



RPD File No. / N° de dossier de la SPR : TB8-28232

Private Proceeding / Huis clos

Reasons and Decision – Motifs et Décision

Claimant(s)	XXXX XXXX XXXX XXXX	Demandeur(e)(s) d'asile
Date(s) of Hearing	March 25, 2019 June 10, 2019	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision and reasons	July 15, 2019	Date de la décision et des motifs
Panel	M. A. McColl	Tribunal
Counsel for the Claimant(s)	Yuliya Dumanska	Conseil(s) du (de la/des) demandeur(e)(s) d'asile
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du (de la) ministre

2019 CanLII 143034 (CA IRB)

REASONS FOR DECISION

[1] This is a decision in the claim of XXXX XXXX XXXX XXXX, who is claiming refugee protection pursuant to section 96 and 97 of the *Immigration and Refugee Protection Act* (IRPA).¹

[2] As the claimant alleges that she fears non-domestic sexual violence in Honduras and wrote about an attempted sexual assault in Honduras, I have considered the *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution*² in my assessment of the relevant facts. I recognize the difficulties faced by the claimant in establishing her claim in this regard. Being aware of the environment of the hearing room, I questioned the claimant with heightened sensitivity and avoided asking for unnecessary detail about the attempted sexual assault. In fact, I did not ask the claimant any direct questions about this allegation.

ALLEGATIONS

[3] The claimant is an 18 year old woman from Saba, Colon, Honduras who alleges that MS-13 wishes for her to become a “*jaina del la mara*” which she alleges means that she will have to engage in sexual activities with all MS-13 members.

[4] She claims that, in 2016, when she walked by members of MS-13, she would overhear them speaking about her beauty.

[5] The claimant alleges that on December 31, 2017, she was kidnapped and put in a room with a pad lock overnight. She claims that the members of MS-13 grabbed at her but, when she cried, they were told to stop by their leader.

[6] The next day, on January 1, 2018, a member of MS-13 let her escape because they had gone to school together. She claims that she ran away and went to stay with her cousin, who also lives in Saba.

[7] The claimant alleges that, about a week after her kidnapping, she went to live with her aunt in La Ceiba, Atlántida.

[8] The claimant left Honduras on XXXX XXXX XXXX 2018 and took a small bus which went through Guatemala, Mexico and eventually arrived in the United States of America on

XXXX XXXX XXXX 2018. The claimant alleges that she lived in the United States of America for six months and then entered Canada, making a claim for protection at the port of entry.

DETERMINATION

[9] I find that the claimant is not a Convention Refugee as she does not have a well-founded fear of persecution for a Convention ground in Honduras. Further, I find that she is not a person in need of protection as her removal to Honduras would not subject her, personally, to a risk to life, to a risk of cruel and unusual treatment or punishment or to a danger of torture.

ISSUES

[10] There are three issues in this claim:

- a. Has the claimant established her identity?
- b. Is there a nexus to the Convention?
- c. Is the claimant a credible witness?

ANALYSIS

Has the claimant established her identity?

[11] To establish her identity, the claimant has provided a certified true copy of her Birth Certificate to Canada Border Services Agency (CBSA)³ and her Student ID Card⁴ for one of the schools she went to while she lived, with her aunt, in La Ceiba. The claimant did not provide a Honduran passport because, as she explained, she never had one in the first place and made no efforts to get one from the Honduran Embassy in Ottawa.

[12] Counsel submitted that the claimant was unable to get a Honduran passport because she did not have a Honduran ID Card⁵ and, in turn, she was unable to get a Honduran ID Card outside of Honduras.⁶ I accept this explanation for why the claimant does not have either a Honduran passport or a Honduran ID Card.

[13] Therefore, I am left with the Honduran Birth Certificate and the claimant's testimony about her identity. I asked the claimant a number of questions about her background. She was consistent with respect to the spelling of her full name, her birth date, her age, where she was born, the spelling of her mother's full name, when her mother passed away, how her mother died, the spelling of her father's full name and his birth date. As Honduran citizenship is acquired by birth,⁷ and the claimant was born in Honduras and her testimony about her identity was consistent, I find, more likely than not, she is a Honduran citizen.

Is there a nexus to the Convention?

[14] The claimant fears MS-13, an international criminal gang that originated in the United States of America and became present in Honduras as a result of deportations. The claimant specifically fears becoming a "*jaina del la mara*," which, according to the objective documentary evidence, means "girlfriend."⁸ Therefore, the claimant's fear is based on her gender. I find that the claimant's fear is as a result of being a member of a particular social group based on her gender.

Is the claimant a credible witness?

[15] When a claimant swears that certain facts are true, this creates a presumption that they are true, unless there is valid reason to doubt their truthfulness.⁹ I find that, in this case, the claimant has not provided sufficient credible and trustworthy evidence to support her fear of returning to Honduras. I make this finding because: (1) the evidence with respect to the treatment she received from MS-13 prior to her alleged kidnapping was inconsistent; (2) her allegations with respect to her escape were vague, implausible and inconsistent; and (3) I do not find it credible that she would reside in the same small town she was kidnapped from, for about a week after her kidnapping when she had somewhere else to live.

Treatment from MS-13

[16] The claimant alleges, in her Narrative, that, when she walked home from school, members of MS-13 would comment about how beautiful she was.¹⁰ Likewise, in her testimony she stated that members of the MS-13 would tell her that she looked "pretty" and "hot." I asked the claimant whether the MS-13 ever did anything else other than shout out these compliments. The claimant testified that they did not. I asked the claimant to give me examples of things they would say to

her. The claimant testified that MS-13 said “Mommy, how hot you look,” “you’re so hot” and “you’re so fine.” I asked the claimant whether they ever said anything else. The claimant testified they only said things of a sexual nature.

[17] However, according to her father’s notarized letter, he states that, on several occasions, they tried to force her to leave with them, threatening her that, if she did not go with them, they would kill anyone who opposed them.¹¹

[18] I asked the claimant why her father would write that MS-13 threatened her with death on several occasions when she alleges that they merely catcalled at her. The claimant testified that she did not know why her father would do that but maybe MS-13 told him these things. I do not accept this explanation as there had been no allegation, prior to the claimant’s attempt to explain this inconsistency, that anyone in her family had been approached by MS-13, prior to her alleged kidnapping. I find that the claimant presented evidence, from her father, that was intended to embellish her claim. I give this letter no weight to establish the allegations the claimant has made.

Escape from MS-13

[19] First of all, the claimant’s testimony with respect to her kidnapping was largely a regurgitation of her Narrative. For example, when I asked her, open-endedly, to tell me about her kidnapping, she recited her Narrative, providing little, if any, additional detail. She even continued to deliver her Narrative, after answering my question, reciting things that happened that I did not ask her about. Another example is that when I asked the claimant what the milkman, the man who allegedly picked her up off the side of the road, looked like, she provided a vague description and then continued to regurgitate her Narrative. The claimant’s testimony seemed rehearsed and unnatural.

[20] The claimant alleges that, when she was kidnapped, she was taken to a warehouse and put in a room with no windows and an aluminum door, with a padlock that locked from the outside. She testified that the only thing in the room was a mattress. The claimant alleges that, in the morning, all of the MS-13 members left the warehouse, except for a boy she happened to go to school with, who was in her exact grade. However, she was not friends with this boy, did not have any classes with him, could not tell me who his friends were in school despite the fact that I asked her twice, could not remember when he dropped out of school and testified that she did not know

much about him. She claims that she begged this boy to help her and he eventually agreed. The claimant alleges that the boy gave her a wooden chair from the other room, told her to hit him with it and then run away. She claims that this is what she did to escape.

[21] I asked the claimant how she got the wooden chair. She testified that it was in the living room. I asked her how she would have gotten the wooden chair. She testified that, without help, she would not have been able to. I asked the claimant, given that the wooden chair was in the other room, would it not have been obvious, to the other members of MS-13, that he had helped her escape. The claimant reiterated that she could not have gotten out of there if he had not helped her.

[22] I find that, because it was both obvious to me and obvious to the claimant that she would have needed help to escape the way she says she did, that it would have been obvious to the members of MS-13 as well.

[23] Gangs, like MS-13, are reported to usually pursue and kill their own 'traitors,' including those that seriously breach the rules of the gang.¹² The family members of these 'traitors' are reportedly sometimes also the object of reprisals.¹³ The lengths to which gangs are reported to go to pursue perceived traitors is illustrated by the fact that nationals from Honduras who fled abroad because they were perceived as traitors by gangs in Honduras were reportedly killed within days of their repatriation to Honduras.¹⁴ Traitorous actions are a death sentence.¹⁵

[24] Given this context, I find it implausible that this boy, who barely knew the claimant, would risk his own death and revenge against his own family, to help her in such a way that would be obvious to anyone that he assisted in her escape.

[25] Further, the claimant could not really describe her escape from the warehouse. I asked her how she got out of the building. She reiterated that this boy helped her. I asked her how she physically got out. She testified that she hit him with the chair, he stayed and she started running. I asked her where she ran to. She testified that she went out the door. I asked her where the door was. She testified that she was right next to the living room, and then the door was in the living room. I had earlier asked the claimant whether she was taken to a house or a warehouse. She testified that it was a warehouse. So, I asked the claimant about the inconsistency between being

held in a warehouse and getting the wooden chair from living room and running through the living room. She explained that it was a warehouse that was like a house.

[26] I asked the claimant what she saw while she was running away. She testified that she ran and ran. I asked her to describe her surroundings. She testified that there were trees and hills. I asked her how she got to the road. She testified that she ran and ran and ran.

[27] I find that the claimant's testimony about her escape was vague and it evolved when the inconsistency about being held in a warehouse versus a house was put to her.

[28] I asked the claimant what she did once she got to the road. The claimant testified that she hid so that, if MS-13 drove by, they would not see her. I asked the claimant whether there were other vehicles driving along the road. She testified that there were a lot of vehicles but they would not stop for her. I asked the claimant whether she tried to get these other vehicles to stop for her. She demonstrated, in the hearing room, that she held out her hand. I asked about this inconsistency, specifically how she was able flag down these vehicles when she was hiding in the bushes. The claimant explained that, when a car came close, she would flag it down. I do not accept this explanation as it does not make practical sense that she would hide in the bushes when there were no vehicles and then go out to the road when one drove by, given that she was afraid of MS-13 driving by her and seeing her.

[29] To illustrate this, I asked the claimant how she would have known that the particular car she was attempting to flag down did not contain members of MS-13. The claimant explained that she had already seen that they drove a white van as that was the vehicle she was kidnapped in. I asked the claimant what she would have done if they happened to be driving something different. The claimant admitted that she would not have known the vehicle contained members of MS-13. I do not accept that the claimant, or anyone, would think all the members MS-13 drive the particular white van that she was allegedly kidnapped in.

Continued to Reside in Saba

[30] Lastly, after her escape, she allegedly remained in Saba for about a week, although she stayed with her cousin. Given that Saba is a fairly small municipality, I asked the claimant why she would continue to live in the same town she was recently kidnapped from. The claimant

explained that her cousin had a room she could stay in. I do not accept this explanation because the claimant had previously lived with her aunt in La Ceiba, Atlántida. She lived there from approximately XXXX of 2014 (when her mother passed away) to mid-2016. Therefore, when this kidnapping allegedly occurred, in December of 2016, she had returned to Saba somewhat recently. If the claimant had truly been kidnapped as she alleged, I am not persuaded that she would continue to live in Saba rather than go back to her aunt's home in La Ceiba, immediately. The fact that she claims she remained in Saba after allegedly being kidnapped diminishes the credibility that she was kidnapped at all.

[31] I find that the claimant's testimony with respect to her escape was vague, inconsistent and implausible. I also find it not to be credible that she would remain living in the same small municipality she was kidnapped from, when she had family, and had recently lived, in the third largest city in Honduras.¹⁶ I am not persuaded that she was ever kidnapped. I find that the claimant embellished her claim. And, while I accept that the claimant was likely catcalled by members of MS-13 as she walked home from school, I do not find that this rises to the level of persecution.

[32] I acknowledge that the claimant's three neighbours have written letters detailing how they assisted the claimant's father in looking for the claimant during her alleged kidnapping.¹⁷ Only one of these letters is notarized.¹⁸ While I have considered these letters, I find that their weight is diminished by the fact that the claimant's father already provided an embellished letter. Further, I note that the notarized letter from the neighbour was notarized by the exact same notary public as the one who notarized the father's letter and they were done within one day of each other. I give these letters limited weight and find that they do not overcome my credibility concerns detailed above.

[33] Further the claimant has provided a letter from a counsellor dated March 22, 2019, three days before the first sitting of this hearing.¹⁹ This letter states that the claimant is exhibiting symptoms of anxiety and depression. While I have considered this letter, there are a number of problems with it. First of all the claimant testified, on March 25, 2019, that she had seen this counsellor approximately six times; however, the letter states that the counsellor has only seen her once. I asked the claimant about this inconsistency and she did not know the reason for it. The letter also states twice that the claimant is from El Salvador; however, she is from Honduras. I

asked the claimant about this inconsistency and she did not know the reason for it. Due to these two inconsistencies, I give this letter no weight. In any event, the letter does not describe any difficulties the claimant may have in testifying before the Refugee Protection Division nor does it explain why the claimant's testimony was vague, inconsistent and implausible.

[34] I have also considered the fact that the claimant would have been 15 years old, about to turn 16 approximately one month later, when the kidnapping allegedly occurred. I have considered that, in general, children are not able to present evidence with the same degree of precision as adults with respect to context, timing, importance and details.²⁰ However, the claimant was not a young child when this occurred, she was a teenager and she is now an adult. While the claimant may still have been maturing at the time this incident occurred, I find that her age would not have severely impacted her story to the extent of making it inconsistent and implausible.

[35] Given that (1) the evidence with respect to the treatment the claimant received from MS-13 prior to her alleged kidnapping was inconsistent; (2) her allegations with respect to her escape was vague, implausible and inconsistent; and (3) I do not find it credible that the claimant continue to reside in the same small town she was kidnapped from, I find that the kidnapping did not occur. Therefore, I find that she has not provided sufficient credible and trustworthy evidence to support her fear of returning to Honduras.

CONCLUSION

[36] I find there is not a serious possibility that the claimant will be persecuted in Honduras, or that, on a balance of probabilities, she will be personally subjected to a danger of torture or face a risk to life, or a risk of cruel and unusual treatment or punishment if returned to Honduras. Accordingly, her claim for refugee protection is rejected.

(signed)

“M. A. McColl”

M. A. McColl

July 15, 2019

Date

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c.27, as amended, sections 96 and 97.

² *Women Refugee Claimants Fearing Gender-Related Persecution: Update*, Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act, IRB, Ottawa, November 25, 1996, as continued in effect by the Chairperson on June 28, 2002, under the authority found in section 159(1)(h) of the Immigration and Refugee Protection Act.

³ Exhibit 1, Birth Certificate; Exhibit 5, Birth Certificate Translation.

⁴ Exhibit 5, Student ID Card.

⁵ Exhibit 3, National Documentation Package, Honduras, 29 March 2019, tab 3.1: Honduras. U. S. Visa: Reciprocity and Civil Documents by Country. United States. Department of State.

⁶ Exhibit 3, National Documentation Package, Honduras, 29 March 2019, tab 3.3: Procedure for obtaining an identity card (tarjeta de identidad) and information that appears on such a card (January 2011-December 2015). Immigration and Refugee Board of Canada. 1 December 2015. HND105350.E.

⁷ Exhibit 3, National Documentation Package, Honduras, 29 March 2019, tab 3.2: Title II, Chapter I of the Constitution of the Republic of Honduras, 2013. Immigration and Refugee Board of Canada. 18 November 2013. HND104659.E.

⁸ Exhibit 3, National Documentation Package, Honduras, 29 March 2019, tab 7.3: Gangs in Honduras. InSight Crime. 21 April 2016.

⁹ *Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 F.C. 302 (C.A.).

¹⁰ Exhibit 2, Narrative; Exhibit 8.

¹¹ Exhibit 6, Letter from XXXX XXXX XXXX XXXX.

¹² Exhibit 3, National Documentation Package, Honduras, 29 March 2019, tab 1.5: UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Honduras. United Nations High Commissioner for Refugees. 27 July 2016.

¹³ Exhibit 3, National Documentation Package, Honduras, 29 March 2019, tab 1.5: UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Honduras. United Nations High Commissioner for Refugees. 27 July 2016.

¹⁴ Exhibit 3, National Documentation Package, Honduras, 29 March 2019, tab 1.5: UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Honduras. United Nations High Commissioner for Refugees. 27 July 2016.

¹⁵ Exhibit 3, National Documentation Package, Honduras, 29 March 2019, tab 14.2: Characterization of Internal Displacement in Honduras. Inter-Agency Commission for the Protection of Persons Displaced by Violence. November 2015.

¹⁶ Exhibit 3, National Documentation Package, Honduras, 29 March 2019, tab 7.3: Gangs in Honduras. InSight Crime. 21 April 2016.

¹⁷ Exhibit 7.

¹⁸ Exhibit 7, Letter from Juan Antonio Cano.

¹⁹ Exhibit 9.

²⁰ *Chairperson Guideline 3: Child Refugee Claimants: Procedural and Evidentiary Issues*, Guidelines issued by the Chairperson pursuant to Section 65(3) of the Immigration Act, Effective date: September 30, 1996.