



RPD File No. / N° de dossier de la SPR : MB7-15344

MB7-15502 / MB7-15503

UCI / IUC : XXXX XXXXXXXXXX / XXXX

*Private Proceeding / Huis clos*

## Reasons and Decision – Motifs et décision

<b>Claimant(s)</b>	XXXX XXXX XXXX XXXXXXXXXXXX XXXX XXXX XXXX XXXXXXXXXXXX XXXX XXXX XXXX	<b>Demandeur(e)(s) d'asile</b>
<b>Date(s) of hearing</b>	October 15, 2020	<b>Date(s) de l'audience</b>
<b>Place of hearing</b>	Montréal, Quebec	<b>Lieu de l'audience</b>
<b>Date of decision and reasons</b>	November 10, 2020	<b>Date de la décision et des motifs</b>
<b>Panel</b>	Nicolas Ranger	<b>Tribunal</b>
<b>Counsel for the claimant(s)</b>	Angelica Pantiru	<b>Conseil(s) du (de la/des) demandeur(e)(s) d'asile</b>
<b>Designated representative</b>	XXXX XXXX XXXX	<b>Représentant(e) désigné(e)</b>
<b>Counsel for the Minister</b>	N/A	<b>Conseil du (de la) ministre</b>

## REASONS FOR DECISION

### INTRODUCTION

[1] XXXX XXXX XXXX (the claimant) and her two minor children, XXXX XXXX XXXX XXXX and XXXX XXXX XXXX XXXX (the minor claimants), citizen of Haiti, are claiming refugee protection in Canada under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

[2] XXXX XXXX XXXX was appointed the designated representative of the minor claimants. The children's father authorized them to travel to Canada with the claimant.

[3] Throughout the hearing and in rendering its decision, the panel applied the Chairperson's *Guideline 4 on Women Refugee Claimants Fearing Gender-Related Persecution*.<sup>1</sup>

### ALLEGATIONS

[4] The claimants' allegations are set out in detail in their Basis of Claim Forms (BOC Forms),<sup>2</sup> as well as in the addendum filed as Exhibit P-1.<sup>3</sup>

[5] In summary, the claimants state that they cannot return to Haiti because they fear being mistreated and threatened, or even killed, by criminals if they were to return to that country.

[6] The claimants fear the members of an unknown gang who attacked and robbed them in their home in XXXX 2011. After the police were alerted, three of the gang leaders were arrested and imprisoned. These gang leaders escaped from prison in 2017 and now want to take revenge on the claimant and her children.

[7] The claimant, her husband and her children left Haiti in search of work in 2014. Fearing for their safety in Brazil, they travelled to the United States in 2016. Upon their arrival, the

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

<sup>2</sup> Document 2 – Claimants' Basis of Claim Forms.

<sup>3</sup> Document 4 – Exhibit P-1: Amended written account.

claimant's husband was sent back to Haiti, where he has since been living in hiding. The claimant and her children travelled to Canada in 2017 in order to claim refugee protection.

## DETERMINATION

[8] The panel determines that the claimants are neither "Convention refugees" nor "persons in need of protection" as they are excluded under Article 1E of the Convention. The panel reached this conclusion for the following reasons.

## ANALYSIS

### Identity

[9] The claimants' identities were established on the basis of their testimony and the evidence on record, notably the copies of their birth certificates and passports that were added to the record.<sup>4</sup>

### 1E exclusion

[10] At the hearing, the claimants provided as evidence a permanent residence card valid for five years in Brazil.<sup>5</sup> The claimant initially explained that she did not have permanent status in Brazil. When asked about the card indicating that the residence was permanent, the claimant agreed that it was permanent residence but that it had to be renewed before it expired (XXXX XXXX XXXX 2020).

[11] The panel concludes that there is *prima facie* evidence on the record concerning the claimants' permanent residence in Brazil. The evidence on the record also indicates that permanent resident status conferred on them rights substantially similar to those of Brazilian nationals.<sup>6</sup> For

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<sup>4</sup> Document 1 – Information package provided by the Canada Border Services Agency and/or Immigration, Refugees and Citizenship Canada, formerly Citizenship and Immigration Canada.

<sup>5</sup> Document 4 – Exhibit P-7: Copies of the Brazilian resident cards of the three claimants.

<sup>6</sup> Document 3 – National Documentation Package (NDP). Haiti, Tab 14.11: Response to Information Request ZZZ200291.FE, Immigration and Refugee Board of Canada, August 28, 2020;  
Document 3 – NDP, Brazil, September 30, 2019, Tab 3.4: Response to Information Request, BRA105515.FE, Immigration and Refugee Board of Canada, May 25, 2016: [translation] "particularly, a permanent resident has the right to return to Brazil; he has the right to work, study and access social services there. Education, health, work, leisure, security, social security, protection of motherhood and childhood, and assistance to the destitute, are social rights, as set forth by" the Brazilian Constitution.

example, they had the right to work, study and access social services.

[12] On the date of the hearing, the claimants had been outside of Brazil since XXXX 2016, that is, for more than two years. Under Brazilian law, a residence permit is revoked following an absence from the country of more than two years.<sup>7</sup> The panel concludes that, on the day of the hearing, the claimants demonstrated that they had lost their permanent resident status in Brazil.

### ***Zeng analysis***

[13] In *Zeng*,<sup>8</sup> the Federal Court of Appeal states that claimants may be excluded from Canada's protection even if they have lost their status in a third country. The panel must weigh various factors to make a finding of exclusion.

### ***Voluntary loss of status and risk in Brazil***

[14] In the amendment to her BOC Form, the claimant states that she and her family left Brazil because they no longer felt safe. She reports being attacked twice after receiving her pay from her employer, in XXXX 2014 and XXXX 2016. During the attack in XXXX 2016, she was apparently told that she would not be so lucky (to escape) next time. She also heard that other people had been stabbed after being robbed. Moreover, the claimant states that her work colleagues were hostile toward Haitians and that it was difficult to find a school for her children.

[15] At the hearing, the claimant testified that she was attacked twice, in XXXX 2014 and XXXX 2015. She confirmed that she had only been attacked twice.

[16] The panel confronted the claimant, as she states in the amendment to her written account that she had been attacked and threatened in XXXX 2016. The claimant replied that she had forgotten about that attack. The panel did not accept this explanation. According to the claimant's written account, it was this attack that led her to quit her job out of fear and caused her to leave Brazil the following month. The panel does not believe that the claimant would have forgotten this event, which is central to her leaving Brazil. The panel concludes that the claimant embellished her allegations regarding what happened to her in Brazil.

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<sup>7</sup> *Idem.*

<sup>8</sup> *Canada (Citizenship and Immigration) v. Zeng*, 2010 F.C.A. 118.

[17] Moreover, the claimant confirmed that her children were in fact able to attend school in Brazil despite having had to apply to a number of schools and received discriminatory refusals.

[18] The panel concludes that the claimants were discriminated against in Brazil. However, the panel also concludes that the claimants did not demonstrate, on a balance of probabilities, that they were threatened, as stated by the claimant in her written account.

[19] The documentary evidence indicates that “Brazil’s economy was in a recession in 2015-2016, and has experienced ‘weak’ recovery in 2017-2019. The panel acknowledges the existence of racism in the difficult economic context of Brazil, and that there is discrimination against Black people, particularly in the areas of employment, education and housing. However, the documentary evidence does not indicate that this discrimination, even cumulatively, amounts to persecution.”<sup>9</sup>

[20] According to the documentary evidence, except for the period from April to December 2016, Brazil recorded more hires than dismissals of Haitians during the period between 2015 and March 2017.<sup>10</sup> The evidence also shows that “Haitians are treated the same as other members of society.”<sup>11</sup> In addition, despite some abuses, in terms of “labour and safety laws, Haitians are treated the same as other members of Brazilian society. In 2014, they demanded their rights.”<sup>12</sup>

[21] Regarding violence, the evidence indicates that Brazil has a high rate of violence:<sup>13</sup>

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

<sup>9</sup> Document 3 – NDP, Haiti, Tab 14.11: Response to Information Request ZZZ200291.FE, Immigration and Refugee Board of Canada, August 28, 2020.

Document 3 – NDP, Haiti, Tab 14.16: Response to Information Request ZZZ106295.E, Immigration and Refugee Board of Canada, August 28, 2020.

<sup>10</sup> Document 3 – NDP, Haiti, Tab 14.11: Response to Information Request ZZZ200291.FE, Immigration and Refugee Board of Canada, August 28, 2020.

<sup>11</sup> *Idem*.

<sup>12</sup> Document 3 – NDP, Haiti, Tab 14.11: Response to Information Request ZZZ200291.FE, Immigration and Refugee Board of Canada, August 28, 2020.

<sup>13</sup> Document 3 – NDP, Brazil, April 30, 2018, Tab 13.2: United Nations, Human Rights Council, February 9, 2016, *Report of the Special Rapporteur on minority issues on her mission to Brazil*.

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).

[22] While it is true that young Black people are overrepresented in terms of homicide, the evidence indicates that victims are killed largely as a result of their disadvantaged socioeconomic situation, which makes them vulnerable to being recruited by drug cartels in the poorest urban areas, not because of the targeted persecution of Black people or people of Haitian origin.<sup>14</sup>

[23] Regarding the situation of Afro-Brazilian women, the evidence states:<sup>15</sup>

59. Afro-Brazilian women are often in exacerbated situations of marginalization and disadvantage. A recent study revealed that Afro-Brazilians women and girls are more likely to be victims of violence: in 2013, 66.7 per cent more Afro-Brazilian women were killed than white women and girls. Afro-Brazilian women are also overrepresented in low-skilled jobs, such as domestic work, and there are few Afro - Brazilian women in positions of power. In addition, Afro-Brazilian women are highly overrepresented in prison populations, compared with their white counterparts. In connection with the “war on drugs”, between 2005 and 2013, the number of women imprisoned for drug-related crimes grew 290 per cent, with the impact on Afro-Brazilian women considerable. The large numbers of Afro-Brazilians male homicides have a significant impact on Afro-Brazilian women, as the mothers, wives and sisters of these slain youths, and who are not provided with any psychosocial support or redress.

60. Afro-Brazilian women and girls are particularly vulnerable to violence, including sexual violence and domestic violence, in particular in marginalized communities such as favelas and periferias. Indeed, in periferia Brasilândia, girls as young as 10 and 11 told the Special Rapporteur that they were forbidden from leaving their houses after school for fear of being raped, a regular occurrence in the neighbourhood. In these communities, as well as elsewhere, the school dropout rate for Afro-Brazilian girls is high, as they are often obligated to take up household duties, including the care of younger siblings. Similarly, teenage pregnancy rates remain high, particularly in poorer areas. The maternal mortality rates for Afro-Brazilian women remain comparatively high (see A/HRC/27/68/Add.1, para. 86).

[24] Again, the evidence shows that Afro-Brazilians are more affected by drug-related criminality and therefore more affected by the war on drugs. As such, they are more likely to be arrested. Afro-Brazilian women are also impacted by this war on drugs and its effects on all aspects

<sup>14</sup> *Idem.*

<sup>15</sup> *Ibid.*, paragraphs 59 and 60.

of their lives. However, this is not the situation of the claimant, who at no time alleged a fear of the drug world or of arrests and mistreatment at the hands of the police.

[25] As for the situation of Haitians in Brazil, the evidence states that “[s]ources indicate that there have been past instances of violent attacks, such as shootings or stabbings, as well as racism against immigrants, including Haitians,”<sup>16</sup> while another report found that “information on incidents of violence against Haitian nationals was scarce.”<sup>17</sup> In fact, the Research Directorate mentions only a single case of violence against Haitians and, even then, it is unclear whether it was an incident in which “the assailants allegedly accused the Haitians of stealing their jobs before opening fire” or rather “a settling of scores relating to drug trafficking.”<sup>18</sup>

[26] The few examples given in the objective evidence of xenophobic or racist attacks against Haitians contradict the claimant’s allegations that Haitians are regularly the victims of violence at the hands of Brazilians, particularly in the Brazilian context, with its high crime rate, as mentioned above.

[27] For all these reasons, although the panel acknowledges that the claimant and her children may have faced racism and discrimination in Brazil, the panel concludes that they did not demonstrate that the discrimination cumulatively amounted to persecution in their case.

[28] Therefore, the panel concludes that the claimants failed to demonstrate that if they were to return to Brazil, they would face a serious possibility of persecution because of their origin or another reason, even cumulatively, or that, on a balance of probabilities, they would be subjected to a danger of torture, a risk of cruel and unusual treatment or punishment or a risk to their lives there under subsection 97(1) of the IRPA.

[29] Furthermore, with regard to this analysis, the panel also concludes that the claimants’ departure from Brazil was voluntary.

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<sup>16</sup> Document 3 – NDP, Haiti, Tab 14.16: Response to Information Request ZZZ106295.E, Immigration and Refugee Board of Canada, August 28, 2020.

<sup>17</sup> Document 3 – NDP, Haiti, Tab 14.11: Response to Information Request ZZZ200291.FE, Immigration and Refugee Board of Canada, August 28, 2020.

<sup>18</sup> *Idem.*

[30] In light of the foregoing, the panel is of the opinion that this factor weighs in favour of exclusion.

***Possibility of returning to Brazil***

[31] The evidence on the record<sup>19</sup> indicates that, on a balance of probabilities, the claimants lost their permanent resident status in Brazil because they were absent from the country for more than two years. The documentary evidence also shows that they would not be able to re-acquire this status. As the claimants no longer have status in Brazil, the panel considers that, on a balance of probabilities, they would not be able to legally return to Brazil. The panel is of the opinion that this factor could weigh against exclusion.

***Risk in the country of origin: Haiti***

***Absence of a nexus to the Convention***

[32] The claimant alleges that she was targeted because she reported criminals to the authorities. The panel is of the opinion that the claimant's fears are related to criminal acts and a personal vendetta. The panel concludes that the claimant's fear concerning her main allegations has no nexus to a Convention ground nor to paragraph 97(1)(a) of the Act. Consequently, the claim concerning the main allegations was assessed under paragraph 97(1)(b) of the Act.

***Analysis***

[33] The determinative issue in the assessment of the claimant's risk in Haiti is credibility and the absence of prospective risk.

[34] The claimant alleges that more than 40 criminals attacked her neighbourhood on XXXX XXXX 2011. She alleges that during the attack, criminals threatened to kill her because they demanded \$XXXX XXXX XXXX but she had only \$XXXX to give them. Police officers allegedly arrested three gang leaders, who were later imprisoned. These gang leaders reportedly escaped from prison in 2017 and now want to take revenge on the claimant and her family.

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<sup>19</sup> Document 3 – NDP, Haiti, Tab 14.11: Response to Information Request ZZZ200291.FE, Immigration and Refugee Board of Canada, August 28, 2020.



[35] The panel assessed the claimant's testimony and concluded that the presumption of truthfulness was rebutted because the claimant was not a credible witness and because her testimony was speculative.

[36] First, the claimant provided very little credible information on the three gang leaders who were supposedly arrested and imprisoned. When questioned on this subject, the claimant did not know the names of the gang leaders or any other detail about them; she did not know if they had been tried or sentenced, and she had not attempted to find out such information.

[37] When the panel questioned the claimant about the gang leaders' escape in 2017, the claimant was even more vague and her testimony was speculative. She stated that she thought that the four leaders were still in prison in 2017 because, in Haiti, criminals stay in prison a long time before being prosecuted. When asked how she knew that the leaders had escaped in 2017, the claimant explained that prison breaks happen from time to time and that the gang continues to operate in the same place. Moreover, she had heard on the radio that there had been a prison break in XXXX 2017. When asked how she knew that the four leaders were at that specific prison, the claimant replied that that was where they had been imprisoned after their arrest in 2011, despite having heard no news about them since 2011.

[38] The panel concludes that the claimant was speculating about the gang leaders' imprisonment, the site of their imprisonment, and their escape.

[39] The claimant testified that someone informed her husband that a masked individual had inquired about him in XXXX 2017. This information prompted her husband to go into hiding after his return to Haiti. The claimant did not know who had given her husband this information ([translation] "maybe it was a friend"). She believed that it was the same criminals as in 2011 because they had promised to return.

[40] As the claimant related vague information that was not corroborated by the documentary evidence, her credibility is the key element in this claim.

[41] The panel confronted the claimant, as she had testified that four gang leaders had been arrested and imprisoned, whereas in her BOC Form, she states that three leaders had been caught.

[42] The claimant's response was full of contradictions. The claimant initially corrected herself, explaining that three leaders and one criminal had been arrested. When the panel asked why then had she just testified that four leaders had been arrested, the claimant explained that when she had read the report of the justice of the peace (when she was in Canada, therefore, recently), she noted that it stated three leaders, not four. She then called the justice of the peace to ask why the report indicated three leaders. When she reached the justice of the peace who had prepared the report in 2011, the latter confirmed that three leaders had been arrested, not four.

[43] The panel informed the claimant that the justice of the peace's report does not specify the number of leaders. Furthermore, it does not mention any arrests. The claimant responded that the report does mention the number of leaders. When the panel confirmed that this was not the case, the claimant explained that the justice of the peace had told her that he had specified the number. Then the claimant stated that she had not in fact read the report because the writing was too small.

[44] The panel asked the claimant to explain why she would have called the justice of the peace to complain that he had indicated the wrong number of leaders when he had not even specified a number in his report. The claimant reiterated that she had told the justice of the peace that she had specified four leaders in her account.

[45] The claimant's counsel argued that this was a minor contradiction. The panel agrees that the claimant could have made a mistake when she testified that three or four leaders had been arrested. However, the claimant did not state that she had made a mistake. Instead, she gave a series of explanations that did not add up. In light of this shaky testimony, the panel has serious doubts about the claimant's honesty and about the reliability of the justice of the peace's report.

[46] The panel then raised a significant contradiction between the claimant's testimony and the excerpt from the minutes of the peace court registry.

[47] The claimant alleges that her neighbour (who is also her cousin) was seriously injured in the attack when a criminal shot her in the leg. The claimant testified that during the night, at around 1:00 a.m., the police officers allegedly took her neighbour to hospital, where she stayed for about one week for medical treatment.

[48] However, the justice of the peace indicates in his report, completed at 10:30 a.m. on the same day, that he [translation] "saw and noted" at the scene that the claimant's neighbour (cousin)

had serious injuries to her leg. How is it possible that the justice of the peace saw and noted the injuries of the claimant's neighbour when the latter was at the hospital and had been there for more than eight hours?

[49] The claimant explained that the justice of the peace had made a mistake and that she was not lying since a person who has been shot cannot be left without any care.

[50] The panel does not accept this response. It does not make sense that the justice of the peace would state in his report that he [translation] "saw and noted" that the claimant's neighbour had a bullet hole in her leg when she had in fact not been present at the scene for many hours.

[51] The panel finds that, taken together, these two contradictions seriously undermine the claimant's credibility. Furthermore, the panel does not give any weight to the justice of the peace's report because it strongly doubts its genuineness.

[52] For these reasons, particularly because the claimant's testimony was speculative and uncorroborated, as well as because of the issues regarding the claimant's credibility, the panel concludes that the claimants failed to prove their allegations, on a balance of probabilities. Specifically, the panel considers that the claimants did not demonstrate, on a balance of probabilities, that three gang leaders were arrested following an attack at the claimant's home, that these leaders were imprisoned, that they escaped from prison, and that they now want to take revenge on the claimants. Therefore, the panel is not of the opinion that the claimants would be subjected to a reasonable fear of persecution or, on a balance of probabilities, to a risk set out in subsection 97(1) if they were to return to Haiti.

*Fear as a woman returning to Haiti*

[53] The claimant's counsel asked the panel to assess the claimant's fear in Haiti as a woman and as a person returning to Haiti after a lengthy stay in Canada, even though this is not alleged in the BOC Form.

[54] The panel, having considered *Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution*, is sensitive to the situation of women in Haiti and has taken into

account Federal Court case law in *Josile*<sup>20</sup> and *Dezameau*,<sup>21</sup> as well as the documentary evidence concerning Haitian women.<sup>22</sup>

[55] The panel is of the opinion that clearly not all Haitian women are in the same situation. The panel considers that, in this case, the claimant, a married woman and mother of two children, who has two brothers and a spouse still living in Haiti, is not without male protection or resources. The claimant has a number of years of experience as a merchant in Haiti. Given that the panel does not accept the claimant's allegations regarding the criminals, it also notes that there is no reason why the claimant's husband would not be able to work in Haiti.

[56] The evidence shows that women in vulnerable situations are at greatest risk of violence, but the panel is of the opinion that the claimant is not in such a situation.<sup>23</sup> Furthermore, even considering society's treatment of Haitians who had lived abroad for a long time before returning to their country,<sup>24</sup> the panel concludes that the claimant has the support and resources needed to resettle in Haiti.

[57] In light of the evidence on the record, the panel does not believe that the claimant would be subjected to a reasonable fear of persecution or, on a balance of probabilities, to a risk set out in subsection 97(1) because she is a woman returning to Haiti after a lengthy stay in Canada.

[58] The panel concludes that this factor argues in favour of exclusion.

### **Canada's international obligations**

[59] The panel considered Canada's international obligations in its exclusion analysis. The panel is of the opinion that Canada would meet its international obligations in the event that an exclusion under Article 1E of the Convention applied. As indicated above, the claimants did not establish that they would have a reasonable fear of persecution or, on the balance of probabilities, that they would be subjected to a risk to their lives or to a risk of cruel and unusual treatment or

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<sup>20</sup> *Josile, Duleine v. M.C.I.* (F.C. No. IMM-3623-10), Martineau, January 18, 2011, 2011 FC 39.

<sup>21</sup> *Dezameau, Elmancia v. M.C.I.* (F.C., No. IMM-4396-09), Pinard, May 27, 2010, 2010 FC 559.

<sup>22</sup> Document 3 – NDP, Haiti, April 30, 2018, Section 5: Gender, Domestic Violence and Children.

<sup>23</sup> Document 3 – Ibid., Tab 5.1: Haiti. Social Institutions and Gender Index 2019, Organisation for Economic Co-operation and Development.

Document 3 – Ibid., Tab 5.4.

<sup>24</sup> Document 3 – Ibid., Tab 14.1.

punishment if they were to return to Haiti or Brazil.

[60] The panel also concludes that this factor argues in favour of exclusion.

### **Conclusion from the *Zeng* analysis**

[61] After weighing the factors in *Zeng*, the panel concludes that the claimants must be excluded under Article 1E of the Convention. The panel comes to this conclusion because the claimants did not establish that they face a serious possibility of persecution or that, on a balance of probabilities, they would be subjected to a risk in Haiti or Brazil.

### **CONCLUSION**

[62] After examining all the evidence on the record, the panel determines that the claimants, **XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX** and **XXXX XXXX XXXX XXXX**, are neither “Convention refugees” nor “persons in need of protection” under section 98 of the Act, as they are persons described in Article 1E of the Convention.

[63] For these reasons, the panel rejects their refugee protection claims.

Nicolas Ranger

November 10, 2020

IRB translation

Original language: French