



RPD File No. / N° de dossier de la SPR : MB7-02551

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

Date(s) of hearing

October 29, 2018
January 10, 2019
March 12, 2019

Date(s) de l'audience

Place of hearing

Montréal, Quebec

Lieu de l'audience

**Date of decision
and reasons**

March 26, 2019

**Date de la décision
et des motifs**

Panel

Georges Nahas

Tribunal

Counsel for the claimant(s)

Annick Legault

**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] **XXXX XXXX XXXX** (the claimant) is a citizen of Haiti. She is claiming refugee protection in Canada under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

[2] The claimant alleges that she was hit and threatened in Haiti by her paternal uncle, who is named XXXX and who lived with her, her family and her other paternal uncle.

[3] She also alleges that she was harassed in secondary school in 2002 or 2003 by a boy her age. The boy was interested in her and ended up being expelled from school in 2004 or 2005 for carrying a weapon.

[4] She further alleges that, in 2006, four armed criminals entered her family home and beat her father.

[5] The claimant alleges that she fears the practice of witchcraft by certain people in Haiti and that she fears being raped, since too many women in Haiti have experienced this atrocity.

[6] The claimant alleges that, as a result of these incidents, she left Haiti and went to Mexico in 2010. She remained in Mexico with temporary resident status until XXXX 2017, but also visited countries such as the Dominican Republic, Costa Rica, Nicaragua, Honduras and Guatemala. She went to the United States twice, once in 2013 and again in 2016. She also returned to Haiti in XXXX 2015 for approximately one month.

[7] The claimant alleges that she ultimately left Mexico and went to the United States in XXXX 2017, but that she decided to enter Canada and claim refugee protection here in XXXX 2017.

DETERMINATION

[8] The panel determines that the claimant failed to establish that she has a well-founded fear of persecution within the meaning of the Convention or that, on a balance of probabilities, she would be subjected personally to a danger of torture, a risk to her life or a risk of cruel and unusual treatment or punishment under subsection 97(1) of the IRPA.

ANALYSIS

Identity

[9] The claimant's identity was established to the panel's satisfaction by means of her Haitian passport and documents issued by the Mexican authorities, which were seized by the Canadian authorities.¹

Conduct of the hearing

The hearing for this refugee protection claim was held over three sessions and included approximately eight hours of testimony. At the start, the panel noted an issue with the claimant's stutter, which prevented her from speaking clearly. This issue was mentioned in a psychotherapist's assessment of the claimant.² The panel sometimes needed to interrupt the claimant to allow her to repeat her statements to ensure that they accurately reflected her testimony. At the second session, counsel for the claimant was of the opinion that the interruptions were very frequent and that, as a result, the panel needed to recuse itself. Nevertheless, at the start of the third session, counsel changed positions and decided to withdraw the recusal request. The panel also gave counsel the entire third session to ask the claimant any questions deemed necessary and to rectify any misunderstanding that may have occurred during the second session. Counsel asked very few questions.

Credibility

¹ Document 2 – Information package provided by the Canada Border Services Agency or Immigration, Refugees and Citizenship Canada: Haitian passports and Mexican identity cards.

² Document 8 – Exhibit D-29: Psychosocial assessment report.

[10] When a refugee protection claimant swears to the truth of certain allegations, this creates a presumption that those allegations are true, unless there is reason to doubt their truthfulness. For example, the presumption may be rebutted by contradictions, inconsistencies, implausibilities or omissions that are relevant to the basis of the refugee protection claim.

[11] The claimant was not a credible witness. The panel identified significant omissions, contradictions and inconsistencies that were directly related to her refugee protection claim in the claimant's testimony, in her accounts in the Basis of Claim Form (BOC Form) and the amendment,³ in the form completed at the request of the Canadian authorities⁴ and in the documentary evidence.⁵ The reasons are as follows.

Allegations regarding the claimant's uncle XXXX

[12] The claimant alleges that her paternal uncle XXXX, who lived with his wife and two children under the same roof as the claimant and her family (father, mother, brother and sister) and her other paternal uncle, was a violent man. He hit the claimant and her brothers and sisters, he insulted the entire family and made death threats against them, and he even threw hot oil on the claimant's mother. The claimant left Haiti in part because of this uncle's behaviour.

[13] When asked whether her father and mother decided to change residences after each alleged incident, the claimant responded that they did not and that they changed residences only after she left Haiti. Her father and mother separated and now live at addresses that are different from the family home address. Her brother and sister live with her mother.

[14] When asked where she lived in 2015 when she returned to stay in Haiti, the claimant responded that she lived with her mother. When asked whether she had issues with her uncle XXXX when she returned to Haiti in 2015, the claimant added an account that was not included

³ Document 1 – Basis of Claim Form (BOC Form).
Document 7 – Exhibit D-1: BOC Form amended on December 20, 2018.
⁴ *Supra*, footnote 1, IMM 5669, "Schedule A – Background/Declaration."
⁵ Document 4 – Exhibits D-1 to D-23;
Document 6 – Exhibit D-24: Speech language pathology assessment report;
Document 7 – Exhibits D-11 to D-28;
Supra, footnote 2.

in her initial BOC Form. She added that she met her uncle in the street and that he gave her a [translation] “dirty look” and stated “you came back?”

[15] The panel notes that the claimant stated at the start of the first session on October 29, 2018, that the content of her BOC Form was “complete, true and correct.” The account concerning her encounter with her uncle XXXX in 2015 was not included in the BOC Form. She added the account concerning the encounter with her uncle XXXX in 2015 only after the panel asked her the question. She added the account in a new amendment to her BOC Form dated December 21, 2018.⁶

[16] The panel notes that her family’s alleged moves are not included in the IMM 5669 form completed at the request of the Canadian authorities, in which the claimant stated that the content was “complete, true and correct.” She also does not mention in the form that she lived at her mother’s new address when she returned to Haiti in 2015. The only address included in her IMM 5669 form⁷ is the address of the family home (XXXX XXXX XXXX, no. XXXX, in XXXX).

[17] The panel finds that the claimant tried to embellish her account and add incidents in her testimony after the panel asked questions. The behaviour of her uncle XXXX is one reason that she fears returning to Haiti. She could not have forgotten the new incident in her initial BOC Form, since it is a key part of her refugee protection claim. The panel also asked her at the start of the hearing whether she wanted to add or amend anything with regard to her written statements. However, she responded that all the information submitted in the various forms was complete, true and correct. The fact that she submitted an amendment to her BOC Form before the second session, but after the panel asked her the question, undermines her credibility.

[18] Moreover, the entire family’s decision to continue living with this violent and threatening uncle until at least 2010 (no move took place before that date even though her uncle’s alleged acts of violence were being carried out long before then and had continued until the claimant left Haiti), and the lack of a complaint filed by the claimant against her uncle before she left Haiti in

⁶ Document 4 – Exhibit D-1, BOC Form, question 2(a).

⁷ *Supra*, footnote 2 – No. IMM 5669, “Schedule A – Background/Declaration,” question 12.

2010 or after she returned to Haiti in 2015, when she had come back to stay, lead the panel to conclude that the claimant failed to establish, on a balance of probabilities, the truthfulness of her allegations regarding her paternal uncle XXXX behaviour.

[19] Even if, purely hypothetically, the claimant's allegations regarding her uncle were true, they date back over ten years. According to her written account, she lived in the family home only until 2009. Nothing on the record shows that her uncle continued to pose a threat to her after that date, in other words, since she left in Haiti in 2010 and returned to Haiti in 2015, or that he would still pose a threat to her at this time. The fact that he met her in the street and stated [translation] "you came back," according to her amendment to her BOC Form, does not constitute a serious risk of persecution within the meaning of the Convention or a personal risk to her life pursuant to subsection 97(1) of the IRPA. Nothing in the claimant's testimony shows that her uncle threatened or attacked her when she returned to Haiti in 2015. The claimant also did not file a complaint with the authorities, according to her written account and her testimony, regarding any threat from her paternal uncle.

[20] The panel concludes that the claimant failed to establish, concerning her uncle XXXX, that she has a well-founded fear of persecution within the meaning of the Convention or that she would be subjected personally, on a balance of probabilities, to a danger of torture, a risk to her life or a risk of cruel and unusual treatment or punishment should she return to Haiti.

Allegations regarding the classmate named Boileau

[21] The claimant alleges in her BOC Form that she was harassed and threatened by a classmate named XXXX XXXX, who was interested in her when she attended secondary school in 2002 or 2003. He was kept away from the claimant after her father and other paternal uncle took action. The claimant also alleges that this classmate threatened to kill her if she did not go out with him and that he brought a weapon to school in 2004 or 2005 and made a death threat to force her to respond to his advances, but that he was expelled from school as a result of this incident. The claimant alleges that she left Haiti in part because of this classmate. She adds that she believes that the same XXXX called her from an unknown number when she returned to Haiti in 2015.

[22] At the hearing, when the panel stated that, according to her written account, nothing occurred between 2005 and 2015 with the person named XXXX, the claimant added an incident that took place during the funeral of an important figure, but she did not remember the year. XXXX was present at the funeral. He pointed at her and he told his friends [translation] “that is her.” She also [translation] “believes” that the classmate called her from an unknown number ten years later, in other words, when she had returned to Haiti. However, she did not explain to the panel how this person guessed that the claimant was back in Haiti and obtained her personal telephone number, and why he waited 10 years to threaten her without identifying himself, for an unknown reason. Neither she nor her family filed a complaint with regard to this classmate before she left Haiti or after she returned to Haiti, even though she alleges that he threatened to kill her and that he brought a weapon to her school in 2004 or 2005.

[23] Even though XXXX death threats and harassment seem to have played a determinative role in the claimant’s decision to leave Haiti, she does not remember the exact years during which these incidents occurred. In her testimony, she stated that the first incident of harassment and threats took place between 2003 and 2004 and that the firearms incident at school occurred between 2005 and 2006. In her BOC Form, she states that the first incident took place between 2002 and 2003, and that the second incident occurred between 2004 and 2005. When the panel asked her about this inconsistency, the claimant changed the version in her testimony to state that the version in her BOC Form must be correct.

[24] Given the contradictions and inconsistencies regarding the threats from her classmate and the periods in which the threats occurred, and given that these alleged incidents took place about 15 years ago and that nothing in the testimony and the written account show that the classmate is still there and that he is looking for the claimant or is still interested in her, the panel finds that the claimant failed to establish, on a balance of probabilities, that the person named Boileau used to constitute a threat to her or still constitutes a threat to her, as alleged.

Allegations regarding the incident on XXXX XXXX, 2006

[25] The claimant alleges that four armed criminals entered her home on XXXX XXXX, 2006. They pointed a firearm near her head and beat her father. He father received

treatment for a number of weeks, and he reported the incident to the police. The police did not record the complaint. The claimant alleges that she left Haiti in part because of this incident.

[26] Assuming that the incident actually took place as alleged, the panel notes that the incident is an isolated act that occurred almost 13 years ago. According to the account of the claimant's father, the only person who fought the attackers, the incident consisted of one act of robbery.⁸ The explanations provided for this incident by the claimant and her family members⁹ do not establish whether the incident consisted of anything other than an attack by criminals who wanted to rob them. Nothing in the claimant's statements or in the written evidence shows that the criminals targeted the claimant or that they are still targeting her. The incident was at most a burglary that ended in an altercation between the claimant's father and the criminals, which resulted in her father needing hospital treatment for his injuries.

[27] In addition, neither the claimant nor her family establish the existence of any current threat from the criminals that attacked the family home, especially since the claimant's parents, brothers and sisters have not been living at the location since the claimant left Haiti.

[28] As a result, the claimant failed to establish, on a balance of probabilities, that the criminals are still there and that they still constitute a threat to her or to her family in Haiti.

Allegations regarding the existence of witchcraft in Haiti

[29] The claimant alleges that she left Haiti in part because of the acts of witchcraft that took place in the country. When asked to specify whether she experienced or witnessed acts of this nature in Haiti, the claimant responded that she did not. When asked to state who committed acts of witchcraft, the claimant did not have a response. When asked to describe the acts of witchcraft committed in Haiti, the claimant did not know the nature of the acts.

[30] Nevertheless, the claimant added that she met Argentinian pastors in Mexico who had a vision concerning her. God revealed himself to them and informed them that she had a threat hanging over her head. When asked to state whether she believes their story concerning their

⁸ Document 4 – Exhibit D-6: Letter from XXXX XXXX XXXX.

⁹ Document 4 – Exhibits D-5, D-6, D-7, D-9 and D-10.

vision and the divine revelation, the claimant responded that she does. When asked to describe the threat, the claimant did not provide any response.

[31] The panel finds that the claimant has the right to believe what she wants in terms of divine revelation. The panel also does not make any value judgment on her religious beliefs concerning witchcraft. However, the panel must establish an objective basis for its reasoning. The claimant's story does not have an objective basis. In addition, nothing specific regarding the existence of acts of witchcraft against the claimant in Haiti or elsewhere was demonstrated to the panel.

[32] Consequently, the panel finds that the claimant's allegations are vague and that she failed to establish, on a balance of probabilities, any type of risk for her stemming from the alleged practice of witchcraft in Haiti.

Claimant's fear of rape in Haiti

[33] The claimant alleges in her BOC Form that she fears being raped in Haiti because [translation] "too many women have experienced this atrocity" in her country.

[34] The panel acknowledges that the National Documentation Package on Haiti¹⁰ refers to acts of violence and rape against women in Haiti. The panel also considered the Chairperson's Guideline 4 and the case law.

[35] The panel finds that, to make an informed decision on this claim, it is not enough to state, as counsel for the claimant did in the oral submissions, that women are raped in Haiti, that the claimant is a woman, that her status as a woman constitutes her membership in a particular social group and that the panel should thus allow her refugee protection claim pursuant to the Convention.

[36] It is still necessary to analyze the claimant's profile and explain how and why she would face a serious risk of rape should she return to Haiti. The Federal Court already decided that membership in a particular social group is not enough to establish persecution. The evidence

¹⁰ Document 3 – Tab 5.3: *Violence against women, including sexual violence; state protection and support services (2012-June 2016)*, HTI105161.FE, Immigration and Refugee Board of Canada.

provided by the claimant must still satisfy the panel that there is a risk of harm that is sufficiently serious and whose occurrence is “more than a mere possibility.”¹¹

[37] The panel notes that, despite her stutter, the claimant is an educated and resourceful person who obtained college diplomas in Haiti¹² before travelling to Mexico, where she managed to obtain temporary residence status, which enabled her to finish her university studies in Spanish¹³ and to own a small XXXX XXXX XXXX, according to her testimony. This status was still valid on the day of the hearing. She travelled to a number of Central American countries with other people, where she participated in humanitarian activities. She also travelled to the United States as a visitor in 2013 and 2016. Although she left her country in 2010 and went to Mexico, she returned to Haiti to visit family members in 2015. She stated that a number of her family members are still living in Haiti (father, mother, sister, brothers, paternal uncles, aunts, maternal grandparents) in various locations (Gonaïves, St-Michel de l’Attalaye, Port-au-Prince). These family members sent her letters of support, which shows that she has remained in contact with them and that they are interested in her well-being. She does not have any dependents.

[38] The panel finds that the claimant failed to establish, on a balance of probabilities, that her profile corresponded to the profile of a single and vulnerable woman who would be persecuted should she return to Haiti based on her membership in the particular social group of women.

[39] The panel concludes that the claimant failed to establish that she faces a serious risk of persecution within the meaning of the Convention, in this case, the risk that she would be the victim of sexual violence or rape in Haiti.

CONCLUSION

[40] The panel concludes that the claimant failed to establish that she faces a serious risk of persecution within the meaning of the Convention or that, on a balance of probabilities, she would be subjected personally to a danger of torture, a risk to her life or a risk of cruel and

¹¹ *Dezameau, Elmancia v. M.C.I.* (F.C., No. IMM-4396-09), Pinard, May 27, 2010; 2010 FC 559; *Paul-Laforest, Sylvie v. M.C.I.* (F.C., No. IMM-5053-11), Mosley, June 26, 2012; 2012 FC 815.

¹² Document 4 – Exhibit D-3: In a bundle, school document from Haiti.

¹³ Document 4 – Exhibit D-4: In a bundle, school document from Mexico (not translated).

unusual treatment or punishment pursuant to subsection 97(1) of the IRPA should she return to Haiti.

DECISION

[41] The claimant is not a “Convention refugee” or a “person in need of protection” under subsection 97(1) of the IRPA.

[42] Consequently, the refugee protection claim of **XXXX XXXX XXXX** is rejected.

Georges Nahas

Georges Nahas

March 26, 2019

Date

IRB translation

Original language: French