



Refugee Protection Division

Section de la protection des réfugiés

RPD File No. / N° de dossier de la SPR : TB2-12073
TB2-12082

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

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)	XXXX XXXX XXXX XXXXXXXXXX XXXX XXXX	Demandeur(e)(s) d'asile
Date(s) of hearing	December 4, 2017, and February 14, 2018	Date(s) de l'audience
Place of hearing	Heard by videoconference in Toronto, Ontario (claimants) and Montréal, Quebec (RPD)	Lieu de l'audience
Date of decision and reasons	March 1, 2018	Date de la décision et des motifs
Panel	Jean-Pierre Beauquier	Tribunal
Counsel for the claimant(s)	Rodney L. Woolf	Conseil(s) du (de la/des) demandeur(e)(s) d'asile
Designated representative	N/A	Représentant(e) désigné(e)

REASONS FOR DECISION

INTRODUCTION

[1] XXXX XXXX XXXX and XXXX XXXX XXXX (brother and sister) are citizens of Saint Vincent. They are claiming refugee protection under sections 96 and 97 of the *Immigration and Refugee Protection Act* (IRPA).

SUMMARY OF ALLEGED FACTS

[2] The events alleged by XXXX XXXX XXXX took place between February 17, 2006, when her relationship with the alleged persecutor began, and XXXX XXXX, 2009, when she came to Canada for the second time. The female claimant was targeted by XXXX XXXX, the father of her child. The persecution alleged by the female claimant took the form of sexual harassment, rape, assault and threats, including death threats.

[3] The events alleged by XXXX XXXX XXXX took place between January 2011 and XXXX XXXX, 2012, the date he arrived in Canada. The male claimant was targeted by an individual named XXXX XXXX, who was in a relationship with his mother. The persecution took the form of assaults and threats, including death threats.

IDENTITY

[4] The claimants' identities were established to the panel's satisfaction by means of the copies of their respective passports, seized by Citizenship and Immigration Canada (CIC), on the record.

DETERMINATION

[5] Having heard the claimants' testimony and analyzed the evidence on the record, the panel determines that the claimants are not Convention refugees or persons in need of protection.

ANALYSIS

[6] XXXX XXXX XXXX credibility is undermined by major omissions and contradictions that are central to her alleged fear. The panel also notes that, at times, the female claimant provided vague answers during her testimony.

OMISSIONS

[7] In her written account, the female claimant indicates that XXXX XXXX began beating and raping her in April 2007. After the alleged event in April 2007, nothing apparently happened to the female claimant until late July 2007. When the panel questioned her about this, the female claimant stated that XXXX had threatened to beat her. The panel notes that this information was omitted from her written account.

[8] In November 2007, XXXX allegedly forced the female claimant to have sexual relations with him and another woman at the same time. She was also allegedly threatened if she refused. In her written account, the female claimant then wrote that, “We continued to argue as the months passed by.”

[9] When asked to explain what she meant, the female claimant stated that XXXX had beaten her in December 2007. This information was also not included in her written account, and the female claimant was asked why she had omitted it. She remained silent and was unable to answer. The omission was not explained.

[10] Also in her written account, the female claimant indicates that in September 2008 (late September, according to her testimony), XXXX, who was drunk at the time, beat her and, as a result of the assault, she lost consciousness for a few minutes. Following this incident, XXXX allegedly left the house. The female claimant stated that the next day, after she had filed a complaint, a police officer came to their home and reprimanded XXXX for what had happened the night before. When asked when XXXX had returned to the house, the female claimant could not answer the question. The panel then pointed out to the female claimant that it was clear from her written account that XXXX was at home the following day. The female claimant then stated, [translation] “I am trying to forget all that.” The female claimant’s credibility is further undermined by the fact that, during her testimony, she could neither confirm nor explain the information she provided in her written account.

[11] The next violent incident included in the female claimant’s written account allegedly took place in December 2008. When asked whether XXXX was violent toward her between September and December 2008, the female claimant stated that he had beaten her in October 2008. This incident is not mentioned in her written account, even though the female claimant listed several

other violent incidents, along with dates. The panel asked her why this incident was included. Again, the female claimant was unable to explain the omission.

[12] Again, according to the female claimant's written account, there were no specific violent incidents between December 2008 and January 2009. When the panel asked her whether XXXX had been violent toward her between those two dates, the female claimant stated that he had beaten her on two occasions. Given that these two violent incidents were also not included in her written account, the panel again asked the female claimant why that was the case. She was unable to explain this additional omission.

CONTRADICTION

[13] In her written account, the female claimant indicates that after the alleged incident in March 2008 (when she was supposedly beaten), she did not go to the police even though her mother urged her to. When the panel asked her why she did not file a complaint with the police, the female claimant stated that she went in March or April. The panel notes that this statement contradicts what is indicated in her written account.

[14] In light of the omissions and contradictions noted, the panel does not believe the female claimant and, as a result, does not believe her alleged fears. Lack of credibility is sufficient grounds for rejecting a claim for refugee protection. The Federal Court has ruled to that effect in a number of cases.¹

[15] Because the panel does not believe the female claimant, its decision will not address the issues of state protection or an internal flight alternative (IFA).

[16] The record contains a letter dated May 1, 2013, from the female claimant's mother in support of her refugee protection claim, which the panel curiously did not receive until December 4, 2017. In the letter, the female claimant's mother generally corroborates her allegations.

¹ *Ocampo Aguilar, Rodrigo v. M.C.I.* (F.C., No. IMM-2728-11), Scott, February 3, 2012; 2012 FC 150.

[17] Given that the panel does not believe the female claimant, it attaches no probative value to the letter, which, in its opinion, is one of convenience.

[18] In *Sheikh*,² the Federal Court of Appeal specifies that a lack of credibility regarding the central elements of a claim may extend to all other elements of the claim.

BEHAVIOUR INCONSISTENT WITH HER FEAR

[19] The female claimant came to Canada for the first time in XXXX 2008. When asked what her intentions were at that time, the female claimant stated, [translation] “I came in 2008 because I was afraid of my spouse.”

[20] The female claimant stated that, at that time, she stayed with her mother’s friends while in Canada. She did not claim refugee protection and returned to her country of origin after three months. She stated that she went back because she loved her spouse and he had asked her to come back.

[21] The panel would like to note that the female claimant testified that she came to Canada at that time in order to escape her spouse; however, curiously, in response to question 12 on her Personal Information Form (PIF), she states that the purpose of her trip was to visit friends.

[22] The female claimant admitted during her testimony that she took no steps to obtain protection in Canada.

[23] The female claimant returned to Canada on XXXX XXXX, 2009. When asked what her intentions were at that time, the female claimant stated that she had left because she was afraid and because her spouse was looking for her. The female claimant also stated during her testimony that her spouse was going to kill her.

[24] Not only did she not claim refugee protection when she arrived, but she also waited until September 2012, more than three years later, to claim refugee protection.

² *Sheikh v. Canada (Minister of Employment and Immigration)*, [1990] 3 F.C. 238 (C.A.).

[25] When asked why she did not claim refugee protection when she arrived, the female claimant stated that she did not know she could claim refugee protection. The panel does not accept the female claimant's allegation. It should be noted that she came to Canada in 2008 and stayed with her mother's friends for three months. At that time, she had the opportunity to ask people who, according to her, had lived in Canada for a long time, about the steps she could take. Then, when asked why, given the alleged circumstances, she had waited more than three years to claim refugee protection, the female claimant stated that she did not know she could claim refugee protection until August 2012, which the panel does not believe. Indeed, she also stated that she met with a lawyer in 2010, which contradicts her allegations that she did not learn that she could claim refugee protection until August 2012.

[26] The panel is not satisfied with the unconvincing explanations provided, and is of the opinion that the female claimant's attitude, in both 2008 and 2009, was not that of an individual who fears returning to her country of origin.

[27] The panel is of the opinion that the female claimant's answers and explanations do not justify her failure to claim refugee protection in 2008 or the fact that she waited three and a half years into her most recent stay before claiming refugee protection. The female claimant's attitude and testimony on this point clearly demonstrate that she is not credible when she states that she left her country out of fear of her spouse and fear that, as she stated, she would be killed if she were to return.

[28] The Federal Court has ruled to this effect in a number of cases.³

[29] In the case of the female claimant, the panel would like to note that it abided by the Immigration and Refugee Board of Canada's guideline on gender-related persecution and violence against women. However, that guideline does not apply to the female claimant for the reasons set out in this decision.

[30] XXXX XXXX XXXX credibility was also undermined by major contradictions and omissions that were central to his alleged fear. In addition, the panel would like to note that the

³ *Huerta v. Canada (Minister of Employment and Immigration)*, QL [1993] F.C.J. 271; 157 N.R. 225.

male claimant's testimony was particularly laboured, as he very often took a long time to respond. The majority of the time, he did not know or did not remember the answer to the questions he was asked.

[31] The male claimant—who alleged during his testimony that he left his country of origin on XXXX XXXX, 2012, because he was afraid of an individual named XXXX XXXX—was unable to state when he decided to leave his country of origin, although his written account indicates that he had an airline ticket to travel to Canada (purchased by his mother) in early XXXX 2012, because his persecutor, XXXX XXXX, was continuing to threaten him, in particular threatening to kill him.

[32] In his written account, the male claimant alleges that he had problems with XXXX XXXX because he tried to protect his mother from him. According to his written account, his mother was in a relationship with XXXX XXXX, a violent man who was involved in drug trafficking.

[33] When questioned by the panel, the male claimant was unable to say when his mother's relationship with XXXX XXXX had begun, stating, [translation] "I don't remember."

[34] The first event alleged by the male claimant took place in January 2011, and the second in April 2011.

[35] When asked whether, in between those two alleged dates, he had had problems with XXXX XXXX, the male claimant was unable to say whether there had been any problems, and stated [translation] "I don't remember."

[36] The male claimant was then asked to explain what happened to him in April 2011. He stated that he was with friends when XXXX XXXX arrived and beat him. His written account indicates that in April 2011, the male claimant was at home with his mother when XXXX XXXX arrived and harassed his mother. The male claimant, trying to defend her, was then allegedly attacked and beaten by XXXX XXXX.

[37] The panel pointed out the contradiction between his testimony and his written account. The male claimant took a long time to respond and finally stated that he was referring to a different incident.

[38] The question was clear. In the panel's opinion, his answer does not explain the contradiction.

[39] The next incident alleged by the claimant supposedly took place in July 2011. Again, he was unable to state whether or not he had had other problems with XXXX XXXX between those two dates, and gave the same answer: [translation] "I don't remember."

[40] During the July 2011 incident alleged in his written account, the male claimant was supposedly in XXXX Village with friends when XXXX XXXX beat him, attacked him with a knife and threatened to kill him. When asked to elaborate on what allegedly happened to him in July 2011, the male claimant stated that he could not remember and that he could not remember where it had allegedly taken place either. According to his written account, the male claimant was hospitalized following this incident. He allegedly spent two weeks in the hospital and also filed a complaint with the police. When asked what he did after he was assaulted by XXXX XXXX, the male claimant stated that he no longer knew what he had done. He was reminded of his allegations that he had been hospitalized for two weeks and that he had filed a complaint with the police. The male claimant was unable to explain why he did not mention that he had been hospitalized, stating that it had happened a long time ago. The panel cannot accept this explanation. Spending two weeks in the hospital after being attacked with a knife is not something you forget, even after several years. Furthermore, when questioned on this point by his counsel later on during the hearing, the male claimant stated that he had been hooked up at the hospital but that he did not remember what else was done to him. The male claimant's counsel also asked when that took place. He stated that he could not remember!

[41] His counsel asked him to elaborate on his complaint to the police, and again, the male claimant simply answered that he could not remember.

[42] No documents (medical reports, police reports) were produced or submitted by the male claimant in support of his allegations regarding the July 2011 incident or the other alleged incidents.

[43] The next two incidents alleged by the male claimant in his written account took place in October 2011 and December 2011. When asked whether he encountered other problems with XXXX XXXX between July and October 2011, the male claimant stated that he had received

death threats from him. This allegation is not included in his written account, and he was asked why that was the case. The male claimant explained that he had forgotten to include it. Yet again, the panel cannot accept such an explanation. The male claimant completed his PIF, including his written account, and had plenty of time to ensure that every event was included, as instructed at question 31 of the PIF. At the start of the hearing, the male claimant indicated that he was aware of the contents of his PIF and, in particular, that the contents were complete. The panel is of the opinion that the omission has not been explained.

[44] When asked to elaborate on what allegedly happened to him and when in October 2011, the male claimant was unable, once again, to explain what had happened to him and when with XXXX XXXX. He again stated, [translation] “I don’t remember.” The incidents that allegedly took place in October 2011 were serious, according to the male claimant’s written account, and included a knife attack, mistreatment in their home, and injuries to his mother, who had to seek treatment at the hospital.

[45] Again, the male claimant was unable to elaborate on what allegedly happened to his mother, stating that he could not remember.

[46] When questioned as to whether there had been problems with XXXX XXXX between the incidents in October and December 2011, the male claimant was again unable to answer yes or no, and again stated [translation] “I don’t remember.”

[47] The same applies to the alleged incident in December 2011, during which, according to his written account, the male claimant and his cousin were beaten by XXXX XXXX, and his mother filed a complaint with the police. Again, the male claimant could not remember what had supposedly happened, or when in December 2011 the incident took place.

[48] The final incident alleged by the male claimant took place in February 2012. When he was again asked whether he had encountered problems with his persecutor between December 2011 and February 2012, the male claimant stated that XXXX XXXX always came back and threatened to kill him when he was there. Those threats were not included in his written account, and the panel asked him why that was the case. As an explanation, the male claimant stated that he was in Canada at the time, which is false because he left his country of origin on XXXX XXXX, 2012. Therefore, this omission was not explained.

[49] With respect to the final incident, in February 2012—which was supposedly the reason for his leaving, according to his written account—the male claimant was again unable to elaborate on what happened to him or indicate when in February 2012 it took place. It should be noted that, according to his written account, the male claimant again went to the hospital.

[50] When asked by his counsel how many times he had had problems with XXXX XXXX, the male claimant stated, [translation] “twice,” which contradicts his allegations. The male claimant also stated, in response to his counsel’s questioning, that XXXX XXXX had assaulted him with a stick when he was 12 years old. That incident would therefore have taken place in 2005. The first incidents alleged by the male claimant in his written account allegedly began in January 2011, which is also contrary to the male claimant’s statement. The male claimant’s counsel asked him whether he had memory issues. The male claimant replied that he did, and that he had always had them. He also stated that he had never been examined about the alleged issue. The panel understands that, after so many years, the male claimant would have difficulty remembering everything that happened. But to remember nothing, or almost nothing, particularly when it is a question of serious incidents and death threats, is a different matter; the panel cannot believe that he has memory issues. Curiously, when questioned by his counsel, the male claimant stated that he remembered what happened in February 2012, which again contradicts his earlier statements to the panel.

[51] In light of all these contradictions and omissions, the poor quality of the male claimant’s testimony, and the almost complete lack of knowledge of the incidents he alleged in his written account, the panel does not believe the male claimant and, as a result, does not believe the incidents or his alleged fears.

[52] Lack of credibility is sufficient grounds for rejecting a refugee protection claim. The Federal Court has ruled to that effect in a number of cases.⁴ Because the panel does not believe the male claimant, its decision will not address the issues of state protection or an IFA.

[53] When questioned by his counsel, the male claimant stated that XXXX XXXX had again come to threaten his mother in January 2018, and that he had asked for him. He allegedly received

⁴ *Ocampo Aguilar, Rodrigo v. M.C.I.* (F.C., No. IMM-2728-11), Scott, February 3, 2012; 2012 FC 150.

that information from his mother. Given the male claimant's lack of credibility, the panel does not believe this allegation either. Furthermore, curiously, in response to another question from his counsel, the male claimant indicated that prior to the alleged incident of January 2018, the last time XXXX XXXX supposedly approached his mother was in October 2011. Therefore, nothing apparently happened between October 2011 and January 2018 (six years). In the panel's opinion, it would not be unreasonable to consider this final allegation implausible given the alleged circumstances. Again, the panel does not believe the male claimant.

[54] The male claimant's counsel also questioned him about his level of education and asked how many years he had attended school. He spontaneously replied, without hesitation, [translation] "two years." His counsel then pointed out that his PIF (at question 6) indicates that he went to school for eight years, and asked why he had stated two years. The male claimant was unable to answer the question and remained silent. Was the male claimant attempting to pass as illiterate? Curiously however, later in his testimony, again in response to questioning from his counsel, the male claimant stated that in 2011 and 2012, he went to school while he was working, whereas in response to question 6 on his PIF, he indicates that he finished school in 2006. Again, the male claimant was unable to provide an explanation. The panel notes these details, which have no direct bearing on his alleged fear, to highlight the fact that the male claimant lied to the panel numerous times during his testimony.

[55] In *Sheikh*,⁵ the Federal Court of Appeal ruled that a lack of credibility regarding the central elements of a claim may extend to all other elements of the claim.

BEHAVIOUR INCONSISTENT WITH HIS FEAR

[56] The male claimant, who stated that he fled his country of origin to escape XXXX XXXX, did not claim refugee protection upon his arrival in Canada on XXXX XXXX, 2012. When asked why, given the alleged circumstances, the male claimant stated, [translation] "I was waiting for my sister to tell me what to do." When asked why he waited until XXXX XXXX, 2012, six months later, which was also the date when his sister, XXXX XXXX XXXX, claimed refugee protection, the male claimant took a long time to reply and finally gave the same answer, stating that he did

⁵ *Sheikh v. Canada (Minister of Employment and Immigration)*, [1990] 3 F.C. 238 (C.A.).

not know what to do and that he relied on his sister. The male claimant was 19 years old at that time.

[57] When asked what he had done between March and September 2012, the male claimant again stated that he could not remember.

[58] As with his sister, XXXX, who has been in Canada since May 2009, the panel is not satisfied with the unconvincing statements and explanations provided, and is of the opinion that the male claimant's attitude is not that of an individual who fears returning to his country of origin.

[59] Again, the panel is of the opinion that the male claimant's answers and explanations do not justify the fact that he waited six months to claim refugee protection.

[60] The male claimant's attitude in this regard clearly demonstrates that he is not credible when he states that he left his country of origin because he was afraid of his alleged persecutor, XXXX XXXX.

[61] As indicated earlier in this decision with respect to the refugee protection claim filed by the male claimant's sister, the Federal Court has ruled on this in several decisions.

CONCLUSION

[62] The panel is therefore of the opinion that, for the purposes of sections 96 and 97 of the Act, the claimants have not discharged their burden of establishing that they face a serious possibility of persecution or that, on a balance of probabilities, they would be subjected to a risk to their lives or a risk of cruel and unusual treatment or punishment if they were to return to their country of origin. For the aforementioned reasons, the refugee protection claims filed by XXXX XXXX XXXX and XXXX XXXX XXXX are rejected.

Jean-Pierre Beauquier

Jean-Pierre Beauquier

March 1, 2018

Date

IRB translation

Original language: French