



RPD File No. / N° de dossier de la SPR : VB8-03928
Client ID No. / No ID client : XXXX

Huis clos / Private Proceeding

Reasons and Decision – Motifs et décision

Claimant(s) XXXX XXXX XXXX Demandeur(e)(s) d'asile

Date(s) of hearing May 1, 2019 Date(s) de l'audience

Place of hearing Heard by videoconference in
Calgary, AB (Claimant) and Vancouver, BC (RPD) Lieu de l'audience

Date of decision
and reasons May 15, 2019 Date de la décision
et des motifs

Panel Janko Predovic Tribunal

Counsel for the claimant(s) N/A 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] This is the decision of the Refugee Protection Division (RPD) in the claim for protection of XXXX XXXX XXXX (“Mr. XXXX” or the “claimant”), a citizen of Jamaica. He claims protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA).¹

PRELIMINARY MATTERS

[2] The claimant had intended to call three witnesses to testify at the hearing. I noticed that the “will-say” statements of all three witnesses were identical, and the evidence that they were to give would be primarily, if not exclusively, pertinent to credibility. As the claimant’s credibility was not in question by the time the witnesses were to be called, the claimant elected to call only one witness to testify, which she did, by telephone.

ALLEGATIONS

[3] The following is a brief synopsis of the claimant’s narrative and allegations.

[4] The claimant is a XXXX who used to work for the Jamaican XXXX in the field of XXXX, XXXX XXXX XXXX XXXX. He believes that if he returns to Jamaica, he will be exposed to high levels of violent crime, and his young son, who still resides there, will be denied opportunities on account of growing up in a crime-prone society. As examples of the crime and violence in Jamaica, the claimant cites that he had a very close friend and business partner, whom he considered a brother, and whom was murdered by gunshots on XXXX XXXX, 2019. Further, the claimant’s mother witnessed a gunfight between gangsters in her community in Jamaica sometime between 2010 and 2012. As a consequence of that gunfight, the claimant believes there is a possibility that the gangsters involved would want to harm family members of any witnesses to the gunfight, so he is at risk.

[5] The claimant's good friend and business partner who was murdered was a man named XXXX XXXX ("Mr. XXXX"). Though the claimant cannot be certain, he believes Mr. XXXX murder was the result of general crime, and he does not attribute it to any specific person or group. The claimant and Mr. XXXX considered themselves brothers and were often seen together. Because the gang culture in Jamaica is one that fetishizes revenge, the claimant fears that if he returns to Jamaica, the men who killed Mr. XXXX will assume that he has returned to exact revenge against them for the death of Mr. XXXX – and therefore, they will act to kill the claimant before he has an opportunity to retaliate against them.

[6] Further, the claimant fears the harm that may come to him at the hands of his former boss, a man named XXXX XXXX ("Mr. XXXX"), who was the XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX. The claimant worked there under this man between XXXX of 2007 and XXXX of 2018.

[7] Mr. XXXX was a corrupt and influential figure who would throw his weight around and pull strings to get whatever he wanted. He knew the machinations of government and he used others as he saw fit to take things for himself whenever he wanted. He said things like "when a man wronged me over XXXX XXXX XXXX XXXX, I made sure he couldn't wrong anybody else." Mr. XXXX also said he had access to thugs, whom he called "prayer warriors", because, as the claimant said Mr. XXXX had explained, "when [Mr. XXXX] called them, neither God nor prayer would save you." One time, Mr. XXXX personally threatened the claimant for selling XXXX XXXX after work hours without permission. According to the claimant, this was Mr. XXXX way of "softening up [the claimant] to show how much power he had." Mr. XXXX would also say things like "I could tell you what I know, but if I did, I would have to kill you" and "I value loyalty over competence." He used loyalty and favours to bend others to his will.

[8] According to the claimant, what Mr. XXXX said in some circumstances could be considered to be proper threats, and in other circumstances, it could be considered as the blowing hot air to make Mr. XXXX appear more powerful. It was not quite clear to the claimant at the time.

[9] Mr. XXXX became aware of some marital problems that the claimant was having in 2016 and made some lewd comments to the claimant. In the first quarter of 2017, Mr. XXXX increased the aggressiveness of his comments and made unwelcome sexual advances toward the claimant. When those advances were not reciprocated, Mr. XXXX threatened the claimant's job security with the government throughout the whole of the country as retaliation. The claimant took this seriously, because he had heard of others whose careers Mr. XXXX had derailed.

[10] The claimant never took his concerns about his safety or Mr. XXXX to the police or other authorities, because as he put it, "that would have been career suicide." He also never tried to flee to safety elsewhere within Jamaica because the dangers owing to crime are the same all over the country. That is why the claimant left Jamaica on XXXX XXXX, 2017. In XXXX of 2018, he resigned his XXXX XXXX XXXX XXXX because he decided not to return to Jamaica at all.

DETERMINATION

[11] I find that the claimant has not established that he faces a serious possibility² of persecution on a Convention ground in Jamaica, or that, on a balance of probabilities, he would personally be subjected to a danger of torture, or that he would face a risk of life or a risk of cruel and unusual treatment or punishment in Jamaica. Accordingly, he is not a Convention refugee nor is he a person in need of protection.

ANALYSIS

Identity

[12] The claimant's identity is established by his testimony and the supporting documentation provided, including a certified true copy of his passport.³ Further, I am satisfied on the testimony of the claimant and his supporting documentation that he is a citizen of Jamaica and no other country.

Credibility

[13] There is a presumption that sworn testimony is true unless there is sufficient reason to doubt its truthfulness.⁴ In this case, I find that there is no serious reason to doubt the truth of the claimant's testimony. He testified in a credible and straight-forward manner. He was spontaneous with answers to my questions, and his testimony was consistent with his Basis of Claim Form (BOC) narrative. Given the foregoing, I accept that the central elements in Mr. XXXX claims for protection are true.

Nexus

[14] The claimant's fears of returning to Jamaica are grounded in issues of criminality and I can see no nexus between the alleged harms the claimant faces and any of the Convention grounds. The Federal Court has determined that victims of crime, corruption, or vendettas generally fail to establish a link between their fear or persecution and one of the Convention grounds⁵ and I find there is nothing specific to the case before me which takes it outside this general principle. I therefore conclude that the claim for protection under section 96 of the IRPA must be rejected on that basis.

[15] I note that at the hearing, the claimant referenced his Rastafarian religious beliefs and suggested that these might make him an easier target for discrimination in Jamaica. However, I find that the claimant's religion is an entirely peripheral issue that only arose when I specifically mentioned to the claimant the differences between claims for protection under section 96 and section 97 of the IRPA. On the evidence before me, I find that there is no nexus between the claimant's religion and any of the harm the claimant alleges he faces in Jamaica.

[16] The claims for protection under section 97(1)(a) and 97(1)(b) must still be analyzed.

Section 97(1)(a)

[17] The claimant has not has not alleged any danger of torture by a public official or other person acting in an official capacity, nor has he produced any evidence that could support such a finding. To be clear, the claimant's allegations against Mr. XXXX, though Mr. XXXX is a XXXX XXXX, are against that man personally, and not against him as an official acting in an XXXX XXXX XXXX XXXX XXXX of the Jamaican XXXX. Accordingly, his claim for protection under s. 97(1)(a) of the IRPA must be rejected.

Section 97(1)(b)

[18] The manifestation of brutal violence, extortion and crime in Jamaica, and the inability of police to control crime in Jamaica, are well documented. For example, item 7.3 of the National Documentation Package (NDP) for Jamaica,⁶ which is an Immigration and Refugee Board (IRB) Research Directorate report respecting the crime situation in Jamaica and police effectiveness, states as follows:

- Patterns and high incidence of crime and violence in Jamaica in recent years have sparked profound concern at the local, national and international levels.
- The country has one of the highest homicide per capita rates in the world.
- Other crimes of concern in the country included assaults, rapes, robberies, extortion and domestic violence.
- A lot of the violence in Jamaica "is the result of warfare between drug gangs. Organized crime and other criminal elements are prevalent and extremely active and that most crime is related to gangs.
- General public distrust of the police, incidence of police corruption and abuse of citizen rights have created an uneasy distance between the police and citizens.

- The lack of arrest and convictions leads both the public and police to doubt the effectiveness of the criminal justice system, leading to vigilantism, which only exacerbates the cycle of violence. Most civilians fear that, at best, the authorities cannot protect them from organized criminal elements and, at worst, are colluding with criminals, all of which leads citizens to avoid giving evidence or witness testimonies.
- Policing of inner-city communities has been largely conditioned by a view that criminalizes entire communities. This prejudiced perception has given rise in a number of instances to a tolerance of excessive use of force by the security forces. However, far from increasing protection from violent crime, such policing methods have exacerbated the public security problem.
- The judicial system in Jamaica is extremely ineffective.

[19] However, as Canadian courts have stated, to succeed in a claim under section 97(1)(b), the evidence must establish a specific, individualized risk to the claimant, and not merely generalized exposure to crime or human rights violations in a country.⁷

[20] As described by the Federal Court in *Guerrero v. Canada*,⁸ there is a two-step process for determining whether the claimant would be subjected personally to a risk to life or a risk of cruel and unusual treatment or punishment that is not faced generally by others. First, the claimant must establish, on balance of probabilities, that they would be subjected personally to a risk to life or a risk of cruel and unusual treatment or punishment if returned to their country of nationality (the “personal risk” stage). It is only after a finding that there is a personal risk that a decision-maker must continue to consider whether that risk is one faced generally by others.

[21] I cannot find that the claimant faces any risk to life, or any risk of cruel and unusual treatment or punishment, on account of being the son of a woman who five years ago (or longer) witnessed a gunfight between rival gangs. The claimant resided in Jamaica for at least five years after that occurred having suffered no repercussions or reprisals, and the same is true of the claimant’s mother, who actually witnessed the gunfight. This leads me to conclude that the

criminals involved in that gunfight have no interest in pursuing either the claimant or his mother to inflict harm upon them.

[22] Similarly, I cannot find that the claimant faces any risk to life, or any risk of cruel and unusual treatment or punishment, at the hands of Mr. XXXX. The threats that were against the claimant's personal safety were vague, and by the claimant's own testimony at the hearing, similar threats were made to many others, in many contexts, and in some cases, could be and sometimes were, even by the claimant, taken to be mere puffery. Mr. XXXX unwanted sexual advances that occurred in 2017 led to threats against the claimant too, but these were threats of retaliation in the form of loss of job security and employment prospects with the Jamaican government – not the kind of harm contemplated by s. 97(1)(b). Further, I am not persuaded on the evidence before me that Mr. XXXX would have any interest in pursuing the claimant or inflicting harm upon him now that he no longer works under Mr. XXXX, and hasn't done so for over a year.

[23] Again, similarly, I cannot find that the claimant faces any risk to life, or any risk of cruel and unusual treatment or punishment, on account of being perceived by the murderer or murderers of Mr. XXXX to be interested in revenge for his death. This is speculative and based on the claimant's opinion that the criminal culture in Jamaica is one that fetishizes revenge. There is no persuasive evidence before me about the identity of the murderer or murderers, or their motives, for killing Mr. XXXX, and there is also no persuasive evidence before me about what the murderer or murderers might know or not know about the claimant himself, including the nature of his relationship with Mr. XXXX. I find that in the absence of such evidence, I cannot rely solely on the claimant's perceptions about Jamaican culture to support a finding that the claimant faces a risk to life, or a risk of cruel and unusual treatment or punishment on account of having a close relationship with Mr. XXXX. I have considered that at the hearing, the claimant alluded to cars seen in his neighbourhood, seemingly casing it or surveilling it before Mr. XXXX was killed – the implication being that Mr. XXXX murderer or murderers would, having seen Mr. XXXX and the claimant together, conclude that they were close. Again, this is speculative, because there is no persuasive evidence before me that any persons who might have been casing or surveilling Mr. XXXX and the claimant's neighbourhood in the past were doing

so for the purpose of murdering Mr. XXXX. It is also speculative that such persons would draw the conclusions about the claimant's closeness to Mr. XXXX that the claimant suggests they would draw based on little more than having seen the two of them together a few times.

[24] On the other hand, I can and do find that the claimant faces a risk to life if he returns to Jamaica on account of the high violent crime rate generally present in Jamaica.

[25] Despite such a finding, what matters in the assessment of objective and prospective risk⁹ under section 97(1)(b) is whether the claimant faces a "personal" risk that is somehow different from or more proximate than that which others "generally" face. To put it another way, the question is whether others are "generally" in the position of the claimant now, as concerns the risk to life which has been identified. In my view, the answer to that question in Mr. XXXX case is "yes" and accordingly, I must conclude that his risk in Jamaica is a generalized risk for which protection cannot be afforded under s. 97(1)(b). Put simply, Mr. XXXX fears being the victim of crime – as almost certainly do most other law-abiding Jamaicans who have achieved some economic success. But, where the general public is subject to a high risk of crime, greater exposure due to living in a more dangerous area, or due to perceived wealth, does not necessarily establish a successful claim under section 97(1)(b).¹⁰ On the evidence before me, I cannot find that the claimant's risk profile is elevated beyond, or distinguishable from, many other Jamaicans. As the claimant has not established that he faces a risk to life that is not faced generally by others in or from Jamaica his claim under s. 97(1)(b) of the IRPA must be rejected.

CONCLUSION

[26] The claimant is neither a Convention refugee nor a person in need of protection.

[27] In coming to my conclusion, I remain empathetic toward the claimant, whom I find to be an honest and law-abiding person seeking better opportunities for himself and for his family. Unfortunately, I am unable to grant him those opportunities as my decision-making in his case is constrained by the IRPA and applicable jurisprudence. I wish the claimant all the best in the future.

(signed) “Janko Predovic”
Janko Predovic
May 15, 2019
Date

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

² *Adjei v. Canada (Minister of Employment and Immigration)*, [1989] 2 F.C. 680; (1989), 7 Imm. L.R. (2d) 169 (C.A.).

³ Exhibit 1.

⁴ *Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 F.C. 302, 31 N.R. 34 (C.A.).

⁵ *Kang v. M.C.I.*, 2005 FC 1128 at para. 10; *Barrantes v. M.C.I.*, 2005 FC 518; *Larenas v. M.C.I.*, 2006 FC 159.

⁶ Exhibit 3, Archive - National Documentation Package, Jamaica, 29 March 2019, tab 7.3: Crime situation, including organized crime; police and state response, including effectiveness; state protection for witnesses and victims of crime (2009-December 2012). Immigration and Refugee Board of Canada. 14 January 2013. JAM104263.E.

⁷ *Ahmad, Hasib v. M.C.I.* (F.C., no. IMM-9188-03), Rouleau, June 4, 2004; 2004 FC 808.

⁸ *Guerrero v. Canada (Citizenship and Immigration)* 2011 FC 1210, October 21, 2011.

⁹ *Correa v Canada (Minister of Citizenship and Immigration)*, 2014 FC 252, cited with approval in *Servellon Melendez v. Canada (Citizenship and Immigration)*, 2014 FC 700.

¹⁰ *Prophete v. Canada (MCI)*, 2009 FCA 31.