



RPD File No. / N° de dossier de la SPR : MB7-14005
UCI / IUC : XXXX

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	XXXX XXXX	Demandeur(e)(s) d'asile
Date(s) of hearing	December 21, 2020	Date(s) de l'audience
Place of hearing	Held by videoconference – MS Teams	Lieu de l'audience
Date of decision and reasons	January 22, 2021	Date de la décision et des motifs
Panel	François Richard-Vézina	Tribunal
Counsel for the claimant(s)	Brice Haziél Samba	Conseil(s) du (de la/des) demandeur(e)(s) d'asile
Designated representative	N/A	Représentant(e) désigné(e)
Counsel for the Minister	N/A	Conseil du (de la) ministre

REASONS FOR DECISION

INTRODUCTION

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

DETERMINATION

[2] The panel determines that the refugee protection claimant is neither a “Convention refugee” under section 96 of the IRPA nor “a person in need of protection” within the meaning of subsection 97(1) of the IRPA for the following reasons.

ALLEGATIONS

[3] The claimant alleges that, if she were to return to Haiti, she would be killed or raped by criminals because she is a woman and would be returning from abroad. She also alleges that she is a single woman.

[4] In her Basis of Claim Form (BOC Form), the claimant alleges that criminals attempted to rob and rape her on several occasions, but she does not provide a specific date or details about any particular incident.

[5] The claimant left Haiti for the United States on XXXX XXXX, 2017. She arrived in Canada on XXXX XXXX, 2017, and claimed refugee protection here on September 14, 2017.

ANALYSIS

[6] Over the course of the hearing and during its analysis, the panel took into account Chairperson’s *Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution*.¹

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

Identity

[7] The panel concludes that the refugee protection claimant's identity has been established, on a balance of probabilities, by her Haitian passport.²

Section 96 – Nexus

[8] The claimant alleges that she fears she will be persecuted because she is a woman. Taking into account all of the evidence, the panel concludes that she has established a nexus to one of the Convention grounds, namely, persecution by reason of her membership in the particular social group of Haitian women. Therefore, the panel reviewed the refugee protection claim with regard to section 96 of the IRPA.

[9] The claimant also alleges that she fears being killed or raped on the basis of being a member of the Haitian diaspora returning from abroad, so the panel also reserved a section at the end of its analysis to review this question in relation to section 96.

Determinative issue

[10] The panel considers that the determinative issue in this case is credibility.

Credibility

[11] After considering all of the evidence, the panel finds that significant elements of the claimant's testimony are not credible. The panel's finding is based on cumulative contradictions and omissions in her testimony.

[12] The panel took into account the principle whereby sworn testimony is presumed to be true. However, the panel concludes that the omissions, inconsistencies and contradictions in the claimant's testimony have not been reasonably explained and that their cumulative nature has resulted in the displacement of the presumption.

[13] The panel identified numerous credibility issues in the claimant's testimony. The main issues are as follows.

² Document 1 – Information package provided by the Canada Border Services Agency and/or Immigration Refugees and Citizenship Canada: Copy of passport.

Repeated attacks

[14] The panel identified a major contradiction between the claimant's BOC Form and her testimony at the hearing with regard to the attacks she allegedly suffered while she was in Haiti.

[15] In her BOC Form, the claimant states that she was the victim of repeated theft and rape attempts by criminals but does not make reference to a specific incident. However, in her testimony at the hearing, she stated that she had not had any problems with criminals apart from one occasion, on XXXX XXXX, 2004, when criminals had allegedly entered her home to rob her.

[16] The panel asked the claimant whether she had had any problems with the criminals other than the incident of XXXX XXXX, 2004. She stated that, sometimes, as she was leaving work, there had been noises in the neighbourhood that prevented her from returning home. The panel asked the claimant why she wrote in her BOC Form that she had been the victim of repeated theft and rape attempts but only made reference to a single incident in her testimony. She stated that a person who lives alone has no protection but did not provide an explanation regarding the contradiction.

[17] The panel cannot accept the claimant's explanations, which it considers to be unreasonable. At the beginning of the hearing, she stated that the information in her BOC Form was complete, true and correct. In her BOC Form, she does not refer to any incident in particular but states that she was subjected to repeated theft and rape attempts by criminals and that, due to these incidents, she would not be safe in Haiti. However, during her testimony, she only made reference to a single incident that occurred on XXXX XXXX XXXX 2004. She was unable to describe any other incidents that could constitute repeated theft and rape attempts, despite the panel, through its questioning, giving her several opportunities to do so. She stated that she had sometimes heard noises when leaving work. However, further to the panel's questions, it concludes that she failed to establish how these noises could have constituted attempted theft or rape or how they could have been targeting her personally.

[18] In the panel's opinion, if the claimant had been the victim of repeated theft and rape attempts, it would be reasonable to expect her to be able to describe several incidents involving attempted theft and rape or to provide a reasonable explanation as to why she only described a single incident in her testimony. However, she failed to provide any explanation even though the

panel gave her several opportunities to do so. The panel considers it unreasonable that, in her BOC Form, she states that she had been the victim of repeated theft and rape attempts by criminals if she had only been the victim of a single incident on XXXX XXXX, 2004.

[19] During her testimony, the claimant described the incident that had allegedly taken place on XXXX XXXX, 2004. She stated that she had heard some noise and had gone to hide under her bed while criminals burglarized her home. She alleged that the criminals left when they heard her neighbours shouting. During her testimony about this incident, she stated that the criminals had not had any contact with her because she had remained hidden. In the panel's opinion, her testimony reveals that this incident could constitute attempted theft but not attempted rape. However, in her BOC Form, she states that she had not only been the victim of attempted theft but also of attempted rape. Since the only incident she made reference to in her testimony was a burglary and since the criminals had no contact with her because, according to her, she had remained hidden, the panel considers it all the more unreasonable that, in her BOC Form, she states that she was the victim of repeated theft and rape attempts, if the only incident she describes in her testimony is a theft.

[20] This contradiction is about more than just a detail in the claimant's written account. Indeed, the repeated theft and rape attempts are the only events alleged in her BOC Form to explain her fear of the criminals in general. Therefore, this element is central to her written account. In the panel's opinion, her testimony at the hearing should not significantly contradict the only events alleged in her BOC Form concerning her fear of the criminals or she should be able to explain the contradiction in a reasonable manner, which was not the case.

[21] Owing to this contradiction, the panel considers that the claimant failed to establish, on a balance of probabilities, that she was subjected to repeated theft and rape attempts by criminals. The panel concludes that the contradiction undermines her overall credibility. However, that is not all.

The attacks of XXXX XXXX, 2004

[22] The panel identified a significant omission in the claimant's BOC Form with regard to the incident of XXXX XXXX XXXX 2004.

[23] In her testimony at the hearing, the claimant stated that the criminals had entered her home to rob her on XXXX XXXX, 2004. No reference is made to this incident in her BOC Form, which only makes general references to repeated theft and rape attempts but does not describe any incident in particular.

[24] The panel asked the claimant why she did not make reference to the incident of XXXX XXXX, 2004, in her BOC Form. She stated that she did not refer to it because she had truly experienced the incident.

[25] The panel cannot accept the claimant's explanation, which it considers unreasonable. At the beginning of the hearing, she stated that the information in her BOC Form was complete, true and correct. In her testimony at the hearing, she described the incident and was able to state the specific date on which it took place. She also provided details, including her statement that she had remained hidden under her bed and that her neighbours had caused the criminals to flee. However, none of this information is provided in her BOC Form.

[26] As she was able to provide details concerning the incident during her testimony at the hearing, the panel would expect that a person who had experienced the alleged events would describe the incident in her BOC Form or provide a reasonable explanation as to why the incident was not described in it. However, she failed to provide any explanation, stating only that the incident was not included because she had truly experienced it.

[27] Furthermore, as it is the only incident she described in her testimony concerning her fear of the criminals, the panel is even more inclined to expect it to be specifically described in her BOC Form. The panel understands that a refugee protection claimant may forget some secondary details or incidents while filling out a BOC Form. However, in this case, the claimant did not forget certain secondary details or incidents. In her original BOC Form, she makes no reference to the incident, which, according to her own testimony, was the only incident during which she had problems with the criminals. Therefore, the panel concludes that this omission is significant, as it pertains to the only incident that the claimant made reference to in her testimony concerning her fear of the criminals.

[28] Therefore, by reason of this omission, the panel concludes that the claimant failed to establish, on a balance of probabilities, the occurrence of the incident on XXXX XXXX, 2004. The panel concludes that this omission undermines her overall credibility.

Moves

[29] The panel identified a significant contradiction between the claimant's BOC Form, testimony at the hearing, and her Schedule A³ with regard to her move from the house where she lived in Port-au-Prince.

[30] In her BOC Form, the claimant states that she had moved to her parents' home to take refuge before leaving Haiti but she does not provide any other details about the move. In her testimony, she instead stated that she had lived in her house on XXXX XXXX XXXX in Port-au-Prince from 1998 to 2017. She also stated that her parents resided in XXXX.

[31] The panel asked the claimant when she had moved to her parents' home. She was unable to provide a date and stated only that she [translation] "went back and forth" between her home and her parents' home. The panel then asked her to provide the duration of her longest stay at her parents' home. She responded that she was unable to provide a duration for her stays at her parents' home. She then adjusted her response and stated that she had lived at her parents' home from 2010 to 2015. The panel asked her why she had testified that she lived on XXXX XXXX XXXX from 1998 to 2017 but had then stated that she lived at her parents' home in XXXX from 2010 to 2015. She stated that she had to return to XXXX XXXX XXXX from time to time.

[32] The panel then drew her attention to Schedule A.⁴ In this document, she states that she lived on XXXX XXXX XXXX in Port-au-Prince from XXXX 2007 to XXXX 2009, and from XXXX 2017 to XXXX 2017. She then states that she lived on XXXX XXXX in Port-au-Prince from XXXX 2010 to XXXX 2013. She states that she only lived in XXXX from XXXX 2013 to XXXX 2014, and from XXXX 2014 to XXXX 2016. In her testimony, she never indicated that she had moved to XXXX XXXX. When the panel asked her to explain the difference between her testimony and the addresses in her Schedule A, she adjusted her testimony and stated that her

³ *Supra*, footnote 2 – IMM 5669.

⁴ *Idem*.

house on XXXX XXXX XXXX had been destroyed by the earthquake in 2010—information she had never previously indicated in her testimony or BOC Form. When the panel asked her to explain why she had not referred to this move previously, she stated that she had forgotten about it.

[33] The panel rejects this explanation, which it considers unreasonable. In her initial testimony and her BOC Form, the claimant stated that she had moved from her home to her parents' home because of her fear. She does not make any reference, in her initial testimony or BOC Form, to her house on XXXX XXXX XXXX being destroyed by the earthquake or to that being the reason why she had left. It was only when the panel asked her about the contradictions between her BOC Form, testimony and Schedule A that she adjusted her testimony and stated that she had moved from her home due to the earthquake. If the real reason for her move was that her house had been destroyed by the earthquake, the panel considers it unreasonable that, in her testimony and BOC Form, she stated that she had moved from her home due to her fear.

[34] This contradiction is significant, because her move to her parents' home is the only measure she took to protect herself from the criminals, according to her BOC Form. The claimant stated that she did not go to the police to ensure her safety. However, her testimony revealed that the reason for her move was not her fear of the criminals but rather the destruction of her house by the earthquake. Her testimony also revealed that the date of her move to her parents' home has not been established, on a balance of probabilities, because she adjusted the dates based on the panel's questions and was unable to provide details as to the duration of her stays. In the panel's opinion, it is especially important that the claimant give testimony that is consistent with her BOC Form and Schedule A with regard to these moves, because her move to her parents' home is the only measure she took to ensure her safety in Haiti while she feared for her life. However, the panel concludes that the credibility of her testimony with regard to her moves has been undermined by the contradictions between her testimony, BOC Form and Schedule A.

[35] In light of the foregoing, the panel concludes that the claimant failed to establish, on a balance of probabilities, that she moved to her parents' home to take refuge from the criminals.

Return trips to Haiti

[36] The panel identified a significant contradiction in the claimant's testimony with regard to her return trips to Haiti.

[37] In her testimony at the hearing, the claimant stated that she had begun to fear for her life in 1992 when criminals had arrived in the neighbourhood. However, according to Schedule A, the panel notes that she took two trips to the United States from XXXX 2013 to XXXX 2013, and from XXXX to XXXX 2014.⁵ In her testimony, she instead stated that her second trip to the United States had been from XXXX to XXXX 2015.

[38] The panel asked the claimant why she had returned to Haiti following her two trips to the United States, considering her statement that she had feared for her life since 1992. She stated that she had not yet decided to settle outside of Haiti. The panel asked her what had changed between her return trips to Haiti and her final departure in XXXX 2017 that had resulted in her deciding to leave Haiti permanently. She stated that the social situation in Haiti had deteriorated following her return in XXXX 2015.

[39] The panel cannot accept the claimant's explanation, which it considers unreasonable. During her testimony at the hearing, she stated that she had feared for her life since 1992. Although she was able to leave the country to travel to the United States, where she did not apply for asylum, she returned to Haiti twice, in 2013 and 2015, which contradicts her statement that she had feared for her life since 1992. The panel would therefore expect her to be able to provide a reasonable explanation as to why she returned to Haiti twice after managing to leave the country to travel to the United States.

[40] The claimant stated that she had not decided to leave Haiti permanently until 2017. She then stated that she had decided to leave the country permanently in 2017 because the situation in Haiti had deteriorated following her visit in 2015. However, in her initial testimony and her BOC Form, she stated that she had decided to leave Haiti and claim refugee protection in Canada due to her fear of the criminals, not the social situation. Between her return trips to Haiti in XXXX 2013 and XXXX 2015, and her final departure from Haiti in 2017, no incidents involving the criminals took place other than the one she alleges to have occurred on XXXX XXXX XXXX 2004. The panel concludes that if she had truly left Haiti to flee from the criminals she feared, as she stated in her BOC Form and testimony, she would have provided a reasonable explanation as to why she had returned after managing to leave the country that would relate to

⁵ *Idem.*

the criminals she allegedly fears. However, to explain why she had returned to Haiti twice and not left the country until 2017, she provided an explanation unrelated to the criminals, one relating instead to the deterioration of the general situation in Haiti.

[41] By reason of this contradiction, the panel concludes that the claimant failed to provide a reasonable explanation for twice returning to Haiti, in XXXX 2013 and XXXX 2015. In the panel's opinion, her behaviour is inconsistent with that of a person who fears for her life and it undermines the credibility of her fear. By reason of this contradiction and the aforementioned credibility issues, the panel finds that the claimant's credibility has been undermined to such an extent that she cannot be considered a credible witness.

Underlying profile as a single woman

[42] The claimant also submitted that she fears for her life should she return to Haiti because she is a single woman.

[43] In question 5 of her BOC Form, the claimant states that she has two brothers, XXXX XXXX XXXX and XXXX XXXX, who live in Haiti. She also states that her father and mother, whom she allegedly moved in with to take refuge, still live in Haiti. When the panel asked her why she could not move in with her brothers or move back into her parents' home to live safely in Haiti, she simply responded that they were subject to the same crime situation in Haiti.

[44] In *Josile*,⁶ the Federal Court justice set out the criteria that should be taken into consideration when a Haitian woman alleges that she fears gender-related persecution. Criteria to be considered include the presence of males in the family, the availability of state protection, the location where the claimant will live and her particular circumstances.

[45] In the panel's opinion, the claimant failed to provide any reasonable explanation for not being able to move in with her parents or brothers. Furthermore, in her BOC Form, she alleges that she had been able to take refuge in her parents' home. She also testified that she had been able to return to her parents' home during her two return trips to Haiti in 2013 and 2015 following her stays in the United States. In addition, she testified that the house she had lived in on XXXX XXXX XXXX in Port-au-Prince belonged to her brother-in-law and that it had been rebuilt

⁶ *Josile, Duleine v. M.C.I.* (F.C., No. IMM-3623-10), Martineau, January 18, 2011; 2011 FC 39.

following its destruction in the 2010 earthquake. Furthermore, in Schedule A, she stated that she had lived in that house from XXXX 2017 to XXXX 2017.⁷

[46] She did not state that she would be unable to find work. In Schedule A, she states that, after high school, she obtained a diploma in XXXX in 1998, a diploma in XXXX XXXX in 2001, a diploma in XXXX in 2005 and a certificate for studies in XXXX XXXX in 2006.⁸ She also states that she gained work experience in XXXX from XXXX 2007 to XXXX 2009, and as a XXXX XXXX for a project from XXXX 2009 to XXXX 2011.⁹ In the panel's opinion, these elements support the conclusion that she would be able to find work if she were to return to Haiti.

[47] In light of the foregoing, the panel concludes that the claimant failed to establish, on a balance of probabilities, that she fits the underlying profile of a single woman, which could have subjected her to a serious possibility of persecution if she were to return to Haiti.

Member of the Haitian diaspora returning from abroad

[48] The claimant also stated that she fears being killed or raped due to being a member of the Haitian diaspora returning from abroad. She stated that she would be perceived as a person who has a lot of money. However, the panel notes that she took two trips to the United States from XXXX 2013 to XXXX 2013, and from XXXX to XXXX 2015. Following these two stays in the United States, she moved back to Haiti. As noted previously, she did not allege that any incident had taken place during her two return trips to Haiti that would establish that she had been targeted due to being perceived as a person who has a lot of money. In the panel's opinion, the fact that no incident took place during her past return trips to Haiti supports the conclusion that no incident would occur if she were to return to Haiti now.

[49] There is documentary evidence that middle-class and affluent Haitians, which may include members of the diaspora, may have a higher risk of victimization by criminals than low-income Haitians.¹⁰ However, the evidence is contradictory in this regard as it also states that the most

⁷ *Supra*, footnote 2 – IMM 5669.

⁸ *Idem*.

⁹ *Idem*.

¹⁰ Document 3 - National Documentation Package, Haiti, 1 September 2020, Tab 14.1: Response to Information Request HTI200334.FE, IRB, 27 August 2020.

frequent victims of crime are Haitians who are poor.¹¹ The evidence reports that the risk of criminal victimization is not limited to members of the diaspora but is shared by everyone who appears to be wealthy and who attracts attention to themselves.¹² It states that people who linger in the vicinity of airports and who do not pay attention to their safety are more likely to be victims of crime.¹³ It concludes that it is difficult to assess the level of danger because specific circumstances, such as the activity level of criminals who are pursuing someone, are a significant factor.¹⁴

[50] The panel concludes that the claimant failed to establish how her profile is consistent with that of a person who would be pursued by criminals upon returning to Haiti. As noted previously, she failed to establish the occurrence of any event that would make it possible to establish that she was ever targeted by criminals. Furthermore, she was able to return to Haiti twice following stays in the United States spanning several months and did not allege that any incidents had occurred. The only element that she made reference to in her testimony was that she would be perceived as someone who has a lot of money. In the panel's opinion, the documentary evidence reveals that simply returning to Haiti from abroad is not sufficient to establish that a person is subject to a serious possibility of being targeted by criminals. The panel considers that there should be specific circumstances that warrant applying the profile of a member of the Haitian diaspora returning from abroad, and that is not the case here. The panel concludes that the claimant failed to establish that she would face a serious possibility of persecution if she were to return to Haiti by reason of her membership in the Haitian diaspora.

CONCLUSION

[51] After examining all of the evidence, the panel concludes that the refugee protection claimant failed to establish that she would face a serious possibility of persecution 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 Haiti.

¹¹ *Idem.*

¹² *Idem.*

¹³ *Idem.*

¹⁴ *Idem.*

[52] The panel determines that the refugee protection claimant is neither a “Convention refugee” under section 96 of the IRPA nor a “person in need of protection” within the meaning of subsection 97(1) of the IRPA.

[53] The refugee protection claim is therefore rejected.

François Richard-Vézina

January 22, 2021

IRB translation
Original language: French