



RPD File No. / N° de dossier de la SPR : MB7-11084
Client ID No. / No ID client : XXXX

Huis clos / Private Proceeding

Reasons and Decision – Motifs et décision

Claimant(s)

Demandeur(e)(s) d'asile

XXXX XXXX

Date(s) of hearing

Date(s) de l'audience

February 5, 2018

Place of hearing

Lieu de l'audience

Montréal, Québec

**Date of decision
and reasons**

**Date de la décision
et des motifs**

April 3, 2018

Panel

Tribunal

Diane Sokolyk

Counsel for the claimant(s)

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

M^c Cristian Roa-Riveros

Designated representative

Représentant(e) désigné(e)

N/A

Counsel for the Minister

Conseil du (de la) ministre

N/A

REASONS FOR DECISION

INTRODUCTION

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

DETERMINATION

[2] The Tribunal finds that the claimant has not satisfied the burden of establishing that there is a serious possibility of persecution on a Convention ground, or that, on a balance of probabilities, the claimant would personally be subjected to a danger of torture or face a risk to life or a risk of cruel and unusual treatment or punishment upon return to her country. . There was such a lack of concrete information in this claim that the Tribunal finds that there is no credible basis for the claim pursuant to section 107(2) of the IRPA.

ALLEGATIONS

[3] The claimant is a Haitian woman of XXXX years old. In her Basis of Claim form (BOC), she alleges that she was living with her father and four brothers in XXXX XXXX in Port au Prince . When she was leaving work in Port au Prince on XXXX XXXX, 2015, a group of people came up to her and said that they were looking for her. She smiled as she was nervous and one of the men said it was not a joke and he grabbed her by the neck and pushed her up against a wall. At this moment a truck was coming down the narrow street and they had to move to let it go by. She took the opportunity to run away. She did not go home but went to a friend's place in XXXX XXXX (Port au Prince). She stayed with her friend for two days. She received telephone threats from anonymous callers during these two days. The claimant moved to another friend's house in Petionville, Port au Prince, where she remained for one month. She alleges that she continued to receive threatening calls which included threats of rape. At some point during this month – the date is not specified in her BOC – she called home and found out that her brother XXXX had been killed in the house on XXXX XXXX, 2015. She states that her other brothers moved elsewhere in Haiti. Her father, who was living there also, moved to Mirogane.

[4] The claimant left Haiti for Brazil on XXXX XXXX, 2015. She alleges that she obtained a five year visa to live and work in Brazil. She did not stay because according to question 2 (g) she

“had problems with the Brazilian women”. She traveled to the United States in XXXX 2016. She did not claim asylum in the United States because the person responsible for her file advised her that they had not requested it yet. When she eventually consulted a lawyer, she found that it was too late to claim asylum.

[5] The claimant alleges that in XXXX 2015 her brother XXXX received threatening calls. She says that each time a member of her family changes their cell phone number, they are retraced and re-threatened. One of her brothers is now living in the Dominican Republic, one in Kenscoff (a suburb of Port au Prince), one in Miami, and one in Cayes, Haiti. Her father allegedly received a telephone threat in XXXX 2017.

ANALYSIS

Identity

[6] The identity of the claimant as a national of Haiti is established by her testimony and the supporting documentation filed, namely a copy of her Haitian passport and her National Identity Card.

Credibility

[7] This claim, involving a Haitian woman and a general allegation of rape or sexual violence was treated according to the Chairpersons Guideline Number 8, Women Fearing Gender-Related Persecution.

[8] At the hearing, held on February 8, 2018 the claimant produced four copies of documents in support of her claim – Exhibit C-1, a complaint allegedly filed with the police and dated XXXX XXXX XXXX, 2015, by a neighbor of her family in Port au Prince following the death of her brother XXXX XXXX; Exhibit C-2, an extract from the Minutes of the Tribunal de Paix regarding the death of XXXX XXXX, also dated XXXX XXXX XXXX XXXX, 2015; Exhibit C-3, the Act of Death of XXXX XXXX, dated XXXX XXXX, 2018 ; and Exhibit C-4, a letter from the claimant’s father dated XXXX XXXX, 2018 with a copy of his National Identification Card. The Tribunal asked the claimant why she had not produced the originals. She answered with confidence that the originals had been sent to her on January 29, 2018 by DHL.

[9] The Tribunal asked the question a second time to be sure and received the same answer. The Tribunal then asked the claimant a third time, why, if the documents had been couriered by DHL on XXXX XXXX, 2018, the letter allegedly hand-written by her father was dated XXXX XXXX, 2018. The claimant had no answer initially. She then replied that the letter from her father was written before and sent by “What’s App”. She was asked if she could show the Tribunal the original message on her phone but she replied no, it was not on the phone she had in the hearing room, it was on another phone at her house. When asked why the letter from her father was written on XXXX XXXX, 2018, she said that she tried to call him but could not reach him. The Tribunal does not believe that any of these explanations are credible – they simply do not make sense. This fact reduces her credibility and the probative value of the letter allegedly from her father.

[10] The Tribunal also noted that the quality of Exhibit C-4, the letter from her father and his National Identification Card was blurry and hard to read. The claimant stated that she would produce the originals of the documents as soon as they were in her possession. On February 9, 2018, counsel for the claimant filed the “original” documents, however they did not include the original letter and copy of identification from the claimant’s father. Her father’s National Identification Card suggests that he is in Pointe a Raquette; in testimony, she stated that he was living in Delmas, Port au Prince, with her and her brothers in 2015, and moved to Mirogane and in the Act of Death (dated XXXX XXXX, 2018) it states that he is living in La Gonave. The Tribunal finds that all of these differences suggest that the information in these documents is not reliable.

[11] Another major problem in this file was the general lack of motive for any of the alleged incidents. The claimant alleged that she was the target of bandits who said they would rape her - allegedly for some transgression of her family. The claimant was asked why she thought her brother XXXX was killed, and her family dispersed from the family home. She had no idea. The suggestion in this file that one reads from her father’s letter and her narrative is that her family is targeted for a reason they do not know.

[12] The claimant's father alleges in his letter that he received telephone threats in XXXX 2017 but he does not know why. This is not credible. The family is not alleging that they are victims of random violence they are alleging targeted violence. The Tribunal cannot accept as credible, in the circumstances of this claim, that a family would be targeted for death over a three year period for no reason.

[13] The claimant alleges that she lived and worked in Port au Prince and that she always went home to her family home in XXXX XXXX. However, when questioned in detail about the events which ensued after she ran away, her story faltered. She stated confidently that she called her brothers at her home in XXXX XXXX on or about XXXX XXXX, 2015 to tell them that she was staying with a friend in Petionville and to allegedly warn them to be careful. It was then that she learned the news that her brother XXXX had been killed. However, the testimony did not make sense. The claimant stated that none of her brothers went home after XXXX was killed on XXXX XXXX, 2015. She states in Question 2H of her BOC that after she had been in hiding for a month, she called her brothers at the house to warn them to be careful and to tell them that she had been receiving death threats and threats of rape.

[14] The Tribunal does not find this timing credible. If the claimant was assaulted on the road on XXXX XXXX, 2015, and ran to save her life and stayed with a friend instead of going home, the Tribunal would expect her to immediately telephone her father and brothers and to warn them. Her initial story was that she stayed in hiding for an unspecified period of time and then called home after XXXX XXXX, to learn that her brother had been killed. Her BOC states that she was in hiding for a month before she called home. When confronted with this discrepancy she stated that her friend had called her brothers to tell them that she was staying with her. This appears to be adjusted testimony and the Tribunal does not find this explanation credible.

[15] The documents filed as Exhibits C-1, C-2 and C-3 are contradictory as to the time of death of XXXX. Exhibit C-1, the police report and Exhibit C-2, the Act of death, place the report of death at about XXXX XXXX XXXX pm on Tuesday XXXX XXXX, 2015. As pointed out by counsel at the outset of the hearing, XXXX XXXX, 2015 was a Wednesday. It is possible but not credible that two different clerks in two different offices could have made the same mistake about the date. Secondly, the document C-3, the extract from the Tribunal de paix, states that it is also written on Tuesday XXXX XXXX, 2015 but places the death of XXXX at XXXX XXXX XXXX am in that morning. When asked to explain these contradictions, the claimant simply repeated her testimony. There are collectively too many errors in these documents to ignore. The Tribunal does not find that they have any probative value.

[16] In conclusion on this point, the Tribunal does not believe any of the allegations made about a targeted attack on the claimant or her family and finds that she does not face any risk as per section 97 (1) of the IRPA in Haiti.

[17] The residual claim alleged by this claimant is fear as a woman of rape under section 96 of the *Act*. It is undeniable that the claimant is a woman of XXXX years old. The documentary evidence, particularly the Report by OPFRA found at section 2.13 of the National Documentation Package describes in detail the risks faced by women in Haiti. The Tribunal finds that the claimant does not fit the profile of a woman at risk in Haiti. First of all, she has established herself to be independent and capable of looking after her own needs and interests: in 2015 she alleges that she travelled alone to Brazil. She remained there for approximately one year, and then travelled across many countries to arrive in the United States.

[18] She found a place to live and work wherever she travelled. While living alone in the United States for approximately one year, she did not manage to claim asylum, blaming the

“person who was helping her”. The Tribunal finds that the profile and movement of this claimant over the last three years does not suggest a person who will be vulnerable or at risk in Haiti.

[19] Furthermore, she has one brother in Cayes, a second brother in Kenscoff and her father who is either living in Mirogane, Pointe a Raquette or la Gonave depending on which document you refer to. The claimant failed to establish a serious possibility of persecution on the basis of her membership in a particular social group.

CONCLUSION

[20] In conclusion, having analyzed the evidence as a whole, the Tribunal determines that the claimant failed to discharge the burden of establishing that there is a serious possibility that she would be persecuted on a Convention ground. She also failed to provide any evidence that could establish, on a balance of probabilities, that she would be subjected to a danger of torture, to a risk to her life or to a risk of cruel and unusual treatment or punishment should she return to Haiti. There was such a lack of concrete information in this claim that the Tribunal finds that there is no credible basis for the claim pursuant to section 107(2) of the IRPA.

Diane Sokolyk

M^e Diane Sokolyk

April 3, 2018

Date

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