



RPD File No. / N° de dossier de la SPR : MB7-15234
MB7-15504

Client ID No. / N° ID client : XXXX

XXXX

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)

XXXX XXXX XXXX
XXXX XXXX XXXX

Demandeur(e)(s) d'asile

Date(s) of Hearing

December 13, 2018

Date(s) de l'audience

Place of Hearing

Montréal, Quebec

Lieu de l'audience

**Date of Decision
and Reasons**

January 15, 2019

**Date de la décision
et des motifs**

Panel

Anne Bardin

Tribunal

Counsel for the Claimant(s)

Jospeh Diemst ALEXIS
(unpaid)

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

Designated Representative

XXXX XXXX

Représentant(e) désigné(e)

Counsel for the Minister

N/A

Conseil du (de la) ministre

REASONS FOR DECISION

INTRODUCTION

[1] The claimants are **XXXX XXXX**, a citizen of the Republic of Haiti, and her minor daughter, **XXXX XXXX XXXX**, a citizen of the United States. They allege that they are “Convention refugees” and “persons in need of protection” within the meaning of section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act* (the Act).

[2] **XXXX XXXX** was appointed as the designated representative of her minor daughter, **XXXX XXXX XXXX**.

ALLEGATIONS¹

[3] The claimant stated that she was a **XXXX** at **XXXX XXXX**, a **XXXX XXXX XXXX**. She stated that, on **XXXX XXXX XXXX XXXX**, 2017, while she was on her way to the bank to make the weekly deposit, the **XXXX XXXX**, **XXXX XXXX XXXX XXXX**, asked her to be his accomplice in stealing the deposit money and the **XXXX** equipment he was supposed to deliver. The claimant refused, deposited the money at the bank as planned and returned home.

[4] The claimant stated that the following **XXXX**, **XXXX XXXX**, 2017, she and Mr. **XXXX** were called to the **XXXX** manager’s office to explain the theft of the equipment. Contrary to the **XXXX** statements, the claimant explained that she had not seen the equipment being stolen and reported Mr. **XXXX**, who was dismissed that day.

[5] The claimant stated that the **XXXX** blamed her for his dismissal and swore to make her pay.

[6] The claimant also stated that Mr. **XXXX** hired criminals to kill her. In anonymous telephone calls, they threatened to kidnap, rape and kill her, calling her three to five times a week beginning on **XXXX XXXX**, 2017. Criminals also fired shots at her home on two occasions.

¹ Document 1 – Basis of Claim Forms.

[7] The claimant filed a complaint with the police on XXXX XXXX and XXXX, 2017, but no action was apparently taken. The claimant then moved from house to house in various communities.

[8] Finally, on XXXX XXXX, 2017, the claimants left Haiti for the United States and arrived at the Canadian border to claim refugee protection on August 21, 2017, and to join her spouse who is a permanent resident here.

[9] The claimant fears returning to Haiti and being killed by XXXX XXXX XXXX XXXX and his criminals.

DETERMINATION

[10] The panel determines that the claimants are not “Convention refugees” or “persons in need of protection” for the reasons that follow.

ANALYSIS

Identity

[11] The claimants established their identities by means of their respective passports, certified true copies of which are in the record before the panel.²

Principal claimant’s fear of returning to Haiti

[12] The claimant’s testimony was laboured and muddled. Answers had to be repeated multiple times, especially when the claimant tried to tell her story rather than answer the specific questions she had been asked. In addition, the panel noted a number of contradictions between the claimant’s testimony and the documents on the record, as well as within her testimony and between the various documents, particularly with respect to the date the threats began, her employment and the complaint reports, which are central to her claim. These problems lead the panel to disbelieve the claimant’s allegations, for the reasons that follow.

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

Date the threats began

[13] From the outset of the hearing, the claimant stated that the rape and death threats she received by telephone began on XXXX XXXX, 2017. However, the equipment was allegedly stolen on XXXX XXXX, 2017, and the claimant did not make the report that led her manager to dismiss Mr. XXXX until XXXX XXXX, 2017. Yet, the claimant confirmed these dates. When asked how the threats could have started five days prior to the theft of the equipment, the claimant answered that she had gone to the doctor's office to make the report on XXXX XXXX, 2017. When the panel asked her again how the threats could have started eight days before Mr. XXXX dismissal, the claimant repeated her previous answer, which does not explain the impossibility. When the facts she provided were presented to her again, the claimant apologized for her confusion. After further clarifications at the panel's request, the claimant stated that the threats had begun on XXXX XXXX, 2017, in person, the day Mr. XXXX was dismissed. The claimant's difficulty in clearly stating the date that the threats began on undermines her credibility.

[14] Later during the hearing, the claimant again changed the date when the threats began, stating that they had begun on approximately XXXX XXXX, or in XXXX 2017 at least, sometime between the XXXX and XXXX of the month. She then explained that her report to the manager was made on XXXX XXXX, 2017, and that Mr. XXXX was dismissed three days later, that is, on XXXX XXXX. When asked whether she had seen Mr. XXXX in the interim, the claimant stated that he had telephoned her the day after he had stopped coming to work. That does not answer the question. As the panel tried to obtain clarifications, the claimant stated that Mr. XXXX had been dismissed the same day that she had made the report, that is, on XXXX XXXX, 2017, going back on her previous statement that he had been dismissed three days after the XXXX XXXX, 2017, report. This further undermines her credibility.

[15] The claimant then stated that Mr. XXXX had been dismissed on XXXX XXXX, 2017, and that he had threatened her in person that day for causing his dismissal. The claimant was then asked about her previous statement that the threats had begun on XXXX XXXX or even XXXX XXXX, 2017. The claimant denied it. When the panel reminded her that she had initially stated that the threats had started on XXXX XXXX, 2017, which she had then changed to XXXX XXXX, 2017, and then to XXXX XXXX, the claimant answered that she recalled the

day on which she had made the report in the manager's office, that is, XXXX XXXX, 2017. The claimant could not explain where the date of XXXX XXXX, 2017, came from. All of this seriously undermines her credibility.

Employment at XXXX XXXX

[16] At the hearing, the claimant stated that she had worked at XXXX XXXX as a XXXX beginning in 2008 and that when she arrived, Mr. XXXX was already employed by the XXXX.

[17] The claimant was then asked about Schedule A, question 8,³ which indicates that she has been employed by XXXX XXXX since XXXX 2015 and was in school prior to that. The claimant answered that it was the certificate of employment she had had prepared to obtain her United States visa. When the panel pointed out that it was actually referring to forms she had completed after making her refugee protection claim, the claimant answered that that was the date of the certificate in question. When the panel repeated that it was not referring to a certificate of employment, but rather to her forms, she repeated that she had worked for XXXX XXXX since 2008. The claimant did not explain the contradiction, which further undermines her credibility.

[18] The claimant was then asked about the certificate of employment⁴ she had submitted in support of her allegations, which also indicates that she had been employed at XXXX XXXX since XXXX 2015. The claimant answered that it could be an error. When the panel expressed surprise that the claimant and her employer would make the same error, the claimant stated that her employment had begun in 2008. Again, no explanation was provided for the error, which undermines the claimant's credibility.

[19] The claimant was then asked about her Canadian visa application, which indicates that she had worked for XXXX XXXX since XXXX2014. When asked to explain this other date, the claimant again stated that she had begun working at the XXXX in 2008. When asked to explain why she would have indicated XXXX 2014 on her visa application, she answered that the person who had helped her complete the form might have made an error. However, the claimant stated

³ Document 2 – *Idem*.

⁴ Document 5 – Exhibit D-2: Certificate of employment.

that she had read the form before signing it. This contradiction further undermines the claimant's credibility.

[20] Thus, the claimant provided three different dates as her start date at XXXX XXXX, leading the panel to give no probative value to the certificate of employment presented and to doubt whether the claimant was even employed at the XXXX.

Other incidents

[21] The claimant alleged that Mr. XXXX sent criminals, who fired shots at her home. She initially stated that this occurred twice in XXXX 2017, with a two-and-a-half-week interval between the two incidents. When the panel pointed out that, if the problems began on XXXX XXXX, 2017, the two incidents could not both have occurred in XXXX 2017 if they took place two and half weeks apart, the claimant changed her testimony and stated that the two incidents did, in fact, not occur in XXXX 2017, but in XXXX 2017. This change further undermines her credibility.

[22] The claimant stated that she had reported these two incidents to police. However, the complaint reports⁵ make no mention of the fact that criminals allegedly fired shots at her home on two occasions. The claimant provided no explanation other than to state that she had mentioned Mr. XXXX and his associates to the police. This further undermines her credibility.

Complaint reports⁶

[23] The claimant stated that the house where she resided in XXXX and XXXX 2017, at which the criminals allegedly fired shots, was located at XXXX XXXX XXXX in Port-au-Prince, where she reportedly lived with her daughter, mother-in-law and niece. The claimant was then asked about the complaint report indicating that her address was XXXX XXXX XXXX XXXX. The claimant explained that that was the address of her workplace, because the officer had asked her where she worked. The name of her employer does indeed appear on the previous line of the record. Nevertheless, it is the complainant's address that should have indicated, not

⁵ Document 5 – Exhibit D-1: Investigation unit certificate.

⁶ Document 5 – *Idem*.

her employer's. When asked about this, the claimant stated that she had brought a piece of identification with her when she had made the complaint. The same error appears on both reports, even though they were prepared by two different officers; such an occurrence is unlikely. This raises concerns in the panel's mind as to the genuineness of these documents.

[24] When the panel asked the claimant about the identification document she had shown the police officers, she answered that she had used her passport. When the panel pointed out to her that, according to the complaint reports, she had used her tax identification number (NIF), she adjusted her testimony and stated that her NIF was stapled to her passport. When the panel asked her why her NIF would be stapled to her passport, she again changed her story and stated that they were paper-clipped together. The claim's changing testimony undermines her credibility.

[25] More importantly, however, when questioned by the panel, the claimant stated that the signature at the bottom of the complaint reports was not hers. She then explained that she had not obtained a copy of her complaint at the time and had instead asked a friend to pick up the documents from the police after she had arrived in Canada. The friend allegedly signed the report on her behalf when she picked it up and sent everything on to the claimant in Canada. That is allegedly how the complaint reports were altered and her signature forged.

[26] For all these reasons, the panel gives no probative value to the complaint records.

Credibility finding

[27] For all these reasons, the panel does not find the claimant to be credible and therefore does not believe her allegations.

Forward-looking risk – particular social group of “women”

[28] The panel, which took into account *Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution*,⁷ is sensitive to the situation of women in Haiti and considered the

⁷ Immigration and Refugee Board of Canada (IRB), *Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution* – Guideline issued by the IRB pursuant to subsection 65(3) of the *Immigration Act*. Effective November 13, 1996.

Federal Court decisions in *Josile*⁸ and *Dezameau*,⁹ as well as the documentary evidence on Haitian women.¹⁰

[29] The claimant is neither alone nor homeless in Haiti. In fact, she has her mother, her mother-in-law and her brother. Accordingly, the panel concludes that the claimant has not established that her situation is similar to that of vulnerable women who are alone or displaced in camps.

[30] In addition, the claimant did not raise any problems or fears— either at the hearing, in her Basis of Claim Form or during her counsel’s final submissions—regarding her situation as a woman following the January 2010 earthquake relating to the problem of sexual violence against women in Haiti. The claimant’s written account and testimony indicate that this was not the basis of her claim.¹¹

[31] In *Josile*,¹² Justice Martineau summarizes the factors to consider when analyzing a refugee protection claim filed by a Haitian woman who alleges a gender-related fear of persecution. The presence of a male family member, the availability of state protection, where the claimant will live and her particular circumstances are factors to be considered.

[32] An examination of section 5 of the National Documentation Package (NDP) on Haiti¹³ reveals that obtaining reliable statistics on gender-related violence in Haiti is very difficult. Although violence against women is described as “chronic,” “systemic” and “widespread,”¹⁴ it is important to keep in mind that violence against women can take many forms, including domestic violence and rape. The claimant did not allege a fear of violence by her spouse or by a former spouse. It is also important to keep in mind that the few available statistics, according to many

⁸ *Josile, Duleine v. M.C.I.* (F.C., No. IMM-3623-10), Martineau, January 18, 2011; 2011 FC 39.

⁹ *Dezameau, Elmancia v. M.C.I.* (F.C., No. IMM-4396-09), Pinard, May 27, 2010; 2010 FC 559.

¹⁰ Document 3 – National Documentation Package on Haiti, July 20, 2018, Section 5: Gender, Domestic Violence and Children.

¹¹ *Frederic, Manita v. M.C.I.* (F.C., No. IMM-804-10), O’Reilly, November 8, 2010; 2010 FC 1100.

¹² *Josile v. Canada (M.C.I.)* (No. IMM-3623-10), Martineau, January 17, 2011; 2011 FC 39.

¹³ Document 3 – *Supra*, footnote 10.

¹⁴ Document 3 – Haiti, Tab 5.3: Response to Information Request (RIR) HTI105161.FE, IRB, December 15, 2016.

documents,¹⁵ include instances of violence against women occurring in the camps for displaced persons established following the 2010 earthquake, which is not the claimants' situation.

[33] With respect to physical violence against women specifically, the evidence indicates that between 25% and 70% of women have reportedly been victims of gender-based violence.¹⁶ This encompasses a very broad spectrum that does not differentiate between the types of violence women may be subjected to. According to the same document, between 50% and 72% of women in Cité Soleil have been victims of rape.¹⁷ Cité-Soleil is a Port-au-Prince shantytown notorious for its violence. Another document states the following:¹⁸

Nonetheless, available evidence suggests that 28% of women aged 15–49 reported having experienced physical violence, and more than one in 10 Haitian women have faced sexual violence at some point in their lives. Data about sexual violence against children younger than 15 is even more difficult to capture.

[34] With respect to young girls, another document¹⁹ indicates the following:

Over 25 percent of Haitian women aged 18–24 reported experiencing some sexual abuse prior to age 18, and over 6 percent reported experiencing physically forced sex.

[35] Although the panel is sensitive to the situation of women, as well as the discrimination and violence they can be subjected to in Haiti, it concludes that the documentary evidence does not establish that there is a serious possibility that the claimant would be subjected to such violence or that the existing discrimination would rise to the level of persecution within the meaning of the Convention in their particular circumstances. Nor did the claimant allege that she would be in the same situation as the women in Cité Soleil if she were to return to Haiti.

[36] Finally, in *Dezameau*,²⁰ Justice Pinard holds the following:

¹⁵ Document 3 – Haïti, Tab 5.3: *Supra*, footnote 14;
Tab 5.9: *Violence against Women, Trafficking, Prostitution, and Exploitation by UN Peacekeepers*, Bureau des Avocats Internationaux [office of international lawyers] et al., January 22, 2016;
Tab 5.12: *Haïti: Les violences faites aux femmes* [violence against women], France, Office français de protection des réfugiés et apatrides [French office for the protection of refugees and stateless persons], January 9, 2017.

¹⁶ Document 3 – Haïti, Tab 5.12: *Idem*.

¹⁷ Document 3 – *Idem*.

¹⁸ Document 3 – Haïti, Tab 5.5: *Against Their Will: Sexual and Gender Based Violence Against Young People in Haiti*. Doctors Without Borders, July 2017.

¹⁹ Document 3 – Haïti, Tab 5.9: *Supra*, footnote 15.

²⁰ *Supra*, footnote 9.

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”.

[37] For these reasons, the panel concludes that the claimant has failed to establish that she would face a serious possibility of persecution as a result of her membership in a particular social group, namely women, under section 96 of the Act, if she returned to Haiti.

Generalized crime and the diaspora

[38] The claimant alleged that she feared returning to Haiti and having to cope with the insecurity.

[39] It is well established in the case law that being a victim of crime does not constitute a ground of persecution under section 96 of the Act.²¹ Similarly, a generalized risk of crime shared by the population as a whole cannot form the basis of a claim for refugee protection under subparagraph 97(1)(b)(ii) of the Act.²²

[40] In *Guerrero*,²³ the Federal Court states the following:

It is important that a decision-maker finds that a claimant has a personal risk because if there is no personal risk to the claimant, then there is no need to do any further analysis of the claim; there is simply no risk. It is only after finding that there is a personal risk that a decision-maker must continue to consider whether that risk is one faced generally by the population.

[41] With respect to the risk of return faced by a person who has lived abroad, Tab 14.1²⁴ of the NDP indicates that “the risk of criminal victimization is not limited to members of the diaspora, but is shared by everyone who appears to be wealthy and who attracts attention to themselves”. Accordingly, in reference to former Tab 14.1 of the package (HTI102610.FE,

²¹ *Lozandier v. Canada (Citizenship and Immigration)*, 2009 FC 770; *Jean, Léonie Laurore v. Canada (Citizenship and Immigration)*, 2010 FC 674.

²² *Prophète v. Canada (Citizenship and Immigration)*, 2008 FC 331, 2009 FCA 31; *Lamour, Nathalie v. M.C.I.* (2011 FC 322), Montigny, March 17, 2011.

²³ *Guerrero v. Canada (Citizenship and Immigration)*, (F.C., No. IMM-2002-11), Zinn, October 21, 2011; 2011 FC 1210, paragraph 27.

²⁴ Document 3 – Tab 14.1: RIR HTI104084.E, IRB, May 29, 2012.

October 15, 2007), Justice Mainville and Justice Mosley of the Federal Court²⁵ suggest examining the claimant's profile, past political activities and reasons for leaving Haiti.

[42] In addition, in *Jean*,²⁶ the case of a Haitian woman and her daughters who alleged a fear of returning to Haiti after having lived abroad, Justice Shore states that “the Haitian diaspora as a whole cannot be considered a [translation] ‘risk group’ and that each case must be considered individually and within [translation] ‘its own context.’”

[43] In this claim for refugee protection, the claimant did not provide the panel with evidence establishing that she would be anything other than a random target. In fact, although she stated that she had had problems in the past, the panel concludes that she failed to establish that these problems had occurred or that they would recur if she returned. Nor did the claimant allege other factors that could create a greater or different risk for her compared with the rest of the Haitian population. The panel further concludes that the claimant failed to establish that she would face a serious possibility of gender-related persecution should she return to Haiti.

[44] The documentary evidence indicates that violence in Haiti does not seem to distinguish between rich and poor: “In its August 2016 report, OFPRA states that violence in Haiti is [translation] ‘indiscriminate,’ specifying that ‘every level of society is vulnerable to being affected by crime’”.²⁷

[45] Furthermore, in *Prophète*,²⁸ Justice Tremblay-Lamer states the following:

While a specific number of individuals may be targeted more frequently because of their wealth, all Haitians are at risk of becoming the victims of violence.

[46] Finally, in *Jarada*, Justice De Montigny states that country conditions alone are not reason enough to find that a person is at risk.²⁹

²⁵ *Tanis v. Canada (Citizenship and Immigration)*, (F.C., No. IMM-3125-09), Mainville, April 19, 2010; 2010 FC 420.

²⁶ *Jean, Léonie Laurore v. M.C.I.* (F.C., No. IMM-5860-09), June 22, 2010; 2010 FC 674.

²⁷ Document 3 – Tab 7.1: RIR HTI106116.FE, IRB, June 19, 2018.

²⁸ *Prophète, Ralph v. M.C.I.* (F.C., No. IMM-3077-07), Tremblay-Lamer, March 12, 2008; 2008 FC 331, paragraph 23, confirmed by *Prophète, Ralph v. M.C.I.* (F.C.A., No. A-168-08) Létourneau, Blais, Trudel, February 4, 2009; 2009 FCA 31.

²⁹ *Jarada v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 409.

[47] For these reasons, the panel is of the opinion that the claimant failed to establish, on a balance of probabilities, that she would be personally subjected to the alleged risk of being a victim of the insecurity should she return to her country.

[48] Having concluded that the claimant would not be personally subjected to such a risk, the panel is not required to consider whether the risk is generalized.³⁰

Conclusion with respect to the principal claimant

[49] Given the claimant's laboured and muddled testimony, the significant contradictions noted thus far and the total lack of reliable evidence to support her allegations, the panel finds that the claimant is not credible and, therefore, does not believe her allegations. In addition, the panel concludes that there is no credible or trustworthy evidence on which it could have based a favourable decision. Therefore, the panel concludes that XXXX XXXX claim has no credible basis.

Fear for the minor claimant

[50] The minor claimant is a citizen of the United States. The principal claimant stated that she has no fear whatsoever for her minor daughter in the United States.

[51] Consequently, the panel concludes that it has not been established that the minor claimant would face a risk of persecution or a risk under subsection 97(1) if she were to return to the United States.

CONCLUSION

[52] After reviewing all the evidence on the record, the panel concludes that the claimants would not face a serious possibility of persecution in Haiti or the United States on any of the Convention grounds or, on a balance of probabilities, a serious possibility of being personally subjected to a danger of torture, to a risk to their lives or to a risk of cruel and unusual treatment or punishment should they return to their respective countries of nationality.

³⁰ *Supra*, footnote 23.

[53] Therefore, the panel determines that the claimants, **XXXX XXXX** and her minor daughter **XXXX XXXX XXXX**, are not “Convention refugees” or “persons in need of protection.”

[54] In addition, the panel concludes that there is no credible basis for this refugee protection claim under subsection 107(2) of the Act.

[55] Consequently, their refugee protection claim is rejected.

Anne Bardin

Anne Bardin

January 15, 2019

Date

IRB translation

Original language: French