



RPD File No. / N° de dossier de la SPR : MB9-14760

UCI / IUC : XXXX

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

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|-----------------------------------------|------------------------------------------------|--------------------------------------------------------------|
| Claimant(s) | XXXX XXXX XXXX XXXX XXXX | Demandeur(e)(s) d'asile |
| Date(s) of hearing | November 18, 2020, and December 9, 2020 | Date(s) de l'audience |
| Place of hearing | Held by videoconference in Montréal, Quebec | Lieu de l'audience |
| Date of decision and reasons | January 6, 2021 | Date de la décision et des motifs |
| Panel | Jose Ordonez | Tribunal |
| Counsel for the claimant(s) | Patrick Fernandez | Conseil(s) du (de la/des) demandeur(e)(s) d'asile |
| Designated representative | N/A | Représentant(e) désigné(e) |
| Counsel for the Minister | N/A | Conseil du (de la) ministre |

REASONS FOR DECISION

INTRODUCTION

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

ALLEGATIONS

[2] The claimant fears death or serious harm at the hands of her ex-boyfriend XXXX XXXX and his wife. In XXXX 2018, she moved from Mexico City to the state of Mexico, where she met XXXX, who approached her at a market. She began a secret relationship with him. On XXXX XXXX XXXX 2018, XXXX invited the claimant to a hotel, where he and his wife, XXXX XXXX XXXX XXXX XXXX XXXX, beat her. XXXX is the daughter of a drug trafficker known as XXXX from La Familia Michoacan. These events took place in Mexico. The claimant alleges that her agents of harm can find her in Guatemala.

DETERMINATION

[3] The panel concludes that the refugee protection claimant is not a “Convention refugee” or a “person in need of protection” under section 96 and subsection 97(1) of the IRPA.

ANALYSIS

[4] The determinative issue in this refugee protection claim is credibility. For the following reasons, the panel does not find the refugee protection claimant credible. This finding is determinative for the panel’s analysis under both section 96 and subsection 97(1) of the IRPA.

IDENTITY

[5] The refugee protection claimant established her identity, on a balance of probabilities, by means of a certified true copy of her Mexican passport.¹

[6] The claimant was born in Guatemala, a country that grants nationality by birth.² The claimant is therefore a Guatemalan and Mexican national.

[7] Since the alleged events took place in Mexico and the determinative issue is credibility, the panel is assessing the refugee protection claim in relation to Mexico.

CREDIBILITY

Secret relationship with XXXX

[8] The claimant gave implausible testimony about her secret relationship with XXXX.

[9] The claimant moved from Mexico City to XXXX XXXX, in the state of Mexico, in XXXX 2018 with her two children. She testified that she rented a place and lived alone with her two children. Her sister lived in XXXX XXXX [translation] “two or three houses away from me” and they saw each other every day.

[10] The claimant wrote in her account that XXXX become friends with a man who had a washing machine and refrigerator repair business in order to watch her and that he saw her leave her home in the morning with her children to bring them to school.³ He was [translation] “almost always sitting.”⁴ She testified that she and XXXX got together three times a week at most and that he picked her up at home by car. They went out for breakfast or ate together at her place or they went to restaurants or movie theatres. XXXX picked up the claimant at home around 2 p.m. or 2:30 p.m. before her son came home from school. Their outings lasted three hours. Sometimes, they got together in the evening for over three hours. They got together in XXXX XXXX. The claimant normally picked her son up from school, but sometimes her sister picked him up, since

¹ Document 1 – Information package provided by the referring Canada Border Services Agency or Immigration, Refugees and Citizenship Canada.

² Document 4 – National Documentation Package (NDP) on Guatemala, Tab 1.3: Guatemala. The World Factbook. United States. Central Intelligence Agency. April 22, 2019.

³ Document 1 – Written account, p. 3.

⁴ Ibid.

her nephew attended the same school as her son. The claimant went to night clubs or bars with XXXX when they got together in the evening. The claimant testified that no one knew about her relationship with XXXX and that she did not tell anyone, apart from her sister after the incident on XXXX XXXX XXXX 2018.

[11] The claimant testified that she worked full time for a company but that she started working part time because XXXX gave her money. She testified that XXXX gave her an average of XXXX XXXX XXXX XXXX XXXX XXXX Pesos (CAD\$XXXX XXXX XXXX)⁵ and that he once gave her XXXX XXXX XXXX Pesos (CAD\$XXXX),⁶ which she used to go out with her children and buy [translation] “household items.” XXXX gave her the money in cash each week. She added that she used the money to buy food, gifts for her nephews and [translation] “when I went to my mother’s place, I brought her something,” such as clothing, fruit or food. She also added that XXXX bought her food, perfume and boots.

[12] The claimant testified that her sister told her about XXXX and his wife XXXX ties to the Michoacan Cartel. She stated that her sister told her who XXXXandXXXX XXXX were and [translation] “that they had killed people before and had been in the newspaper.” She added that XXXX had been in the newspaper together with her family as a member of the Michoacan Cartel. She also added that XXXX had been in the news as a member of the Michoacan Cartel but that she was not aware of this since she was new to the city. She stated that XXXX was in the news for selling drugs and weapons. She also testified that her sister identified XXXXas XXXX wife, since [translation] “my sister had lived there for years, people, neighbours, everyone knew.”

[13] The panel asked the claimant how no one knew about her relationship with XXXX if she went out with him in public in XXXX XXXX XXXX XXXX spent time in front of the claimant’s home and watched her, she reduced her workload, she had more money and bought gifts for her family, her sister sometimes picked up her son from school, her sister lived two to three houses away from her, and she and her sister saw each other every day.

[14] The claimant testified that her sister [translation] “did not know in any way, at any time” and added that “when she [her sister] asked me how I could give gifts to her children, I told her I

⁵ Rate from xe.com on January 4, 2021.

⁶ Rate from xe.com on January 4, 2021.

had extra money saved.” She stated: [translation] “when we went out to restaurants, bars, movie theatres, they were places far from XXXX XXXX, not in XXXX XXXX. Once we drove out to Michoacan. We did not keep going to the same places. Since we did not keep going to the same places, I do not believe that he could have been recognized easily.” She also added: [translation] “I did not yet realize that he could be recognized. That is all.”

[15] The panel rejects the claimant’s explanations. The panel considers that a practical and informed person would not readily recognize such actions as reasonable in that place and in those conditions.⁷ The claimant’s actions fall outside the realm of what could reasonably be expected in the circumstances.⁸ In this case, a practical and informed person would not readily recognize as reasonable: (1) that the neighbours, especially the owner of the business near the claimant’s home, were not aware of the claimant’s relationship with XXXX since he went to the business to watch her and saw her leave in the morning with her children a number of times to bring them to school; (2) that her sister who lived two to three houses away from the claimant was not aware of her relationship with XXXX if he picked the claimant up at home by car and sat down at the business to watch her and the claimant changed her work schedule to part time while having more money to buy gifts for her nephews and mother and to go out with her children when XXXX had been in the news and [translation] “everyone,” including her neighbours, knew that XXXX was XXXX wife and that they belonged to the Michoacan Cartel; and (3) that neighbours and residents in XXXX XXXX were not aware of the relationship given that the claimant went out with XXXX to restaurants, movie theatres, bars and night clubs in XXXX XXXX, even though XXXX and his wife were known to people, neighbours and [translation] “everyone” in the city because they were in the news and newspapers and their ties to the Michoacan Cartel were exposed. On the contrary, a practical and informed person would not accept that no one was aware of the relationship given the notoriety of XXXX and his wife, the nature and location of the claimant’s activities with XXXX, and the claimant’s work and economic situation and how she spent the money that she received from XXXX. The panel therefore considers that these actions, as described by the claimant, are implausible.

⁷ *Faryna v. Chorny* [1952] 2 D.L.R. 354 (B.C.C.A.), para. 357.

⁸ *Valtchev v. M.C.I.* (F.C.T.D., No. IMM-4497-99), Muldoon, July 6, 2001; 2001 FCT 776.

[16] Regarding the claimant's activities with XXXX, she gave contradictory testimony about where they occurred. The claimant first testified that the outings with XXXX were in XXXX XXXX. When the panel asked her how no one knew about the relationship, she stated that the activities did not take place in XXXX XXXX but farther away. When asked about the contradiction, the claimant testified that XXXX [translation] "picked me up at my place in XXXX XXXX. He also came to my apartment. It was one of the locations and possibly the only location near my place or next to my place. The other locations were in plazas outside XXXX XXXX."

[17] The panel rejects the claimant's explanations because they do not justify the contradiction. It is objectively reasonable to expect the claimant to be able to establish where the activities with XXXX took place. These activities took place over a number of months in 2018.

[18] For these reasons, the panel considers that the claimant did not establish, on a balance of probabilities, that she had a secret relationship with XXXX, who was married to XXXX and who had close ties to the Michoacan Cartel.

Violent incident with XXXX and XXXX XXXX

[19] The claimant provided inconsistent testimony about the violent incident with XXXX and his wife XXXX that allegedly took place on XXXX XXXX XXXX 2018, and drove her to leave Mexico. She testified that she went to a hotel room where she was meeting XXXX XXXX XXXX came out of the bathroom and started hitting her together with XXXX XXXX XXXX threatened her, telling her that if she shouted, she would kill her children. The claimant stated that XXXX did not say anything while he and XXXX beat her, that he held her for XXXX to hit her and that he kicked her.

[20] The claimant wrote in her account that XXXX grabbed her by the back of the neck and told her that, if she shouted, XXXX would kill her children. When asked about the inconsistency regarding the person who allegedly made the threat during the incident, the claimant testified that XXXX had helped XXXX hold her and control her in order for XXXX to beat her. She added that, when she wrote her account, she focused on XXXX but that [translation] "they both threatened me with the same thing. There were no different threats."

[21] The panel rejects the claimant's explanations. It is objectively reasonable to expect the claimant to be able to establish who threatened her during the incident. This incident is the only

violent incident involving the claimant in her written account and is her reason for leaving her country. The claimant did not explain the inconsistency. She contradicted herself when she stated that XXXXandXXXX XXXX made the threat, whereas she stated earlier that XXXX did not say anything. For these reasons, the panel concludes that the claimant did not establish, on a balance of probabilities, that she was threatened during a violent incident with XXXXand XXXX in a hotel on XXXX XXXX XXXX 2018.

Move to XXXX XXXX from Mexico City

[22] The claimant failed to provide her address in XXXX XXXX in Schedule A. When asked about the omission, she testified [translation] “I did not” and added that the address under the name XXXX XXXX XXXX in Mexico City provided in Schedule A is her grandmother’s address, where she lived until she moved to XXXX XXXX.

[23] The panel rejects the claimant’s explanation. She alleges that she lived in XXXX XXXX from XXXX 2018 to XXXX XXXX XXXX 2018. Her relationship with XXXX allegedly took place in XXXX XXXX. Therefore, it is objectively reasonable to expect the claimant to provide this address in Schedule A since the events that drove her to leave Mexico occurred at this place and she lived there for five months. As a result, the panel draws a negative inference in terms of the claimant’s overall credibility.

Lack of supporting evidence

[24] The claimant did not submit any evidence to support her allegations. She alleges that she went to a doctor after the incident on XXXX XXXX XXXX 2018. She did not submit any doctor’s report. When asked about the missing report, she testified that she did not submit one. The claimant alleges that her friend in XXXX XXXX called to tell her that a sign in the window of her home in XXXX XXXX stated [translation] “I will find you slut.” The claimant did not submit a letter from her friend about this matter. She stated that she did not think to ask her friend to take a picture of the sign. The claimant did not submit a letter from her sister or mother to corroborate her allegations and did not make any effort to do so. The claimant is represented by counsel, who helped her fill in her Basis of Claim Form (BOC Form) and who represented her at her hearing. Given the claimant’s major credibility issues and the fact that she has counsel and could have tried

to obtain supporting evidence, the panel draws a negative inference in terms of the claimant's overall credibility.

Subjective fear

[25] The claimant arrived in Canada on XXXX XXXX XXXX 2018. She filed her refugee protection claim on XXXX XXXX XXXX 2019. She extended her Canadian visa, which expired on XXXX XXXX XXXX 2019.⁹ She testified that she waited one year before filing her refugee protection claim because [translation] "I did not know about refugee protection." She added that, five to six months after arriving in Canada, she learned about the possibility of filing a refugee protection claim. She also added that she did not have her children with her and that she wanted them with her, and therefore she could not decide.

[26] The panel rejects the claimant's explanations. It is objectively reasonable to expect the claimant to file her refugee protection claim as soon as possible, especially after learning that she could do so. However, the claimant waited six months after learning that she could do so because she wanted her children with her. If she truly fears XXXX and XXXX, the claimant should have filed her refugee protection claim as soon as she learned that she could do so regardless of whether her children are in Mexico or with her in Canada. As a result, the panel considers that the delay in filing her refugee protection claim undermines the claimant's subjective fear of XXXX and XXXX.

[27] For all these reasons, the panel considers that the claimant did not establish, on a balance of probabilities:

- (a) that she had a secret relationship with XXXX in XXXX XXXX XXXX;
- (b) that she was threatened during a violent incident on XXXX XXXX XXXX 2018, by XXXX or his wife XXXX;
- (c) that the violent incident on XXXX XXXX XXXX 2018, took place; and
- (d) that XXXX XXXX XXXX or the Michoacan Cartel can harm her in Mexico or Guatemala.

⁹ Document 1 – GCMS notes.

[28] The claimant testified that she does not fear anyone else. The panel does not need to rule on her fear as a single woman in Guatemala.

Profile as a single woman in Mexico

[29] The panel notes that violence against women is a widespread problem in Mexico and that femicide is the main cause of death for women aged 15-19 years.¹⁰ Sexual abuse and domestic violence against women are common in Mexico, with domestic violence being the main type of gender-based violence.¹¹ Femicide is defined as the murder of a woman because of her gender. According to the national prosecutor of Mexico, the number of femicides has grown 137% over the past five years.¹² The gender-based violence situation is confirmed by the claimant's evidence.

[30] However, the number of homicides among males is much higher than among females.¹³ Men are far more likely to die by homicide than women.¹⁴ Mexican men are 8.3 times more likely to be homicide victims than women. In 2017, 88.9% of victims were men (28,522 victims) and 10.7% were women (3,430 victims).¹⁵

[31] While women in Mexico face gender-based violence, the panel considers that the claimant did not show that she would be targeted by the violence. She did not provide specific reasons for why she would be the victim of femicide, domestic violence or other gender-based violence in Mexico. From assessing the objective evidence on the record, the panel cannot conclude that women face a higher risk of murder, since most homicide victims are men. Women in Mexico are victims of gender-based violence. However, after assessing all the evidence on the record, the panel considers that the claimant did not establish a serious possibility of persecution by reason of gender-based violence against single women. The panel is of the opinion that gender-based

¹⁰ Document 3 – NDP on Mexico, Tab 5.2: Mexico. Social Institutions and Gender Index 2019. Organisation for Economic Co-operation and Development. December 7, 2018, p. 4; Tab 2.2: Mexico. Human Rights in the Americas: Review of 2019. Amnesty International. February 27, 2019. AMR 01/1353/2020, p. 3.

¹¹ Document 3 – Tab 5.3: Mexico: Domestic Violence. COI Compilation. Austrian Red Cross. Austrian Centre for Country of Origin and Asylum Research and Documentation. May 2017. P. 11; Tab 5.11: Mexico Gender Assessment. The World Bank. April 30, 2019. P. 69.

¹² Document 3 – Tab 5.6: Mexican government paralyzed in the face of a wave of femicides. Human Rights Watch. José Miguel Vivanco. March 3, 2020.

¹³ Document 3 – Tab 5.11: Mexico Gender Assessment. The World Bank. April 30, 2019. P. 70.

¹⁴ Document 3 – Tab 7.9: Organized Crime and Violence in Mexico. Analysis Through 2018. University of San Diego. Justice in Mexico Project. Laura Calderón et al. April 2019. P. 36.

¹⁵ Ibid.

violence against single women is not systemic such that it creates a serious possibility of persecution. As a result, the fact that the claimant is a single woman does not mean that she faces a serious risk of femicide, domestic violence or other types of gender-based violence.

[32] For all these reasons, the panel considers that the claimant would not face a serious possibility of persecution should she return to Mexico. For the same reasons, the panel concludes that the claimant did not establish that she would be subjected to a risk to her life, to a risk of cruel and unusual treatment or punishment or to a danger of torture, on a balance of probabilities, should she return to Mexico.

NO CREDIBLE BASIS

[33] The panel concludes that there was no credible or trustworthy evidence based on which a favourable decision could have been made in this case. The panel (1) established that none of the claimant's allegations are credible and (2) concludes that the claimant's behaviour is not consistent with her delay in claiming refugee protection. Apart from her testimony and BOC Form, the claimant did not provide any other evidence to substantiate her allegations. The lack of corroborating evidence was analyzed above. Given that the claimant is not credible, the objective evidence on the record cannot support or corroborate her allegations against the Michoacan Cartel. Therefore, the panel concludes that there is no credible basis for the refugee protection claim.

CONCLUSION

[34] As a result, the panel determines that the refugee protection claimant, **XXXX XXXX XXXX XXXX XXXX XXXX**, is not a "Convention refugee" under section 96 or a "person in need of protection" under subsection 97(1) of the IRPA. Moreover, the panel concludes that there is no credible basis for this refugee protection claim.

[35] As a result, the refugee protection claim is rejected.

(signed by) Jose Ordonez
January 6, 2021

IRB translation
Original language: French