Immigration and Refugee Board of Canada
Refugee Protection Division

Commission de l'immigration et du statut de réfugié du Canada
Section de la protection des réfugiés

RPD File No. / N° de dossier de la SPR : TB7-14178
TB7-13495
TB7-13496
TB7-13497

Private Proceeding / Huis clos

Reasons and Decision – Motifs et Décision

Claimant(s)	XXXX XXXX XXXX XXXXXXXX XXXX XXXX XXXX XXXX XXXXXXXX XXXX XXXX XXXXXXXX XXXX XXXX	**Demandeur(e)(s) d'asile**
Date(s) of Hearing	March 22, 2018 May 29, 2018	**Date(s) de l'audience**
Place of Hearing	Toronto, Ontario	**Lieu de l'audience**
Date of Decision and reasons	June 1, 2018	**Date de la décision et des motifs**
Panel	R. Jackson	**Tribunal**
Counsel for the Claimant(s)	Richard Wazana	**Conseil(s) du (de la/des) demandeur(e)(s) d'asile**
Designated Representative(s)	XXXX XXXX	**Représentant(e)(s) désigné(e)(s)**
Counsel for the Minister	N/A	**Conseil du (de la) ministre**

Canada

REASONS FOR DECISION

[1] XXXX XXXX XXXX (hereinafter "the principal claimant"), is a citizen of the Democratic Republic of Congo (DRC) and a resident of South Africa, and her three minor children**,** XXXX XXXX XXXX XXXX XXXX , XXXX XXXX XXXX , XXXX XXXX XXXX , are all citizens of South Africa. They claim refugee protection pursuant to ss. 96 and 97 of the *Immigration and Refugee Protection Act*[1] (IRPA).

[2] These claims were heard jointly pursuant to Rule 55 of the Refugee Protection Division *Rules*.

[3] The principal claimant confirmed at the first sitting that she would be the designated representative for the children. However, at that hearing the panel noticed problems with some of her documents,[2] namely an attestation of her birth which bore obvious signs of tampering, and an unsigned letter of consent from her husband giving her permission to keep the children in Canada. Therefore, the panel designated a different representative for the minor claimants.

ALLEGATIONS

[4] The principal claimant alleges that she moved to South Africa in 2001 where she obtained refugee status. In 2005, she obtained a student permit which replaced the refugee status. She started cohabitating with her husband in 2005, and in 2009 her immigration status in South Africa changed again when she obtained a relative visa based on the South African citizenship of her husband. She obtained another relative visa in 2016,[3] which was valid until April 30, 2018. Her three children, born in South Africa, are South African citizens.

[5] The principal claimant alleges that she had her own little shop in the Yeoville district of Johannesburg, and she also worked for an organization called XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX). She alleges that her family were victims of xenophobic attacks in

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[1] *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, as amended.
[2] Exhibits 9 and 11.
[3] Exhibit 17 – Visa.

South Africa because the claimant is a foreigner and her husband is originally from the DRC. She alleges that she received threats by telephone because of her work on a documentary regarding xenophobia.

[6] She also alleges that their house was broken into several times by unknown people. Her shop was in the Yeoville area in Johannesburg, and she alleges that is where she was also threatened and slapped by unknown people on three separate occasions. These people told her to leave the country and on the final occasion her life was threatened. She made police reports but nothing happened as a result of them. The claimant alleges as well that the minor claimants were treated like foreigners at school because their parents are originally from the DRC.

DETERMINATION

[7] The panel finds that the principal claimant is excluded under Article 1E as she had access to permanent residence in South Africa and through her own inaction, failed to acquire it. The panel finds that the minor claimants are not Convention refugees as they do not have a well-founded fear of persecution on a Convention ground in South Africa. The panel also finds that the minor claimants are not persons in need of protection in that their removal to South Africa would not subject them personally to a risk to life or a risk of cruel and unusual treatment or punishment. The panel finds that there are no substantial grounds to believe that the claimants' removal to their country of citizenship would subject the claimants personally to a danger of torture.

ANALYSIS

[8] The determinative issues are Exclusion under Article 1E of the Convention, and internal flight alternative.

Identity

[9] The panel is satisfied with the principal claimant's personal identity and status as a citizen of the DRC, on a balance of probabilities, and the minor claimants' identities and status as citizens of South Africa. Their identities were established based on the principal claimant's oral

testimony and by the copies of all of the claimants' passports provided to the panel by Immigration, Refugees and Citizenship Canada (IRCC).[4]

Exclusion 1F(b)

[10] The panel invited the Minister to participate in these proceedings owing to concerns over the identity of the principal claimant because of the attestation of birth she presented, and the consent letter from the children's father, as noted above. The Minister participated through documents only. However, the Minister did not take the position that the claimant had abducted the children, and the panel had the opportunity to speak with the children's father by telephone at the second sitting. He testified that the children have permission to make this refugee claim and that the principal claimant as their mother can make all the decisions regarding where they shall live. The panel also notes his further written statement in Exhibit 14, wherein he admits to using a third party to obtain the birth attestation for the principal claimant. Considering as well that the panel has no concerns with the passport that was presented at the hearing, the panel finds the principal claimant is not excluded under Article 1F(b).

Exclusion 1E

[11] The issue of Article 1E of the *Refugee Convention* arose due to the principal claimant having held valid temporary residence permits in South Africa for the duration of her stay (2001 to 2017). During the last decade that the principal claimant lived in South Africa, she had access to permanent residency through her marriage and children. She failed to acquire this status by never applying for it.

[12] It should be noted that the principal claimant, despite having only permits that were temporary in nature, was still able to go to school, live, and work in South Africa.[5] When asked at the hearing why she did not acquire permanent residency in South Africa, the principal claimant stated that she had to obtain two relative visas before she could apply for it. The panel asked if this requirement was written anywhere, and she said she did not know. The panel does not accept

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[4] Exhibits 1 and 17 – Passports.
[5] Exhibit 1 – Schedule A; Exhibit 9 and Exhibit 21.

this explanation of the principal claimant for not having applied for permanent residence, since she already had acquired two relative visas prior to departing South Africa. Furthermore, as will be seen below, the panel prefers the documentary evidence, which does not state any "two visa" requirement as stated by the principal claimant. What is required is valid temporary residence status. The documentary evidence comes from reliable sources, such as the South African government, who is responsible for issuing visas and permanent residence status.

[13] For reference, section 98 of the *Immigration and Refugee Protection Act* states, "[a] person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection."[6]

[14] The Convention provisions referred to in section 98 are contained in the Schedule to the *Immigration and Refugee Protection Act*, incorporated into our law by subsection 2(1) of the *Immigration and Refugee Protection Act*. Article 1 reads (in part):

> E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he is taking residence as having the rights and obligations which are attached to the possession of the nationality of that country.

[15] With issues related to Article 1E of the Convention, the panel is cognizant of the Federal Court's decision in *Shamlou* where the Board must undertake an analysis of the basic rights enjoyed by the claimant.[7] These rights include the right to return to the country of residence, the right to work freely without restrictions, the right to study and the right to social services in the country of residence. The rights that the claimant has in the country of permanent residence do not have to be identical in every respect to those of a citizen. However, at the minimum, the claimant must be able to return to South Africa and remain.[8]

[16] The panel considered whether the principal claimant has the right of return to South Africa and finds she does have the right of return. The principal claimant does not deny that she has the

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[6] *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, as amended, section 98.
[7] *Shamlou, Pasha v. Canada (Minister of Citizenship and Immigration)* (1995), 32 Imm. L.R. (2d) 135 (F.C.T.D.).
[8] *Mahdi, Roon Abdikarim v. Canada (Minister of Citizenship and Immigration)* (1994), 26 Imm. L.R. (2d) 311 (F.C.T.D.).

right to return to South Africa. Her passport bears an expired resident visa, the second of such permits that she has obtained since her marriage. The principal claimant testified that she could reapply for another relative visa, and the panel notes that the documentary evidence[9] supports this. The principal claimant has access to relative visas through her husband and also through her children.

[17] She also has access, within South Africa, to permanent residence through her husband and separately, through her children. In order to acquire it, she must make an application and demonstrate these family ties through documentation such as the birth certificates of the children. The panel finds that this process is reasonable in the principal claimant's particular case, since she is the mother of South African citizen children (the minor claimants) and they are in her care. Should she choose to apply for permanent residence based on her husband rather than through her relationship to the children, this would also be reasonable for her to do since her marital relationship with her spouse is clearly not broken down, given his having testified at the hearing and provided letters to support her claim.

[18] The principal claimant's first child was born in South Africa in March 2006; therefore, she has had over eleven years in which she could have obtained permanent residence based on that relationship alone, but she failed to do so. Furthermore, citizenship requires ten years of continuous residence after the acquisition of permanent residence.[10] Had the principal claimant obtained permanent residence at the earliest opportunity, the claimant may have also acquired citizenship in South Africa by the time of the hearing, on the basis of the above-noted familial relationships. These were options open to her to explore, however she chose not to do so.

[19] The panel also notes that most of the principal claimant's immediate family now resides in South Africa; two brothers, two sisters, her mother, and their families. The principal claimant testified that in South Africa she had been employed in her field, had her own business, and went to school, even on the strength of her relative visa. The panel has no reason to believe that permanent residence would diminish the claimant's access to these things. Rather, on a balance of

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[9] Exhibit 6, National Documentation Package (NDP) for South Africa (December 21, 2017), items 3.2 and 3.3.
[10] Ibid.

probabilities, her access to social services would increase in South Africa should she hold permanent residence status there.

[20] The tribunal refers to the Federal Court decision of *Zeng*[11] in which the Federal Court of Appeal indicates that in order to determine whether section E of article 1 of the Convention should apply in a particular case, a relevant consideration is whether the claimant had access to permanent residence and failed to acquire it. The panel is satisfied on a balance of probabilities that the claimant had access to permanent residence in South Africa, that this status is substantially similar to that of its nationals, and that she failed to acquire it by never having applied for it.

Onus to Renew Status

[21] The case of *Shamlou,*[12] as well as other decisions of the Federal Court, indicate that there is an onus on the claimant to renew their status in the putative Article 1E country, if it is renewable. Moreover, recognition of permanent resident status can exist without the right of re-entry (where the person can apply for a re-entry visa).[13] As previously noted, the claimant indicated that she can renew her relative visa in order to return to South Africa, and the documentary evidence supports this.

[22] The Refugee Protection Division (RPD) can consider whether the claimant has a well-founded fear of persecution or a risk of harm under Section 97(1) of the *IRPA* in the article 1E country.[14] Therefore this analysis will now focus on the allegations of risk for all the claimants in South Africa.

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[11] *Zeng, Guanqiu v. Canada (Minister of Citizenship and Immigration)* [2011] 4 F.C.R. 3 (F.C.A.).
[12] *Shamlou, Pasha v. Canada (Minister of Citizenship and Immigration)* (1995), 32 Imm. L.R. (2d) 135 (F.C.T.D.).
[13] *Nepete, Firmino Domingos v. Canada (Minister of Citizenship and Immigration)*, 2000 F.C.T.D., no. IMM-4471-99.
[14] *Kroon, Victor v. Canada (Minister of Employment and Immigration)* (1995), 28 Imm. L.R. (2d) 164 (F.C.T.D.); see also
Mobarekeh, Fariba Farahmad v. Canada (Minister of Citizenship and Immigration), 2004 (F.C., no. IMM-5995-03), FC 1102; and *Dieng, Khady Kanghe v. Canada (Minister of Citizenship and Immigration)*, 2013 (F.C., no. IMM-5029-12), FC 450.

Problems in Johannesburg

[23] The principal claimant and the minor claimants have made allegations of risk in South Africa related to xenophobia. They lived, studied and worked in Johannesburg.

Break-ins at the family home not connected to xenophobia

[24] With regards to the principal claimant's risk in South Africa as well as the minor claimants' risk, she testified that there were several break-ins at the family home, which destabilized the children. She testified that she could not specifically link the break-ins at the house to xenophobia.

[25] The panel also considered the letters from the principal claimant's husband[15] and his testimony, which was provided by telephone. The panel notes that his evidence indicates that the family had some problems over the years, and he provides information about his own past and his perspective on the incidents noted in the claimants' testimony and Basis of Claim Forms (BOCs).

[26] Item 7.5 of the National Documentation Package (NDP) for South Africa states[16]:

> Violent crime remains an ever-present threat in South Africa; however U.S. citizens are not singled out for criminal activity, as **most crimes are opportunistic**. Common crimes include: murder, rape, armed robbery, carjacking, home invasion, property theft, smash-and-grabs, and ATM robberies. Victims who resist or fail to comply with demands may be killed or seriously injured. The South African Police Service (SAPS) released April 2015 – March 2016 crime statistics for all major crimes.
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> Armed robbery is the most prevalent major crime in South Africa, most often committed by organized gangs that are armed with handguns/knives. Of particular concern are home invasion robberies. These crimes are often violent and can occur at any time. In many cases, criminals prefer to attack when the occupants are home or arriving/leaving because the alarm system is off and the occupants can identify where valuables are kept. The majority of carjackings occur when the victim arrives at home and pulls into the driveway or entrance gate; the carjackers pull up behind the victim to block an escape path. In many scenarios, robbers force the victim into the house; rob the home, and carjack the vehicle. [emphasis added]

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[15] Exhibits 9, 11 and 14.
[16] Exhibit 6, NDP for South Africa (December 21, 2017), item 7.5.

[27] Considering the prevalence of crime in South Africa, the panel finds that it is speculation to say that the robberies at the claimants' house related to xenophobia.

Threats by telephone and incidents at the store do not render IFAs not viable

[28] The principal claimant testified as well that she was personally targeted at her shop by unknown people who entered, told her to leave the country as she is a foreigner, and they slapped her. She testified that she complained to police each time, however nothing ever came of her complaints. When asked if she had ever followed up with police about her complaints, she said she had not. When asked if she had a security camera in her business, she said she didn't have one. The claimant testified she thought the third incident was connected to some threatening phone calls she had been getting just prior to the incident. These calls mentioned a documentary she was working on regarding xenophobia and said that she should leave the country or they would take the matter into their own hands. The callers did not identify themselves. The third incident at the store occurred on June 15, 2017, and according to the claimant, these were different individuals who threatened her than the previous two occasions. She said they threatened her life. The panel notes that the principal claimant presented an affidavit[17] she made to police on June 15, 2017, the date of the third incident at the store. The panel asked her whether she had any police reports regarding these incidents wherein she personally was threatened, and she said there was only the copy of the one affidavit noted above. This affidavit makes vague allegations of xenophobia and the inaction of authorities; it provides no description is given of the attackers and the principal claimant does not even state in this affidavit how many people there were. This affidavit does not state that her store was the location of the attack. The attackers were neither identified nor described. Under the circumstances, it is not unreasonable that the police were unable to make any arrests. The claimant has not demonstrated that there was xenophobia-motivated police inaction in her situation.

[17] Exhibit 9, p 9.

[29] The principal claimant alleges that she sought refuge in a church after this incident. She submitted an affidavit from a pastor[18] who says that she stayed at his church from June 15, 2017 to July 10, 2017, after a xenophobic attack. The details of this attack are not mentioned, and so this affidavit does little to establish the claimants' allegations. There is also an article from a four-page newsletter,[19] and the panel was able to view the original document. At the hearing, the claimant denied any knowledge of how this article came to be. She made some speculative comments about who may have put this information in the newsletter, such as other people who saw her attack in the neighbourhood of the shop. The panel pointed out that the information that she was staying at the church was in the article, and then the claimant said that maybe it was people who worked with her in the diaspora organization (which worked on anti-xenophobia activities) who might have said something. The uncertainty regarding the source for this article diminishes its probative value. Moreover, the article states that the principal claimant was seriously injured and went to hospital for treatment, but she testified that she was never seriously hurt, only slapped, and she never sought medical attention. It also states that she was attacked twice at home, but she testified that this happened at her store. Considering all of these issues and inconsistencies, this article is not credible evidence. On a balance of probabilities, the claimant is unlikely to be known for this incident outside of Yeoville where the newsletter was published.

[30] The principal claimant alleges that she did not relocate to another part of South Africa because she didn't know who was after her. She testified that the threatening phone calls made her think that she was targeted due to the documentary that she alleges she was working on for the XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX). A letter was provided from XXXX,[20] which confirms her employment there as "XXXX XXXX XXXX XXXX XXXX XXXX [sic]." It does not mention any documentary, or xenophobia. The panel notes that there is no evidence before it that the principal claimant was working on this documentary, apart from her testimony. Despite this, the panel is willing to accept that she was working on a xenophobia-related project. Even so, as there is no corroborating evidence before the panel of the existence of this project, the panel finds that it is unlikely that anyone outside of Johannesburg would have any

[18] Ibid., p 1.
[19] Exhibit 9, p 31.
[20] Ibid., p 2.

knowledge of her involvement in it. Therefore, despite her allegations that some people had targeted her due to her work on this documentary, the panel finds that she does not have any elevated profile due to this work and she is unlikely to be known for it or targeted because of it by anyone outside of Johannesburg.

The Children's Experiences at XXXX XXXX XXXX

[31] With regards to the minor claimants, a copy of a letter[21] was submitted from their school in Johannesburg, XXXX XXXX XXXX. This letter was sent to parents in February 2017. It says that without presenting their documents, the children would no longer be able to go to school, and they might be taken to police. The principal claimant presented an article[22] from the Saturday Star which mentions that this letter was withdrawn by the school and they said to ignore it. There is also a letter from a friend of the family[23] indicating that his children also went to this same school and there was xenophobia. The Minister's documents[24] include an article specifically about XXXX XXXX XXXX. It confirms that the letter in question was withdrawn by school officials. This article also states that South African courts have found that children have the right to education and that this right is not bound to nationality. While the evidence indicates that this message regarding access to education had not made its way to the children's school when they attended there, court decisions such as this indicate that the courts are responsive to the issue of education for all children regardless of nationality.

[32] The designated representative conveyed her conversations with the minor claimants at the hearing, and she stated in summary that the minor claimants were not treated well at XXXX XXXX XXXX because their parents were of Congolese origin. They were not accepted by their peers, blamed for things which other children did, and sometimes punished when others were not. The students also called them "makwerekwere" which is a derogatory term for foreigners. She also said that the principal claimant had tried to work with the teachers and administration to alleviate these problems, to no avail.

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[21] Exhibit 9.
[22] Exhibits 9 and 22.
[23] Exhibit 9, p 3.
[24] Exhibit 19.

[33] The panel asked the principal claimant whether she had ever changed the children's school, and she said no, she came to Canada. The designated representative said that in her conversations with the principal claimant and the children, she learned that XXXX was a public school, and in order to change schools they would have to move to another district. She also said the family didn't have the money for private school. No evidence was presented regarding the lack of funds for the family. On the contrary, the principal claimant's husband has been sending money to Canada to support the family and to pay their legal fees, according to his testimony at the hearing and Exhibit 14, where there is proof of payments sent to Canada for the claimants. The Minister's evidence also indicates that the claimants' lived in a house of their own in Johannesburg, and the principal claimant testified that her husband owns it. However, the issue of the family's finances is not central to this analysis. As will be seen below, should the claimants relocate to one of the viable internal flight alternative areas, they will be far away from the XXXX Public School district.

[34] The panel can appreciate that the claimants have not lived peacefully in South Africa. However, having considered all of the evidence, the panel finds that their problems in Johannesburg do not mean that they cannot relocate to one of the IFA areas.

Internal Flight Alternative (IFA)

[35] The panel considered whether there is a viable IFA for the claimants in Cape Town, where the principal claimant's brother, two sisters, mother and their families reside. The panel also considered the large city of Port Elizabeth. Given the facts of this case, the panel finds that the claimants would be able to relocate to one of the proposed IFA areas.

The Test

[36] Claimants are expected to avail themselves of a safe haven in their own country where they would be free of persecution, unless they can show that it is objectively unreasonable for them to do so.[25]

[37] The test to apply in order to determine whether a viable IFA exists is two-pronged: there is no serious possibility of the claimant being persecuted or subjected, on a balance of probabilities, to a danger of torture or to a risk to life or a risk of cruel and unusual treatment or punishment in the proposed IFA area, and conditions in the IFA area must be such that it would not be unreasonable, in all the circumstances, for the claimant to seek refuge there.[26]

Risk to the Claimants in Cape Town or Port Elizabeth

[38] The claimants bear the burden of proof to show a serious possibility that they would be persecuted under one of the Convention grounds, or be subject personally, on a balance of probabilities,[27] to a risk to life or a risk of cruel and unusual treatment or punishment in all of South Africa and specifically in the potential IFA areas, in this case Cape Town or Port Elizabeth.

[39] The panel finds that the claimants have not established a serious possibility of persecution in Cape Town or Port Elizabeth. The panel asked the principal claimant whether she could relocate to either of the proposed IFA areas, and she said she could not because she did not identify the people who attacked her.

[40] It is the claimant's burden to provide evidence that her persecutor has the motivation and ability to locate her in the IFA. In this case, the claimant has not demonstrated by actual and concrete evidence that there is a serious possibility that she will be discovered if she relocates to the IFA area.[28] As such, the panel finds that the claimant has not established that she faces a risk of harm at the hands of those who threatened her or attacked her in Johannesburg should she

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[25] *Thirunavukkarasu, Sathiyanathan v. Canada (Minister of Employment and Immigration*), [1994] 1 F.C. 589 (C.A.).
[26] *Rasaratnam, Sivaganthan v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.), at 710.
[27] *Li, Yi Mei v. Canada (Minister of Citizenship and Immigration)*, [2005] 3 F.C.R. 239 (F.C.A.).
[28] *Momodu, Cordilla Gift v. Canada (Minister of Citizenship and Immigration)*, 2015 FC 1365, paragraph 14.

relocate to Cape Town or Port Elizabeth, that is, a reasonable chance of persecution in regard to s. 96 of the *IRPA*, or, a likelihood of the harm that is set out in s. 97(1) of the *IRPA*, should she return to South Africa.

[41] The claimants also alleged a fear of returning to South Africa including the IFA area of Cape Town and Port Elizabeth due to xenophobia there. The principal claimant's brother, two sisters, mother and their families reside in Cape Town, and she has another brother who resides in Johannesburg. The panel asked if her family members remaining in South Africa had experienced any xenophobia, and she replied that the one brother who lives in Johannesburg had lost his previous job for that reason, before he got his current position. The panel therefore finds that similarly situated persons, namely the claimant's immediate family, have been living in Cape Town without experiencing xenophobic incidents.

[42] The claimant's counsel submitted some documentation regarding xenophobic violence in South Africa.[29] This documentation indicates that there have been some xenophobic attacks in Cape Town. The panel has taken this information into account, and finds that it is not persuasive with respect to rendering the IFA areas not viable. Cape Town has a population of 3.66 million and Port Elizabeth has a population of 1.179 million.[30] The panel finds that while xenophobia does exist in the country and thus the IFA areas are not immune to this, the documentation presented and the testimony heard by the panel does not establish that the claimants would face a serious possibility of xenophobic violence in South Africa, including in the IFA areas. Furthermore, the claimants have not established with sufficient credible evidence that they would face a serious possibility of discrimination amounting to persecution in the IFA areas.

[43] Therefore, the panel finds that the claimants have not established that there is a risk of harm or a reasonable chance of persecution in regard to s. 96 of the *IRPA*, or, a likelihood of the harm that is set out in s. 97(1) of the *IRPA*, for them in Cape Town or Port Elizabeth due to xenophobia.

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[29] Exhibits 9, 10 and 16.
[30] Exhibit 6, NDP for South Africa (December 21, 2017), item 1.3.

Reasonableness of the IFA area

[44] There is "a very high threshold for the unreasonable test. It requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions".[31]

[45] The panel finds that it is not objectively unreasonable for the claimants to relocate to Cape Town or Port Elizabeth.

[46] In determining the reasonableness of the claimant's recourse to an IFA in Cape Town or Port Elizabeth the panel considered the *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution* and the ability of women, because of their gender, to travel safely to Cape Town and to stay there without facing undue hardship. The panel also considered the issue she raised about xenophobia, as discussed above. It is not a matter of a claimant's convenience or the attractiveness of the IFA, but whether she should be expected to make do in that location before travelling far away to seek a safe haven in another country.[32] The principal claimant testified that her siblings who live in Cape Town are all gainfully employed. She testified that she has worked in South Africa in public relations and client service, and she also ran her own shop. She appeared to the panel to be a capable individual, and she has travelled on her own to Canada with the children.

[47] South Africa has no restrictions on freedom of movement and women may travel anywhere in the country.[33] The claimants have family in one of the IFA areas. Based on the objective evidence and the principal claimant's testimony, the panel finds that there would not be undue hardship for the claimants in establishing residence or obtaining education, or for the principal claimant to earn a living, and that it would be reasonable for the claimants to relocate to Cape Town or Port Elizabeth.

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[31] *Ranganathan, Rohini v. Canada (Minister of Citizenship and Immigration*), [2001] 2 F.C. 164 (C.A.) at paragraph 15.
[32] Ibid., paragraph 13.
[33] Exhibit 6, NDP for South Africa (December 21, 2017), item 5.5.

[48] Considering the particular facts of this case, the panel determines that there is an IFA for the claimants in Cape Town or Port Elizabeth. Therefore, the claimants have not established that they face a serious possibility of persecution on a Convention ground, or that, on a balance of probabilities, they would be subject personally to a risk to life or to a risk of cruel and unusual treatment or punishment everywhere in South Africa.

CONCLUSION

[49] Based on the foregoing analysis, the panel concludes that the principal claimant is excluded from Canada's refugee protection process by operation of article 1E of the Convention relating to the status of refugees and, under Section 98 of the *IRPA,* a person who is found to be excluded by article 1E is neither a "Convention refugee" nor a "person in need of protection" and cannot therefore be determined to be such a person in relation to any country. The panel concludes that the principal claimant is neither a Convention refugee nor a person in need of protection.

[50] Considering the panel's finding that there is a viable internal flight alternative for the claimants, the panel concludes that the minor claimants are not Convention refugees or persons in need of protection. Therefore, their claims are denied.

(signed) **"R. Jackson"**

R. Jackson

June 1, 2018

Date