



Refugee Protection Division

Section de la protection de
réfugiés

RPD File No. / N° de dossier de la SPR : MB7-14202
MB7-14480

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

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)

Demandeur(e)s d'asile

XXXX XXXX XXXXXXXXXX XXXX

Date(s) of hearing

Date(s) de l'audience

November 1, 2018

Place of hearing

Lieu de l'audience

Montréal, Quebec

Date of decision
and reasons

Date de la décision
et des motifs

November 28, 2018

Panel

Tribunal

Melanie Calisto Azevedo

Counsel for the claimant(s)

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

Cristian Roa-Riveros

Designated representative

Représentant(e) désigné(e)

XXXX XXXX

Counsel for the Minister

Conseil du (de la) ministre

N/A

REASONS FOR DECISION

INTRODUCTION

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

[2] XXXX XXXX was appointed as the designated representative for her minor daughter, XXXX XXXX, under subsection 167(2) of the IRPA. She confirmed at the start of the hearing that she understands and accepts the responsibilities of that role.

ALLEGATIONS

[3] The principal refugee protection claimant states that she was raped on XXXX XXXX XXXX 2014, in an attack targeting her brother, who was murdered for his political opinion, as he was a member of the Fanmi Lavalas party; the two (2) attackers were members or supporters of the Parti Haïtien Tèt Kale (PHTK) [Haitian Tèt Kale party]. The refugee protection claimant states that she would still be targeted by those individuals today, as she recognized them and filed a complaint with the authorities.

[4] The principal refugee protection claimant also states that she fears rape and the generalized insecurity in Haiti.

[5] The minor refugee protection claimant raised family separation as a risk should she return to the United States of America.

DETERMINATION

[6] The panel determines that the principal refugee protection claimant is a “Convention refugee” because she has established a well-founded fear of persecution on a Convention ground, namely, by reason of her particular social group, single women in Haiti.

[7] With respect to the minor refugee protection claimant, XXXX XXXX, the panel determines that it was not established that, should she return to the United States of America, she

would be persecuted 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.

ANALYSIS

[8] The panel considered the Chairperson's *Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution*¹ and *Guideline 3: Child Refugee Claimants—Procedural and Evidentiary Issues*.²

Identity

[9] The panel is satisfied as to the principal claimant's identity, which was established, on a balance of probabilities, by means of her testimony as well as the photocopies of her birth certificate,³ an excerpt from the birth certificate registry⁴ and the identification page of her passport.⁵ The child's identity was established to the panel's satisfaction by means of a certified true copy of her passport⁶ and a photocopy of her American birth certificate.⁷

Minor refugee protection claimant's fear/risks in the United States of America

[10] The minor refugee protection claimant was born in the United States of America. She is a citizen of that country. Therefore, the panel considered that country as the country of reference.

[11] The panel asked the designated representative, the principal refugee protection claimant, whether her child fears returning to the United States; she answered yes, stating that her child fears being separated from her family.

[12] The minor refugee protection claimant's best interests is a factor in the assessment of her refugee protection claim, but it cannot be used as the basis for determining that she is a

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

² *Guideline 3: Child Refugee Claimants—Procedural and Evidentiary Issues*, issued by the IRB pursuant to subsection 65(3) of the *Immigration Act*. Effective September 30, 1996.

³ Document 6: C-10: Certificate of birth for XXXX XXXX.

⁴ *Idem* – Excerpt from the birth certificate registry.

⁵ Document 6: C-11 – Photocopy of the identification page of XXXX XXXX passport.

⁶ Document 3: Information package provided by the Canada Border Services Agency and/or Immigration, Refugees and Citizenship Canada.

⁷ Document 6: C-13 – Certification of birth for XXXX XXXX.

“Convention refugee” or a “person in need of protection.” This concern for the child’s best interests does not relieve a refugee protection claimant, even if she is a minor, from the obligation to establish her refugee protection claim in compliance with the requirements of section 96 or subsection 97(1) of the IRPA. The family unit concept does not relieve the refugee protection claimant of the burden of establishing that she meets the definition of a “Convention refugee” or that of a “person in need of protection.”⁸

[13] Having considered all the evidence, the panel concludes that the refugee protection claimant has not established a serious possibility that she would be persecuted in the United States of America under section 96 of the IRPA or that 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 under subsection 97(1) of the IRPA. Consequently, the panel determines that the minor claimant is not a “Convention refugee” or a “person in need of protection.”

[14] Given that determination, the panel did not analyze the minor refugee protection claimant’s fear or risk in Haiti.

Principal claimant’s fear/risks in Haiti

Fear based on her brother’s political opinion or risk based on his murderers’ revenge

[15] The refugee protection claimant’s primary allegation focuses on the event that reportedly occurred on XXXX XXXX XXXX 2014, when her brother was murdered, her parents were bound, and she was raped by reason of her brother’s political opinion.

[16] The panel does not believe this allegation because of contradictions in the description of the attack, including her brother’s location, the sequence of events that followed the attack and the failure to mention that event to the American authorities during the refugee protection claimant’s entry interview.

[17] However, the panel will not dwell on this analysis, given its conclusion in assessing the principal claimant’s refugee protection claim with regard to her particular social group.

⁸ *Nazari v. The Minister of Citizenship and Immigration*, 2017 FC 561, para. 17.

Analysis of the claim under section 96 of the *Immigration and Refugee Protection Act*

[18] The panel considered this claim in light of section 96 of the IRPA, given the refugee protection claimant's membership in the particular social group of Haitian women, which has been recognized by the Federal Court, notably in *Josile*⁹ and *Dezameau*.¹⁰

[19] The documentary evidence is unanimous on the fact that violence against women in Haiti is widespread and is a chronic and systemic problem.¹¹

[20] However, in accordance with the teachings in *Dezameau*,¹² the panel cannot find that there is a risk of persecution based purely on membership in a particular social group, but must rather determine whether the refugee protection claimant faces a risk of harm that is sufficiently serious and whose occurrence is more than a mere possibility.

[21] The panel took into account the objective documentary evidence on the country and the claimant's personal situation to determine whether or not her situation gives rise to a serious possibility of persecution in her case. For the following reasons, the panel is of the opinion that it does.

Family support and male protection in Haiti

[22] The refugee protection claimant is a 27-year-old woman.

[23] The principal refugee protection claimant has a common-law partner, the minor refugee protection claimant's father, but he is in Canada and is seeking Canada's protection against a return to Haiti.

⁹ *Josile v. Canada (Citizenship and Immigration)*, 2011 FC 39 (CanLII);

¹⁰ *Dezameau v. Canada (Citizenship and Immigration)*, 2010 FC 559 (CanLII).

¹¹ Document 4: 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). IRB. December 15, 2016. HTI105161.FE; Tab 2.1: *Haiti. Country Reports on Human Rights Practices for 2017*. United States. Department of State. April 20, 2018.

¹² *Supra*, footnote 10, paragraph 29.

[24] The principal refugee protection claimant currently has three family members in Haiti: her father; her brother, XXXX XXXX; and her half-sister, XXXX. Her mother, two of her brothers and one sister are in the United States of America, and another sister is in Brazil. The claimant testified that she could not live with her family members who are in Haiti for the following reasons. Her young brother is allegedly a 22-year-old [translation] “XXXX XXXX” who is living in Port-au-Prince with his “XXXX” XXXX. Her half-sister is a 21-year-old XXXX who is living with her mother, who is not the refugee protection claimant’s mother. Finally, regarding her father, the refugee protection claimant testified that he is living in a remote location, in the country, and supports himself through XXXX. The refugee protection claimant could not work or support herself there.

[25] The evidence on the record indicates that the refugee protection claimant could not count on family support or effective male protection in Haiti.

[26] Family support and male protection were recognized by the documentary evidence¹³ and the jurisprudence¹⁴ as key elements in the assessment of a well-founded fear of persecution in Haiti for Haitian women.

[27] Therefore, the panel is of the view that the refugee protection claimant’s situation with regard to those aspects weighs in favour of a positive response. That said, the panel will continue its analysis of the claimant’s personal situation.

Autonomy

[28] When she left Haiti, the refugee protection claimant was living with her parents and her brothers. She was a student. She never had a job in Haiti. Her parents were supporting her.

[29] She does not have a job waiting for her in Haiti.

[30] According to the documentary evidence, economic independence is the most determining factor when it comes to a woman’s situation in Haiti.¹⁵

¹³ Document 4 – Tab 5.4: *The situation of women who live alone, including those who are not in precarious situations; whether they can access employment and housing; support services available to them (2015-September 2017);*.

¹⁴ *Josile v. Canada (Citizenship and Immigration)*, 2011 FC 39 (CanLII); *Dezameau v. Canada (Citizenship and Immigration)*, 2010 FC 559 (CanLII).

[31] That factor also weighs in favour of allowing the principal refugee protection claimant's claim.

Place of residence

[32] The panel assessed the refugee protection claimant's place of residence should she return to Haiti because that is an important factor according to the documentary evidence¹⁶ on the record. The evidence establishes that camps for internally displaced persons and poor and precarious neighbourhoods are places where violence against women is endemic.

[33] The principal refugee protection claimant never lived alone in Haiti.

[34] She would have no place to live should she return to her country of nationality.

[35] That factor also weighs in favour of a positive response in the analysis of the refugee protection claimant's profile as a vulnerable woman in Haiti.

Conclusion

[36] According to the documentary evidence, among the women who are at the highest risk are those who have no family support or male protection, who are not financially autonomous and independent and who live in precarious areas that are subject to violence.

[37] Based on objective evidence and considering the refugee protection claimant's particular circumstances that were outlined, the panel concludes that the claimant has established that she would face a serious possibility of persecution in Haiti as a single woman.

State protection

[38] The panel concludes that, in light of the objective evidence, the presumption of state protection has been rebutted. Adequate state protection in Haiti would not be available to the refugee protection claimant.

¹⁵ *Supra*, footnote 13.

¹⁶ Document 4 – Tab 5: *Gender, Domestic Violence and Children*; Tab 2.5: *Rapport de mission en République d'Haïti du 26 mars au 7 avril 2017* [report of a mission to Haiti from March 26 to April 7, 2017]; Tab 2.4: *Haiti. World Report 2018: Events of 2017*; Tab 2.7: *Rapport sur la situation des droits de l'homme en Haïti. 1^{er} juillet 2015 – 31 décembre 2016* [report on the human rights situation in Haiti. July 1, 2015 – December 31, 2016].

[39] Violence against women in Haiti is widespread and is a chronic and systemic problem.¹⁷ Violence against women in Haiti is part of a culture of discrimination and stereotypes against them.¹⁸

[40] The documentary evidence describes a Haitian justice system that fosters impunity, including with respect to violence against women. The Haitian national police (PNH) is still an organization that is very strongly dominated by men, who are often vulnerable to corruption, reluctant to get involved in domestic problems and sometimes prone to victim-blaming.¹⁹

[41] Despite these efforts, the credibility of police forces remains to be demonstrated.²⁰ Although the police have units specializing in violence against women, only a small number of police officers have received a full training on gender violence, and the number of police officers, especially women officers, is too low to respond to the demand.²¹ There is also a limited number of specialized units for handling cases of gender-based violence.²²

[42] Sources indicate that women victims of violence face a number of obstacles when they try to access justice.²³

[43] The government allegedly does not meet its obligation to carry out the necessary investigations and to ensure that rape victims have sufficient access to the judicial system.²⁴

[44] Therefore, the panel concludes that the refugee protection claimant cannot obtain adequate state protection in Haiti.

Internal flight alternative

[45] As the situation described is prevalent across Haiti, it appears unreasonable to the panel to conclude that there is a viable internal flight alternative in this case.

¹⁷ *Supra*, footnote 11. Tab 2.1: *Haiti. Country Reports on Human Rights Practices for 2017*.

¹⁸ *Supra*, footnote 11. Tab 5.9: *Violence against Women, Trafficking, Prostitution, and Exploitation by UN Peacekeepers*. Bureau des Avocats Internationaux et al. January 22, 2016.

¹⁹ Document 4: Tab 2.5: *Rapport de mission en République d'Haïti du 26 mars au 7 avril 2017*.

²⁰ *Supra*, footnote 11.

²¹ *Idem*.

²² *Idem*.

²³ *Supra*, footnote 18.

²⁴ *Idem*.

CONCLUSION

[46] In light of all the evidence, the panel determines that the principal refugee protection claimant, **XXXX XXXX**, is a “Convention refugee.” Therefore, her refugee protection claim is allowed.

[47] Concerning the minor refugee protection claimant, **XXXX XXXX**, the panel concludes that it has not been established that, should she return to the United States of America, 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. Therefore, her refugee protection claim is rejected.

DECISION

Melanie Calisto Azevedo

Melanie Calisto Azevedo

November 28, 2018

Date

IRB translation

Original language: French