



RPD File No. / N° de dossier de la SPR : MB5-05320

Client ID No. / N° ID client : XXXX

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)

Demandeur(e)(s) d'asile

XXXX XXXX XXXX
a.k.a. XXXX XXXX

Date(s) of hearing

Date(s) de l'audience

July 4, 2019

Place of hearing

Lieu de l'audience

Montréal, Quebec

**Date of decision
and reasons**

**Date de la décision
et des motifs**

July 20, 2020

Panel

Tribunal

Virginie Francoeur

Counsel for the claimant(s)

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

Francisco Alejandro Saenz Garay

Designated representative

Représentant(e) désigné(e)

N/A

Counsel for the Minister

Conseil du (de la) ministre

Nathalie Guillaume

REASONS FOR DECISION

APPLICATION TO VACATE

INTRODUCTION

[1] On November 27, 2012, the Refugee Protection Division (RPD) determined that **XXXX XXXX XXXX** (a.k.a. **XXXX XXXX**, the respondent) was a “Convention refugee”.

[2] On November 23, 2015, pursuant to section 109 of the *Immigration and Refugee Protection Act* (IRPA) and rule 64 of the *Refugee Protection Division Rules*, the Minister of Public Safety and Emergency Preparedness (the Minister) filed an application with the RPD to vacate the respondent’s “Convention refugee” status.

[3] In reviewing this file, the panel took into account the Chairperson’s *Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution*.

SUMMARY OF FACTS AND MINISTER’S ALLEGATIONS

[4] The respondent claimed refugee protection in Canada against the Republic of Guinea (Guinea), her country of origin, on August 4, 2011, at the Immigration, Refugees and Citizenship Canada (IRCC) office in Montréal.¹ She alleged that she had experienced sexual abuse perpetrated by her paternal uncle’s son, a polygamous man who is significantly older than her. She also alleged a fear of being forced to marry this man if she returned to Guinea, as ordered by her paternal uncle.

[5] In her claim for refugee protection, the respondent identified herself as **XXXX XXXX XXXX**, a citizen of Guinea born on **XXXX XXXX XXXX** 1992, in Mamou, Guinea, and provided as an identity document a Guinean passport issued on **XXXX XXXX**, 2011, containing the same information. She stated that she had never used another name and had never applied for a temporary resident visa (TRV) or permanent resident visa for Canada or any other country. She stated that she had fled Guinea on **XXXX XXXX**, 2011, and arrived in Canada the same day, with

¹ Document 2 – Minister’s application to vacate, Exhibit M-1, p. 1: Notice of respondent’s claim for refugee protection, August 4, 2011. Immigration, Refugees and Citizenship Canada (IRCC) was then known as Citizenship and Immigration Canada (CIC).

the assistance of a smuggler, who had provided her with a red French passport bearing the name “XXXX” and her photograph.²

[6] On November 27, 2012, the respondent’s claim for refugee protection was allowed without a hearing, as part of the RPD’s expedited refugee protection claim process in effect at that time.³

[7] In 2014, a Canada Border Services Agency (CBSA) investigation revealed that the Canadian embassy in Dakar received an application for a Canadian TRV in XXXX 2011 under the identity of XXXX XXXX, a Guinean citizen born in Mamou in 1981. The application included a Guinean passport in the name of XXXX XXXX, issued on XXXX XXXX XXXX 2011. The application was approved and a TRV was issued on XXXX XXXX XXXX 2011, in the name of XXXX XXXX.⁴

[8] As part of that investigation, a senior CBSA analyst did a facial comparison between three different photographs of the respondent included in her claim for refugee protection in Canada under the name XXXX XXXX XXXX, and the photograph attached to the TRV application form submitted under the identity of XXXX XXXX. In its findings report, the CBSA concluded that, on a balance of probabilities, the respondent in this case (XXXX XXXX XXXX) and XXXX XXXX from the TRV application are the same person.⁵

[9] According to the CBSA’s Integrated Customs Enforcement System (ICES), on XXXX XXXX XXXX 2011, a person entered Canada at Pierre Elliott Trudeau Airport using the above-mentioned Guinean passport and the TRV in the name of XXXX XXXX.⁶

² Document 2 – Minister’s application to vacate:
 - Exhibit M-2, pp. 3-19: Copy of Guinean passport No. XXXX, issued on XXXX 2011, in the name of XXXX, born on XXXX, 1992, in Mamou.
 - Exhibit M-3: form IMM 5611 “Claim for Refugee Protection in Canada”, p. 20 (Q. 1-8), p. 24 (Q. 21-22) and p. 28 (Q. 33).
 - Exhibit M-4: Respondent’s Personal Information Form (PIF), p. 31 (Q. 1(a)-1(f), 2) and p. 36 (Q. 19).

³ Document 1 – Original RPD File No. MB1-04500, respondent’s claim for refugee protection: RPD’s positive Notice of Decision and report on expedited process, November 27, 2012.

⁴ Document 2 – Minister’s application to vacate, Exhibit M-7, pp. 59-89: Canadian Temporary Resident Visa (TRV) application file under the identity of XXXX, received by the Canadian embassy in Dakar on XXXX 2011.

⁵ Document 2 – Minister’s application to vacate, Exhibit M-6, pp. 49-58: Results of facial comparison conducted by the Canada Border Services Agency (CBSA).

⁶ Document 2 – Minister’s application to vacate:

[10] On the basis of that evidence, the Minister submits that the respondent obtained a TRV in XXXX 2011 under another identity, namely XXXX XXXX; the Minister further submits that she entered Canada using this identity on XXXX XXXX XXXX 2011, not on XXXX XXXX XXXX 2011, using a French passport under the name XXXX. According to the Minister, the respondent was therefore not in Guinea at the time of the events she allegedly experienced between XXXX and XXXX 2011.

[11] The Minister submits that the respondent made misrepresentations with respect to key elements of her claim for refugee protection and did not accurately present her circumstances or her identity. The Minister submits that, in light of this new information, the respondent's identity has not been established and the allegations on which her claim for refugee protection was based now lack credibility. The Minister's position is that the RPD's determination would have been different had it been aware of this information.

DETERMINATION

[12] For the reasons set out below, the Minister's application to vacate is allowed.

ANALYSIS

A. Applicable legislation

[13] In all applications to vacate refugee protection made under section 109 of the IRPA, the onus is on the Minister to establish, on a balance of probabilities, that the person who is the subject of the application has directly or indirectly misrepresented or withheld a material fact relating to a relevant matter.

[14] Section 109 of the IRPA reads as follows:

Applications to Vacate

Vacation of refugee protection

-
- Exhibit M-7, p. 69: Copy of passport No. XXXX biopage, issued on XXXX 2011, under the name XXXX.
 - Exhibit M-7, p. 88: Copy of Canadian TRV issued under the name XXXX on XXXX 2011.
 - Exhibit M-8, p. 90: Traveller history report from the CBSA's Integrated Case Management System (ICES), dated November 16, 2012.

109 (1) The Refugee Protection Division may, on application by the Minister, vacate a decision to allow a claim for refugee protection, if it finds that the decision was obtained as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter.

Rejection of the application

(2) The Refugee Protection Division may reject the application if it is satisfied that other sufficient evidence was considered at the time of the first determination to justify refugee protection.

Allowance of application

(3) If the application is allowed, the claim of the person is deemed to be rejected and the decision that led to the conferral of refugee protection is nullified.

[15] As such, the issues under section 109 are as follows:

- 1) Has the Minister established on a balance of probabilities that a fact relating to a relevant matter was directly or indirectly misrepresented or withheld, leading to a positive decision in the respondent's claim for refugee protection?
- 2) If the answer to the first question is yes, was there sufficient evidence at the time of the initial determination to justify granting refugee protection despite the misrepresentations or the information withheld?

[16] In *Canada (Minister of Public Safety and Emergency Preparedness) v. Gunasingam*, the Federal Court held that the RPD must first make a decision with respect to subsection 109(1) of the IRPA before consideration is given to subsection 109(2).⁷ As stated in *Gunasingam*, subsection 109(1) of the IRPA sets out three requirements:

- i. there must be a misrepresentation or withholding of material facts;
- ii. those facts must relate to a relevant matter; and
- iii. there must be a causal connection between the misrepresenting or withholding on the one hand and the favourable result on the other.

⁷ *Canada (Minister of Public Safety and Emergency Preparedness) v. Gunasingam*, 2008 FC 181 [Gunasingam], para. 7.

B. Application of subsection 109(1) of the IRPA

Was there a misrepresentation or withholding of a material fact relating to a relevant matter?

[17] At the hearing, the respondent was questioned at length by the Minister's representative, the panel and her own counsel regarding the facts alleged by the Minister. Her credibility was a central issue.

[18] The respondent denies the Minister's allegations in their entirety and maintains that all of the information presented in her claim for refugee protection is true. During her oral testimony, she maintained that she had never applied for a TRV under the identity of XXXX XXXX. She testified that she is not XXXX XXXX, that she does not know this person, and that she has never used that identity in any form. She repeated that she left Guinea for Canada on XXXX XXXX XXXX 2011.

[19] After considering the respondent's testimony together with all of the evidence on the record and both counsel's submissions, the panel gives more weight to the Minister's evidence than to the respondent's evidence. The panel concludes, on a balance of probabilities, that the respondent applied for and obtained a TRV under the identity of XXXX XXXX in XXXX 2011 and that she arrived in Canada using the TRV and the passport in the name of XXXX XXXX on XXXX XXXX, 2011, XXXX months before her alleged arrival date. The panel is of the opinion that the respondent's testimony lacked credibility on central elements as a result of major inconsistencies and contradictions in her testimony for which she was unable to provide reasonable explanations.

Facial comparison report

[20] The key element linking the respondent to the TRV and to the passport under the identity of XXXX XXXX is the facial comparison done by the CBSA.

[21] The CBSA used the following photographs for the facial comparison:

- Three different digital photographs of the respondent from her refugee claim file in Canada under the identity of XXXX XXXX XXXX. The first is the photograph affixed to the passport of XXXX XXXX XXXX, which the respondent submitted as an identity document when she filed her refugee protection claim. The other two photographs are

from the file for her refugee protection claim made with IRCC in 2011—a file that is currently in the CBSA’s possession.⁸

- A scanned photograph, which was attached to the TRV application form submitted to the Canadian embassy in Dakar under the identity of XXXX XXXX.⁹

[22] At the hearing, the respondent confirmed that it was indeed her in the three photographs from her refugee protection claim under the identity of XXXX XXXX XXXX. With respect to the photograph attached to the TRV application form in the name of XXXX XXXX, the respondent stated that she is not the person in that photograph, that she does not recognize that person, and that she has never used the name XXXX XXXX.

[23] However, the CBSA analyst indicated that several specific similarities were identified during the facial comparison. The analyst’s report includes the following findings:¹⁰

- i. XXXX XXXX XXXX and XXXX XXXX share a resemblance in the shape of their skulls, eyes, nose, chin and upper and lower lips.
- ii. In terms of the ears, the shape of the respondent’s outer ears, which the analyst describes as [translation] “quite distinctive,” share several similarities with those of XXXX XXXX. He notes that [translation] “in forensic science, the outer ears and fingerprints are unique features in individuals.”¹¹
- iii. XXXX XXXX XXXX craniofacial proportions share similarities with those of XXXX XXXX. In order to assess them, the analyst superimposed two photographs of XXXX XXXX XXXX on the photograph of XXXX XXXX using various techniques. The result is that, apart from a [translation] “slight difference in angle, no significant dissimilarity was noted between the craniofacial proportions in the three photographs.”¹² The report specifically notes that the two individuals share the same pupillary distance.
- iv. Finally, the various facial features of XXXX XXXX XXXX and XXXX XXXX are [translation] “easily interchangeable”.¹³ To make this finding, the analyst cut up into four parts the faces in the three photographs of XXXX XXXX XXXX and in the

⁸ Document 2 – Minister’s application to vacate:
 - Exhibit M-6, p. 50: Photographs of the respondent included in her claim file with IRCC/CBSA, reproduced in the CBSA’s facial comparison report.
 - Copy of passport in the name of XXXX, *supra*, footnote 2.

⁹ Document 2 – Minister’s application to vacate, Exhibit M-7, p. 59: Photograph attached to the Canadian TRV application made on March 29, 2011, under the identity of XXXX.

¹⁰ Document 2 – Minister’s application to vacate, Exhibit M-6: facial comparison results, pp. 49-58.

¹¹ *Ibid.*, p. 54.

¹² Document 2 – Minister’s application to vacate, Exhibit M-6: facial comparison results, p. 55.

¹³ *Ibid.*, p. 56.

photograph of XXXX XXXX. The analyst then reassembled them by mixing them up, so as to create another face. The analyst notes that, in reassembling the features of XXXX XXXX face in her photograph with the features of XXXX XXXX XXXX face in her photographs, neither of their appearances changes.

v. No dissimilarities were found between the four photographs.¹⁴

[24] In the report, the analyst indicates that he took into account the poor resolution of the photograph of XXXX XXXX, which prevented him from [translation] “achieving a higher degree of certainty with respect to whether the individuals in the photographs are the same.”¹⁵ Nevertheless, the analyst’s observations allowed him to conclude as follows: [translation] “[The] likelihood that two Black women with at least seven general facial similarities, and with no significant dissimilarities, are not the same person is very low, if not nearly non-existent, on a balance of probabilities. Consequently, and although we cannot state beyond a reasonable doubt that the two women, XXXX and XXXX, are indeed the same person, we can conclude that they probably are.” [emphasis added]¹⁶

[25] The panel gives strong probative value to the facial comparison analysis, which was conducted in a detailed and rigorous manner by a CBSA specialist with no interest in the outcome of the respondent’s claim for refugee protection or the application to vacate. Having carefully reviewed the content of the analysis report and its comparison images, the panel is of the opinion that the report’s findings are justified and reasonable. Although the analysis has a shortcoming in terms of the resolution of the photograph of XXXX XXXX, the analyst indicated that he took this into consideration in his findings and still concluded that there is a high likelihood that the two individuals are the same person. The analyst’s conclusion meets the applicable standard of proof in an application to vacate under section 109 of the IRPA, which, as mentioned earlier, is the balance of probabilities.

[26] Although the respondent challenges the findings of this report, she did not present any credible evidence that is sufficient to overcome its strong probative value and lead the panel to a conclusion in her favour.

¹⁴ Ibid., p. 58.

¹⁵ Ibid., p. 56.

¹⁶ Ibid., p. 58.

[27] *Similarities between the passport photographs of XXXX XXXX XXXX and XXXX XXXX XXXX* In addition, the panel noted another photograph in the TRV file under the identity of XXXX XXXX that closely resembles the respondent, which further supports the link between the respondent and the TRV application.

[28] In addition to the photograph attached to XXXX XXXX TRV form, which the CBSA used for the facial comparison, the panel examined the photograph on the biopage of XXXX XXXX passport included in the TRV file.¹⁷ Although this passport photograph was not included in the facial comparison, the respondent was nonetheless questioned about it at the hearing.

[29] The respondent testified that she is not the person in the photograph in XXXX XXXX passport and that the document is not hers.

[30] However, it is clear that the photograph in XXXX XXXX passport, issued on XXXX XXXX, 2011, is very similar, in fact almost identical, to the photograph in XXXX XXXX XXXX passport, issued just XXXX months later, on XXXX XXXX, 2011.¹⁸ The similarities are striking even to the naked eye. The strong similarities between these two photographs, when considered in conjunction with the CBSA's facial comparison analysis, lead the panel to consider that the respondent obtained two Guinean passports under two different identities: one in the name XXXX XXXX, born on XXXX XXXX, 1981, which she used for the TRV application; and one in the name XXXX XXXX XXXX, born on XXXX XXXX, 1992.

[31] The panel further notes that the place of birth indicated in XXXX XXXX passport is XXXX, the same as that indicated in XXXX XXXX XXXX passport. Although this point is not determinative in itself, it is difficult to accept that it is mere coincidence. Considering all the evidence in the record, the panel does not consider this to be a coincidence.

Respondent's testimony and documents concerning the period from XXXX to XXXX 2011

[32] The panel must now determine whether or not it is satisfied that the person who entered Canada on XXXX XXXX, 2011, using a passport and TRV in the name of XXXX XXXX, as

¹⁷ Document 2 – Minister's application to vacate, Exhibit M-7, p. 69: copy of biopage of Guinean passport No. XXXX, issued to XXXX on XXXX 2011, content of the TRV application completed under the identity of XXXX.

¹⁸ Copy of passport in the name of XXXX, *supra*, footnote 2.

stated in the ICES report,¹⁹ was the respondent. To do so, the panel assessed the evidence on record regarding the respondent's physical presence in Guinea throughout the period from XXXX to XXXX 2011.

[33] It is important here to review in more detail the facts alleged by the respondent in her claim for refugee protection. In the narrative attached to her Personal Information Form (PIF),²⁰ she alleged that, following the accidental deaths of her parents in 2010, she had to live with her paternal uncle, a strict and conservative imam. She stated that her uncle was strongly opposed to the romantic relationship she had been in with her Christian boyfriend since 2009. She recounted serious incidents that took place between XXXX 2011 and XXXX 2011, including a great deal of physical abuse by her uncle, as well as sexual abuse by his son, who was then 45 years of age. The respondent stated that her uncle had forced her to stop her studies in XXXX 2011, and that on XXXX XXXX XXXX 2011, he gathered the members of the family to announce that he had made the decision to marry the respondent to his son. The wedding date was set for XXXX XXXX XXXX 2011. The respondent stated that she nonetheless managed to escape her uncle's clutches and the forced marriage with the help of her aunt, who paid a smuggler to bring her to Canada on XXXX XXXX, 2011. She arrived in Canada the same day with a red French passport bearing the name "XXXX".

[34] Other than the respondent's written statements and oral testimony, the only evidence in the record suggesting that she was physically present in Guinea between XXXX and XXXX 2011 is the following: (a) the above-mentioned passport in the name of XXXX XXXX XXXX, issued in Guinea on XXXX XXXX, 2011;²¹ (b) a vaccination booklet in the name of XXXX XXXX XXXX with a vaccine entry on XXXX XXXX XXXX 2011, which was filed in evidence for the hearing for the Minister's application to vacate;²² and (c) a letter from a lawyer in Guinea dated XXXX XXXX XXXX 2012, which was filed in support of the respondent's claim for refugee protection.²³

¹⁹ ICES report, *supra*, footnote 6.

²⁰ Document 2 – Exhibit M-4, pp. 39-45: narrative attached to the respondent's PIF.

²¹ Copy of passport in the name of XXXX, *supra*, footnote 2.

²² Document 3 – Exhibit D-5: extract from a vaccination booklet in the name of XXXX.

²³ Document 1 – Original RPD File, No. MB1-04500, in the respondent's claim for refugee protection, Exhibit P-5: letter from XXXX, dated XXXX 2012.

[35] The panel identified significant contradictions and inconsistencies with respect to key elements in the respondent's testimony and the evidence on the record concerning the period from XXXX to XXXX 2011.

[36] One of the contradictions identified concerns the passport obtained in the name of XXXX XXXX XXXX, issued on XXXX XXXX XXXX 2011.²⁴ The respondent maintains that she obtained this passport while she was in Guinea. At the start of the hearing, the Minister's representative asked her why she had requested this passport:

[translation]

- *Minister's representative*: Why did you apply for that passport?
- *Respondent*: Why did I apply for that passport?
- *Minister's representative*: Yes.
- *Respondent*: Because the smuggler said that once I arrived here, I would need a passport to claim refugee protection.²⁵

[37] Later in the hearing, the panel asked her when she had taken steps to obtain this passport. She stated that it was around mid-XXXX 2011. When the panel asked her why she had taken steps at that time, she stated that she had wanted a passport because girls her age had one since they sometimes won competitions at the university to study in Morocco. [Translation] "You never know", she said.²⁶ Subsequently, the Minister's representative sought to clarify this response, which led to the following exchange with the respondent:

[translation]

- *Minister's representative*: I have a question regarding the issuance of the passport in the name of XXXX XXXX XXXX.
- *Member*: Yes.
- *Minister's representative*: That document—earlier you told the member you had this passport issued because, at your age, sometimes there are competitions to go to Morocco. But briefly at the start of the hearing, you stated that it was because the smuggler had told you that you needed it for your claim for refugee protection.
- *Respondent*: He asked me for a passport for my claim for refugee protection, yes.
- *Minister's representative*: So it's...
- *Respondent*: It can be for both reasons.²⁷

²⁴ Copy of passport in the name of XXXX, *supra*, footnote 2.

²⁵ Audio recording of the hearing held on July 4, 2019, from 00:40:45 to 00:41:00.

²⁶ Ibid., from 02:50:00 to 02:51:39.

²⁷ Audio recording of the hearing held on July 4, 2019, from 03:12:17 to 03:13:00.

[38] Following this exchange between the respondent and the Minister's representative, the panel went on to ask the respondent whether she had already been in contact with the smuggler when she applied for her passport in XXXX 2011. She answered no. How then to explain that she had applied for this passport on the smuggler's instructions if she was not already in contact with him at the time she submitted the application? When asked to clarify this issue for the panel, the respondent gave the following explanation:

[translation]

- *Member*: ...So when you applied for your passport, were you already in contact with the smuggler?
- *Respondent*: No.
- *Member*: So why would you answer that you had applied for the passport because the smuggler had told you that you would need it?
- *Respondent*: Why did she ask me for the passport? Why did my aunt ask me for the passport?
- *Member*: Mmm?
- *Respondent*: Why did my aunt ask me for the passport.
- *Member*: Earlier, at the start of the hearing, Ms. XXXX [the Minister's representative] asked you why you had applied for a Guinean passport ... why you had applied for this passport that was issued in XXXX 2011. You answered that it was because the smuggler had told you that you would need it.
- *Respondent*: Maybe I misunderstood. I must have understood "why did my aunt ask me for my passport".
- *Member*: Can you please elaborate a little bit about what you understood?
- *Respondent*: To me, she said why did my aunt need my passport. So, I replied "it's because the smuggler needed it, he had told me that I would need it here to claim refugee protection."²⁸

[39] The panel does not accept the respondent's explanation, as it considers it unreasonable for two reasons. First, although the role of the respondent's aunt in Guinea with respect to the respondent's identity documents and the steps she took to leave Guinea was raised a few times at the hearing, in the two exchanges above between the Minister's representative and the respondent, the Minister's representative makes no mention of the respondent's aunt in her questions. Her questions were clear and open-ended, not leading, and the respondent answered on two occasions that she had requested the passport because the smuggler had told her that she would need it for her claim for refugee protection; the respondent made no mention of her aunt. The hearing was held in French and the respondent did not request the assistance of an interpreter. Second, according to the respondent's statements in her PIF narrative, her aunt did not start making plans to help her leave the country until her uncle announced on XXXX XXXX, 2011, that he intended

²⁸ Ibid., from 03:13:49 to 03:15:38.

to marry the respondent to his son.²⁹ This contradicts the respondent's explanation that her aunt had told her to apply for a passport in XXXX 2011.

[40] Here, the panel is of the opinion that the respondent adjusted her testimony when a major contradiction was pointed out to her. The respondent's contradictory explanation about obtaining this passport undermines her credibility and lends support to the Minister's position that she was not in Guinea in XXXX 2011. It should be noted that the fact that a genuine passport was issued to her in Guinea in XXXX 2011 does not necessarily imply that she was in the country at that time. This passport could have been sent to her by mail or by other means after she was already in Canada. It should also be noted that this passport has no entry or exit stamps that could help to corroborate the respondent's physical presence in Guinea during the period in question.

[41] The respondent's testimony regarding the above-mentioned vaccination booklet in the name of XXXX XXXX XXXX raises additional doubts. This document was not in the original RPD file for her claim for refugee protection and was submitted into evidence for the vacation hearing. At the hearing, the respondent testified that she had been vaccinated prior to leaving Guinea because her aunt had informed her that she would be travelling and needed to get vaccinated. She testified that when she was vaccinated, she was still living at her paternal uncle's home in XXXX, a region in Conakry. The vaccination booklet indicates that the vaccines were given on XXXX XXXX, 2011.³⁰ However, in her narrative, the respondent states that on [translation] "**XXXX XXXX, 2011, at around XXXX p.m.**", her aunt helped her escape her uncle's home and sent her to a friend's home in XXXX XXXX to await a solution that would help her escape the forced marriage to her uncle's son which was planned for [translation] "**XXXX XXXX, 2011**" [emphasis in the original].³¹ According to her narrative, the respondent was no longer living with her uncle on the date indicated in the vaccination booklet (XXXX XXXX XXXX2011), contrary to oral testimony. When asked about this, the respondent stated that it was possible that the vaccine was [translation] "backdated" in the vaccination booklet to match the number of days for the vaccine.

²⁹ Document 2 – Minister's application to vacate, Exhibit M-4: narrative attached to the respondent's PIF, pp. 43-45, paras. 18-23.

³⁰ Extract from vaccination booklet in the name of XXXX, *supra*, footnote 22.

³¹ Document 2 – Minister's application to vacate, Exhibit M-4: narrative attached to respondent's PIF, p. 44, paras. 19 and 22.

[42] The panel recognizes that it must avoid analyzing the evidence microscopically and attaching undue weight to dates. Admittedly, the difference is a single day and the alleged events occurred in 2011. However, it is important to note that several specific dates – 11 to be precise – are included throughout the respondent’s narrative, most of them in bold type, to refer to significant events.³² This indicates the respondent’s particular focus on specific dates in the alleged events, which invites the panel to do the same. More importantly, the panel is of the view that the respondent’s justification for this inconsistency between her testimony, PIF and vaccination booklet—namely, that the vaccine may have been backdated—is far-fetched and further undermines her credibility. Since there is no other way to link the respondent to the content of the vaccination booklet other than her non-credible testimony, the panel gives this document no weight in establishing her presence in Guinea between XXXX and XXXX 2011.

[43] The record also contains a letter from a lawyer in Guinea dated XXXX XXXX XXXX 2012, which the respondent had filed in evidence in support of her claim for refugee protection.³³ The author of this letter states that he was consulted in XXXX 2011 by XXXX XXXX XXXX and her aunt regarding potential legal action against the respondent’s paternal uncle and his son for sexual abuse, death threats and forcing the respondent into marriage. Considering the Minister’s evidence and all of the credibility issues set out above, the panel grants no probative value to this document in terms of corroborating the respondent’s allegations and her physical presence in Guinea in XXXX 2011.

Academic documents submitted by the respondent for the vacation hearing

[44] The respondent submitted educational records, transcripts and annual report cards from Guinea in the name of XXXX XXXX XXXX for the years 2008 to 2010.³⁴ Based on the dates of the documents, they do not establish that the respondent was in Guinea at the time of the alleged events between XXXX and XXXX 2011, nor do they establish that it was not the respondent who obtained a TRV under the identity of XXXX XXXX in XXXX 2011 and entered Canada using this identity the following month.

³² Ibid., pp. 40–45, paras. 8–10, 14–15, 17, 20, 22, and 24.

³³ Letter from XXXX, dated XXXX 2012, *supra*, footnote 23.

³⁴ Document 3 – exhibits D-1 to D-6: educational records, transcripts and annual report cards for 2008 to 2010.

[45] Taking into consideration all of the above, the panel is not satisfied that the respondent was physically present in Guinea after XXXX XXXX XXXX 2011. The panel concludes, on a balance of probabilities, that the respondent XXXX XXXX XXXX and XXXX XXXX are one and the same person, and that the respondent arrived in Canada on XXXX XXXX, 2011, using a passport and TRV under the identity of XXXX XXXX. The panel concludes that the respondent directly misrepresented information in her claim for refugee protection by stating that she had never applied for a visa to enter Canada, had never used any identity other than XXXX XXXX XXXX, and had left Guinea for Canada on XXXX XXXX, 2011, using a French passport. These misrepresentations concerned relevant aspects of the respondent's claim for refugee protection: her identity, her story and her persecution in Guinea, given that she was already in Canada at the time the events of XXXX to XXXX 2011 described in her PIF allegedly occurred. These misrepresentations had a direct impact on the RPD's original decision to allow her claim for refugee protection.

Permanent residence granted to the respondent in 2016

[46] Counsel for the respondent at the vacation hearing, Mr. XXXX, submitted that IRCC had granted the respondent permanent residence in 2016 as a result of her becoming a Convention refugee, despite the fact that IRCC was already aware of the content of the Minister's application to vacate filed a year earlier. Indeed, at the hearing, the respondent testified that at the time of her appointment to obtain her Confirmation of Permanent Residence at the IRCC office in XXXX 2016, the IRCC officer gave her the copy of the passport under the identity of XXXX XXXX, told her about the Minister's application to vacate, and asked her several questions regarding her identity. She stated that she had explained to the IRCC officer that she was not the person depicted in the passport or the TRV belonging to XXXX XXXX. She testified that IRCC had requested that she submit additional documentation, and that at a second appointment on XXXX XXXX, 2016, IRCC had issued her Confirmation of Permanent Residence. In his submissions at the end of the hearing, counsel for the respondent argued that despite the fact IRCC was already aware and despite the concerns raised in the Minister's application to vacate, IRCC had given credence to the respondent's explanations and granted her permanent residence.

[47] With all due respect, when the RPD is seized with an application to vacate under section 109 of the IRPA, it is not bound by any previous IRCC decision to grant permanent residence to the individual who is the subject of the application to vacate. The RPD's mandate in

this case is to determine whether the Convention refugee status granted to the respondent in 2012 should be vacated. The fact that IRCC granted her permanent residence in 2016 does not affect the RPD's jurisdiction under section 109 of the IRPA.

Is there a causal relationship between the misrepresentations or withholding of information and the RPD's decision to allow the claim for refugee protection?

[48] The panel is of the opinion that there is a strong causal relationship between the respondent's misrepresentations and the RPD's positive decision in her claim for refugee protection.

[49] In her PIF, the respondent described several incidents that occurred between XXXX 2011 and XXXX 2011 involving her paternal uncle and his son.

[50] In considering the respondent's claim for refugee protection in 2012, the RPD was not aware of all the relevant facts and was therefore prevented from making an informed decision. Had the RPD known at that time that the respondent had obtained a TRV in XXXX 2011 under an identity other than the one used in her claim for refugee protection, and that she had left Guinea to come to Canada in XXXX 2011 rather than in XXXX 2011, its decision would likely have been different. The respondent's misrepresentations had a direct impact on the outcome of her claim for refugee protection.

C. Application of subsection 109(2) of the IRPA

Is there sufficient evidence remaining from the evidence considered at the time of the initial decision to justify granting refugee protection despite the misrepresentations?

[51] The panel is of the opinion that there is insufficient credible and trustworthy evidence remaining from the evidence considered at the time of the RPD's initial decision to justify granting refugee protection in the respondent's case.

[52] According to the expedited report, in reaching its decision, the original panel considered the [translation] "Personal Information Form, the supporting evidence filed, the documentary evidence on the country and the tribunal officer's report."³⁵

³⁵ Document 1 – Original RPD file, No. MB1-04500, in the respondent's refugee protection claim: expedited report, officer's observations, dated November 27, 2012.

Tribunal officer's report

[53] At the time the original decision was rendered, the RPD had tribunal officers, formerly known as [translation] “refugee protection officers”, one of whose functions was to make recommendations to members in cases selected for expedited processing of refugee protection claims, a process in effect at the time. The officers considered the evidence on the record and conducted an interview with claimants, which was shorter than a regular hearing, to ask them questions about their claim. Thereafter, the officers could either recommend that the member assigned to the file render a positive decision without a hearing or that the member proceed with a regular hearing to further consider the claim for refugee protection.

[54] The officer's observations in the expedited report³⁶ indicate that the respondent was a 20-year-old Guinean woman who arrived in Canada on XXXX XXXX, 2011, alleging that she was a victim of circumcision and domestic sexual violence, and that she feared being forced into a marriage in Guinea. The officer was satisfied as to the respondent's identity and credibility, indicating that she had answered all of his questions directly and that he had noted no contradictions.

[55] However, it is important to note here that the officer's interview with the respondent lasted only 40 minutes³⁷ and that, when he submitted his observations to the member assigned to the file, the officer was certainly not aware of the new evidence presented in the application to vacate. His recommendation to the member was based entirely on the information presented by the respondent in her statements and evidence. Had the tribunal officer been aware of the other evidence in the record in this application to vacate, his assessment of the evidence and report to the member would certainly have been negatively impacted, which in turn would have significantly impacted the member's decision in the case. In this case, the panel cannot consider the tribunal officer's observations as evidence of the credibility of the respondent's allegations.

Personal Information Form and other supporting documents filed

[56] Although the evidence in the original file regarding the alleged events between XXXX and 2011 is now vitiated for the reasons set out above, the respondent's PIF narrative recounts other

³⁶ *Idem.*

³⁷ Expedited report, officer's observations, dated November 27, 2012, *supra*, footnote 35.

incidents that occurred in the months preceding XXXX 2011.³⁸ Accordingly, the panel considered whether this part of the respondent's allegations should be accepted.

[57] In this part of her allegations, the respondent recounted that, in accordance with the tradition in her culture, she was a victim of female genital mutilation (FGM) at age 10, an experience she describes as very difficult—one whose effects were still ongoing. She stated that she was raised in the Muslim faith, and that although she lived with her parents, her paternal uncle, a local imam, had a great deal of influence on the family. She states that she attended Quranic school first, then French school. She describes her own parents as more open, noting that they had accepted her boyfriend when she first introduced him to them in 2009, even though he was of the Christian faith.

[58] In addition, she stated that when she and her younger siblings went to live with her paternal uncle following the sudden death of her parents by car accident in XXXX 2010, their living conditions at his home were very difficult: they were not adequately fed, and she was forced to do all of the household chores alone—for her uncle, his wife and their children, as well as for her own siblings. She stated that she completed part of her post-secondary education, but when her university term began in XXXX 2011, her uncle refused to pay her tuition. She was forced to seek help from her boyfriend, with whom she had maintained a romantic relationship in hiding from her uncle, as he would have forbidden her to continue the relationship. The respondent stated that in XXXX 2011, while living with her paternal uncle, her uncle's son threatened her at knifepoint and sexually assaulted her. The next day, her paternal uncle accused her of trying to sully the family's honour and told her that she would have to marry this son. In XXXX 2011, the respondent and her lover were taken by surprise at a restaurant by her paternal uncle.irate, her uncle immediately sent for his sons, and the respondent and her boyfriend were severely beaten. Then, in XXXX 2011, while the respondent was working on her university assignments, her uncle tore up her books and began to beat her. He formally forbade her to continue going to school, hammering the idea that her place was at home. The other incidents that she mentioned in her narrative happened during the period from XXXX to XXXX 2011.

³⁸ Document 2 – Minister's application to vacate, Exhibit M-4: narrative attached to the respondent's PIF, pp. 41–43, paras. 10–19.

[59] The issue for the panel is that the alleged incidents for the period from XXXX to XXXX 2011, which are now wholly lacking in credibility, are directly related to the previous incidents. Specifically, the allegation of the family gathering on XXXX XXXX, 2011, during which the respondent's uncle announced his intention to marry her to his son on XXXX XXXX XXXX and the subsequent allegations concerning the steps taken by the respondent's aunt to help her flee the country, are directly related to the other allegations of the previous months concerning the actions of her paternal uncle and his son. As the respondent's credibility with respect to the period from XXXX to XXXX 2011 is already seriously compromised, the panel finds that her credibility regarding the incidents that allegedly took place during the months preceding this period is also seriously undermined, such that the panel finds these allegations to be unfounded.

[60] The original file contains a medical certificate from the XXXX XXXX XXXX, which the respondent had filed in support of her claim for refugee protection.³⁹ This document indicates that XXXX XXXX XXXX received medical care at the centre on XXXX XXXX, 2011, and that she told the physician she had been beaten by her uncle and his children because they objected to her romantic relationship with her boyfriend. The document is dated XXXX XXXX, 2011. The panel is of the opinion that this evidence is tainted by the respondent's misrepresentations, which have undermined her credibility such that the panel gives the medical certificate no probative value.

[61] In support of her claim for refugee protection, the respondent had also filed a letter from a XXXX XXXX at XXXX XXXX XXXX dated XXXX XXXX XXXX 2012.⁴⁰ The letter states that at the time of writing, the respondent was being followed for XXXX and receiving XXXX care at XXXX XXXX XXXX. It indicates that the respondent was showing several symptoms of post-traumatic stress due to what she experienced in Guinea, making reference to the respondent's paternal uncle and the sexual assault she stated she had experienced at the hands of her uncle's son in Guinea. While the panel is sensitive to the symptoms the respondent has shown, it cannot accept this letter as evidence that the respondent was persecuted in Guinea. With all due respect, the observations made by the social worker with respect to the persecution experienced in Guinea were based solely on statements made by the respondent, whose credibility has been seriously

³⁹ Document 1 – Original RPD file, No. MB1-04500, in the respondent's claim for refugee protection, Exhibit P-5.1: medical certificate from the XXXX, dated XXXX, 2011.

⁴⁰ Document 1 – RPD file, No. MB1-04500, in the respondent's claim for refugee protection, Exhibit P-6: letter from XXXX, XXXX at XXXX, XXXX 2012.

undermined. While the respondent may have experienced hardships in Guinea that caused the symptoms of post-traumatic stress described by the social worker, given the credibility issues raised, this letter is not sufficient to corroborate the incidents that gave rise to these symptoms.

[62] The respondent had also filed documents related to the deaths of her parents as evidence in her claim for refugee protection.⁴¹ These documents state that they died XXXX XXXX XXXX XXXX XXXX in 2010. While the panel sympathizes with the respondent regarding this situation, this evidence is not sufficient in itself to justify granting her refugee protection.

Objective documentary evidence on Guinea

[63] Articles on forced marriages in Guinea had been filed by Mr. Koné, the counsel for the respondent at the time of her claim for refugee protection. The original file also included the Index to the IRB's national documentation package dated June 15, 2012.⁴² This is objective documentary evidence on the general conditions in Guinea, including the frequent occurrence of violence against women and forced marriages. While the panel accepts the content of the documents, the objective documentary evidence on the conditions in the country of origin is not sufficient, in and of itself, to justify granting refugee protection.⁴³ Other factors considered in the original decision must credibly establish that these conditions apply to the respondent's situation.

[64] The only remaining evidence for the panel to consider is the respondent's profile at the time of her claim for refugee protection: a young Guinean woman of Muslim faith and a childhood victim of FGM in the process of completing her post-secondary education, whose parents died in 2010.

[65] In *Sow v. Canada*, the Federal Court held that the fact that an adult female refugee protection claimant was forced to undergo FGM as a child amounts to past persecution; "it is not relevant to an assessment of forward-looking risk".⁴⁴ Sections 96 and 97 of the IRPA address forward-looking risks in the event of a return to the country of origin. The Court found that "she

⁴¹ Document 1 – RPD file No. MB1-04500 in the respondent's claim for refugee protection, exhibits P-1 and P-2: death certificates for the respondent's parents. Exhibit P-3: Certificates of storage of human remains.

⁴² Document 1 – RPD file No. MB1-04500 in the respondent's claim for refugee protection, Exhibit P-4: articles on forced marriages in Guinea.

Document 1 – Index of the NDP on Guinea (June 15, 2012).

⁴³ *Naqvi v. Canada (M.C.I.)*, 2004 FC 1605, paras. 16–17.

⁴⁴ *Sow v. Canada (Minister of Citizenship and Immigration)*, 2011 FC 1313, para. 53.

cannot be subjected to such treatment again if she returns to Guinea, and she did not allege that this is the risk that she faces.”⁴⁵ While the panel acknowledges that FGM is a serious violation of human rights, the Federal Court’s reasoning in *Sow* applies to the respondent in this case.

[66] The other elements of the respondent’s profile at the time of the RPD’s original decision do not, in the panel’s view, justify granting refugee protection to the respondent.

[67] Accordingly, the panel concludes that, on a balance of probabilities, there is insufficient evidence remaining to justify granting refugee protection to the respondent. Subsection 109(2) of the IRPA cannot be applied favourably in the respondent’s case.

D. Other evidence submitted by the respondent in the application to vacate

[68] The respondent filed in evidence copies of her XXXX XXXX XXXX issued by the XXXX XXXX XXXX XXXX XXXX XXXX XXXX [XXXX XXXX XXXX XXXX XXXX XXXX],⁴⁶ her marriage certificate (for a marriage that took place in Quebec),⁴⁷ birth certificates for her two children born in Quebec,⁴⁸ and her vocational certification as a pharmacy technician obtained in Quebec.⁴⁹ The panel certainly has compassion for the respondent’s current situation. However, the jurisdiction conferred to the panel by the IRPA does not allow it to take into account humanitarian and compassionate considerations in its decision. Other remedies are provided for in the IRPA for this purpose.

CONCLUSION

[69] For the foregoing reasons, the panel concludes that the Minister has established, on a balance of probabilities, that the RPD’s determination granting the respondent “Convention refugee” status on December 20, 2012, resulted from a misrepresentation of a material fact relating to a relevant matter. The panel further concludes that there is no remaining evidence from the evidence considered by the RPD in its original decision to justify granting refugee protection.

⁴⁵ *Idem*.

⁴⁶ Document 3 – Exhibit D-11: XXXX issued by the XXXX [XXXX] on XXXX, 2016.

⁴⁷ Document 3 – Exhibit D-7: copy of the respondent’s marriage certificate, issued by the Registrar of Civil Status of Quebec on XXXX 2017.

⁴⁸ Document 3 – Exhibit D-8: birth certificates for the respondent’s two children, issued by the Registrar of Civil Status of Quebec.

⁴⁹ Document 3 – Exhibit D-13: respondent’s vocational certification, issued on XXXX, 2012.

[70] Consequently, under section 109 of the IRPA, the panel allows the Minister's application to vacate the "Convention refugee" status granted to the respondent.

[71] This determination is deemed to constitute a rejection of her claim for refugee protection. Consequently, the original decision allowing her claim for refugee protection is nullified.

Virginie Francoeur

Virginie Francoeur

July 20, 2020

Date

IRB translation

Original language: French