



RPD File No. / N° de dossier de la SPR : TB7-13406
TB7-13432

Private Proceeding / Huis clos

Reasons and Decision – Motifs et Décision

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| Claimant(s) | XXXX XXXX XXXX (a.k.a. XXXX XXXX) XXXX XXXX XXXX | Demandeur(e)(s) d'asile |
| Date(s) of Hearing | October 25, 2018 | Date(s) de l'audience |
| Place of Hearing | Toronto, Ontario | Lieu de l'audience |
| Date of Decision and reasons | November 20, 2018 | Date de la décision et des motifs |
| panel | R. Jackson | Tribunal |
| Counsel for the Claimant(s) | Sherif R. Ashamalla | Conseil(s) du (de la/des) demandeur(e)(s) d'asile |
| Designated Representative(s) | XXXX XXXX XXXX | Représentant(e)(s) désigné(e)(s) |
| Counsel for the Minister | N/A | Conseil du (de la) ministre |

2018 CanLII 147450 (CA IRB)

REASONS FOR DECISION

INTRODUCTION

[1] The claimant, XXXX XXXX XXXX, a citizen of Haiti, as well as her minor daughter XXXX XXXX XXXX XXXX a citizen of Chile, are claiming asylum in Canada under articles 96 and 97(1) of the *Immigration and Refugee Protection Act* (IRPA)¹.

[2] The claimant was appointed as a designated representative for the minor claimant. These claims were heard jointly pursuant to Rule 55 of the Refugee Protection Division *Rules*.

ALLEGATIONS

[3] The claimant's allegations are set out in the Basis of Claim (BOC)² form and further explained in her oral testimony. In summary, the claimant fears persecution in Haiti because in XXXX 2010 she XXXX XXXX XXXX XXXX and spoke against XXXX XXXX. A man named XXXX XXXX was a XXXX supporter and he brought three other men with him to the claimant's house to threaten her with weapons. They beat her and the children. She reported the incident to police.

[4] About a month later this man returned to the claimant's house and said he knew of the police report. They had an argument about politics and the man and his group were going to sexually assault the claimant and her daughters but they were stopped by neighbours.

[5] The claimant moved to Chile with her children on XXXX XXXX, 2011. She obtained permanent residence. She remained until XXXX XXXX, 2014, when she went to the United States of America (US) with the minor claimant and her new husband. She left three of her older children with her sister in Chile.

[6] The claimant was married in Haiti, and this marriage was dissolved in 2013. The relationship resulted in her pregnancy with the minor claimant. The minor claimant's father has never been a part of her life.

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c.27 as amended.

² Exhibit 2, Basis of Claim.

[7] The claimant met and married XXXX XXXX in Chile. He is a citizen of Haiti. Since his deportation from the US, he resides in Port au Prince.

[8] The minor claimant bases her claim on that of her mother.

DECISION

[9] The panel concludes that the claimants are not Convention refugees or persons in need of protection.

[10] The panel finds that the adult claimant is excluded under Article 1E as she had permanent residence status in Chile and through her own voluntary actions, lost it. The panel finds that the minor claimant is not a Convention refugee as she does not have a well-founded fear of persecution on a Convention ground in Chile. The panel also finds that the minor claimant is not a person in need of protection in that her removal to Chile would not subject her 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 minor claimant's removal to her country of citizenship would subject her personally to a danger of torture.

[11] In reaching a decision, the panel considered the *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution*. The panel considered that various factors may affect a claimant's ability to provide evidence, such as the sensitive nature of the allegations, cross-cultural misunderstandings, social, religious, and economic differences. These *Guidelines* also state that gender is an innate characteristic and it may form a particular social group, and the panel considered whether this applies to the circumstances of the claimant.

ANALYSIS

[12] The determinative issues are exclusion under Article 1E of the Convention, discrimination amounting to persecution in Chile, and credibility.

Identity

[13] The identity of the claimant as a citizen of Haiti was established, on a balance of probabilities, by her testimony along with a copy of her Chilean permanent residence card,³ and copies of her birth certificate extracts⁴ issued by the national archives in Haiti.

[14] Counsel stated in his submissions that both claimants held permanent residence status in Chile; however, the minor claimant having permanent residence is not supported by the BOCs, the claimant's testimony, her port of entry (POE) interview,⁵ the minor claimant's birth certificate,⁶ or the documentary evidence,⁷ all of which indicate that as a child born in Chile the minor claimant has Chilean nationality. According to the objective documentation, Chile is considered to be the one of the strongest democracies in the region, exhibiting respect for the rule of law. Domestic courts reportedly demonstrate that there are strong legal protections safeguarding the right to nationality. Thus, the panel is satisfied, on a balance of probabilities, that the minor claimant is the claimant's daughter and that she is a citizen of Chile.

[15] With regards to their passports, which the panel did not see, according to the claimant's testimony, they were taken by US officials upon filing their asylum claims.

Permanent residence in Chile and exclusion 1E: claimant

[16] Section E of Article 1 of the *Convention* states as follows, "[t]his 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 nationality of that country."

[17] In the *Zeng*⁸ decision, the Federal Court of Appeal set out the following criteria to determine if Section E of Article 1 would apply in a particular case:

Considering all relevant factors to the date of the hearing, does the claimant have status, substantially similar to that of its nationals, in the third country? If the answer is yes, the

³ Exhibit 6, claimant's Permanent Residence card for Chile.

⁴ Exhibits 1 and 7.

⁵ Exhibit 1, interview notes, p 3.

⁶ Exhibit 1, Birth Certificate of minor claimant.

⁷ Exhibit 8, National Documentation Package (NDP) for Chile (April 30, 2018), item 3.4.

⁸ *Zeng, Guanqiu v. Canada (Minister of Citizenship and Immigration)*, [2011] 4 F.C.R. 3 (F.C.A 118).

claimant is excluded. If the answer is no, the next question is whether the claimant previously had such status and lost it, or had access to such status and failed to acquire it. If the answer is no, the claimant is not excluded under Article 1E. If the answer is yes, the RPD must consider and balance various factors. These include, but are not limited to, the reason for the loss of status (voluntary or involuntary), whether the claimant could return to the third country, the risk the claimant would face in the home country, Canada's international obligations, and any other relevant facts.⁹

[18] According to the documentary evidence, with regard to Chile, the National Documentation Package states:

The website of the Department of Immigration (Departamento de Extranjería y Migración) indicates that permanent residence (Permanencia Definitiva) is a permit issued to foreigners allowing them to reside indefinitely in Chile and to perform any lawful activity (Chile n.d.a). The same source further indicates that once the permit for permanent residence is granted, the foreigner has 30 days to register the permit at the National Headquarters of Foreign Affairs and International Police (Jefatura Nacional de Extranjería y Policía Internacional), or at the Police, if the previous service is not available at the place where the foreigner lives; and, to apply for a Foreigners' Identity Card at the Civil Registry and Identification Service (Servicio de Registro Civil e Identificación).¹⁰

[19] Despite the panel and the claimant's counsel's attempts to elicit testimony about her status in Chile, the claimant did not testify clearly about this. However, the panel notes that she was able to live and work in Chile, held a permanent residence card, and the three of her children that she has left in Chile with her sister are attending school. The panel finds that the claimant possessed and enjoyed fundamental rights shared by Chilean citizens.

[20] The claimant's counsel showed her the photocopy of the identity card issued in 2012 with the notation "permanencia definitiva" and the claimant indicated that this was her permanent residence card.¹¹ The translation provided by counsel states that this means "permanent residence" and the claimant's status on the card is listed as "permanent resident."

[21] In light of the testimony of the claimant as well as the documentary evidence, the panel finds, on a balance of probabilities, that the claimant obtained permanent residence in Chile.

[22] However, according to documentary evidence, permanent residence is lost once a person is outside of Chile for a period of 1 year:

⁹ *Zeng, Guanqiu v. Canada (Minister of Citizenship and Immigration)*, [2011] 4 F.C.R. 3 (F.C.A 118).

¹⁰ Exhibit 8, NDP for Chile (April 30, 2018), item 3.2.

¹¹ Exhibit 6.

The permanent residence permit will be automatically revoked if the individual spends an uninterrupted period of more than one year outside of Chile. Foreign Service (Consular) officials can prolong the validity of the permit if a permanent resident is unable to return to Chile during the year for "justified reasons," including study or illness. The extension is stamped on the Permanent Residence Certificate (Certificado de Permanencia Definitiva) and must be requested within the 60 days prior to the expiration of the one-year period. A maximum of four consecutive extensions can be granted for the permanent residence permit, and each extension is valid for one year. Once an extension expires, and if a new one is not obtained, permanent residence status will be automatically revoked if the permanent resident continues to remain outside the country.¹²

[23] The panel sought clarification from the claimant regarding her permanent resident status. The claimant testified that she has been outside of Chile since XXXX 2014. The panel does not have the claimant's passport to view her exit and entry stamps; however, on a balance of probabilities this passport has been with US authorities since the claimant filed for asylum in that country and thus she would not have been in a position to use it. The panel has no evidence before it to indicate that the claimant returned to Chile.

[24] Considering the documentary evidence and the testimony of the claimant, the panel finds, on a balance of probabilities, that she lost her permanent resident status in XXXX 2015.

[25] Notwithstanding that the claimant is no longer a permanent resident of Chile, in accordance with the test set out in *Zeng*¹³, the panel must examine and balance the four factors set out in order to determine whether Section 1E exclusion applies.

Voluntary or involuntary departure

[26] At the hearing the claimant testified that she and her daughter left Chile because people did not like her there.

[27] The panel sought to understand the decision taken, given that the claimant left three of her children and her sister in Chile. She said that in 2011 she worked at a XXXX XXXX, but her co-workers would spray things at her to insinuate that she had an odor. The panel asked the claimant if she had reported the matter to her employer. She said she had, but since she did not speak Spanish, she did not understand what he replied to her.

¹² Exhibit 8, NDP for Chile (April 30, 2018), item 3.2.

¹³ *Zeng, Guanqiu v. Canada (Minister of Citizenship and Immigration)*, [2011] 4 F.C.R. 3 (F.C.A 118).

[28] The claimant also testified about the theft of her bag, which she did not attribute to her being Haitian but rather general crime in Chile. The claimant stated that she had not reported the matter to police. When asked why she had not sought any assistance, she said that since she did not speak Spanish there would be nothing she could say and she could not have brought a report. The panel asked the claimant if she had ever taken any steps to learn Spanish, and she said she had not. When asked why not, she said she had too many children to take care of. However, she also testified that six months after she entered Chile, her sister moved there as well and they lived together. This sister continues to care for three of the claimant's children. Even so, in the three years the claimant lived in Chile, she made no efforts to learn Spanish.

[29] The U.S. Department of State Crime and Safety Report for Chile describes the police in the following terms, "[t]he Carabineros are the uniformed national police force and have primary responsibility for crime prevention, order, and traffic control. They are considered to be one of the most professional, well-trained, and least corrupt police forces in Latin America."¹⁴

[30] The panel finds that the claimant's answer regarding the futility in approaching police was speculative and not based on any personal experience with the Chilean authorities. Having made no effort to find out if there was someone who could help her in Creole, she therefore made no efforts to obtain help from the state. The panel rejects the claimant's explanation for failing to seek assistance from the police. Even so, as noted above, the theft was not attributable to racial targeting according to the claimant's testimony.

[31] Regarding the problems she reported having at work, it would have been difficult for either the claimant's employer or anyone else to assist her in finding a remedy for any problems she had under the circumstances, given the language barrier. The claimant also made vague comments at the hearing that shopping, working, and other things were difficult, and she went on to say that if you don't speak Spanish you can't do anything. The claimant testified that in Canada she is taking English classes and tries to speak English.

[32] She also said in Chile people were racist on the bus and didn't want their bodies touching. When the panel asked whether the claimant herself had anything happen to her on the bus, she

¹⁴ Exhibit 8, NDP for Chile (April 30, 2018), item 7.3.

said no. The incident at the claimant's work was the sole incident where the claimant alleged to have been harassed due to her Haitian origins. The panel finds that considering all of the above, the claimant has not established with sufficient evidence that her experiences in Chile would rise to the level of persecution.

[33] According to the documentary evidence¹⁵ with regards to Chile, equal treatment and nondiscrimination are explicitly protected in the constitution, and the labor code specifically prohibits discrimination. A survey was conducted in June 2017 by the National Center for Migration Studies at the University of Talca; 48 percent of immigrants surveyed, most of whom were from other Latin American countries or from the Caribbean, reported experiencing discrimination. The National Institute of Human Rights (INDH), a government body, operated independently, issued public statements, and proposed changes to government agencies or policies to promote and protect human rights. In its 2016 report, the INDH took an in-depth look at the human rights impact of environmental degradation, democratic security, migration, and poverty, among other themes. The Senate and Chamber of Deputies have standing human rights committees responsible for drafting human rights legislation.

[34] The documentary evidence also states that no laws limit participation of women and/or members of minorities in the political process, and they did participate. The government cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, or other persons of concern.

[35] The law provides for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees, including access to education and health care. The country recognized approximately 2,000 refugees in 2017, including 60 Syrians. On May 25, the government launched the project Chile Reconoce, designed to extend Chilean citizenship to children of refugees and immigrants born in Chile. UNHCR reported 100 children who were at risk of statelessness were able to confirm their Chilean nationality as a result of the project.

¹⁵ Exhibit 8, NDP for Chile (April 30, 2018), item 2.1.

[36] On a social level and political level, Chile is a major destination for immigration.¹⁶ Chile has a long history of encouraging immigration.¹⁷ Chile has numerous laws and policies to support the integration of immigrants into its society. For example, in 2005 Chile ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and adopted the Presidential Instruction No. 9 in 2008 which states that national migration policy should be founded on principles such as respect for migrants' labour rights, non-discrimination and the integration and social protection of migrants in the field of education, health and employment. Chile has adopted several administrative measures to govern the access by migrant workers to services such as education and health care.¹⁸

[37] Counsel submitted some country conditions documents¹⁹ which discuss racism in Chile. They indicate that there are many Haitians in Chile and there have been reports of discrimination and racism. These range from racist comments to physical mistreatment.

[38] The panel also notes that the claimant submitted a letter from one of her children in Chile,²⁰ who is now 25 years old. This letter does not indicate that the claimant's family members are experiencing discrimination or racism. The daughter states that they live calmly in Chile without fear.

[39] The claimant testified that the kids have had their phones stolen out of their pockets, but considering the small amount of information about these incidents and her other testimony around theft in Chile, it is speculative to attribute this to racial targeting.

[40] The panel is willing to accept that the claimant experienced racism at her workplace in 2011, as she testified. There may be some instances in Chile where racism or discrimination amounts to persecution; however, the claimant has not established that this applies to her situation.

[41] Based on all of her testimony and the evidence before the panel, it would appear that the claimant left Chile in 2014 partly due to her not having made any efforts to learn Spanish, which

¹⁶ Exhibit 8, NDP for Chile (April 30, 2018), item 2.5

¹⁷ Ibid., item 3.3.

¹⁸ Ibid., item 2.5.

¹⁹ Exhibit 7.

²⁰ Ibid.

hindered her ability to seek redress for any wrongs she experienced and which hindered her integration into Chilean society. The claimant has not established with sufficient evidence that she had to leave Chile because of racism or discrimination. She legally held permanent residence status when she left Chile.

[42] The panel therefore finds, on a balance of probabilities, that the claimant left Chile voluntarily. It is therefore a factor in favor of exclusion under Article 1E.

[43] Considering all of the above, the panel finds that the claimant has not established with sufficient evidence that the claimant or the minor claimant would face discrimination amounting to persecution in Chile. The panel finds there is no forward-facing serious possibility of persecution for the claimants in Chile.

Possibility to Return to Chile

[44] The claimant was asked if she could regain her permanent residence. The claimant stated that she could not get it back. The panel asked if she had tried to find out if and how she could revive her status, given that three of her children continue to reside there. She replied that she had looked on the internet and found out that someone would have to sponsor you from inside the country.

[45] It is the claimant's burden to show that she could not revive her status. The claimant did not provide evidence indicating that she could not recover her status or return to Chile. The National Documentation Package does not provide an answer as to what procedures may exist to recover permanent residence once lost. In the absence of this evidence, this factor cannot be evaluated.

Risk in the country of nationality - Haiti

[46] The claimant alleges that she was threatened and assaulted XXXX XXXX 2010 by XXXX XXXX who was a XXXX supporter, and some unknown individuals. This occurred in the city of Port au Prince where the claimant lived, in the area called Fontamara.

[47] The claimant stated that XXXX came to her home on XXXX 27, 2010 with some of his friends and they returned on XXXX XXXX, 2010. The claimant testified that she went to Mariani to her mother's on XXXX XXXX, 2010, and left the next day to stay in Leogane with her former husband's mother. She testified that she stayed there from XXXX XXXX, 2010 until she left Haiti for Chile in XXXX.

[48] The claimant further testified that she made a police report on XXXX XXXX, 2010, and then a second one on XXXX XXXX, 2010 after the election. When the panel asked the claimant to confirm if she made the second report on the same day that the people came to her house, she said there was no way she could go to police on the day of the incident. She said she went to a clinic, and then filed a police report. The panel asked when she filed the second police report, and the claimant testified that it was on XXXX XXXX, 2010 in Pétion-Ville. The claimant said she went to the clinic in Pétion-Ville on XXXX XXXX, 2010. The panel pointed out that the claimant had testified earlier that she went to her mother's on XXXX XXXX, 2010 and stayed until XXXX XXXX, 2010, in the town of Mariani. The claimant did not provide an explanation for the shifting testimony, but said the incident occurred on XXXX XXXX, 2010 and at the same time she went to the clinic, and didn't return to her home again. The panel takes a negative credibility inference due to this evolving testimony.

[49] The panel asked the claimant to confirm her testimony that she made her police report the day after the incident, on XXXX XXXX, 2010. The claimant said yes, because she did it the day after it happened as she couldn't go the same day since she went to the doctor on the same day the incident happened. The report²¹ indicates that it was made on XXXX XXXX XXXX, 2010. The panel asked the claimant about the date on the report, and the claimant replied that they made an error. The panel finds that reasonably, the police would not have made an error regarding the date of the report seeing as it is several days' difference, and especially in light of the fact that it states the day of the week as well.

[50] The objective documentation²² also indicates that fraudulent documents are readily available in Haiti.

²¹ Exhibit 7, pp 14-16.

²² Exhibit 4, National Documentation Package (NDP) for Haiti (July 20, 2018), items 3.2, 3.8, 3.11, 3.13.

[51] Considering all of the above, the panel finds, on a balance of probabilities, that the police report is fraudulent. The claimant's testimony regarding when she filed the report was inconsistent and evolving. Her whereabouts during the relevant period are unclear due to shifting testimony. Finally, the date on the report does not make sense in light of the claimant's testimony. A negative inference is taken. The claimant has not established with sufficient evidence that she filed any police reports in Haiti. Doubt has been cast upon the alleged events involving XXXX XXXX having threatened or harmed the claimant or her children.

[52] The panel also considered a medical note²³ which the claimant testified was obtained for her by her brother in Haiti. This was issued in Pétion-Ville and states the claimant was examined in that city on XXXX XXXX, 2010. It says she had bruises and hallucinations. Conversely, the claimant also presented a timeline of relevant events²⁴ which states that she received medical treatment in Mariani, rather than Pétion-Ville. Her Amended BOC²⁵ states that she went to the police on XXXX XXXX, 2010 and then left her Fontamara house to go to Mariani on the XXXX XXXX, 2010, and then went to Leogane three days after that. The panel considered whether hallucinations could have caused the claimant's inconsistent testimony. There is no other medical or psychological documentation on file. This report is from 2010, is very brief, and is not detailed regarding what the examination entailed. Even taking into account the possibility of the claimant having had hallucinations in 2010, this does not assist the panel in determining what actually happened to the claimant at the time, given her shifting testimony and contradictory evidence.

[53] Given the claimant's shifting testimony regarding her whereabouts in Haiti and the evidence she submitted which is contradictory, the panel finds that the claimant has not been a credible witness with regards to her whereabouts in XXXX 2010. Since a significant portion of the claimant's testimony and most of her documents indicate she did not go to Pétion-Ville, and given the finding that the police report from that same city is fraudulent, the panel attributes this medical certificate no weight in establishing the claimant's allegations. On a balance of probabilities, the panel finds that this medical certificate is also fraudulent.

²³ Exhibit 7, p 9.

²⁴ Ibid, p 20.

²⁵ Exhibit 5.

[54] While the claimant's testimony was reasonably consistent with regards to the claimant having XXXX XXXX XXXX XXXX XXXX XXXX, and regarding XXXX XXXX having come to her home on two occasions, the panel finds that this does not overcome the areas of her testimony which were inconsistent. In particular, the panel refers to the negative inferences taken regarding what actions the claimant took because of those alleged incidents. Therefore, the panel finds the claimant has not established with sufficient evidence the events involving XXXX, which she alleges precipitated her departure from Haiti.

[55] Claimant testified that her sister XXXX XXXX XXXX lived in Haiti until her recent immigration to the US. She said this sister told her that people were looking for her in Fontamara. However, the claimant's testimony on this issue was vague and confusing. It is not clear when people showed an interest in her. The panel asked whether the claimant had asked her sister for evidence that people were looking for her and she said no, they don't talk about such things. The panel takes a negative credibility inference, given the claimant's vague account of people looking for her and the lack of evidence regarding this matter, where it would have been reasonably available.

[56] Cumulatively, the panel finds that the above-noted elements have a serious impact on the claimant's credibility. Consequently, the panel does not believe that the claimant has established her allegations on a balance of probabilities. Considering all of the above, the panel finds that no one is looking for the claimant in Haiti.

[57] The panel is aware of the claimant's daughter's letter²⁶ which reiterates the allegations the claimant has put forward with regards to what happened to her in Haiti. Weighed against the negative credibility findings noted above, the panel finds this letter does not overcome the credibility concerns in this case.

[58] As well, there is a letter²⁷ from the XXXX party, issued in 2018. The letter states that the claimant was a member from 2008-2014. The claimant testified that her problems in Haiti were not connected to the XXXX party. The letter makes a reference to problems the claimant had from XXXX supporters, but does not explain what those were in any detail. The writer does not

²⁶ Exhibit 7, p 7.

²⁷ Exhibit 7, pp 12-13.

explain how or when he became aware of the claimant's problems. It does not state that he was a witness or was involved the claimant's problems or their resolution. Therefore, this letter serves to establish that the claimant had a political opinion as a member of XXXX when she was in Haiti. It does not establish that this put her at risk, or that she would face a forward-looking risk in Haiti due to this previous membership.

Gender-based risk

[59] The panel also considered the claim under section 96 of the IRPA with respect to whether there is a risk to the claimant based on her gender, given that she is a Haitian woman and that gender-based violence in Haiti is widespread.

[60] The objective evidence states that violence against women is prevalent in Haiti.²⁸ However, as indicated by the Federal Court in *Dezameau*, it is not sufficient to simply state that the claimant is a member of the particular social group consisting of Haitian women to demonstrate that she would be persecuted in her country:

This is not to say that membership in a particular social group is sufficient to result in a finding of persecution. The evidence provided by the applicant must still satisfy the Board that there is a risk of harm that is sufficiently serious and whose occurrence is 'more than a mere possibility'.²⁹

[61] Thus, by making a gender-based persecution claim, the claimant must demonstrate elements that belong to her specific profile. As such, it is important to consider the context in which the claimant would be returning to Haiti in order to determine whether there is a well-founded fear of persecution in her specific case.

[62] The objective country documents indicate that violence against women in Haiti is more specifically tied to factors that make women more vulnerable, including women living in a rural environment, women who have been internally displaced or who are living in camps, women victims of domestic violence including spousal rape, women with disabilities, sexual minorities, and pregnant women and girls.³⁰

²⁸ Exhibit 4, NDP for Haiti (July 20, 2018), item 5.3.

²⁹ *Dezameau, Elmancia v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 559, at para 29.

³⁰ Exhibit 4, NDP for Haiti (July 20, 2018), items 2.1, 5.1, 5.3, 5.8, 5.10, and 5.11.

[63] The documentation also indicates that the violence committed against women depends largely on their socio-economic situation. Thus, although the statistics reveal widespread violence, the data includes women living in poverty-stricken neighborhoods, or sectors affected by extreme violence such as Cité-Soleil. It also includes tens of thousands of people still living in poor and dangerous conditions in camps following the 2010 earthquake.

[64] “While reliable statistics are difficult to find, reports indicate that between 25 and 70 percent of Haitian women have been victims of gender-based violence. In Cité Soleil, a poor commune on the outskirts of Port-au-Prince between 50-72 percent of women are estimated to have been raped (the estimates differ depending on the source). Since 2009, reports of violence against women and girls have steadily increased, with a spike in reports after the 2010 earthquake due to the unsafe living conditions in displacement camps. According to the UN Office for the Coordination of Humanitarian Affairs approximately 60,000 earthquake victims still live in displacement camps in and around Port-au-Prince”³¹. In fact the OFPRA considers that violence against women in those camps is endemic.³²

[65] For reasons stated above, the panel has found the claimant does not have a forward-looking risk with regards to her alleged political opponents. Upon a return to Haiti, she will be living with her husband. The claimant did not present evidence indicating that her husband would not assist her upon a return to Haiti. The claimant has not established that she would be alone should she return to Haiti. She was asked if her husband had any problems in Haiti, and she indicated there was insecurity and demonstrations. The panel finds that this vague information about general insecurity does not establish that she would be unable to live with her husband in Haiti. Given these circumstances, it is unlikely that the claimant will be forced to live in a location that would leave her vulnerable to gender-based violence such as in a tent or displacement camp.

[66] As a result, the claimant did not demonstrate that she would be placed in a situation where the risk of gender-based persecution would be more than a mere possibility upon her return to Haiti.

³¹Exhibit 4, NDP for Haiti (July 20, 2018), item 5.9.

³²Ibid., item 5.12.

[67] The panel therefore concludes that the claimant has failed to demonstrate that she faces a reasonable fear of persecution, or, on a balance of probabilities, that she faces a risk under subsection 97(1) should she return to Haiti.

[68] In light of the foregoing, the panel concludes that the claimant has failed to establish that she would be at risk were she to return to her country of nationality. This factor weighs in favor of applying exclusion as provided under article 1E of the *Convention*.

Canada's International Obligations

[69] The panel weighed this factor and determines that Canada's international obligations would be best maintained by applying the exclusion under Article 1E of the Convention, by providing protection to those who merit it based on a well-founded fear of persecution or who would be exposed to a risk under Article 97(1).

[70] Therefore, having weighed the factors set out in *Zheng*³³, the panel arrives at the conclusion that the claimant is excluded by the application of Article 1E of the *Convention*, even if she has lost her permanent residence in Chile.

Claim of minor claimant against Chile

[71] The minor claimant based her claim for refugee protection on the allegations presented by her mother. The panel noted above that the claimant failed to establish that her daughter would be persecuted in Chile. The following is a more specific analysis of the claim of the minor claimant against her country of birth and citizenship: Chile.

[72] In terms of state protection, the documentary evidence states that Chile is a constitutional democracy.³⁴ The authors state that the civilian authorities maintained effective control over the security forces, and also indicate that the constitution provides for an independent judiciary system, and that the government generally respected judicial independence and impartiality.³⁵

³³ Exhibits 1 and 7.

³⁴ Exhibit 8, NDP for Chile (April 30, 2018), item 2.1.

³⁵ Exhibit 8, NDP for Chile (April 30, 2018), item 2.1..

[73] Considering the objective evidence balanced against the country documentation presented by the claimant's counsel,³⁶ the panel finds that the presumption of state protection has not been rebutted.

[74] It is also noted that the minor claimant's siblings remain in Chile with the claimant's sister, who holds permanent residence there. The minor claimant's father, with whom she has never resided, remains in Haiti. The panel therefore finds that the minor claimant would be able to access protection if she were to need it in the future and could live with her aunt and other siblings in Chile.

[75] Having analyzed the evidence as a whole, the panel determines that the minor claimant has failed to discharge her burden of establishing that there is a "serious possibility" that she would be persecuted on a *Convention* ground. She also failed to provide any evidence that could establish, on a balance of probabilities, that she would be subjected to a danger of torture, to a risk to her life or to a risk of cruel and unusual treatment or punishment should she return to Chile.

CONCLUSION

[76] For all of these reasons, the panel determines that the claimant, in accordance with Article 98 of IRPA, the claimant is neither a "*Convention* refugee", nor a "person in need of protection" as she is excluded under Section E of Article 1 of the *Convention* as a result of her having had permanent residence in Chile.

[77] For all of these reasons, the panel determines that the minor claimant is not a "*Convention* refugee", or a "person in need of protection" and rejects her claim for refugee protection.

³⁶ Exhibit 7.

(signed)

“R. Jackson”

R. Jackson

November 20, 2018

Date