



RPD File No. / N° de dossier de la SPR : MB7-06078  
Client ID No. / N° ID client : 1105784199

Private Proceeding / Huis clos

## Reasons and Decision – Motifs et décision

**Claimant(s)**

**Demandeur(e)(s) d'asile**

XXXX XXXX

**Date(s) of Hearing**

**Date(s) de l'audience**

September 24, 2018

**Place of Hearing**

**Lieu de l'audience**

Montréal, Quebec

**Date of Decision  
and Reasons**

**Date de la décision  
et des motifs**

October 24, 2018

**Panel**

**Tribunal**

Melanie Calisto Azevedo

**Counsel for the Claimant(s)**

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

Tony Manglaviti

**Designated Representative**

**Représentant(e) désigné(e)**

N/A

**Counsel for the Minister**

**Conseil du (de la) ministre**

N/A

## REASONS FOR DECISION

### INTRODUCTION

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

### ALLEGATIONS

[2] The refugee protection claimant alleges that she was raped during the night of May XXXX or XXXX, 2014, by a man named XXXX, a member of a local gang, in the presence of four (4) of his masked and armed accomplices.

[3] She left home immediately and fled Haiti shortly afterwards, on May XXXX, 2014.

[4] The refugee protection claimant fears being killed or raped again by the gang.

### DETERMINATION

[5] The refugee protection claimant is not a “Convention refugee” or a “person in need of protection” for the reasons that follow.

### ANALYSIS

[6] The panel took into consideration the Chairperson’s *Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution*.<sup>1</sup>

#### Identity

[7] The panel is satisfied as to the claimant’s identity, which was established, on a balance of probabilities, by means of photocopies of her passport<sup>2</sup> and birth certificate.<sup>3</sup>

---

<sup>1</sup> Guideline 4 of the Immigration and Refugee Board of Canada. Guideline issued by the Board pursuant to subsection 65(3) of the *Immigration Act: Women Refugee Claimants Fearing Gender-Related Persecution*. Effective November 13, 1996.

<sup>2</sup> Document 5 - C-2: Photocopy of the identification page of the passport.

## Credibility

[8] The claimant's credibility is the determinative issue in this case. The panel finds that she is not credible or trustworthy with respect to the central event of her refugee protection claim. When she was asked to testify about the circumstances of that incident, contradictions and inconsistencies were noted that were not satisfactorily explained.

[9] The claimant testified that she went in person, with her brother, to the Police nationale d'Haïti (PNH) [Haitian national police] station in XXXX in the hours that followed the rape, at around 10 a.m., and then to the XXXX peace court. The claimant, her brother, police officers from the station and court staff allegedly went to the claimant's home together, travelling in the same vehicle. However, the excerpt from the record of the registry of the XXXX peace court,<sup>4</sup> which is in the file, paints a very different picture of the situation.

[10] Below is the relevant excerpt:

[translation]

... Upon the verbal requisition of Mr. XXXX XXXX, the property owner residing and domiciled in XXXX. That we travel to XXXX, in this commune, to take the statement of a woman who was a victim of rape. Acting upon that requisition, we went to that location **accompanied by the requestor and police officers**. When we arrived, we observed a house comprised of walls, a sheet metal roof and a portico. The lock on the door leading to the interior of the house was smashed. **We entered and observed a woman, one XXXX XXXX, lying on a bed in an east-west position, wearing a partially torn cream-coloured nightgown...**<sup>5</sup>

[emphasis added]

[11] First, contrary to the claimant's statements, there is no mention of her being among the people identified by the justice of the peace and the registrar as accompanying individuals. Also, it was only when they entered the residence that they observed an individual who seemed to be unknown to them because they describe her as [translation] "a woman, one XXXX XXXX." There is no mention of or allusion to the fact that they had not only seen the claimant before

<sup>3</sup> Document 6 - C-10: Photocopy of her birth certificate.

<sup>4</sup> Document 5 - Exhibit C-4: Excerpt of the record of the XXXX XXXX peace court registry, record of findings.

<sup>5</sup> Ibid.

entering the premises, but had travelled there in a vehicle with her. This contradicts the claimant's version of the facts.

[12] Even more problematic is the authorities' description of the claimant: a woman lying on a bed in an east-west position dressed in a partially torn cream-coloured nightgown. This description, in the panel's opinion, tries to paint the picture of a rape victim. Yet it is inconsistent with the claimant's testimony that she took a bath and got dressed before leaving to go to the police station.

[13] Confronted with these contradictions and inconsistencies, the claimant provided the following explanations. First, she repeated that she had gone to the police station and the court and that she accompanied them to her home in a vehicle. She stated that she did not feel well when she returned home and that she lay down on her bed, which explains the description in the report. As for the nightgown described, she stated that the French term [*robe de nuit*] does not have the same meaning in Haiti as in Canada. She did not remember what clothing she was wearing, but it must have been torn, which would again explain the descriptions given by the justice of the peace and the registrar.

[14] In the panel's opinion, these explanations are not reasonable. The claimant adjusted her testimony as she went along, based on the contradictions and implausibilities that were raised. The claimant did not explain why the authorities did not mention her presence. She merely repeated her account. The panel is of the opinion that it is reasonable to believe that if the claimant had accompanied the justice of the peace and the registrar, they would have noted this, as they took the trouble to list all the other parties. With respect to the statement that she was on the bed, the justice of the peace and the registrar saw the claimant lying there when they entered the house; it is implausible that she would have hurried into her home to lie down on the bed, where she had allegedly been raped, before the justice of the peace and the registrar made their way in. Finally, with respect to the nightgown described, which was allegedly merely a torn piece of clothing, the panel cannot accept that explanation. French is one of Haiti's official languages and the predominant language, particularly in the areas of legislation and justice. The panel is therefore entitled to presume that court officials, who are required to work in French on a daily basis, are proficient in that language. While certain expressions may vary from one French-speaking country to another, this is not a question of expressions or proverbs, but rather

of common words. The panel is of the opinion that there is a significant difference between the French words for a dress (*robe*) and a nightgown (*robe de nuit*).

[15] The panel noted another problem in the claimant's evidence. The justice of the peace and the registrar state in the excerpt from the registry record that they saw bruises on the claimant's face, arms and chest, and they conclude that she is [translation] "a true victim." Yet the claimant testified that she sustained no injuries because she did not fight back or struggle since she did not want to wake her children and put them in danger. Asked to explain this contradiction, the claimant reaffirmed her testimony and denied that she sustained any injuries. She stated that it was an error in the report and that she had not had time to read it because she had left the country quickly. Counsel for the claimant added in his submissions that this explanation is reasonable, in particular considering the claimant's low level of education and the fact that her brother generally helps her. The panel does not agree. First, this is not a clerical error or an error in recording statements relayed by a third party. These are observations made and recorded by officers of the court. Second, these observations were recorded contemporaneously with the events, which reduces the possibility of errors and increases their probative value. Indeed, according to the excerpt from the record of the court registry, the justice of the peace and the registrar prepared and closed the file between 10:04 and 10:23 a.m. The panel is of the opinion that the claimant's level of education is of little relevance to the observations made personally by officers of the court. The panel does not accept this argument, even though it was raised to establish the reason the claimant failed to notice the alleged error or ask that it be corrected. The claimant was accompanied by her brother. The document was in her brother's keeping for a number of years. The claimant stated at the beginning of the hearing that she can read French well. She has had the document in her possession for several months, perhaps even a year. The panel concludes that the claimant's explanations are not reasonable.

[16] All these contradictions and inconsistencies completely undermine the claimant's credibility.

[17] Furthermore, the panel attaches no probative value to an additional document submitted by the claimant in support of her refugee protection claim, namely, a complaint filed with the

investigation services of the XXXX PNH station<sup>6</sup> (hereinafter the “complaint”) and draws another negative inference from it.

[18] The panel noted a contradiction between the claimant’s oral testimony and the complaint submitted with respect to the number of individuals who were present during the rape. One mentions five (5), while the other mentions about ten people. The claimant stated that this was a typographical error, because she had counted five people, which the panel does not accept as an explanation because [translation] “five” and “about ten people” cannot be a typographical error. Moreover, the claimant allegedly signed the document and confirmed its content.

[19] However, the panel’s true concern with respect to this evidence pertains to its content, more precisely its similarity, to within a few words, to the claimant’s account in her Basis of Claim Form (BOC Form).<sup>7</sup>

[20] Below is the content of the claimant’s statement to the PNH. The sections in bold are the points that differ from the account in her BOC Form.

[translation]

**During the night of May XXXX to XXXX, 2014**, I was assaulted and raped by a group from a local gang. These guys answer to the names of XXXX, XXXX, XXXX, XXXX, etc. ... **as they are all known**. They are gang leaders who operate together in the community. They are very powerful, heavily armed and they spread terror in the area. They operate anywhere and anytime. XXXX is one of the gang leaders; he threatened me openly and wanted me to be one of his women. He told me: if I did not accept I would die. I was afraid to file a complaint because the police are powerless and unable to keep the public safe. I was terrorized by the idea that he would carry out his plan. Unfortunately, the inevitable happened on Thursday, May XXXX, 2014; my two boys were sleeping in their rooms and I was in the bedroom not far from the front door of the house. I was sleeping when I heard a noise, footsteps. They were already in the house and they came to my room. I was trembling in my bed. There were about **10** people there. XXXX face was uncovered and the other members were wearing masks. XXXX took out his weapon and started touching me all over. He raped me in front of the other members. I was afraid to yell as loud as I could because I didn’t want

---

<sup>6</sup> Document 6 – Exhibit C-3: *Plainte – Police Nationale d’Haïti, Direction départementale de l’Ouest, Commissariat de XXXX, Services des investigations* [complaint – Haitian national police, Ouest [west] departmental division, XXXX police station, investigation services].

<sup>7</sup> Document 1 – Basis of Claim Form.

my boys to be hurt because of it. They threatened to come back if I filed a complaint. You can imagine that it was **the worst moment of my life**. It was about 1:30 a.m. when they left my house. [Emphasis added]

[21] This complaint was filed by the claimant and signed by her on May 23, 2014, at 10 a.m., while her narrative was completed and signed on June 19, 2017, some three (3) years later.

[22] When asked to comment on these almost identical versions, the claimant answered that it was her life, a traumatic event that she will remember for the rest of her life, that is etched in her memory. When asked rather to explain the fact that the words and sentences are almost identical, the claimant reiterated her initial response. The panel does not consider the claimant's answer to be reasonable, given the circumstances.

[23] It is implausible that a person would relate an incident, as significant as that incident may be, using almost identical words and sentences after such a significant period of time. More than three (3) years elapsed between the two accounts. The time period, the person's state of mind, and the circumstances are different.

[24] The Immigration and Refugee Board of Canada (IRB) is not required to accept testimony merely because it is not contradicted. It can rely on reason, common sense and rationality.<sup>8</sup>

[25] In this case, the similarity between the versions defies all probability.

[26] The panel might have understood if the claimant had completed her BOC Form with the complaint in hand. The panel therefore asked her that question. But this was not the case. According to her testimony, she left the complaint at her home in Haiti, where her brother and her children live. The document was sent to her through her uncle on an unspecified date, perhaps in 2018, but after her refugee protection claim in Canada.

[27] The IRB can reject unrefuted evidence if it is not consistent with the probabilities of the case as a whole, and that is the case here.

---

<sup>8</sup> *Aguebor v. (Canada) Minister of Employment and Immigration* (1993), 160 N.R. 315 (F.C.A.); *R.K.L. v. Canada (Minister of Citizenship and Immigration)*, 2003 FCTD 116 (CanLII), [2003] F.C.J. No. 162 (QL), at paragraphs 9 to 11.

[28] For all these reasons, the panel finds that the claimant is not credible and it does not accept her testimony.

### **Other grounds relating to her fear or risks**

[29] Despite its conclusion regarding the claimant's principal allegation, the panel examined whether the claimant, as a woman in Haiti, would face a prospective risk.

[30] In doing so, the panel took into account the Chairperson's *Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution*,<sup>9</sup> the documentary evidence concerning Haitian women,<sup>10</sup> the case law on the issue, and the claimant's personal situation.

[31] While the panel recognizes that violence against women is a problem in Haiti, it remains to be seen whether there is a serious possibility that the claimant would be a victim of gender-based persecution if she were to return to Haiti.

[32] In the Federal Court decision in *Dezameau*,<sup>11</sup> Justice Pinard states the following at paragraph 29:

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 that is sufficiently serious and whose occurrence is "more than a mere possibility".

### *The claimant's personal situation*

[33] It is important to take into account the claimant's personal situation when determining whether or not her situation gives rise to a serious possibility of persecution in her case.

[34] The claimant has a family in Haiti and male protection. Several members of her family live there, including her father, several brothers, her sons and sisters. They all live in XXXX, XXXX commune, where the claimant was also living. Her house is still there. The claimant has kept in touch with her family, particularly with two (2) brothers, XXXX and XXXX. She left her

---

<sup>9</sup> *Supra*, footnote 1.

<sup>10</sup> Document 3 – National Documentation Package on Haiti, July 20, 2018, see Part 5: *Gender, Domestic Violence and Children*.

<sup>11</sup> *Dezameau, Elmancia v. M.C.I.* (F.C., No. IMM-4396-09), Pinard, May 27, 2010, 2010 FC 559.



home and her children in the care of her brother XXXX. Her brothers work. Thus, everything suggests that the claimant would not be alone or homeless if she were to return to Haiti.

[35] Considering the panel's finding regarding the claimant's credibility, the panel does not consider a return to XXXX to be problematic.

[36] The panel also notes that the claimant had a job in Haiti and that she was able to support herself and her children when she was living there.

#### *Documentary evidence*

[37] An analysis of the documentary evidence reveals that it is very difficult to obtain reliable statistics on gender-based violence in Haiti.

[38] The violence against women is described as "chronic," "systemic," and "widespread,"<sup>12</sup> and can take various forms, including domestic violence<sup>13</sup> and rape. The women most at risk are those living in the camps set up for people displaced by the 2010 earthquake and those living in precarious conditions.

[39] The claimant's file contains no allegations of domestic or spousal violence. There is also no indication that she will have to settle in a shanty town or in a displacement camp. On the contrary, the claimant has family and male protection.

[40] The panel concludes that the claimant has failed to establish that there is a serious possibility that she would be persecuted by reason of her membership in a particular social group (that is, women) under section 96 of the IRPA, if she were to return to Haiti.

---

<sup>12</sup> Document 3 – National Documentation Package on Haiti, July 20, 2018, Tab 5.3: *Violence against women, including sexual violence; state protection and support services* (2012-June 2016). Immigration and Refugee Board of Canada. December 15, 2016. HTI105161.FE.

<sup>13</sup> Ibid.; Tab 5.9: *Violence against Women, Trafficking, Prostitution, and Exploitation by UN Peacekeepers*. Bureau des Avocats Internationaux et al. January 22, 2016; Tab 5.12: *Haïti : Les violences faites aux femmes* [Haiti: violence against women]. France. Office français de protection des réfugiés et apatrides [French office for the protection of refugees and stateless persons]. January 9, 2017.

## CONCLUSION

[41] For all the foregoing reasons, the panel determines that the claimant, **XXXX XXXX**, has not established that she would face a serious possibility of persecution on a Convention ground or that, on a balance of probabilities, she would be personally subjected to a danger of torture, to a risk to her life, or to a risk of cruel and unusual treatment or punishment if she were to return to her country. Her claim for refugee protection is therefore rejected.

*Melanie Calisto Azevedo*

**Melanie Calisto Azevedo**

October 24, 2018

**Date**

IRB translation

Original language: French