



RPD File No. / N° de dossier de la SPR : MB7-17406

MB7-17447

UCI / IUC : XXXX XXXXXXXXX

*Private Proceeding / Huis clos*

## Reasons and Decision – Motifs et décision

Claimant(s)	XXXX XXXX XXXXXXXXX XXXX XXXX	Demandeur(e)(s) d'asile
Date(s) of hearing	February 26, 2020	Date(s) de l'audience
Place of hearing	Montréal, Quebec	Lieu de l'audience
Date of decision and reasons	March 10, 2020	Date de la décision et des motifs
Panel	Mélissa Rodrigue	Tribunal
Counsel for the claimant(s)	Claudette Menghile	Conseil(s) du (de la/des) demandeur(e)(s) d'asile
Designated representative	XXXX XXXX	Représentant(e) désigné(e)
Counsel for the Minister	Fatouma Dione [Written intervention]	Conseil du (de la) ministre

## REASONS FOR DECISION

### INTRODUCTION

[1] XXXX XXXX, a citizen of Haiti, and her minor daughter, XXXX XXXX XXXX, a citizen of Brazil, are claiming refugee protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

### DESIGNATED REPRESENTATIVE

[2] XXXX XXXX acted as her minor daughter's designated representative. She filed into evidence a document<sup>1</sup> from the child's father giving her permission to travel with the child outside of Brazil.

### ALLEGATIONS

[3] XXXX XXXX alleges that she was a victim of theft and threats of rape from a group of criminals in Haiti. She alleges that she was a victim of racism in Brazil.

[4] She fears that she and her daughter would face violence or death if they had to return to Haiti and Brazil.

### MINISTER'S INTERVENTION

[5] In his notice of intervention of January 14, 2020,<sup>2</sup> the Minister submits that the adult claimant obtained permanent residence in Brazil in XXXX 2013, as indicated by a stamp in her passport. Her minor daughter was born in Brazil and therefore has Brazilian citizenship.

[6] The Minister submits that the rights and obligations of permanent residents of Brazil are essentially the same as those of Brazilian citizens. He notes that the claimants must still demonstrate a specific fear in Brazil and that they made efforts to obtain state protection from Brazil. According to the Minister, the adult claimant must also explain why she voluntarily left the country and renounced her permanent resident status.

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<sup>1</sup> Document 6 – Exhibit P-3: Travel authorization from the minor child's father.

<sup>2</sup> Document 5 – Minister's notice of intervention.

[7] Lastly, the Minister submits that abandoning permanent resident status in Brazil, then taking the risk of entering numerous countries illegally, is not behaviour that would be expected from individuals who fear returning to Haiti.

[8] The Minister therefore requests that the Refugee Protection Division (RPD) exclude the adult claimant from the *Convention Relating to the Status of Refugees* (the Convention) under section 98 of the IRPA.

[9] He also requests that the RPD determine that the minor daughter is not a “Convention refugee.”

## DETERMINATION

[10] The panel determines that the adult claimant is a person referred to in Article 1E of the Convention and is therefore neither a “Convention refugee” nor a “person in need of protection,” pursuant to section 98 of the IRPA.

[11] The panel also concludes that the minor claimant did not establish a serious possibility of persecution on one of the Convention grounds or that, on a balance of probabilities, she would be personally subjected to a danger of torture, to a risk to her life or to a risk of cruel and unusual treatment or punishment if she were to return to her country.

## ANALYSIS

[12] In this case, the panel considered *Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution*.

### Identity

[13] The claimants’ identities were established, on a balance of probabilities, to the panel’s satisfaction through copies of the passports, which were provided as evidence.<sup>3</sup>

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<sup>3</sup> Document 1 – Information package provided by the Canada Border Services Agency and/or Immigration, Refugees and Citizenship Canada: Copies of passports.

**Exclusion under Article 1E – Adult claimant***Permanent residence in Brazil*

[14] Section 98 of the IRPA states that:

A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.

[15] Article 1E states that:

The 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 the nationality of that country.<sup>4</sup>

[16] The adult claimant submitted into evidence a permanent resident card<sup>5</sup> from Brazil, issued in 2013. When asked about it at the hearing, she spontaneously answered that she was a permanent resident of Brazil. She also indicates in question 12 of her Generic Application Form that she had been a permanent resident of Brazil, and there is a stamp to that effect in her passport. The panel therefore has no reason to doubt her status at the time.

[17] Under the circumstances, the panel referred to the criteria in *Canada (Citizenship and Immigration) v. Zheng*, 2010 FCA 118,<sup>6</sup> which are to be considered for decisions rendered under Article 1E:

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 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.

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<sup>4</sup> *Convention and Protocol Relating to the Status of Refugees*, Article 1E.

<sup>5</sup> Document 6 – Exhibit P-2: Document on the claimant's status in Brazil.

<sup>6</sup> *M.C.I. v. Zheng, Guanqiu* (FCA, No. A-275-09), Noël, Layden-Stevenson, Stratas, May 10, 2010; 2010 FCA 118.

[18] With regard to the first question, the panel refers to *Shamlou*,<sup>7</sup> which defines what constitutes “status substantially similar to that of [a country’s] nationals” as the right to return, work, study and have full access to social services.

[19] The adult claimant stated that she could work and be paid for her work in Brazil. She testified that she had three different employers there.

[20] However, she stated that she was unable to study in Brazil. When asked about this, the claimant stated that she did not have the necessary financial resources or time. She then added that even if she had the means, she would not have been able to study since her papers prohibited her from doing so. When asked to explain if she had been denied access to education and how she knew that studying was prohibited, the claimant hesitated before answering that she was not entirely certain, but she never asked whether she was permitted to study. No evidence was presented to the panel to confirm that she was prohibited from studying, and no request was made to this end.

[21] The adult claimant confirmed that she had access to health services and that she had relied on them, notably for the birth of her daughter. She stated that she could use public transit and that she had managed to find housing, even though it was challenging because she was a single mother.

[22] Lastly, the claimant stated that she did not know whether she could leave Brazil and return there as she had never tried.

[23] The claimants’ counsel noted that, according to the National Documentation Package (NDP) on Brazil, foreigner identity cards must be replaced every nine years. She maintained that since the adult claimant’s card expired after only five years, this meant that she did not have the same rights as other permanent residents. The claimants’ counsel then referred the panel to previous information requests and versions of the NDP, but did not provide a copy of the text in question.

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<sup>7</sup> *Shamlou, Pasha v. M.C.I.* (F.C.T.D., No. IMM-4967-94), Teitelbaum, November 15, 1995. Reported: *Shamlou v. Canada (Minister of Citizenship and Immigration)* (1995), 32 Imm. L.R. (2d) 135 (F.C.T.D.).

[24] According to the documentary evidence,<sup>8</sup> permanent residents in Brazil have the right to return there as permanent residents, work there and study there and have access to social services (education, health, work, leisure, security, social security, protection of motherhood and childhood and assistance to the destitute).

[25] Furthermore, the objective evidence indicates that foreigner identity cards are “valid for a maximum of nine years”<sup>9</sup> and “that as a rule,”<sup>10</sup> they must be changed every nine years. It does not specify whether other periods of validity are possible, without changing the nature of the status or any associated rights.

[26] It is possible that residency be granted to her under the humanitarian visa program<sup>11</sup> for Haitians or as the mother of a Brazilian child,<sup>12</sup> since the card was issued a few months after the birth of the minor claimant.

[27] In any event, since the claimant stated that she either had the opportunity to exercise these rights (employment, housing, social services) or had never tried to exercise them and thus does not know that it would have been impossible (school and the possibility of leaving the country), the panel is of the opinion that she did not establish, on a balance of probabilities, that she did not have the same rights as other Brazilian nationals while she was a permanent resident there.

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<sup>8</sup> Document 4 – National Documentation Package (NDP) on Brazil, October 31, 2019, Tab 3.3: Response to Information Request, ZZZ106127.FE, Immigration and Refugee Board of Canada, June 21, 2018.

<sup>9</sup> Document 4 – NDP on Brazil, Tab 3.10: *The “permanente” inscription on the “Registro de Estrangeiros” seal that may be stamped in foreign passports, including how the word appears and the rights associated with it*, Immigration and Refugee Board of Canada, July 4, 2019.

<sup>10</sup> Document 4 – NDP on Brazil, Tab 3.6: Response to Information Request, ZZZ106003.FE, Immigration and Refugee Board of Canada, October 17, 2017.

<sup>11</sup> *Supra*, footnote 8.

<sup>12</sup> *Idem*.

*Possibility of returning to Brazil*

[28] That said, on the date of the hearing, the adult claimant stated that she no longer has the rights conferred by permanent resident status since she had left Brazil more than two years ago and had thus lost her permanent resident status.

[29] The immigration forms on the record note that the claimants were in the United States as of XXXX 2016.

[30] According to the documentary evidence, a permanent resident of Brazil loses their status if absent from the country for a period exceeding two years, but could provide justification for the absence. Yet “there is nothing [in the 2017 law] that defines what type of justification would be acceptable” for being outside Brazil that would allow permanent residents to retain their status.<sup>13</sup>

[31] In light of this evidence, the panel is of the opinion that, on a balance of probabilities, under current Brazilian law, the adult claimant has lost her permanent resident status.

[32] However, according to the documentary evidence, the claimant could now be granted a family reunification visa that would allow her to return to and reside in Brazil since her daughter is a Brazilian citizen.<sup>14</sup>

[33] The claimant is eligible for a visa to return to Brazil for a period equivalent to the duration of her daughter’s resident permit. Since she is a citizen of Brazil and does not require a resident permit, the adult claimant can therefore reside in Brazil indefinitely. After one year of residence, the adult claimant could even apply for Brazilian citizenship.

[34] At the hearing, the adult claimant stated that she was not aware of this possibility and that she had not taken any steps to find out how to maintain her status in Brazil.

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<sup>13</sup> *Supra*, footnote 11.

<sup>14</sup> Document 3 – NDP on Haiti, September 30, 2019, Tab 14.11: Response to Information Request, ZZZ106127.FE, Immigration and Refugee Board of Canada, June 21, 2018.

[35] In light of the preceding, the panel concludes that the claimant could obtain a permanent resident visa and could therefore return to Brazil. With this visa, she could participate in any activity, including working, like Brazilian citizens.

[36] According to *Zeng*,<sup>15</sup> we must therefore weigh the risk in the country and the reason for the departure.

*Risk in Brazil*

[37] Before excluding the adult claimant under Article 1E, the panel must analyze the risk to which she would be exposed if she were to return to Brazil.

[38] The adult claimant testified that she had decided to leave primarily because she had difficulty finding a daycare for her daughter. Even after she managed to find one, she felt that she was not welcome like the other parents and that her daughter was not integrated or accepted into the group. She stated that her daughter sometimes had bite marks or scratches on her from the other children.

[39] The adult claimant also testified that she was harassed and rejected by her co-workers, who called her racist names and accused her of stealing their jobs. She stated that she had changed jobs twice, but the insults continued. The supervisors never took her seriously and they did nothing to rectify the situation.

[40] Lastly, the adult claimant stated that she had left the country because she finished work late (at about 10 p.m.) and had to walk far to pick up her child. In these situations, she feared being attacked and raped by a Brazilian man, since some of them hid in corners to attack Haitian women passing by. She stated that she had never been attacked, but that on one occasion, a man had approached her and she would have been attacked if it had not been for a bystander who scared him away.

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<sup>15</sup> *M.C.I. v. Zeng, Guanqiu* (FCA, No. A-275-09), Noël, Layden-Stevenson, Stratas, May 10, 2010; 2010 FCA 118.



[41] The adult claimant confirmed that she had never been threatened, but that Brazilians did not hesitate to let her know that there was no place for her in the country. The discomfort was so palpable that the adult claimant decided to leave.

[42] In her submissions, the claimants' counsel mentions a serious issue of violence against migrants in Brazil. She notes violence against Afro-Brazilian women, as well as marginalization and acts of xenophobia, especially against Haitians. The claimants also submitted into evidence a number of articles on the murder of young Haitians in Brazil, and on police violence against Black people.<sup>16</sup>

[43] According to the documentary evidence, crime and police violence are serious problems in Brazilian cities, particularly in São Paulo, where the claimants lived.<sup>17</sup> The evidence<sup>18</sup> states the following:

The Special Rapporteur was shocked to learn about the levels of violence in Brazil. Regrettably this violence has a clear racial dimension. Of the 56,000 homicides that occur each year, 30,000 victims are between 15 and 29 years old, of which 77 per cent are Afro-Brazilian male youth. What is disconcerting is that a significant number are perpetrated by the State, often through the apparatus of the military police. Research reveals that the number of Afro-Brazilians who have died as the result of police actions in the state of São Paulo is three times greater than that registered for the white population.

[44] Yet at no time did the claimant state that she fears the police, the state apparatus or gangs.

[45] The documentary evidence submitted by the claimants<sup>19</sup> reports a number of situations of violence against young, often poor, Black men.

[46] If it is true that young Black men are overrepresented in homicide cases, the objective evidence indicates that these murders stem largely from the unfavourable socio-economic context,

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<sup>16</sup> Document 6 – Exhibit P-7 : Document on Brazil.  
Exhibit P-8: Document on Brazil.

<sup>17</sup> Document 4 – NDP on Brazil, Tab 7.12: *Brazil. 2019 Crime and Safety Report: São Paulo*. United States, Overseas Security Advisory Council, May 6, 2019.

<sup>18</sup> Document 4 – NDP on Brazil, Tab 13.2: *Report of the Special Rapporteur on minority issues on her mission to Brazil*. United Nations. Human Rights Council, February 9, 2016.

<sup>19</sup> *Supra*, footnote 16.

which sees these people recruited by drug cartels in the poorest areas, but not because of persecution targeting Blacks or Haitians, in particular.<sup>20</sup>

[47] With respect to Afro-Brazilian women, the objective evidence<sup>21</sup> states the following:

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

Afro-Brazilian women and girls are particularly vulnerable to violence, including sexual violence and domestic violence, in particular in marginalized communities such as *favelas* and *periferias*.

[48] Once again, the evidence states that Afro-Brazilians are more affected by drug-related crime and the war on drugs, and that Afro-Brazilians also suffer the consequences. However, this situation does not reflect that of the claimant, who has at no time alleged that she fears the drug world or being arrested or mistreated by the police.

[49] Although she stated that she had to walk [translation] “near” a slum to pick up her daughter from daycare, the claimant did not testify that she lived in a *favela* or in a poor, marginalized area where women are at higher risk of being victims of violence, or that she would have to live there if she were to return to Brazil.

[50] Lastly, the objective evidence on Brazil does not indicate a specific problem for women in Brazil other than conjugal violence, which is not alleged by the claimant.

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<sup>20</sup> Document 4 – NDP on Brazil, Tab 13.2: *Report of the Special Rapporteur on minority issues on her mission to Brazil*, United Nations, Human Rights Council, February 9, 2016. A/HRC/31/56/Add.1., paragraphs 53 to 58.

<sup>21</sup> *Supra*, footnote 20, paragraphs 59 and 60.

[51] The panel therefore concludes that the claimant did not demonstrate that there is a serious possibility that she would be persecuted by reason of her gender or her Haitian origin if she returned to Brazil.

[52] Lastly, the objective evidence states that “there have been past instances of violent attacks, such as shootings or stabbings, as well as racism against immigrants, including Haitians.”<sup>22</sup> Yet it also states the following:

Socioeconomic indicators show that living conditions of afro-Brazilians have increased in the last 2 decades, as well as access to services and rights. Progress among afro-Brazilians is higher when compared to other groups. However, challenges remain.<sup>23</sup>

[53] The adult claimant’s fear should she return to Brazil is based on her alleged problems with regard to being mistreated by Brazilian citizens by reason of her ethnic origin. The panel does not question the truthfulness of these unfortunate experiences of discrimination, which were described clearly and in detail. While the panel is sensitive to the difficulties experienced by the claimants in Brazil, the alleged mistreatment against her does not cumulatively amount to persecution.

[54] Consequently, the panel concludes that the adult claimant did not establish a serious possibility of persecution on a Convention ground under section 96 of the IRPA or that, on a balance of probabilities, she would be personally subjected to a risk within the meaning of subsection 97(1) of the IRPA if she returned to Brazil.

*Voluntary or involuntary loss of status in Brazil*

[55] At the hearing, the adult claimant stated without hesitation that her decision to leave Brazil was entirely her own and entirely voluntary for the reasons explained above. She stated that she had no intention of returning and that she did not want to expose her daughter to the kind of discriminatory treatment and actions she faced.

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<sup>22</sup> Document 3 – NDP on Haiti, Tab 14.16: Response to Information Request, ZZZ106295.E, Immigration and Refugee Board of Canada, September 18, 2019.

<sup>23</sup> Document 4 – NDP on Brazil, Tab 2.7: *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Brazil*, Brazil, February 27, 2017, A/HRC/WG.6/27/BRA/1.

[56] When the panel asked what the claimant had done to maintain her status in Brazil, she responded that she had done nothing in that regard.

[57] The claimant therefore left Brazil on her own initiative because of discriminatory behaviour from Brazilians. As in *Zhong*,<sup>24</sup> she failed to take any serious action to maintain her status in Brazil. The lapse in status was a result of her voluntary inaction.

[58] The adult claimant therefore did not demonstrate, on a balance of probabilities, that she left Brazil involuntarily or that she took action to protect her status.

#### *Canada's international obligations*

[59] There is nothing to suggest to the panel that the application of the exclusion under Article 1E of the Convention would contravene Canada's international obligations with regard to refugee protection.

#### *Fear in Haiti*

[60] Since the claimant did not demonstrate that it was impossible to return to Brazil, the panel will not analyze her allegations regarding Haiti. In *Osazuwa*,<sup>25</sup> the Federal Court states:

[51] Having concluded that the Applicant can return to Italy, there was nothing unreasonable about the conclusion that there was no point in analysing the risks faced by the Applicant in Nigeria.

#### **Fear for the minor claimant in Brazil**

[61] With respect to XXXX XXXX XXXX, a citizen of Brazil, the principal claimant alleges that they have the same fears given their Haitian origin.

[62] Since the panel has already concluded that the adult claimant failed to demonstrate that if she were to return to Brazil, she would face a serious possibility of persecution based on her Haitian origin, her gender or another reason, or that, on a balance of probabilities, she would be subjected to a risk of cruel and unusual treatment or punishment or to a risk to her life under subsection 97(1) of the IRPA, the panel comes to the same conclusion in the case of the minor claimant.

<sup>24</sup> *Zhong, Zong Li v. M.C.I.* (F.C., No. IMM-3909-10), Near, March 9, 2011, 2011 FC 279, paragraph 28.

<sup>25</sup> *Osazuwa, Steven v. M.C.I.* (F.C., No. IMM-846-15), Russel, February 8, 2016, 2016 FC 155, paragraph 51.

**CONCLUSION**

[63] After analyzing all of the evidence and after weighing the various factors in *Zeng*, the panel concludes that the adult claimant is a person referred to in Article 1E of the Convention and that, consequently, she is neither a “Convention refugee” or a “person in need of protection,” pursuant to section 98 of the IRPA.

[64] Furthermore, the panel concludes that the minor claimant did not discharge her burden of establishing that there is a serious possibility of persecution on one of the Convention grounds. She also did not demonstrate, on a balance of probabilities, that if she were to return to Brazil, she would be personally subjected to a danger of torture or to a risk to her life or to a risk of cruel and unusual treatment or punishment.

[65] For these reasons, the panel concludes that the minor claimant is neither a “Convention refugee” under section 96 of the IRPA nor a “person in need of protection” within the meaning of subsection 97(1) of the IRPA.

[66] Consequently, the panel rejects the refugee protection claims of **XXXX XXXX** and **XXXX XXXXXXXXXXXX**.

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*Mélissa Rodrigue*

**Mélissa Rodrigue**

**March 10, 2020**

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**Date**

IRB translation

Original language: French