



RPD File No. / N° de dossier de la SPR : MB7-15088

Client ID No. / N° ID client : XXXX

Private Proceeding / Huis clos

2019 CanLII 132736 (CA IRB)

Reasons and Decision – Motifs et décision

Claimant(s)

Demandeur(e)(s) d'asile

XXXX XXXX XXXX

Date(s) of hearing

Date(s) de l'audience

December 17, 2018

Place of hearing

Lieu de l'audience

Ottawa, Ontario

**Date of decision
and reasons**

**Date de la décision
et des motifs**

April 11, 2019

Panel

Tribunal

Jérôme Ruault

Counsel for the claimant(s)

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

François Kasenda Kabemba

Designated representative

Représentant(e) désigné(e)

N/A

Counsel for the Minister

Conseil du (de la) ministre

N/A

REASONS FOR DECISION

INTRODUCTION

[1] **XXXX XXXX XXXX** (the claimant) states that she is a citizen of Haiti and is claiming refugee protection in Canada under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

[2] The claimant's allegations are set out in her Basis of Claim Form¹ (BOC Form).

[3] The claimant states that she fears persecution in Haiti from supporters of Lavalas or of the Pitit Dessalines party by reason of her membership in the Tet Kale party (PHTK). This fear is also related to the orders that her **XXXX XXXX XXXX XXXX** received from officials in the PHTK and the Haitian government.

[4] The claimant states that she owned a **XXXX XXXX XXXX XXXX XXXX** from 1992 to 2017. In 2015, she became a member of the PHTK.

[5] The claimant states that she was the victim of three physical attacks in 2015 and 2016, a break-in at her home that caused material damages on **XXXX XXXX**, 2017, and threats by telephone on **XXXX XXXX**, 2017.

[6] She left Haiti on **XXXX XXXX**, 2017, and arrived in Canada on September 18, 2017, via the United States. She claimed refugee protection in Canada as soon as she arrived.

DETERMINATION

[7] Having examined all the testimonial and documentary evidence, the panel determines that the claimant is neither a Convention refugee nor a person in need of protection.

¹ Document 1 – Basis of Claim Form (BOC Form) – MB7-15088.
Document 4, Exhibit C-1: Amended version of the BOC Form.

[8] In analyzing this claim for refugee protection, in addition to the evidence submitted, the panel also considered the Chairperson's *Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution*.²

ANALYSIS

The determinative issue in this case is credibility.

Identity

[9] The claimant's identity was established to the panel's satisfaction by a passport³ issued by Haitian authorities.

Credibility

[10] Credibility is the determinative issue in this case. Because of significant contradictions that go to the heart of the claim for refugee protection, the panel finds that the claimant is not credible. The reasons for that finding are set out below.

[11] In general, the panel found that the claimant's testimony was frequently marked by confused answers that led to a number of contradictions about the allegations at the heart of her fear.

[12] For the purposes of assessing the credibility of the allegations, the panel took into consideration not only the claimant's testimony, her BOC Form and all the documents in the record, but also the detailed nature of the information provided in the Canada Border Services Agency (CBSA) / Immigration, Refugees and Citizenship Canada (IRCC) package and the 15 years of education, including 6 years of high school and 3 years of professional studies, that the claimant declared.

² Immigration and Refugee Board of Canada. *Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution*: Guideline issued by the Chairperson pursuant to subsection 65(3) of the *Immigration Act*. Effective date: November 13, 1996.

³ Document 2 – Information package provided by the Canada Border Services Agency and/or Immigration, Refugees and Citizenship Canada.

[13] From the outset, the panel noted credibility problems with respect to the allegation that she XXXX XXXX XXXX XXXX XXXX XXXX.

[14] The claimant alleged that she was the owner of the XXXX XXXX XXXX XXXX XXXX XXXX from 1992 to 2017. The Port-au-Prince business offered XXXX XXXX XXXX XXXX. The claimant maintains that her problems arose because of the profitability of the business and political profile of its customers, particularly those from the highest ranks of the PHTK and the government. In her testimony, she talked about a flurry of official vehicles outside her business when PHTK or government officials came to place orders for XXXX XXXX.

[15] When asked about her XXXX business during the hearing, the claimant provided details such as the address, the names of her employees and the names of the XXXX XXXX XXXX.

[16] The claimant submitted into evidence a certificat de patente⁴ [business licence] and a certificat de dépôt de déclaration définitive⁵ [certificate of taxes filed] for the business named XXXX XXXX. Both documents were issued by Haitian authorities on XXXX XXXX, 2016.

[17] Finally, the claimant produced a letter signed by her two sons, stating that their mother [translation] “was running XXXX XXXX very well and was getting major orders thanks to politician friends in Michel Martelly’s PHTK party.”⁶

[18] However, at question 8 of Schedule A in the information package from the CBSA or IRCC,⁷ the claimant mentions that she had worked in XXXX from XXXX 1992 to XXXX 2017. The schedule makes no mention of the XXXX XXXX XXXX XXXX that, as the claimant stated in her BOC Form and her testimony, she owned over the same period. When pressed to explain the contradiction, the claimant stated that she had forgotten to mention her business because of the stress she was undergoing as she filled in the forms for her claim for refugee protection, and because of the large quantity of information to be provided.

⁴ Document 5, Exhibit C-5: Certificat de patente [business licence] for the client’s business.

⁵ Document 5, Exhibit C-6: Certificat de dépôt de déclaration définitive [certificate of taxes filed] for the client.

⁶ Document 5, Exhibit C-4: Testimonial letter from XXXX XXXX and XXXX XXXX.

⁷ *Supra*, footnote 3.

[19] Without understating the stressful nature of the formalities involved in submitting a claim for refugee protection, the panel notes the large quantity of precise information that the claimant provided in Schedule A about her education, her parents, her professional history and her addresses going back to 1982. For those reasons, the panel is of the opinion that her explanation for a contradiction as to a central aspect of her fear is not satisfactory, and draws a negative inference about the very existence of the XXXX XXXX XXXX XXXX.

[20] Furthermore, in her testimony, the claimant first stated that the XXXX XXXX XXXX XXXX had existed from 1992 to 2017, dates which match those in her written account. After questions about how she obtained the two certificates dated 2016, the claimant stated that her business had been established on XXXX XXXX in 2016, XXXX XXXX. She went on to specify that she had finished her studies as a XXXX XXXX in 1992 and that she had not started the business right away because she needed time to get together the money she needed to buy materials. When asked to explain the differences in her testimony as to the date her business was launched, the claimant replied that it was perhaps an error on her part.

[21] As previously mentioned, the claimant produced two certificates pertaining to her business. The panel notes that both documents were issued on XXXX XXXX, 2016, that is, before the date the business was established as the claimant stated in her testimony. Moreover, the Certificat de dépôt de déclaration définitive indicates that a tax return had been submitted for the 2016–2017 financial year on XXXX XXXX, 2016, implying that the business was operating before that date, in contradiction to the claimant's testimony.⁸ The panel draws another negative inference from this contradiction, which further undermines the claimant's credibility about the allegation that she owned a XXXX XXXX XXXX XXXX XXXX.

[22] Furthermore, the panel noted another contradiction between her testimony at the hearing and the documentary evidence about her business.

[23] In her testimony, the claimant stated that she joined the PHTK in January 2015. To support that statement, the claimant provided a membership card bearing a photograph issued on

⁸ Document 5, Exhibit C-6: Certificat de dépôt de déclaration définitive for the client.

XXXX XXXX, 2015.⁹ The claimant had never been involved in politics before 2015, and justified joining by stating that her involvement with the PHTK meant more orders for her business. When the claimant was reminded about her testimony that her business had been established on XXXX XXXX, 2016, she revised her testimony and stated that her business had been established in 2015, recalling that the first attack against her occurred on XXXX XXXX, 2015. The claimant had to correct herself again, stating that she had started her business in 2016, then 2017, and finally 1992.

[24] The panel is of the opinion that the claimant's explanations for the many variations in her testimony as to the date her business was established are not satisfactory. First of all, the difference between the dates is significant, up to 14 years. Then, the evidence on the record places the success of her business at the heart of the claimant's fear, specifically because supporters of Lavalas or the Pitit Dessalines party apparently became jealous, and because it was also the site of the attack of XXXX XXXX, 2017.

[25] For those reasons, the panel does not find the claimant credible as to the existence of her XXXX XXXX XXXX business, an allegation that is at the heart of this claim for refugee protection. In addition, the panel attributes no weight to the two certificates entered into evidence and to the letter signed by her two sons.

[26] Furthermore, the panel noted a contradiction between the claimant's testimony and the documentary evidence about the attack she claims to have suffered.

[27] In her testimony, the claimant stated that she was attacked on XXXX XXXX, 2016, at XXXX XXXX XXXX a.m. after buying a few things at a supermarket.

[28] To corroborate that allegation, the claimant submitted a certificate attesting to a complaint to the Haitian police.¹⁰ However, that document describes an attack on XXXX XXXX, 2016, at XXXX XXXX XXXX p.m.

⁹ Document 5, Exhibit C-2: Client's PHTK membership card.

¹⁰ Document 5, Exhibit C-7: Attestation de plainte a la police d'Haiti [certificate attesting to a complaint to the Haitian police].

[29] When first asked to explain the difference in dates, the claimant stated that the third attack took place on XXXX XXXX, 2018, then corrected herself and confirmed the date mentioned in the certificate attesting to the complaint, stating that she had made a mistake.

[30] As for the difference in time, the claimant explained that the person who wrote the certificate was not the same one who wrote it [translation] “in the book,” and that it was possible that the person had misheard. The panel is of the opinion that these explanations are not satisfactory, pointing out that the certificate bears the claimant’s signature.

[31] When urged to explain how she had obtained the police certificate, the claimant stated that the police had given it to her in person when she filed the complaint on XXXX XXXX, 2016. However, the date on which the judge signed the document is XXXX XXXX, 2018. When invited to explain this difference in dates, the claimant stated that she had noticed it when she received the document and had asked her lawyer in Haiti to have it changed. According to her, the document had been altered. The panel considers this explanation to be unsatisfactory. If the claimant had taken steps to correct the certificate, the panel would expect her to make sure she submitted the corrected version on the record. Consequently, the panel gives no weight to the certificate. Because the certificate refers not only to an attack on XXXX XXXX, 2016, but also to two previous attacks in the space of two months, the panel finds that the claimant is not credible as to the three attacks.

[32] The claimant submitted on the record an excerpt from the minutes of the justice of the peace¹¹ about the attack that occurred on XXXX XXXX, 2017. As it describes the facts, the excerpt makes reference to bullet holes on the bedroom walls and eight shell casings found in the same spot. Noting the lack of reference to any gunshots in the claimant’s written account and testimony, the panel asked her to explain. The claimant stated that she had not had the opportunity to finish her testimony on the matter because of the break in the hearing that the panel had agreed to. When she was asked to finish her testimony on the matter, she added that she knew that excerpt contained errors and she had intended to mention the gunshots at the hearing. The panel considers these explanations to be unsatisfactory. The claimant was able to

¹¹ Document 5, C-9: Extrait des minutes du juge de paix [excerpt of minutes from the justice of the peace], peace court, Croix-des-bouquets.

remember a number of details of that attack. The panel is of the opinion that the use of firearms during an incident is important to mention to the authorities responsible for a criminal investigation. Once again, this undermines the claimant's credibility as to the fourth attack. As a result, the panel gives no weight to this excerpt from the minutes of the justice of the peace.

[33] In light of the accumulation of credibility problems, which could not be satisfactorily explained, the panel finds that the claimant is not credible. It does not believe that she was targeted because PHTK and government officials kept coming to her business. The panel therefore finds that the claimant has not met her burden of establishing the merits of her allegations on a balance of probabilities.

Risk related to a particular social group, women facing gender-related persecution, within the meaning of section 96 of the Immigration and Refugee Protection Act

[34] The panel also examined the fear of returning, given her profile as a woman in Haiti.

[35] At the outset, the panel notes that the alleged facts were not found to be credible. Moreover, they had nothing to do with the fact that the claimant is a woman.

[36] Then, the panel notes that, for several years, according to the claimant's testimony, she lived alone in Haiti without her spouse. The panel also notes that her two sons are living in Haiti, although it is not clear whether they have a fixed address.

[37] No one is denying that sexual and sexist violence remains a chronic problem in Haiti.¹² The various sources consulted are of the opinion that women there are not adequately protected, because gender stereotypes and discrimination are still very widespread in Haitian society. Women remain at a major disadvantage in all respects, be it education, social, economic or health. Poverty and the subordinate role of women make them vulnerable to violence, specifically sexual violence.

¹² Document 3, National Documentation Package, Haiti, July 20, 2018, Tab 2.1: *Haiti. Country Reports on Human Rights Practices for 2017*, United States, Department of State, April 20, 2018.
 Tab 5.3: *Response to Information Request, HTI105161.FE*, Immigration and Refugee Board of Canada, December 15, 2016.
 Tab 5.4: *Response to Information Request, HTI105995.FE*, Immigration and Refugee Board of Canada, October 17, 2017.
 Tab 5.8: *Gender Issues Facing Women and Girls*, Bureau des Avocats Internationaux [office of international lawyers] et al, January 22, 2016.

[38] The Committee on the Elimination of Discrimination against Women also states in its observation report that it is very concerned by the sexual violence in Haiti and especially by the fact that it seems to be socially legitimized and accompanied by a culture of silence and impunity. The committee also condemns the lack of legislation and of the means to combat this violence and to come to the aid of women who are victims of violence of that kind.¹³

[39] The sources consulted also point out that women living in precarious conditions, especially in camps, are at increased risk of becoming victims of gender-based, and especially sexual, violence.¹⁴

[40] Although the panel recognizes that violence against women is a problem in Haiti, it remains to be ascertained whether the claimant, as a member of the particular social group of women, would be a victim of persecution by reason of her gender.

[41] In the Federal Court decision in *Dezameau*,¹⁵ Justice Pinard states, at paragraph 29:

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”.

[42] In short, the claimant’s particular circumstances are not those of the most vulnerable who are at risk of gender-based persecution. The claimant has lived on her own in Haiti after she was married on XXXX XXXX, 2010, since her husband remained in Canada. The claimant has also done professional culinary and sewing studies. She could also benefit from the presence of her two sons in Haiti.

[43] She is therefore not one of the women who are most exposed, those living in tents or in precarious conditions, who are more vulnerable to sexual assault as a result.

¹³ Document 3 – National Documentation Package, Tab 5.10: *Concluding observations on the combined eighth and ninth periodic reports of Haiti*, United Nations, Committee on the Elimination of Discrimination against Women, March 9, 2016, CEDAW/C/HTI/CO/8-9.

¹⁴ Document 3 – National Documentation Package, Tab 5.3: *Response to Information Request, HTI105161.FE*,

Immigration and Refugee Board of Canada, December 15, 2016.

¹⁵ *Dezameau, Elmancia v. M.C.I.* (F.C., No. IMM-4396-09), Pinard, May 27, 2010, 2010 FC 559.

[44] Clearly, this is not to deny that the situation is difficult in Haiti and that, unfortunately, women are sometimes subjected to violence. Nevertheless, in this case, the panel is of the opinion that the claimant has not shown that she in particular faces a serious possibility of persecution in Haiti simply because she is a woman.

Conclusion

[45] After examining all the evidence, the panel finds that the claimant has not discharged her burden of establishing a “serious possibility” of persecution under one of the Convention grounds. She has also not succeeded in demonstrating, on a balance of probabilities, that, if she had to return to Haiti, she would be personally subjected to a danger of torture, a risk to her life, or a risk of cruel and unusual treatment or punishment.

[46] For these reasons, her refugee protection claim is rejected.

Jérôme Ruault

Jérôme Ruault

April 11, 2019

Date

IRB translation

Original language: French