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XXXX

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)

Demandeur(e)(s) d'asile

XXXX XXXX XXXXXXXXXX XXXX

Date(s) of hearing

Date(s) de l'audience

November 7, 2018

Place of hearing

Lieu de l'audience

Montréal, Quebec

Date of decision
and reasons

Date de la décision
et des motifs

November 19, 2018

Panel

Tribunal

Melanie Calisto Azevedo

Counsel for the claimant(s)

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

Vincent Desbiens

Designated representative

Représentant(e) désigné(e)

N/A

Counsel for the Minister

Conseil du (de la) ministre

N/A

REASONS FOR DECISION

INTRODUCTION

[1] The principal refugee protection claimant, **XXXX XXXX**, and her sister, **XXXX XXXX** (hereinafter “refugee protection claimant”), are citizens of Haiti. They are claiming refugee protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

[2] The refugee protection claimants fear being raped and killed by members of the Haitian power and their accomplices because of their brother’s political opinion.

[3] Their brother is a well-known Haitian **XXXX XXXX** who has publicly expressed critical views about the Haitian presidency and its other actors. As a result, he has allegedly been attacked and threatened.

[4] During the night of October 5 and 6, 2016, while their brother was at the family home, where the refugee protection claimants also lived, armed men tried to break into the house by forcing the door and firing shots. Intervention by a government commissioner, a friend of their brother who was alerted by him, caused the men to flee.

[5] The brother of the refugee protection claimants fled Haiti on **XXXX XXXX XXXX** 2016.

[6] Following his departure, the principal refugee protection claimant and her father began to receive threatening telephone calls that continued until the refugee protection claimants left Haiti.

DETERMINATION

[7] The panel determines that the refugee protection claimants are “Convention refugees” because they have established a well-founded fear of persecution on a Convention ground, by reason of their membership in a particular social group, family.

ANALYSIS

[8] The panel took into consideration the Chairperson's *Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution*.¹

Identity

[9] The panel is satisfied that the identity of the refugee protection claimants was established, on a balance of probabilities, by a certified true copy of their passports.²

Analysis under section 96 of the IRPA

[10] In the panel's opinion, this claim should be examined pursuant to section 96 of the IRPA, specifically with regard to the particular social group of the family, and given that the persecution alleged by the refugee protection claimants is related to the persecution of their brother.

[11] The Federal Court of Appeal³ has long held that family is a particular social group. The characterization of family as a particular social group relates to the persecution that would be suffered directly by an individual simply by virtue of their membership in a particular family, which is the claim in this case. A refugee protection claimant must therefore prove (1) that the family member meets the definition of Convention refugee and (2) that there is a clear nexus between the persecution that is being levelled against that member and that which is taking place against him or her.⁴

Persecution of John Wesley Delva

¹ 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.

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

³ *Al-Busaidy v. Canada (MEI)*, 16 Imm. L.R. 119: Justice Heald, on behalf of the Court, stated that the Board (the CRDD) had committed a reviewable error in failing to give the proper effect to the complainant's uncontradicted testimony with respect to his membership in a particular social group, namely his own immediate family. He held that the evidence clearly established that the complainant was targeted by the Ugandan military authorities because of his father.

⁴ *Macias, Laura Mena v. M.C.I.* (F.C., No. IMM-1040-04), Martineau, December 16, 2004; 2004 FC 1749, para. 13.

[12] Mr. XXXX was recognized as a “Convention refugee” on June 8, 2017.⁵

[13] The panel had the benefit of Mr. XXXX testimony during the hearing as well as several pieces of evidence⁶ related to his profile.

[14] Given all the evidence presented before it, the panel is satisfied, on a balance of probabilities, that XXXX XXXX XXXX was a nationally renowned XXXX in Haiti, owing in particular to his being a XXXX with XXXX XXXX XXXX⁷ and was a XXXX XXXX XXXX XXXX XXXX⁸, that he made comments, published articles and adopted positions that were critical⁹ of the Haitian authorities in Haiti while he was living there and since his arrival in Canada, and that this media and political engagement has resulted in constant threats and assaults against him.¹⁰

[15] Mr. XXXX testified about an attempted break and enter at the family home on October 5, 2016, and threats against his family because of him. The panel will address this part of the testimony in the next section of the decision.

[16] The panel is of the opinion that XXXX XXXX XXXX has a well-founded fear of persecution in Haiti, given his specific profile, political opinion, notoriety and national visibility, which the panel believes makes him a political opponent in the eyes of the Haitian authorities and their supporters.

⁵ Document 5: D-4 – Notice of Decision.

⁶ Document 5: D-5 – News article “*Le retour de monsieur XXXXX XXX XXXX sur les ondes de la radio caraïbes*” [XXXX XXX XXXXX returns to Caribbean radio]; D-6 – Article “*Quand XXXX XXXX XXXX accuse le palais National dans le dossier de corruptions*” [When John Wesley Delva accuses the national palace of corruption]; D-7 – Article “*Petit Dessalines vs Moïse : le XXXX XXXX XXXX XXX flingue XXXX et XXXX*” [Petit Dessalines vs. Moïse: journalist XXXX XXXX XXXX shoots down XXXX and XXXX]; D-9 – Newspaper articles in a bundle; Document 8: D-14 – Excerpts in a bundle from John Wesley Delva’s Facebook page;

⁷ Document 5: D-5 – News article “*Le retour de monsieur XXX XXXX XXXX sur les ondes de la radio caraïbes*”; D-6 – Article “*Quand XXX XXX XXXX accuse le palais National dans le dossier de corruptions*”; D-9 – Newspaper articles in a bundle;

⁸ Document 5: D-9 – Newspaper articles in a bundle;

⁹ *Supra*, footnote 6;

¹⁰ Document 5: D-9 – Newspaper articles in a bundle; D-10 – Record of statement of complaint (October 20, 2016); D-11 – Certificate of the clerk attesting to a complaint submitted for death threats (August 25, 2016).

[17] Having reached this conclusion, the panel must determine (1) whether the refugee protection claimants were subjected to the alleged attack and threats, and if so, (2) whether there is a nexus between this persecution and their brother's persecution.

Credibility of the refugee protection claimants

[18] The panel heard from the two (2) refugee protection claimants during the hearing, as well as their brother, as previously mentioned.

[19] The Court established a presumption that sworn statements by a refugee protection claimant are true unless there are valid reasons to doubt their truthfulness.¹¹

[20] Although the panel notes some contradictions and inconsistent behaviour on the part of the principal refugee protection claimant, the panel has no serious reason to reject the refugee protection claimants' testimony on the central elements of their claim.

[21] The testimony of the refugee protection claimants as well as that of their brother, who had been excluded from the room as a witness, was confirmed in several respects, on central elements of the claim. For example, with respect to the attempted break and enter that allegedly took place during the night of October 5 to 6, 2017, no contradiction was noted between their respective testimonies, despite specific questions from the panel regarding the description of the house, how the attack unfolded and the complaint process that followed. Similarly, all of the testimonies were to the effect that the family left their home the day after the incident, to go to a remote location, Source Pineau. Mr. XXXX also confirmed his knowledge of the threatening phone calls received by the principal refugee protection claimant and her father. He testified that his family asked him to stop his writings and criticisms in order to give them some respite; this had been mentioned by the principal refugee protection claimant in her testimony.

[22] In addition, refugee protection claimant XXXX XXXX offered spontaneous, candid and innocent testimony. Her answers were clear, detailed in her reactions and included banal examples that showed no attempt to exaggerate or embellish. Her testimony confirmed the testimony of her sister, the principal refugee protection claimant, on the central elements.

¹¹ *Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 F.C. 302 (C.A.); 31 N.R. 34 (F.C.A.).

[23] The testimony of the principal refugee protection claimant revealed certain contradictions, about the start of the threatening telephone calls and the timing in their reappearance after her return from the United States, among other things. However, the panel does not consider these contradictions fatal. The panel is of the opinion that the principal refugee protection claimant tried to exaggerate their frequency, but concluded that she had received threatening calls, given the other testimony.

[24] The panel's main concern with respect to the principal refugee protection claimant's testimony stemmed from her inconsistent behaviour, including her failure to seek asylum in the United States, her voluntary return to Haiti and the delay of three (3) months before she left Haiti again, this time for good. However, these are not determinative grounds in themselves. Moreover, the panel is prepared to give the refugee protection claimant the benefit of the doubt based on her explanation. She testified that she did not stay in the United States in the hope that there would be a change in her situation. However, after receiving threatening calls again, and with the support of her brother, she and her sister left Haiti permanently. Mr. XXXX explained that he was hoping for a lull in the threats against his family because of the time passed and his presence in Canada. He also explained that the decision to leave his country is a difficult one and that he did not want to see his family lose everything in order to start over elsewhere. He had not told his family about the difficulties, instability and uncertainty of a refugee protection claim process. When his refugee protection claim was accepted, his confidence in the process led him to encourage the refugee protection claimants to come to Canada to seek refugee protection, which they did.

[25] Having found the refugee protection claimants' allegations to be credible, the panel is left to determine whether there is a nexus between their persecution and that of their brother.

Nexus with XXXX XXXX XXXX

[26] The nexus between the persecution suffered by the refugee protection claimants and their brother is established by the credible testimony of the refugee protection claimants and Mr. XXXX.

[27] The principal refugee protection claimant testified that, during the threatening telephone calls, she was told that if they did not find her brother, they would go after his family. They also told her on another occasion that her brother continued to speak badly of the regime because he

felt safe where he was, but that they would go after someone in the family, that they would kill and rape, and that then her brother would be quiet.

[28] The panel also took into account the fact that the first incident, namely, the attack during the night of October 5 to 6, 2016, took place while the brother of the refugee protection claimants was at the family home.

[29] The documentary evidence¹² tends to support the allegations of the claimants. It is reported that in the case of political revenge, if those seeking revenge are serious, when they lose track of an individual, they attack his or her family and that the most vulnerable family members of the targeted individuals are women and girls. According to this evidence, they may be sexually assaulted, sometimes in the presence of the person threatened, as a form of retaliation.

[30] Therefore, the panel is of the opinion that the refugee protection claimants were targeted because of their brother and that they would be prospectively for the same reasons.

State protection

[31] The panel concludes that the male claimant would not have access to adequate state protection if he had to try to obtain such protection in Haiti.

[32] The objective documentary evidence indicates that the police in Haiti are corrupt, ineffective and unable to protect citizens.¹³

[33] A situation of general impunity prevails in Haiti,¹⁴ even more so when members of the government or their accomplices are the agents of persecution, which is the case here.

[34] In most cases of assault, threats and harassment suffered by human rights defenders, for example, it is reported that “[i]n the vast majority of cases, the authorities failed to carry out

¹² Document 3 – National Documentation Package, Haiti, July 20, 2018. Tab 7.6: *Acts of revenge committed by gangs or by other organized crime entities; ability of gangs or other organized crime entities to track down their targets, including those who return to Haiti after a long absence* (2015-June 2018).

¹³ Document 3 – Tab 10.2: *Protection provided by the police and effectiveness of the police, particularly in Port-au-Prince, Cap-Haïtien, Jérémie, Les Cayes and Gonaïves* (2014-June 2015). Immigration and Refugee Board of Canada. June 12, 2015. HTI105163.FE.

¹⁴ Document 3 – Tab 2.1: United States, Department of State, April 20, 2018, *Haiti. Country Reports on Human Rights Practices for 2017*.

thorough and prompt investigations or to provide effective protection measures.”¹⁵ The panel is of the opinion that a parallel can be drawn between the situation of human rights defenders in Haiti and political opponents, with both groups campaigning for justice and criticizing the government.

[35] In this case, despite a complaint to the Haitian national police (PNH)¹⁶ and to an investigation office in Petit-Goave,¹⁷ the authorities did nothing.

[36] Based on the refugee protection claimants’ testimony and objective country documents, the panel finds that the refugee protection claimants have rebutted the presumption of state protection with clear and convincing evidence that the authorities in Haiti would be unwilling or unable to provide them with adequate protection.

Internal flight alternative

[37] The panel finds that the claimants face a serious possibility of persecution throughout Haiti and that there is no viable internal flight alternative for them in the country.

[38] Given the status of the refugee protection claimants’ persecutors, namely, members of the government and their accomplices, as well as the means at their disposal and their interest in eliminating criticism against them, the panel concludes that the refugee protection claimants would be easily located, regardless of where they are in Haiti.

CONCLUSION

[39] In light of all of the evidence, the panel determines that the refugee protection claimants, **XXXX XXXXXXXXX** and **XXXX XXXXXXXXX**, are “Convention refugees.” Therefore, their refugee protection claims are allowed.

Melanie Calisto Azevedo

Melanie Calisto Azevedo

November 19, 2018

Date

IRB translation

¹⁵ *Idem.*

¹⁶ Document 5: D-2 – Statement of complaint to the PNH

¹⁷ Document 5: D-1 – Letter of complaint to the Petit-Goave investigation office.

Original language: French