



Refugee Protection Division

Section de la protection des réfugiés

RPD File No. / N° de dossier de la SPR : MB7-05270
MB7-05289

Client ID No. / N° ID client : XXXX
XXXX

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)

Demandeur(e)(s) d'asile

XXXX XXXX XXXX XXXX
XXXX XXXX XXXX

Date(s) of hearing

Date(s) de l'audience

October 9, 2018

Place of hearing

Lieu de l'audience

Ottawa, Ontario

Date of decision
and reasons

Date de la décision
et des motifs

December 19, 2018

Panel

Tribunal

Christian Fournier

Counsel for the claimant(s)

Conseil(s) du (de la/des)
demandeur(e)(s) d'asile

Karima Karmali

Designated representative

Représentant(e) désigné(e)

XXXX XXXX XXXX

Counsel for the Minister

Conseil du (de la) ministre

N/A

REASONS FOR DECISION

INTRODUCTION

[1] The claimant, **XXXX XXXX XXXX**, a citizen of Haiti, and her son, **XXXX XXXX XXXX**, a citizen of the United States, are claiming refugee protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

[2] The claimant is the designated representative of her minor son.

ALLEGATIONS

[3] The claimant alleges a fear for her life because of her ex-husband's political activities in 2010-2011 while he was **XXXX XXXX XXXX** in the **XXXX** region. Criminals attacked their vehicle on **XXXX XXXX**, 2011.

[4] She states that she fears her husband, who was abusive throughout their relationship.

[5] Her husband's ex-wife also threatened her several times through telephone messages and she fears that she will want revenge for her failed marriage.

[6] The claimant's daughter, who is in Haiti, was the victim of an attempted kidnapping on **XXXX XXXX**, 2017, as she was leaving school; the family was targeted because of their perceived financial means because she and her husband were in the United States.

[7] She states that she learned, shortly before the hearing, that her daughter had been sexually assaulted by her brother-in-law. She states that she fears her brother-in-law, who would want to seek revenge if the sexual abuse against her daughter was reported to the police.

[8] The claimant arrived in Canada with her American son on May 19, 2017, and signed her Basis of Claim Form (BOC Form) on June 1, 2017. An amended version of the BOC Form was signed on September 28, 2018.

DETERMINATION

[9] Having heard the claimant at the hearing and reviewed the documentary evidence, the panel determines that the claimant is neither a “Convention refugee” nor a “person in need of protection” under subsection 97(1) of the IRPA.

[10] The claimant’s son’s refugee protection claim is based on that of the claimant, and he is a citizen of the United States. He is not a “Convention refugee” or a “person in need of protection” under subsection 97(1) of the IRPA.

ANALYSIS

Identity

[11] The claimant established her identity by means of her testimony and her Haitian passport. The identity of the claimant’s son was established by means of his United States passport and a birth certificate from XXXX, Massachusetts.¹

Credibility

[12] The claimant testified spontaneously and sometimes emotionally about the allegations of sexual abuse against her daughter, who remains in Haiti.

[13] However, the panel noted significant omissions relating to a number of allegations that are central to her claim for refugee protection for which the claimant was unable to provide reasonable explanations. Moreover, the initial BOC Form submitted to the panel did not include a number of allegations, though it did contain certain untrue allegations. The BOC Form amended on September 28, 2018, reiterated all the allegations mentioned above and withdrew certain allegations that the claimant reported as untrue. The claimant blamed her former counsel for the differences between the two BOC Forms.

¹ Document 2 – Information package provided by the Canada Border Services Agency or Immigration, Refugees and Citizenship Canada.

Omission of death threats against her daughter in the amended BOC Form

[15] The panel notes a significant omission in the claimant's amended BOC Form dated September 28, 2018. She did not mention the death threats against her daughter even though the letter received from her brother, with whom her daughter is living, was submitted in evidence and is dated September 25.² This letter mentions death threats against her daughter and niece from the brother-in-law who assaulted them. The claimant did not mention these death threats in her BOC Form that was amended and signed on September 28, 2018. She stated that she had completed the BOC Form before she knew about them, but she had just told the panel that she found out about the death threats on September 26, 2018.

[16] When confronted with this contradiction, the claimant explained that she had simply not included all the details and that this omission was a result of her emotional state. She also submitted that it was already in the letter from her brother and that she did not believe she had to mention it.

[17] The panel rejects this explanation. The letter from her brother was provided in support of the claim, so its content cannot replace content in the BOC Form. The claimant stated that she gave up her life in the United States and alleges that she fears for her life because of the attempted kidnapping of her daughter in Haiti. In this context, it is not credible that the claimant forgot to mention the death threats against her daughter in her amended BOC Form, especially if she learned of the threats two days before signing this revised version. This significant omission seriously undermines the claimant's credibility.

Omission with respect to the identity of the agent of persecution related to the political threat

[18] The panel notes a significant omission regarding the identity of the alleged agent of persecution in connection with the alleged political threats against the claimant and her husband.

[19] The claimant stated at the hearing that she and her husband were attacked by [translation] "XXXX XXXX XXXX XXXX" on XXXX XXXX, 2011, on their return from XXXX, where her husband went for political activities. She covers this incident in her amended

² Document 5 – Claimant's disclosure, Exhibit R-48.

account dated September 28, 2018. In his asylum claim in the United States,³ her husband states that a man named XXXX XXXX was allegedly responsible for the attack [translation] “XXXX XXXX XXXX XXXX.” The panel asked her why she did not know the attackers’ identities. She stated that maybe her husband had done some research afterwards and had not discussed it with her.

[20] This explanation is not sufficient: if the criminals’ identities are known to the point that the claimant’s husband mentioned it in his asylum claim in the United States, it is not credible that the claimant does not know. The panel notes that she is the one who submitted her husband’s claim into evidence. Furthermore, it is not credible that the claimant would not be aware of the content of her husband’s asylum claim in the United States, as it relates to one of the central allegations of her own refugee protection claim in Canada. This seriously undermines her credibility regarding these allegations.

Implausibility of the threat posed by her husband’s former wife

[21] The panel asked the claimant about XXXX ability to find her if she were to return to Haiti and noted an implausibility with respect to her alleged fear.

[22] The claimant alleged that XXXX, who has threatened her life several times, would know if she were returning to the country because she talks to XXXX XXXX, the son from another of her husband’s marriages, to whom the claimant also speaks on occasion. He would have the resources and money and could inform XXXX. However, in explaining why he would expose the claimant to her, the claimant stated that he is in XXXX care and lives with her.

[23] This explanation is not credible or plausible. The claimant adjusted her testimony to try to give XXXX a more threatening profile and amplify her ability to find the claimant. It is unreasonable for the claimant to allege a fear being exposed by someone like XXXX XXXX and still speak with them on occasion. This finding further undermines the claimant’s credibility.

Abandonment of asylum claim in the United States

³ Document 5 – Claimant’s disclosure, Exhibit R34.

[24] The panel also notes that the claimant abandoned an ongoing asylum claim in the United States. She stated that she had never received a notice to appear for a hearing and that her work permit was not renewed.

[25] She explained at the hearing that she had engaged the services a friend to try to obtain a US visa for her daughter and inquire about her chances of being granted asylum in the United States. The friend apparently informed her that her daughter could not have a visa because the claimant was seeking asylum in the United States. He also informed her that she had only a 17 percent chance of being granted asylum. She explained that, given the threats against her daughter, she had to leave the United States to try to seek protection in Canada.

[26] This behaviour is not consistent with that of someone who fears for her life. Although the panel understands that she believed she had less of a chance of being granted asylum in the United States, it is not credible that she would abandon this opportunity. This further undermines the claimant's already damaged credibility.

Allegations against her former counsel

[27] At her hearing before the Refugee Protection Division on October 9, 2018, the claimant alleged that her former counsel had decided on several central elements in the claimant's account attached to her BOC Form, signed on June 1, 2017.

[28] To consider the claimant's allegations, the panel invoked the tribunal's Practice Notice, "Allegations Against Former Counsel," and asked the claimant in writing on October 12, 2018, to provide a written statement regarding these allegations concerning her former counsel and to allow him ten days to respond.

[29] Applying the Chairperson's *Guideline 4 on Women Refugee Claimants Fearing Gender-Related Persecution*, the panel preferred to write to the claimant after the hearing so as not to cause any additional stress for her during the hearing.

Addition of untrue allegations to her initial BOC Form

[30] The panel notes that some allegations that were included in her initial BOC Form signed on June 1, 2017, and submitted to the panel were missing from the amended version dated September 28, 2018.

[31] The following elements were removed from her initial BOC Form: when the kidnappers' went to the claimant's daughter's home during the night of XXXX XXXX to XXXX, 2017, the house cat was killed and graffiti on the wall allegedly stated that a ransom needed to be paid or else family members would be killed one after the other.

[32] The claimant stated at the hearing that these elements are false and were added by her former counsel, and that she did not agree with several elements included in her initial BOC Form.

[33] However, in the affidavit dated October 29, the claimant provided another explanation: she alleges that her former counsel probably made an unintentional error because he had spoken to her about another case in which the cat was supposedly killed and graffiti was left on the walls.

[34] In addition, the claimant alleges that her formal counsel also added the comment [translation] "I was preparing to return to my country" in the initial version of her BOC Form. In her affidavit, she states that she did not remove this sentence when she returned a revised version to counsel late on June 1, 2017, because it was recommended by her former counsel and he had experience in the field. She states that she removed the allegations about the cat and the graffiti at that time.

[35] In response to the affidavit, the claimant's former counsel maintains that he had not mentioned any other case involving those facts, or suggested the addition of a sentence about a planned return to Haiti.

[36] The panel concludes that the claimant's explanations are not credible. The claimant provided contradictory or incomplete explanations about the addition of these untrue allegations. She did not provide a credible explanation at the hearing. When asked [translation] "Why sign the BOC Form on June 1 if it was not correct?" the claimant did not tell the panel that the written

account had been completed afterwards or through emails. Instead, she stated that she had been unaware of anything and that she had mentioned many things she did not like in her BOC Form. If she indeed signed it when the content had yet to be finalized, it is reasonable to assume that she would have informed of this the panel immediately.

[37] Moreover, if the claimant had received an electronic copy of her written account and amended it, she would also be able to provide the content of this communication from her former counsel, which she did not do. Additionally, if the claimant actually sent amendments to her former counsel on June 1, 2017, she did not ensure that her amendments were in fact received.

[38] This finding seriously undermines the claimant's credibility regarding all of her allegations.

Allegations that were allegedly excluded from the first BOC Form on the recommendation of former counsel

[39] The panel asked for explanations about several allegations that were missing from the claimant's first BOC Form but appeared in the second version (that of September 28, 2018). These include allegations of domestic violence by her husband, her fears related to his political activities, as well as her fear of her husband's former wife, XXXX.

[40] The claimant alleged at the hearing that her former counsel had insisted that she not include in her initial BOC Form the additional allegations that are in the amended written account signed on September 28, 2018.

[41] These explanations are not sufficient. It is not credible that the claimant did not see fit to include these threats in her BOC Form if she really feared that one of these threats could cost her her life. Her former counsel notes in response to the claimant's affidavit of October 29, 2018, that the claimant contradicts herself in the affidavit.⁴ The claimant states in point 7 that she discussed the political threats related to her husband's activities with her former counsel in order to prepare the BOC Form, but states in point 18 that counsel might have given her another

⁴ Document 5 – Claimant's disclosure – R50, Former counsel's response to the claimant's affidavit to her former counsel, dated October 29, 2018.

recommendation regarding focusing on her daughter's attempted kidnapping if he had known about the other threats.⁵ In her correspondence of November 8, 2018, with the panel through her counsel, the claimant did not respond to this submission.⁶

[42] In the circumstances, the panel concludes that the claimant was unable to provide a reasonable explanation for not including these allegations in her initial BOC Form, which seriously undermines her credibility in relation to them.

Supporting documentation

[43] In this case, where the claimant's credibility has already been seriously undermined, the panel gives no probative value to the police complaints filed regarding the allegations of threats against her and her husband because of his political activities,⁷ or to the reports concerning the alleged attempted kidnapping against the claimant's daughter.⁸ These documents are not sufficient to redeem her credibility, because in the panel's opinion, even if these documents were found to be credible, they would not be enough to support the claimant's allegations, which have already been found not credible.

[44] Furthermore, the attack against the claimant and her husband's vehicle on XXXX XXXX, 2011, may have happened, but it does not prove the claimant's allegations regarding her husband's political activities.

[45] Given the serious credibility issues, including the omission of the death threats against the claimant's daughter, the panel gives no probative value to the letter from the claimant's brother.⁹

⁵ Ibid., R49, Claimant's affidavit dated October 29, 2018.

⁶ Ibid., R51, Final communication from the claimant's lawyer pursuant to the Practice Notice on allegations against a former counsel.

⁷ Document 5 – Claimant's disclosure, Exhibits R16, R17, R19 and R20.

⁸ Ibid., R23, R24.

⁹ Ibid., R48.

Residual profile

[46] The claimant alleges a gender-related fear for her safety in the context of her relationship with her husband, but does not invoke any risk related to the overall situation of women in Haiti. Her husband now lives in the United States.

[47] She has family in Haiti, including brothers who have demonstrated their support for her by taking in her daughter. Two live in XXXX XXXX XXXX XXXX XXXX and three live in XXXX. The panel is of the opinion that, as a XXXX, she would be able to find work in one of these locations.

[48] The claimant does not fit the profile of women at higher risk as described in the documentary evidence, such as women living in the camps¹⁰ or single women who cannot rely on male protection.

CONCLUSION

[49] After reviewing all the evidence, the panel concludes, on a balance of probabilities, that the claimant has failed to establish the truthfulness of her allegations.

Claimant's son's refugee protection claim

[50] The claimant did not express any specific fear for her son in the United States, his country of citizenship, and his claim is therefore dependent on that of his mother in regard to returning to Haiti.

DETERMINATION

[51] For the foregoing reasons, the panel determines that the claimant is not a "Convention refugee" under section 96 of the IRPA or a "person in need of protection" within the meaning of subsection 97(1) of the IRPA.

¹⁰ Document 4 – National Documentation Package for Haiti, Tab 5.3.

[52] No specific fear was raised for her son, who is a citizen of the United States. The claimant also has not established that he is a “Convention refugee” under section 96 of the IRPA or a “person in need of protection” within the meaning of subsection 97(1) of the IRPA.

[53] Consequently, the panel rejects the claims for refugee protection.

Christian Fournier

Christian Fournier

December 19, 2018

Date

IRB translation

Original language: French