

Immigration and
Refugee Board
Refugee Protection Division



Commission de l'immigration
et du statut de réfugié
Section de la protection des réfugiés

RPD File No. / N° de dossier de la SPR : MB1-03138

Private Proceeding

Huis clos

Claimant(s)

Demandeur(e)s d'asile

XXXX XXXX

Date(s) of Hearing

Date(s) de l'audience

May 7, 2014 / August 25, 2014

Place of Hearing

Lieu de l'audience

Montréal, Quebec

Date of Decision

Date de la décision

October 17, 2014

Panel

Tribunal

Renée Bourque

Claimant's Counsel

Conseil du demandeur
d'asile

M^c Stewart Istvanffy

Tribunal Officer

Agent du Tribunal

N/A

Designated Representative

Représentant désigné

N/A

Minister's Counsel

Conseil du ministre

Farah Merali
[Filing of documents]

[1] The principal claimant, XXXX XXXX, is a citizen of Guinea. Ms. XXXX XXXX is alleging that she is a “Convention refugee” and a “person in need of protection” under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act (IRPA)*.

ALLEGATIONS

[2] The claimant stated that she was born in XXXX and lived with her maternal aunt, XXXX XXXX, in XXXX, from the age of three. She was circumcised in the village at the age of five. In 2007, her aunt told her that her father wanted to marry off her older sister, XXXX, to his friend XXXX XXXX XXXX, a wealthy merchant who was over 50 years old and who already had two wives. Her sister therefore fled. Her father promised the same man that he would give him XXXX if he did not find XXXX.

[3] One year later, her father told the claimant’s aunt that he wanted to take his daughter back to have her marry XXXX; her aunt refused. However, on XXXX XXXX XXXX 2011, her father arrived at her home with his friend. Her aunt telephoned the claimant, who was at school at the time, warning her not to come back home and telling her to hide while she tried to find a way send her to Bénin to hide at the home of her friend XXXX.

[4] The claimant went to the home of her boyfriend, XXXX XXXX, for a few days. Then, on XXXX XXXX, 2011, she left Guinea and arrived in Cotonou, Bénin, on XXXX XXXX, 2011. Her aunt’s friend then drove her to Togo; she then had to return to XXXX.

[5] On XXXX XXXX, 2011, her father arrived in Bénin with another man. This man hit the claimant and then took her back to XXXX, to XXXX XXXX home, where she was confined. This man sexually assaulted her and threatened to kill her.

[6] One day, XXXX left and forgot his telephone; the claimant contacted XXXX XXXX, who suggested that she go join him. She took one hundred thousand Guinean francs, broke the window and left that house. She went to the train station, took a taxi to Conakry and met her boyfriend the same day.

[7] Her boyfriend told her that she was going to travel that same day—XXXX XXXX, 2011— with a friend, XXXX; she thus left her country and came to Canada, to Toronto. She took the bus and arrived in Montréal on XXXX XXXX, 2011, and claimed refugee protection that day.

DETERMINATION

[8] Having analyzed the documentary and testimonial evidence, the panel determines that the claimant is not a “Convention refugee” or a “person in need of protection.”

ANALYSIS

Preamble

[9] The Minister intervened in this case by filing a notice of intervention¹ stating that he would attend the hearing. Subsequently, he filed exhibits² but did not appear at the hearing.

[10] The main exhibit filed is the copy of the Personal Information Form (PIF) of the claimant’s sister, XXXX XXXX,³ who was accepted as a refugee without a hearing, on January 4, 2008. The Minister noted that the two narratives are similar and name the same agent of persecution—XXXX XXXX XXXX. He pointed out various inconsistencies, including how long the father waited before going to take his second daughter back after the aunt refused to return her to him.

[11] Furthermore, on XXXX XXXX XXXX 2013, XXXX XXXX published XXXX XXXX XXXX’s death notice.⁴

Chairperson’s Guideline 4 on women’s fears of gender-related persecution

[12] The panel is sensitive to the factors that can affect the testimony of women refugee claimants fearing gender-related persecution.

[13] The panel therefore ensured that the hearing took place in a calm and reassuring atmosphere, avoiding interruptions and questions that could be perceived as intimidating or aggressive, and thereby facilitated the claimant’s testimony.⁵

¹ Notice of Intervention by the Minister, April 2, 2012.

² Exhibit M-1: Field Operations Support System (FOSS) printout confirming the refugee protection claim; Exhibit M-2: Copy of Personal Information Form (PIF); Exhibit M-3: Copy of IMM-5611, Claim for Refugee Protection in Canada; Exhibit M-4: Copy XXXX XXXX PIF; Exhibit M-5: Copy of notice of decision of XXXX XXXX; Exhibit M-6: Copy of Mr. XXXX XXXX death notice, published XXXX, 2013.

³ Exhibit M-4: Copy of XXXX XXXX PIF.

⁴ Exhibit M-6: Copy of Mr. XXXX XXXX death notice, published XXXX, 2013.

⁵ Thereby applying Guideline 4 of the Chairperson of the Immigration and Refugee Board of Canada (IRB) on *Women Refugee Claimants Fearing Gender-Related Persecution*, and taking into account the Office of the

[14] A member must take special care when assessing the credibility of a woman refugee claimant who has suffered violence because she is a woman. The panel must at all times demonstrate sensitivity and understanding.

[15] The Guidelines do not, however, excuse all omissions, inconsistencies and contradictions. The claimant's testimony was not credible regarding major aspects of her refugee protection claim.

Identity

[16] In light of the documents provided as evidence,⁶ namely, the photocopies of her passport, valid from XXXX XXXX, 2009, to XXXX XXXX, 2014, the panel is satisfied as to the claimant's identity.

Fear under section 96, social group women

[17] The panel wished to know whether the claimant's agent of persecution was indeed deceased, as indicated by the Minister.

Agent of persecution

[18] In response to the panel's question about the man her father wanted her to marry—XXXX XXXX—the claimant stated that he was not dead and that the evidence filed by counsel⁷ showed that it was not the same man. That evidence is an individual life certificate⁸ and a photograph of this man.⁹ The panel verified how these documents were obtained. The panel found out that the claimant had asked her aunt to look into the possible death of this man, XXXX. The aunt then apparently asked a lawyer to go to XXXX to check. The lawyer then apparently contacted the XXXX urban commune, which allegedly confirmed for him that this man was alive. The panel asked whether the lawyer had met with or contacted this man, and the claimant answered no, explaining that if he had met him, XXXX would not have said anything.

United Nations High Commissioner for Refugees' *Guidelines on gender-related persecution*, HCR/GIP/02/01, May 7, 2002, specifically the procedural issues described at item 36.

⁶ Exhibit A-2: Immigration documents in a bundle.

⁷ Exhibit P-8: Individual life certificate of XXXX XXXX, issued by XXXX XXXX, Civil status officer for the XXXX XXXX urban commune, XXXX 2014, and proof of delivery from Guinea.

⁸ Exhibit P-8: Individual life certificate of XXXX XXXX, issued by XXXX XXXX, Civil status officer for the XXXX urban commune, XXXX 2014, and proof of delivery from Guinea.

⁹ Exhibit P-9: Photograph of XXXX XXXX, husband chosen by the claimant's father.

[19] The panel does not accept this explanation because the filed document¹⁰ indicates that the civil status officer for the XXXX urban commune certifies [translation] “that XXXX XXXX XXXX is alive and well having appeared before him.” The panel is surprised at the response from the claimant and from counsel—that those people (the civil status officer and the lawyer) did not meet XXXX even though he supposedly appeared before the civil status officer. The panel notes that the claimant and counsel were unaware of the contents of this evidence, the purpose of which was to prove that XXXX is alive. In view of this contradiction, the panel concludes that this evidence is not genuine because the claimant and her counsel contradicted the contents of the evidence issued by the civil status officer regarding how this man was verified. Based on the panel’s specialized experience as a result of hearing various refugee protection claims from Guinea that undermined the integrity of the refugee protection system, the panel knows that it is extremely easy to obtain false documents in Guinea or to obtain documents illegally in that country.

[20] Accordingly, the panel believes that this man, XXXX XXXX XXXX XXXX, did in fact die on XXXX XXXX, 2013, as indicated in the evidence filed by the Minister,¹¹ even though this evidence indicates that he died in XXXX and not in XXXX, because it is plausible that he had moved in the meantime. In addition, the panel is surprised that this civil status officer filed a photograph of this man with, according to counsel, the telephone number of this man in Guinea. Counsel claims that he does not know how he managed to obtain such a photograph and that this man bears little resemblance to the man in the photograph on the Minister’s evidence. The panel notes that it is difficult to compare these two photographs, because the Minister’s is not very clear. However, the photograph filed by the claimant is not accompanied by any identification; it could therefore come from anyone.

¹⁰ Exhibit P-8: Individual life certificate of XXXX XXXX issued by XXXX XXXX Civil status officer for the XXXX urban commune, XXXXX, 2014, and proof of delivery from Guinea.

¹¹ Exhibit M-6: Copy of Mr. XXXX XXXX death notice, published XXXXX 2013.

[21] Given the contradiction regarding how this evidence was issued¹² and the absence of any link between the photograph¹³ and an identity document for XXXX, the panel attaches no probative value to either of these two pieces of evidence—the certificate or the photograph.

[22] Therefore, the panel notes that the claimant has no need to fear persecution because of this man if she returns to Guinea because, in its opinion, and in the Minister's opinion, this man is dead.

[23] The panel would, however, like to examine the circumstances of the alleged persecution to which the claimant was subjected.

Claimant's time in XXXX

[24] In her testimony at the hearing, the claimant also stated that her father took her back to XXXX on XXXX XXXX, 2011, that she was with XXXX for one week and that she then left her country on XXXX XXXX, 2011.

[25] The panel verified whether, apart from her having allegedly been confined and raped by XXXX, this man of over 50, every day, morning and night, any other events occurred during this week in XXXX, and she answered no. The panel noted that, according to her PIF,¹⁴ she was married during the period from XXXX XXXX to XXXX XXXX, 2011. The claimant responded that no, she was not married to this man, which contradicts the information in her PIF. She added that XXXX XXXX, 2011, not XXXX XXXX XXXX 2011, was the day she arrived in this town and at this man's home, because it took quite a long time to travel through several countries to get from Bénin to Guinea. The panel pointed out, however, that in her PIF,¹⁵ the claimant wrote that she returned to XXXX on XXXX XXXX, 2011; she also stated this in her written narrative—that her time in XXXX started on XXXX XXXX, 2011.¹⁶ Furthermore, she provided no explanation about the registration of this traditional forced marriage of XXXX XXXX, 2011, which is indicated in her PIF.

¹² Exhibit P-8: Individual life certificate of XXXX XXXX, issued by XXXX XXXX, Civil status officer for the XXXXXXX urban commune, XXXXXX, 2014, and proof of delivery from Guinea.

¹³ Exhibit P-9: Photograph of XXXX XXXX husband chosen by the claimant's father.

¹⁴ Exhibit P-15: Claimant's PIF, question 3.

¹⁵ Exhibit P-15: Claimant's PIF, question 11(d).

¹⁶ Exhibit P-15: Claimant's PIF, question 31, lines 43 to 46.

[26] The panel is of the opinion that these contradictions regarding both the date of arrival in XXXX and particularly her traditional forced marriage—indicated in her PIF but which did not take place, according to the claimant—undermine her credibility on whether this forced marriage took place and on her time in XXXX. With regard to her stay in XXXX, the panel does not believe that it occurred.

Claimant's attempts to get help

[27] The panel noted that the claimant alleged that she was raped for an entire week and that she was beaten, but she stated that she did not file a complaint. Her explanation for this was that the police were not going to intervene because they do nothing in the case of a forced marriage. The panel insisted, stating that it was no longer a matter of a forced marriage, but rather, of abduction followed by repeated rape, according to the claimant's statements, because she supposedly was not married to this man. The police would have to intervene in such a situation, but the claimant made no attempt in that regard, that is, by complaining to the police.

[28] The claimant is relatively well educated; she has done one year of university. She was almost 21 years old during these events. She could have filed a complaint with the police, if not in XXXX when she escaped, at least in XXXX where she had an aunt who had already helped her avoid her father's plans in 2008. Also, the claimant made no attempt to contact her aunt or a religious leader or another member of her family to put a stop to her father's plan for her marriage. She did not call the telephone help line about this, nor the special police unit. She did not complain to the police, as indicated at the hearing.

[29] Accordingly, given this failure to try to seek help or to file a complaint, the panel does not believe that the claimant was forced to return to XXXX, or that she was subjected to these rapes by XXXX XXXX XXXX, particularly since it is surprising that her father, who promised her to XXXX in 2007 and who tried to bring her back in 2008, waited until 2011 to act on this plan, as noted by the Minister's representative.¹⁷

¹⁷ Notice of Intervention by the Minister, April 2, 2012, paragraphs 9 and 10.

[30] Given the inconsistency regarding her father's delay of nearly four years before marrying his daughter to XXXX, the panel does not believe that the claimant's father wanted to give his daughter to this man, XXXX, or that the claimant's father contributed to the claimant's persecution by planning a forced marriage for his daughter XXXX.

Claimant's health problems

[31] The panel reviewed a report filed by an anti-rape agency.¹⁸ According to this report, the claimant told them that she had been the victim of a forced marriage (which contradicts her statement at the hearing—that she was not married) and rape by the man her father had arranged for her to marry. The author of the report indicated that the claimant needs medical care. When asked about this, the claimant explained that after her circumcision, which had serious consequences for her, and after the alleged rapes, the claimant suffered from abdominal pain and no longer experiences pleasure (during sexual relations).

[32] In this report, the claimant stated that this man came three times a day, fell upon her, beat her, raped her several times every day, all the while insulting her. She also stated that she had seen the doctor a few times and that he told her that she was fine, that it was all in her head and that she should see a sex therapist, which she did not wish to do.

[33] The panel believes that the claimant may well have been circumcised; an exhibit was filed to that effect¹⁹—unfortunately, it is a common practice in Guinea—and that she may well experience after-effects from her circumcision. However, as mentioned earlier, the panel does not believe that the claimant experienced repeated rapes by XXXX XXXX XXXX, because it is of the opinion, first of all, that her statement is clearly exaggerated (raped two or three times a day) and, above all, the panel does not believe that the claimant was married to XXXX as she stated, or that she was held captive by this man, as indicated earlier, especially since she did not seek help and did not file a complaint.

¹⁸ Exhibit P-4: Report, Mouvement contre le viol et l'inceste, by Michèle Roy, social worker, dated February 17, 2014.

¹⁹ See letter from first counsel dated February 6, 2012, and the note that follows from Dr. XXXXX dated December 3, 2011.

[34] Because this report contradicts the claimant's statements at the hearing, because it reports statements made by her, and because she is not credible regarding the reported facts, the panel attaches no probative value to this report.

Letters of testimony

[35] The claimant filed three handwritten letters²⁰ in support of her allegations. The signature on two of these letters—from the aunt, XXXX XXXX,²¹ and from XXXX XXXX²²—are identical. The panel grants them no probative value.

[36] The claimant also filed another letter from her closest friend, XXXX XXXX,²³ but the claimant filed no identification for the author of this letter, and none of the letters constitute an affidavit.

[37] The panel therefore attaches no probative value to these three handwritten letters, which could have been written by anyone, particularly since the panel does not believe that the claimant's father planned to marry her against her will to XXXX XXXX XXXX.

[38] Therefore, the panel finds that the claimant is not credible on the matter of her primary agent of persecution, XXXX XXXX XXXX, still being alive. The panel also does not believe, considering a major contradiction, that the claimant was forced to marry this man, XXXX, or that she stayed with him in XXXX, or therefore that she was the victim of rape and assault by him, especially since it is inconsistent that the claimant's father waited nearly four years to act on his marriage plan. Furthermore, the claimant made no attempt to seek help or to file a complaint. Finally, the panel grants no probative value to the documents meant to corroborate that XXXX is alive, to the letters filed by the claimant, or to the medical report that recounts the claimant's version of the facts.

²⁰ Exhibit P-2: Letter from XXX XXXXX, the aunt who looked after the claimant from the age of three until she went to Canada; Exhibit P-3: Letter from XXXX XXXX, friend of the family who took the claimant in when she fled to Bénin; Exhibit P-10: Letter from XXXX XXXX, close friend of the claimant, dated June 16, 2014. Exhibit P-2: Letter from XXXX XXXXX, the aunt who looked after the claimant from the age of three until she went to Canada.

²² Exhibit P-3: Letter from XXXX XXXXX, friend of the family who took the claimant in when she fled to Bénin.

²³ Exhibit P-10: Letter from XXXX XXXXX, close friend of the claimant, dated June 16, 2014.

[39] The panel finds that the claimant is not credible with respect to the substance of her allegations.

Section 97

[40] In light of all the evidence and the claimant’s lack of credibility regarding the alleged fear, the panel considers that there is no evidence justifying the application of subsection 97(1) of the IRPA in this case.

CONCLUSION

[41] Having considered all the evidence, the panel determines that the claimant was unable to establish a “serious possibility” of persecution on one of the Convention grounds. The claimant also failed to demonstrate, on a balance of probabilities, that if she returned to Guinea, she would be personally subjected to a danger of torture, to a risk to her life, to or a risk of cruel and unusual treatment or punishment.

[42] For these reasons, the refugee protection claim of **XXXX XXXX** is rejected.

Renée Bourque

Renée Bourque

October 17, 2014

Date

IRB translation
Original language: French