



Refugee Protection Division

Section de la protection des réfugiés

RPD File No. / N° de dossier de la SPR : MB7-05826

MB7-05830 MB7-05842 MB7-05843

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

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)

Demandeur(e)(s) d'asile

XXXX XXXX XXXXXXXXXX XXXX XXXX XXXX
XXXXXXXX XXXX XXXXXXXXXX XXXX

Date(s) of hearing

Date(s) de l'audience

June 28, 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

Marie-Claude Yaacov

Counsel for the claimant(s)

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

François Jean Denis

Designated representative

Représentant(e) désigné(e)

N/A

Counsel for the Minister

Conseil du (de la) ministre

N/A

REASONS FOR DECISION

[1] XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX, all citizens of Haiti and all adults at the time of the hearing, are claiming refugee protection under sections 96 and 97 of the *Immigration and Refugee Protection Act* (IRPA).

DETERMINATION

[2] The principal claimant owned a business in downtown Port-au-Prince, not far from Cité Soleil. The principal claimant and his spouse, XXXX, planned and carried out with the police the capture of armed criminals who were trying to extort them. The criminals uttered death threats against them when they were arrested on March 27, 2017; the next day criminals fired shots in front of their store, swearing to kill them that same day. The claimants contacted the police for help, but the police did not show up, leaving the criminals free. The claimants went to live with a friend in Clercine. Meanwhile, their shop was burglarized. They also received threatening calls. The police remained deaf to their requests for protection, and in April, they purchased airplane tickets for the first available flight to Canada, that of XXXX XXXX XXXX XXXX. They asked a neighbour to have a statement drawn up by a justice of the peace. During the night of April 22 to 23, 2017, criminals attempted to break into the claimants' home to kill them. According to the report from the neighbours, they fired shots in all directions, calling out the names of the claimants.

[3] On XXXX XXXX XXXX XXXX, the claimants left Port-au-Prince for Montréal. They filed their claims for refugee protection in Canada on June 2, 2017.

[4] After they left, the criminals continued to search for them. In July 2017, their friend received threats and learned that the three criminals arrested at the claimants' shop had been released and had sworn to seek revenge. In December 2017, following rumours about the imminent deportation of Haitians living temporarily in the United States, criminals went to the home of the male claimant's sister, believing that she was hiding the claimants. They threatened to kill her if she tried to protect the claimants. On May 9, 2018, four armed criminals on motorcycles arrived at the home where the claimants were living before they left. When they found no one there, they approached the claimants' neighbour to ask her when the claimants

would be back because they wanted to punish them for their arrest. They fired shots into the air as they left.

[5] The claimants fear returning to Haiti, because they have received recent and real threats. The criminals are extremely organized and are waiting for them in order to kill them as revenge.

DETERMINATION

[6] The claimants are neither Convention refugees nor persons in need of protection under sections 96 and 97 of the IRPA.

ANALYSIS

Identity

[7] The claimants established their identity with their passports.¹

Credibility

[8] Inconsistencies and contradictions were noted between the testimonies and the supporting evidence. Moreover, the supporting evidence they presented to corroborate their allegations was not reliable and contained inconsistencies.

[9] According to the testimonies of the principal claimant and the claimant XXXX XXXX the criminals visited them at their shop on March 25, 2017. They allegedly went to the police to make a complaint that same day and, on the spot, a plan was devised between them and the police for the capture of the criminals two days later.

[10] According to the principal claimant's testimony, the plan was carried out without a hitch on March 27, 2017. Police officers in plain clothes posing as clients were inside the business when the criminals arrived. They intervened to arrest the criminals when the latter verified the contents of the envelope with money that the principal claimant had given them. The police in plain clothes were supported by another unit of police officers who were there as backup. They arrested the criminals and left with them.

¹ Exhibit 2: Certified copies of the passports.

[11] According to the claimants' testimony, however, after the criminals were apprehended, the police did not follow up with them for their investigation needs or to protect them from other members of the gang.

[12] To substantiate their allegations that they had tried to extort them, the principal claimant and the claimant XXXX presented a document with the title "Feuille de plainte" [complaint form]. That document is dated March 25, 2017.² The printed part of the document contains numerous errors and the type of form used for the complaint is for complaints of gender-based violence. The seal affixed is also that of the gender violence unit. The panel is of the opinion that it is unlikely that that document was created in the circumstances described by the principal claimant and the claimant XXXX XXXX

[13] With respect to the allegations regarding the arrest of the criminals in their shop, the principal claimant testified that he withdrew \$1,000 from his bank account on March 27, 2017, and that he redeposited that amount in his bank account on March 28, 2017. Yet, he did not submit his bank account statement to corroborate those transactions. He explained that he had not sought to obtain it. Those transactions could, however, have established a very relevant element of the allegations.

[14] According to the principal claimant's testimony, when his shop was burglarized, he asked his neighbour to call a justice of the peace to have a statement drawn up. To support his allegations, the principal claimant presented an extract from the registry records³ (the extract). That extract, dated March 2017, contains a paragraph that is unrelated to the others, which mentions that criminals [translation] "came to my home to kill my daughter and family members." The panel is of the opinion that that document is unreliable and it gives it no probative value.

[15] The testimony of the principal claimant and his spouse XXXX XXXX were not supported by any reliable documentary evidence. The documentary evidence submitted in support of the events that gave rise to the claimants' refugee protection claims instead undermines their

² Exhibit 5 – Tab C-04: Complaint of March 25, 2017.

³ Exhibit 5 – Tab C-05: Report of March 29, 2017.

credibility. Lastly, the panel finds the testimony from the principal claimant and the claimant XXXX about the circumstances in which the criminals were arrested to be implausible.

[16] The panel is of the opinion that the claimants have not established, on a balance of probabilities, that the events on which they have based their refugee protection claims occurred.

[17] In the circumstances, the panel gives no probative value to the letters signed by XXXX XXXX⁴ and XXXX XXXX XXXX XXXX⁵ and is of the opinion that the claimants have not established, on a balance of probabilities, that criminals who were looking for them before they left Haiti in May 2017 have continued searching for them.

[18] The panel also considered the possibility that the female claimants would be sexually assaulted if they were to return to Haiti, and thus took into account *Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution*.⁶ The claimants, parents and children, lived in Haiti together and they left Haiti together. According to the principal claimant's account, the female claimant XXXX and he ran the family business together. There was also no mention in the claimants' account of any previous problems related to the female claimants' gender. The claimants lived in a fixed home and the panel is of the opinion that if the female claimants were to return to Haiti today, they could continue to live at a fixed address with the principal claimant.

CONCLUSION

[19] Since the claimants have failed to establish, on a balance of probabilities, that the events they allege gave rise to their departure from Haiti occurred, the panel finds that they have failed to establish that they would be targeted by criminals seeking vengeance against them if they were to return to Haiti today.

[20] The female claimants, for their part, have not established more than a mere possibility that they would persecuted simply because they are women if they were to return to Haiti.

⁴ Exhibit 5 – Tab C-06: Letter from XXXXXX XXXXXX + identity document.

⁵ Exhibit 5 – Tab C-07: Letter from XXXXX XXXXXX XXXXX + identity document.

⁶ Effective date: November 13, 1996.

[21] For all these reasons, the panel finds that the claimants have failed to establish a serious possibility of persecution if they had to return to Haiti. They have also failed to establish, on a balance of probabilities, that they would be subjected to a danger of torture, to a risk to their life, or to a risk of cruel and unusual treatment or punishment.

[22] Their claims for refugee protection are rejected.

(signed by) Marie-Claude Yaacov
Marie-Claude Yaacov
October 24, 2018
Date

IRB translation

Original language: French