorandum, para. 2. 3 Ibid., para. 3. 4 Ibid., para. 22. 5 Canada (MCI) v. Huruglica, 2016 FCA 93; Rozas del Solar v. Canada (MCI), 2018 FC 1145. 6 P-2, appellants' record, appellants' memorandum, para. 21. 7 SPR-1, RPD record, RPD reasons, para. 14. 8 Ibid., para. 15. 9 Ibid., paras. 21 and 22. 10 P-2, appellants' record, appellants' memorandum, para. 7. 11 Ibid., para. 8. 12 Ibid., para. 9. 13 Ibid., para. 10. 14 Ibid., para. 11. 15 Ibid., paras. 14, 15 and 16. 16 Response to Information Request. Haiti: Information on the security situation, including crime and kidnappings; measures taken by the government and other bodies to fight crime (June 2012-May 2014). Immigration and Refugee Board of Canada. HTI104872.FE. June 11, 2014. <https://irb-cisr.gc.ca/en/country-information/rir/Pages/index.aspx?doc=455389&pls=1> 17 P-2, appellants' record, appellants' memorandum, paras. 17 and 18. 18 Ibid., paras. 19 and 20. 19 SPR-1, National Documentation Package, Haiti (September 30, 2019), Tab 14.1. 20 Soimin, Ruth v. Canada (MCI), 2009 FC 218, para. 14. 21 Refugee Appeal Division Rules, SOR/2012-257, subparas. 3(3)(g)(i) and (ii). Updated May 22, 2019. Last amended on December 15, 2012.

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Prepared on 26 October 2026 · Esheria