



Refugee Protection Division

Section de la protection des réfugiés

**RPD File No. / N° de dossier de la SPR : MB7-06862
MB7-06894**

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

Private Proceeding / Huis clos

Reasons and Decision - Motifs et décision

Claimant(s)

Demandeur(e)(s) d'asile

XXXX XXXX XXXX XXXXXXXXXX XXXX XXXX

Date(s) of hearing

Date(s) de l'audience

September 19, 2018

Place of hearing

Lieu de l'audience

Montréal, Quebec

**Date of decision
and reasons**

**Date de la décision
et des motifs**

October 16, 2018

Panel

Tribunal

Melanie Calisto Azevedo

Counsel for the claimant(s)

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

François Jean-Denis

Designated representative

Représentant(e) désigné(e)

XXXX XXXX XXXX

Counsel for the Minister

Conseil du (de la) ministre

N/A

REASONS FOR DECISION

INTRODUCTION

[1] The principal refugee protection claimant, **XXXX XXXX XXXX**, is a citizen of Haiti. Her son **XXXX XXXX XXXX** (hereinafter “the minor refugee protection claimant”) is a citizen of the United States of America. They are claiming refugee protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

[2] **XXXX XXXX XXXX** was appointed the designated representative for the refugee protection claim of her minor son, **XXXX XXXX XXXX**, pursuant to subsection 167(2) of the IRPA. She confirmed at the start of the hearing that she understands and accepts the responsibilities of this role.

ALLEGATIONS

[3] The principal refugee protection claimant fears for her life by reason of her imputed sexual orientation (lesbian) and her advocacy for the rights of sexual minorities in Haiti. She alleges that she also fears being raped in Haiti by reason of her particular social group (single women in Haiti).

DETERMINATION

[4] The panel determines that the principal refugee protection claimant is a “Convention refugee” because she has established a well-founded fear of persecution on a Convention ground, namely, by reason of her particular social group (single women in Haiti).

[5] With respect to the minor refugee protection claimant, the panel determines that it was not established, should he return to the United States of America, that he would be persecuted on a Convention ground or that, on a balance of probabilities, he would be personally subjected to a danger of torture or to a risk to his life or a risk of cruel and unusual treatment or punishment.

ANALYSIS

[6] The panel took into consideration the Chairperson's *Guideline 4¹ on Women Refugee Claimants Fearing Gender-Related Persecution* and the Chairperson's *Guideline 3² on Child Refugee Claimants*.

Identity

[7] The panel is satisfied as to the claimants' identities, which were established on a balance of probabilities by the photocopies of their passports³ and of their birth certificates.⁴

The minor refugee protection claimant's fear/risks in the United States of America

[8] The minor refugee protection claimant was born in the United States of America and is therefore a citizen of that country. This was recognized and confirmed by his designated representative during the hearing. The refugee protection claim of the minor refugee protection claimant is therefore analyzed in relation to that country of reference.

[9] There is no fear of persecution or risk of any kind alleged for the minor refugee protection claimant in respect of a return to the United States of America.

[10] In light of that fact—along with the fact that the panel does not have jurisdiction in humanitarian and compassionate matters and its jurisdiction is limited to determining whether there is a serious possibility that the minor claimant would be persecuted in the United States of America within the meaning of section 96 of the IRPA or would be personally subjected to a danger of torture or to a risk to his life or a risk of cruel and unusual treatment or punishment

¹ Immigration and Refugee Board's Guideline 4: Guideline issued by the Board pursuant to subsection 65(3) of the *Immigration Act: Women Refugee Claimants Fearing Gender-Related Persecution*. Effective November 13, 1996.

² Immigration and Refugee Board's Guideline 3: Guideline issued by the Board pursuant to subsection 65(3) of the *Immigration Act: Child Refugee Claimants*. Effective September 30, 1996.

³ Document 2 – Information package provided by the Border Services Agency (CBSA) and/or Immigration, Refugees and Citizenship Canada (IRCC).

⁴ Document 2 – Information package provided by the Border Services Agency (CBSA) and/or Immigration, Refugees and Citizenship Canada (IRCC); Document 6 – C-5: Birth certificate of the principal refugee protection claimant.

within the meaning of subsection 97(1) of the IRPA—the panel determines that the minor claimant is not a “Convention refugee” or a “person in need of protection.”

[11] The panel need not proceed with an analysis of the minor claimant’s risk in Haiti.

The principal refugee protection claimant’s fear of persecution in Haiti

Imputed sexual orientation and advocacy for the rights of sexual minorities

[12] The refugee protection claimant’s primary allegation is that she would be targeted in Haiti by a group of individuals because of her advocacy for the rights of sexual minorities in Haiti and because of her imputed sexual orientation. She alleges that she was threatened and assaulted on February 14 and 17, 2011, in Haiti. She states that members of her family were also targeted after she left. She alleges that she would still, to this day, be targeted by those individuals because she is perceived as a lesbian and would be blamed for the presence of homosexual individuals in her neighbourhood and the freedom they have been granted.

[13] The panel does not believe these allegations by the refugee protection claimant. Her testimony in this regard contained contradictions, adjustments and implausibilities. Specifically, there was a contradiction about her family’s moving to Port-au-Prince following a death threat, an adjustment to the testimony concerning the individuals who allegedly attacked her on February 17, 2011, and the implausibility of her current and future risk in connection with the freedom and rights now safely enjoyed by homosexual people in her neighbourhood and her alleged role in that victory.

[14] However, the panel will not focus on this analysis given its finding in assessing the claim of the principal refugee protection claimant in relation to her particular social group.

Single woman in Haiti

[15] The principal refugee protection claimant alleges that she fears being raped in Haiti by reason of her particular social group.

[16] Accordingly, the panel looked at whether the refugee protection claimant has a well-founded fear of persecution as a single woman in Haiti.

[17] Although the panel recognizes that there is a problem in Haiti with violence against women, the panel must determine whether there is a serious possibility that the refugee protection claimant would be persecuted based on her gender.

[18] At paragraph 29 of the Federal Court's decision in *Dezameau*,⁵ Justice Pinard states the following:

This is not to say that membership in a particular social group is sufficient to result in a finding of persecution. The evidence provided by the applicant must still satisfy the Board that there is a risk of harm that is sufficiently serious and whose occurrence is "more than a mere possibility".

[19] The panel is aware of the situation of single women living in Haiti, as described in the National Documentation Package. According to this documentary evidence, the women who are most at risk are those who are uneducated, with low incomes, and who do not have male protection or family support.

[20] The panel is of the opinion that the principal refugee protection claimant does match the profile of women who are most at risk of gender-based persecution in Haiti.

[21] The refugee protection claimant is a XXXX XXXXyear-old woman. She does not have a spouse. She is a single parent to the minor refugee protection claimant, who is XXXX years old.

[22] She left Haiti in 2011 when she was XXXX years old. At that time, she was living with her parents and her brothers and sisters. She had just completed secondary-level education. She was unemployed. She has never worked in Haiti. She has never lived alone in Haiti. Her parents provided for her needs.

[23] If she returned to Haiti, the principal refugee protection claimant would no longer be able to count on the resources she had at the time she left. She would have no male protection, nor would she have any real family support. The claimant's father and one of her sisters are now living in Brazil. Her mother and another sister are in Miami in the United States. The principal refugee protection claimant has only a younger brother and two younger sisters who are in school. They cannot support themselves and would not be able to provide the principal refugee

⁵ *Dezameau, Elmancia v. M.C.I.* (F.C. IMM-4396-09), Pinard, May 27, 2010, 2010 FC 559.

protection claimant with the assistance needed. They live with an aunt who is single herself. She has two other younger half-brothers, but they live with their mothers and she has no contact with them. She has no job awaiting her and nowhere to stay.

[24] Based on the objective evidence and considering the particular circumstances of the principal refugee protection claimant as described, the panel finds that the principal refugee protection claimant has established she would face a serious, prospective possibility of persecution in Haiti as a single woman.

State protection

[25] The panel concludes that the claimant has rebutted the presumption of state protection through clear and convincing evidence establishing that the Haitian authorities would be unwilling or unable to ensure she receives adequate protection.

[26] Violence against women is widespread in Haiti and is a chronic and systemic problem.⁶ In Haiti, violence against women is part of a culture of discrimination and stereotypes against them.⁷

[27] Representatives from Haitian civil society and across government sectors have consistently agreed that Haiti's government lacks the capacity to eradicate violence and discrimination against women and girls.⁸

[28] In general, the Haitian authorities do not have the capacity or the resources to protect citizens who face a serious possibility of persecution.

[29] In spite of the efforts undertaken to strengthen the capacity of the Police nationale d'Haïti (PNH) [Haitian national police] to respond to gender-based violence, the credibility of the police remains limited. Only a small number of police officers received a full training on gender violence and the number of police officers is too low to respond to demand.⁹

⁶ Document 3: Tab 5.3 *Violence against women, including sexual violence; state protection and support services (2012-June 2016)*; Tab 2.1 *Haiti. Country Reports on Human Rights Practices for 2017*.

⁷ Document 3: Tab 5.3 - Ibid.

⁸ Ibid.

⁹ Ibid.

[30] The documentary evidence describes a Haitian justice system that fosters impunity, including with respect to violence against women.¹⁰

[31] In such a context, the people of Haiti often have to rely on themselves to ensure their own safety or resolve their own problems. Women are often victims of violence that goes unpunished.¹¹

[32] Based on this objective evidence, the panel concludes that the claimant has rebutted the presumption of state protection.

Internal flight alternative

[33] As a single woman in Haiti, the principal refugee protection claimant has established a serious possibility of persecution throughout Haiti.

[34] The insecurity, especially for single women without male protection or family support, and the lack of state protection throughout the country mean that there is no internal flight alternative for the principal refugee protection claimant anywhere in the country.

CONCLUSION

[35] In light of all of the evidence, the panel determines that the principal refugee protection claimant, XXXX XXXX XXXX, is a “Convention refugee.” Accordingly, her refugee protection claim is allowed.

[36] With respect to the minor claimant, XXXX XXXX XXXX, the panel determines that it was not established, should he return to the United States of America, that there would be a serious possibility of him being persecuted there on a Convention ground or that, on a balance of probabilities, he would be personally subjected to a danger of torture or to a risk to his life or a risk of cruel and unusual treatment or punishment. Accordingly, his refugee protection claim is rejected.

¹⁰ Ibid.

¹¹ Document 3: Tab 2.5: *Rapport de mission en République d’Haïti du 26 mars au 7 avril 2017.*

Melanie Calisto Azevedo

Melanie Calisto Azevedo

October 16, 2018

Date

IRB translation

Original language: French