



RPD File No. / N° de dossier de la SPR : MB7-10680

MB7-10827

Client ID No. / N° ID client : XXXX

XXXX

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)

Demandeur(e)(s) d'asile

XXXX XXXX XXXX
XXXX XXXX

Date(s) of hearing

Date(s) de l'audience

January 16, 2018
March 6, 2018
April 13, 2018

Place of hearing

Lieu de l'audience

Montréal, Quebec

Date of decision
and reasons

Date de la décision
et des motifs

May 30, 2018

Panel

Tribunal

Anne Bardin

Counsel for the claimant(s)

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

M^e Cristian Roa-Riveros

Designated representative

Représentant(e) désigné(e)

N/A

Counsel for the Minister

Conseil du (de la) ministre

Farah Merali
[Filing of documents]

REASONS FOR DECISION

INTRODUCTION

[1] The claimants, XXXX XXXX and his spouse, XXXX XXXX, are citizens of the Republic of Haiti. They allege that they are “Convention refugees” and “persons in need of protection” as defined in section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act* (the Act).

ALLEGATIONS¹

Male claimant’s allegations

[2] The male claimant states that in XXXX 2004, in Gonaïves, some chimères shot at his father and set him on fire because of his employment with XXXX XXXX XXXX. The male claimant’s family moved to Port-au-Prince, and the male claimant went to the Dominican Republic.

[3] The male claimant states that in 2013, his brother XXXX XXXX XXXX asked him to become involved in politics with him, specifically in XXXX XXXX XXXX XXXX. The male claimant returned to Gonaïves in XXXX 2013 to meet his brother. He states that in addition to working with Mr. XXXX, he worked for XXXX XXXX XXXX. Members of the opposing party, the PHTK, including Mr. XXXX, approached the male claimant and his brother to ask them to join the party, but they refused. As a result, the male claimant was attacked on XXXX XXXX, 2013.

[4] The male claimant left Haiti for the Dominican Republic on XXXX XXXX, 2013. In XXXX2013, he returned to Haiti to search for his brother XXXX XXXX XXXX, who had gone missing, but was unable to find him. He then went to Brazil in XXXX 2014.

[5] On XXXX XXXX, 2015, the male claimant returned to Haiti, as he found life in Brazil difficult, in particular because of the discrimination. Shortly thereafter, he learned that he had been seen in Port-au-Prince and that people were wondering if he had come back to seek

¹ Document 1 – Basis of Claim Form (BOC Form).

vengeance for his brother's death. The male claimant returned to Brazil, then left Brazil for the United States, where he arrived in XXXX 2016 and requested asylum. He crossed the Canadian border on August 3, 2017, to claim refugee protection.

[6] The male claimant states that he fears returning to Haiti and being killed by the people who disappeared his brother in 2013 because they refused to join the PHTK.

Female claimant's allegations

[7] The female claimant states that on XXXX XXXX, 2007, her uncle XXXX XXXX raped and beat her in the family home in Belladère. During the assault, he pointed a weapon at her and threatened to kill her if she told her family about it.

[8] The female claimant states that she told her mother about the assault a few days later and that her mother asked XXXX for an explanation. The female claimant ran into her uncle in the street that day; he hit her and said he would deal with her. They ran into each other again a few days later. XXXX beat her, injured her with a knife and said that the next time he saw her, he would kill her.

[9] The female claimant states that she left Haiti for the Dominican Republic on XXXX XXXX, 2007. Unable to obtain status in that country and having been robbed there, the female claimant left for Brazil in XXXX 2014.

[10] The female claimant states that in Brazil, she was a victim of racism and theft and could not live there. She travelled to the United States in XXXX 2016 and crossed the Canadian border on August 3, 2017, to claim refugee protection.

[11] The female claimant states that after arriving in Canada, she learned that her uncle had obtained a visa for Brazil and had gone there. She states that her uncle was seen in the place where she had been living in Brazil. She further alleges that her uncle was a criminal in Haiti who sold drugs and weapons.

[12] The female claimant states that she fears returning to Haiti and being raped and killed by her uncle XXXX or someone working for him.

MINISTER'S INTERVENTION

[13] In his notice of intervention dated October 19, 2017,² the Minister alleges that the claimants are permanent residents of Brazil and that the principal claimant obtained a VIPER visa on XXXX XXXX, 2014.³

[14] Referring to an excerpt from Response to Information Request BRA105515.FE, the Minister states that there is no indication that the principal claimant's permanent resident status has been cancelled and that he cannot return to Brazil.⁴

[15] The Minister is therefore requesting that the RPD exclude the claimants from the *Convention Relating to the Status of Refugees* (the Convention) under section 98 of the Act.

DETERMINATION

[16] The panel determines that the female claimant is a person referred to in Article 1E of the Convention and is therefore neither a "Convention refugee" nor a "person in need of protection," under section 98 of the Act.

[17] The panel determines that the male claimant is not a person referred to in Article 1E of the Convention.

[18] In addition, the panel determines that the claimants are neither "Convention refugees" nor "persons in need of protection" for the reasons that follow.

ANALYSIS

Identity

[19] The claimants established their identities by means of their passports, copies of which have been filed in the record.⁵

² Document 5 – Minister's intervention, October 19, 2017.

³ Document 5 – Exhibit M-1.

⁴ Document 5 – Exhibit M-2.

⁵ Document 2 – Information package provided by the Canada Border Services Agency and/or Immigration, Refugees and Citizenship Canada, formerly Citizenship and Immigration Canada.

EXCLUSION

Female claimant's permanent residence in Brazil

[20] Article 1E of the Convention reads as follows:

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

[21] The female claimant acknowledged, and never hid the fact, that she applied for and obtained permanent residence in Brazil. She stated that she arrived in Brazil on XXXX XXXX, 2015, claimed refugee status after obtaining a [translation] “protocol” document and obtained permanent residence eight months later. She received a residence card, also called a foreigner identity card (CIE), but lost it on her way to the United States and does not remember the expiry date or period of validity. Her spouse stated that the card was valid for ten years.

[22] The female claimant's statements are consistent with the documentary evidence on Brazilian permanent residence. In fact, the female claimant's name appears on the list of 43,871 Haitians who were permitted by the Brazilian government to regularize their status and thus obtain permanent residence in Brazil.⁶

[23] Based on this evidence, the panel's experience and opinion, as well as the female claimant's testimony, this is sufficient to conclude that the female claimant obtained permanent resident status in Brazil.

[24] The female claimant was questioned about the rights that are attached to this status. She stated that she only had the right to work and did not have access to other services. When questioned about access to health care, the female claimant initially stated that she did not have access to these services, then explained that she had needed health care in Brazil in 2015 and that her employer had paid for her hospital stay. This all seems to indicate that she did in fact have access to health services. She also confirmed that she could have studied if she wanted to and that she had the right to travel outside Brazil and to return there.

⁶ Document 3 – National Documentation Package (NDP) on Haiti (October 20, 2018), Tab 3.12: Response to Information Request (RIR) ZZZ105986.FE, Immigration and Refugee Board of Canada (IRB), October 3, 2017.

[25] According to the documentary evidence,⁷ permanent resident status gives a foreigner the right to return to Brazil as a permanent resident; he or she has the right to work, to study and to access social services. Social rights (under the Brazilian constitution) include education, health, work, leisure, security, social security, protection of motherhood and childhood, and assistance to the destitute.

[26] In *Zeng*⁸ (and confirmed in *Majebi*⁹), the Court of Appeal clearly established that the relevant date with respect to whether a claimant has permanent residence status is the date of the hearing before the RPD. In this case, the hearings took place on January 16, March 6 and April 13, 2018, less than two years after the female claimant left Brazil on July 8, 2016.¹⁰

[27] Therefore, there is every reason to believe that the female claimant is a permanent resident of Brazil, as her name appears on the list of individuals who have been granted permanent residence in Brazil¹¹ and she subsequently obtained a permanent residence card, according to her statements.

[28] The panel concludes that, on a balance of probabilities, given that she is a permanent resident, the female claimant's status in Brazil is essentially the same as that of Brazilian nationals, which includes the ability to freely enter the country, to study, to work and to access social services. She is therefore a person referred to in Article 1E of the Convention.

[29] However, the female claimant alleges a fear for her life both in her country of nationality, Haiti, and in her country of permanent residence, Brazil.

⁷ Document 3 – NDP on Brazil (March 31, 2017), Tab 3.4: RIR BRA105515.FE, IRB, May 25, 2016.

⁸ *M.C.I. v. Zeng, Guanqiu* (F.C.A., No. A-275-09), Noël, Layden-Stevenson, Stratas, May 10, 2010; 2010 FCA 118.

⁹ *Majebi v. M.C.I.* (F.C.A., No. A-52-16) McLachlin, Abella, Moldaver, Karakatsanis, Wagner, Gascon, Côté, Brown and Rowe, November 9, 2016, 2016 FCA 274.

¹⁰ Document 2 – Schedule 12 (IMM008) at page 3 of 4 (on the reverse side) and Schedule A, question 12.

¹¹ Document 3 – (Haiti) Tab 3.12: Ibid.

Male claimant's permanent residence in Brazil

[30] The male claimant alleged that he was never granted permanent residence in Brazil. He stated that he entered Brazil on XXXX XXXX, 2014, with a VIPER visa that he obtained in Ecuador just before going to Brazil.

[31] The male claimant stated that, like his wife, he had applied for permanent residence when he arrived in Brazil, but that he had not received a response. When the panel asked him why he had not received a response after living in Brazil for two years, whereas his wife allegedly obtained permanent residence in eight months, the male claimant's testimony was laboured. He adjusted his statements and repeated that he did not qualify for permanent residence, that the government had decided to end the program because many Haitians were leaving Brazil and, finally, that his application was pending. In addition, when the panel asked him if he had a copy of his work permit, the male claimant initially stated that he had left it in the United States. When the panel asked why, he stated that he had forgotten it in the United States, thinking that he had brought it with him. This testimony undermines his credibility.

[32] The panel has strong doubts regarding the allegation that the male claimant was not granted permanent residence in Brazil. However, in the absence of evidence of the male claimant's status in Brazil, the panel concludes that it has not been demonstrated that the male claimant was a permanent resident of Brazil.

INCLUSION**Female claimant's fear of returning to Brazil**

[33] The female claimant stated that she fears returning to Brazil for two reasons: because thieves robbed and assaulted her in Brazil, and because her uncle, who is allegedly looking for her to seek revenge, went to Brazil.

[34] The female claimant stated that approximately one month before the hearing, in XXXX 2017, a female friend told her that her uncle had gone to Brazil. She did not know when he arrived in Brazil or whether he was still there or had returned to Haiti.

[35] When asked how her uncle would know where she lived in Brazil, the female claimant stated that he could have asked around, as he did in Haiti, according to her mother. The female

claimant testified that, by doing so, her uncle could find her anywhere in Brazil, even if she moved from Sao Paulo to another city, such as Rio de Janeiro or Brasilia.

[36] If the female claimant's uncle had been looking for her since the assault in XXXX 2007, the panel cannot understand why he would wait nearly 10 years to search for her. The female claimant left Haiti for the Dominican Republic on XXXX XXXX, 2007. If it were so easy to find a person by word of mouth, even in a foreign country, the panel wonders why the female claimant's uncle did not look for her in the Dominican Republic, where she lived for seven years from XXXX 2007 to XXXX 2014. Moreover, the panel finds it difficult to understand why the female claimant's uncle would look for her in Brazil after she left the country in XXXX 2016, over a year before she found out that he had been seen in her old neighbourhood in Sao Paulo.

[37] The Board is not required to accept testimony simply because it is not contradicted; it is entitled to use reason, common sense and rationality.¹² In light of the female claimant's testimony, the panel concludes that the female claimant is not credible and does not believe her allegation that her uncle is currently in Brazil looking for her in order to kill her.

[38] The female claimant also alleged that she was robbed and assaulted three times, once in 2015 and twice in 2016. She stated that the robbers' modus operandi was to club their victim and then rob them, and that Haitians were often the victims of such assaults. When asked whether Brazilians were also victims of crime, she answered that she did not know, but that Haitians were the ones she had heard such complaints from.

[39] When asked further about the three assaults, the female claimant stated that a weapon had been pointed at the back of her neck during the third assault, which is not mentioned in her account¹³ or in the amendment submitted.¹⁴ The female claimant testified that when she completed her form, she was not asked that question. When the panel pointed out that it was she who had submitted the amendment to her account and therefore no question had been asked, she responded that there are no robbers who are not armed. The panel can understand this; however, it does explain why she did not indicate that a firearm had been pointed at the back of her neck.

¹² *Aguebor v. (Canada) Minister of Employment and Immigration* (1993), 160 N.R. 315 (F.C.A.).

¹³ Document 1.

¹⁴ Document 6 – Exhibit C-9: Amended BOC Form – Questions 2(a) and 3.

The female claimant did not provide an explanation for this omission, which undermines her credibility.

[40] The female claimant also stated that during the second assault, she was beaten to the point that she required three days off work. The female claimant was then presented with her amended account,¹⁵ which indicates that she required three days off work after the third assault. She reiterated that it was after the second assault that she needed time off, although she required medical care after all three assaults. The female claimant added that she had suffered an injury to the mouth during the third assault. The panel notes that the amendment she submitted does not indicate that she was injured. After re-reading the amendment, the panel also notes that she did not state that she had been beaten during the first incident, which is contrary to her statement that she required medical care after all three incidents.

[41] In his written submissions, counsel points out that when the amendment was drafted, the incidents were transcribed in the manner in which they were reported to him, not in chronological order; therefore, the female claimant should not be criticized for the confusion between the second and third incidents. The panel cannot accept such an argument. First, the amendment makes clear reference to a chronology: [translation] “the first time ... the second time ... the third time.” The amendment was also translated for the female claimant from French to Creole, and she could therefore have asked for the chronology of these incidents to be corrected. Lastly, in the Basis of Claim Form (BOC Form), in the section “Why you are claiming refugee protection,” just before question 2(a), the following is clearly stated: “When you answer the questions in this section, please explain everything in order, starting with the oldest information and ending with the newest.” It is the responsibility of counsel and claimants to ensure that the information is true, complete, correct and written in chronological order. Regardless of the chronology, many allegations are missing from the female claimant’s amendment: that she had been injured during each incident, including the first; that the robbers were armed, specifically with firearms and not simply with knives; and that a weapon had been pointed at the back of her neck during one incident. These omissions undermine the female claimant’s credibility, particularly regarding the severity of what she allegedly experienced.

¹⁵ *Idem.*

[42] The female claimant stated that she did not fear anything else in returning to Brazil apart from the general racism and mistreatment endured by Haitians in Brazil.

[43] The panel is aware that the economic and social situation deteriorated in Brazil after the Olympic Games and the soccer World Cup, which together had created many jobs that no longer exist. The panel is aware that with a lower employment level, it is more difficult to find work. The panel is also aware that racism exists in Brazil's difficult economic climate, which has led to a reluctance to hire or rent accommodations to foreigners with scarce financial resources. This economic situation can exacerbate pre-existing racism and discrimination, which in turn can lead to conflicts with local residents.

[44] The documentary evidence¹⁶ on the situation of Afro-Brazilians mentions discrimination and poverty, particularly among those living in the outskirts or in *favelas*.

[45] With respect to crime, the evidence shows that Brazil, a country that has received 85,000 Haitians since 2012,¹⁷ has one of the highest homicide rates in the world and that crime and police violence are serious problems in Brazil's cities.¹⁸ The evidence¹⁹ also indicates the following:

50. The Special Rapporteur was shocked to learn about the levels of violence in Brazil. Regrettably this violence has a clear racial dimension. Of the 56,000 homicides that occur each year, 30,000 victims are between 15 and 29 years old, of which 77 per cent are Afro-Brazilian male youth. What is disconcerting is that a significant number are perpetrated by the State, often through the apparatus of the military police. Research reveals that the number of Afro-Brazilians who have died as the result of police actions in the state of São Paulo is three times greater than that registered for the white population. In Rio de Janeiro, in 2013, nearly 80 per cent of the victims of homicides resulting from police interventions were Afro-Brazilian, of whom 75 per cent were youth between 15 and 29 years of age. In addition to the killings committed by police on duty, it is believed that a large number of deaths are also caused by so-called death squads and militias made up primarily of civil and military police and other agents of the State (see A/HRC/11/2/Add.2).

¹⁶ Document 3 – (Brazil) Tab 13.2: *Report of the Special Rapporteur on minority issues on her mission to Brazil*, United Nations. Human Rights Council, February 9, 2016;
Tab 13.1: *Brazil. State of the World's Minorities and Indigenous Peoples 2016: Events of 2015*, Minority Rights Group International, July 2016.

¹⁷ Document 3 – (Brazil) Tab 2.1: *Brazil. Country Reports on Human Rights Practices for 2016*, United States. Department of State, March 3, 2017, at page 11.

¹⁸ Document 3 – (Brazil) Tab 7.2: RIR BRA104224.E, IRB, November 13, 2012.

¹⁹ Document 3 – (Brazil) Tab 13.2: *Report of the Special Rapporteur on minority issues on her mission to Brazil*, United Nations. Human Rights Council, February 9, 2016

[46] In view of this, the panel notes that the female claimant never alleged that she feared the actions of the police or the State.²⁰

[47] The evidence also indicates the following:²¹

Overall, Brazil is one of the most violent countries in the world, with a homicide rate of 27.1 per 100,000 inhabitants in 2011. As in other parts of Southern and Central America, a large part of this violence and criminality can be linked to organized crime groups participating in drug trafficking. The murder victims are frequently young black men from poor urban areas who are constantly recruited by drug gangs.²²

[48] While it is true that young black people are overrepresented in terms of homicide, this excerpt indicates that victims are killed largely as a result of the disadvantaged socio-economic situation, which makes them vulnerable to recruitment by drug cartels in the poorest urban areas, not because of targeted persecution of black people.

[49] In addition, although the figures may suggest that Haitians are also victims of such widespread violence in Brazil, this does not mean that Haitians are targeted solely because they are foreigners.

[50] The panel therefore acknowledges that Haitians have been killed in Brazil, as demonstrated by the female claimant's evidence.²³ However, the reasons for these murders are not always identified.

[51] In view of this, the female claimant stated that she herself never experienced problems during the nearly three years she spent in Brazil, other than losing her job.

[52] For all these reasons, the panel concludes that the female claimant failed to demonstrate that if she were to return to Brazil, she would face a serious possibility of persecution because of her Haitian origin or on other grounds, or that, on a balance of probabilities, she would be

²⁰ Regarding police violence, see also Document 5 – “*Brésil : toutes les 23 minutes un jeune noir est assassiné!*” [Brazil: a black youth is murdered every 23 minutes!].

²¹ Document 3 – (Brazil) Tab 7.2: RIR BRA104224.E, IRB, November 13, 2012.

²² Document 3 – (Brazil) Tab 7.9: *Drugs and Drug Trafficking in Brazil: Trends and Policies. Improving Global Drug Policy: Comparative Perspectives and UNGASS 2016*, Brookings, April 29, 2015, at page 3.

²³ Document 6 – Exhibit C-4: Newspaper article – *La migration haïtienne vers le Brésil* [Haitian migration to Brazil]; Exhibit C-10: Newspaper article – *Au Brésil, être une jeune femme noire double le risque* [in Brazil, being a young black woman doubles the risk]; Exhibit C-12: Newspaper articles in a bundle.

subjected to a risk of cruel and unusual treatment or punishment or to a risk to her life under subsection 97(1) of the Act.

[53] Having concluded that the female claimant would face no risk in Brazil, her country of permanent residence, the panel does not need to examine the risks she might face if she were to return to Haiti.

Male claimant's fear of returning to Haiti

[54] The claimants' first hearing was on January 16, 2018, and Brazil was the only country discussed. They were called to appear again on March 6, 2018, so that the male claimant could testify as to his fears regarding Haiti. The claimants appeared a third time on April 13, 2018, to have the interpreter who had translated the amendment to their BOC Forms testify.

[55] At the beginning of the hearing on March 6, 2018, the claimants submitted an amendment to their accounts.²⁴ In the male claimant's case, the additions and clarifications made to questions 2(a) and 2(g) were substantial. When asked why such amendments had not been made before the first hearing on January 16, 2018, or even within the regulatory time limits before the second hearing on March 6, 2018, instead of at the beginning of that hearing, the male claimant stated that he had this information in his head and thought that the panel would ask him questions during the first hearing. He stated that since that did not happen, he had decided to write down the information. The male claimant also testified that there was not enough space on the BOC Form to write everything down. The panel cannot accept this as a reasonable explanation. The male claimant is represented by a lawyer who knows that claimants can write their account on a separate sheet and attach it to the BOC Form and that all details must be provided, and this is also indicated on the BOC Form. Moreover, the male claimant's statement does not explain why he did not submit the amendment before the first hearing. The male claimant had plenty of time to do so after submitting his original BOC Form on September 7,

²⁴ Document 7 – Exhibit C-13: Amended BOC Form (Haiti) – XXXX XXXX; Exhibit C-14: Amended BOC Form (Haiti) – XXXX XXXX.

2017; in fact, he amended his response to question 3 on January 11, 2018.²⁵ For these reasons, the panel draws a negative inference from the late filing of this amendment.

[56] The male claimant alleged that he fears returning to Haiti, facing persecution and losing his life at the hands of PHTK supporters because of his involvement with XXXX XXXX XXXX and the LAPEH opposition party. However, the male claimant's description of his involvement in this party, with XXXX XXXX and with the NGO Colinu is inconsistent with what he indicated on his BOC Form²⁶ and immigration forms.²⁷

[57] First, the male claimant stated that he [translation] "was in the LAPEH party." He subsequently mentioned that he was not a member but had been taking steps to become one, and for that reason, had been offering his services to magistrate XXXX XXXX starting in XXXX 2013 when he returned to Haiti.

[58] The male claimant was then asked about his activities with XXXX XXXX XXXX. He stated that when he started, he was bringing messages from XXXX XXXX, who was located outside of the city, to another XXXX XXXX XXXX XXXX XXXX XXXX XXXX, with whom his brother worked and who was located in the city. He also apparently replaced Mr. XXXX at COLINU, an NGO in XXXX XXXX XXXX XXXX XXXX, when the latter could not travel to a given site. The male claimant explained that XXXX XXXX had been in charge of finding workers to XXXX XXXX. As such, the male claimant sometimes hired workers on behalf of Mr. XXXX. These were the tasks allegedly performed by the male claimant during his two-month employment with the XXXX. The male claimant stated that at COLINU, he also employed other people whom he met and who asked him if he had work for them, which he did in addition to replacing Mr. XXXX. He allegedly never took part in any purely political activity other than working with the XXXX, who retained COLINU's services to project a positive image through reforestation activities and employment ahead of the fall 2015 elections.

²⁵ Document 6 – Exhibit C-2: Amended BOC Form – Question 3.

²⁶ Document 1; Document 7 – Exhibit C-13: Amended BOC Form (Haiti) – XXXX XXXX.

²⁷ Document 2.

[59] The male claimant was then presented with Schedule A, question 9,²⁸ which indicates that he was a [translation] “XXXX XXXX XXXX” for the “La Paix” [peace] party, to be understood as “LAPEH.” The male claimant stated that it was the person who had completed the form at the Olympic stadium who had written this when he had explained his job to the latter, even though the male claimant had told him that he was simply a messenger. The male claimant was also presented with question 10 of the same form, which indicated that he was a [translation] “XXXX XXXX” for LAPEH in Bassain. The male claimant again stated that this was an error made by the person who completed the forms with him.

[60] While the panel can understand the conditions in which these forms were completed at the Olympic stadium in summer 2017, although it seems very surprising that errors of such magnitude could have been made, the situation is quite different for the BOC Form and his account,²⁹ which were completed when the male claimant was represented by his lawyer and with the help of an interpreter, as was the case for the amendment he submitted at the beginning of the second hearing.³⁰

[61] According to the amendment, the male claimant [translation] “had been chosen to be supervisor [at COLINU] since I spoke several languages and could interpret for the XXXX.”³¹ This is very different from the male claimant’s testimony that he replaced the magistrate occasionally to hire workers for COLINU when the latter could not travel. The male claimant also indicates the following in his amended account: [translation] “I also had the role of messenger for the [LAPEH] party.” Again, this significantly differs from his testimony that he brought messages from XXXX XXXX XXXX to XXXX XXXX XXXX XXXX—that is, between two people, not for an entire party, even though these people were members. These major discrepancies regarding the male claimant’s role and involvement in COLINU and the LAPEH party greatly undermine his credibility and lead the panel to believe that he was attempting to exaggerate his allegations as set out in his amended account.

²⁸ Document 2 – Schedule A, question 9.

²⁹ Document 1 – Account.

³⁰ Document 7 – Exhibit C-13: Amended BOC Form (Haiti) – XXXX XXXX.

³¹ *Idem*.

[62] The male claimant alleged that his brother, who worked for XXXX XXXX XXXX XXXX and who had been threatened by Mr. XXXX, went missing in XXXX 2013. He stated that he had returned to Haiti to look for him. The male claimant testified that he had returned to Port-au-Prince, because his brother had lived there prior to his disappearance. He apparently spent about two weeks looking for his brother in the latter's neighbourhood, from XXXX XXXX, 2013, to XXXX XXXX, 2014. When asked what he had done, he stated that he had simply asked his brother's friends if they had seen him. Although according to the male claimant, he and his brother had received death threats and his brother had gone missing, he decided to return to Haiti, to his brother's neighbourhood to inquire about his brother, thereby exposing himself to everyone and putting himself within the reach of the PHTK criminals whom he allegedly feared. This return to his country to do something that could have been done by any member of his family significantly undermines both his credibility and his subjective fear.³²

[63] The male claimant returned to Haiti again for about three weeks, from XXXX XXXX, 2015, to XXXX XXXX, 2016. He explained that he had planned to move back to Haiti permanently since he had not felt well in Brazil, where he had lived from XXXX 2014 to XXXX 2015. The male claimant stated that six or seven days after he returned to Haiti, a cousin told him that he had heard a group of men say that he was back in Port-au-Prince to seek vengeance for his brother and that they would follow him and kill him. The male claimant stated that he did not know whether these individuals had looked for him at his uncle's place in Port-au-Prince, where he lived. When asked by the panel if anyone in the family had told him that the criminals had come looking for him, the male claimant answered that they had not come after him directly, but that they had just been watching him. The panel presented him with documentary evidence³³ stating:

According to the doctoral candidate, the victims of the acts of revenge committed by gangs or other organized crime structures in Haiti are mainly family members or loved ones of the target (ibid). According to the POHDH representative, revenge is committed on relatives of the target when the target [translation] "has fled to save themselves in another city, region or elsewhere" (1 May 2015).

³² *Ilie, Lucian Ioan v. M.C.I.* [1994] F.C.J. No. 1758.

³³ Document 3 – NDP on Haiti (October 20, 2017), Tab 7.3: RIR HTI105162.FE, IRB, June 11, 2014.

[64] The panel then asked the male claimant if his uncle, with whom he lived, or any other member of his family had experienced problems with Mr. XXXX or his criminals. The male claimant answered that his family was not in the party. The male claimant is not a member of the party either. When the panel pointed out to the male claimant that it was not necessary to be a party member for the criminals to seek vengeance on his family, the male claimant stated that it was his and his brother's political opinion. He also referred to his father's murder, which had been committed by the *chimères* because he also worked for a magistrate, and to the fact that his entire family had had to flee to the Dominican Republic. When questioned further about this, the male claimant testified that he and his brother had moved to the Dominican Republic and that his mother and sister had gone to Cap-Haïtien, where they had not encountered any problems. When asked whether he himself could move to Cap-Haïtien, he answered that he could not, stating that he was afraid because he had been involved in politics. The panel cannot believe that the two months during which he worked for Mr. XXXX would cause him problems today, over four years later.

[65] The male claimant was also asked why he had returned to Haiti in 2015. He stated that he had encountered too many problems in Brazil. When asked by the panel why he had not gone to another country instead of returning to a country where he allegedly feared for his life, he answered that other countries did not grant asylum and had problems as well. When asked what country he was referring to, he answered the Dominican Republic. When the panel pointed out that there were other countries in the world, the male claimant responded that the only other country he thought was good was the United States. When asked why he did not go to the United States, the male claimant answered that at the time, he did not know how to get there. It would appear that he did no research to look into it. The panel also finds it surprising that he did not know this at a time when many Haitians were leaving Brazil for the United States, which he also later did. In the circumstances, his second return to Haiti again significantly undermines both his credibility and his subjective fear.³⁴

[66] Regarding the allegation that his cousin informed him that he had heard a group of men say that he was back in Port-au-Prince to seek vengeance for his brother and that they would

³⁴ *Ilie, Lucian Ioan v. M.C.I.* [1994] F.C.J. No. 1758.

follow him and kill him, the male claimant was presented with his amended account,³⁵ which reads as follows:

[translation]

After a few days, one of my cousins, who is in Gonaïves, wrote me to tell me that someone had seen me in Port-au-Prince and had been asking whether I had come back to get revenge for my brother's disappearance. I think that people want to take revenge on me, in addition to harming me, since they fear that I am seeking vengeance for my father and brother. I'm scared that they will kill me or make me disappear like my brother.

[Underlined in the original to show the amended portion of the account]

[67] The panel pointed out to the male claimant that, according to his testimony at the hearing, his cousin had told him that men had said they would kill him, whereas his account does not indicate this; rather, it states that it was the male claimant himself who thought that. The male claimant stated that he had told the interpreter to write in the amendment that criminals had said they would kill him before he himself sought revenge.

[68] XXXX XXXX, the interpreter who translated the amendment, was heard as a witness at the hearing on April 13, 2018. When questioned by the panel, the interpreter repeatedly attempted to recount what seemed like a learned scenario instead of answering the panel's specific question. This undermines the credibility of the interpreter, who alleged that she remembered exactly what was stated on XXXX XXXX, 2018, when the account was amended.³⁶ According to her testimony, after the amendment was drafted in French, it was re-translated into Creole so that the male claimant could confirm that everything was correct, which he did by signing at the end of the amendment. By signing it, he was declaring that the text had been translated for him in full and was "complete, true and correct." The male claimant cannot blame the interpreter or his lawyer, who typed the amendment, if the text was subsequently translated and if he confirmed its accuracy.

³⁵ Document 7 – Exhibit C-13: Amended BOC Form (Haiti) – XXXX XXXX.

³⁶ Document 7 – Exhibit C-13: Amended BOC Form (Haiti) – XXXX XXXX.

[69] The male claimant was therefore unable to provide a reasonable explanation for the contradiction between his testimony and his BOC Form regarding what happened while he was in Haiti in 2015–2016. This further undermines his credibility.

[70] The panel notes that the male claimant failed to submit any documents supporting his allegations or showing that he worked for XXXX XXXX XXXX or that his brother went missing because of this.

[71] For all these reasons, the panel finds that the male claimant is not credible and therefore does not believe his allegations that he worked for magistrate XXXX XXXX of the LAPEH party, and that this caused him problems with members and supporters of the PHTK.

CONCLUSION

[72] After examining all the evidence on the record, the panel determines that the female claimant, XXXX XXXX, is neither a “Convention refugee” nor a “person in need of protection” pursuant to section 98 of the Act, as she is a person referred to in Article 1E of the Convention in light of her permanent resident status in Brazil.

[73] In addition, the panel concludes that there is not a serious possibility that the male claimant, XXXX XXXX, would be persecuted in Haiti on a Convention ground or that, on a balance of probabilities, he would be personally subjected to a danger of torture, to a risk to his life or to a risk of cruel and unusual treatment or punishment should he return to Haiti. The panel therefore determines that XXXX XXXX is neither a “Convention refugee” nor a “person in need of protection.”

[74] Therefore, their refugee protection claims are rejected.

Anne Bardin

Anne Bardin

May 30, 2018

Date

IRB translation

Original language: French