

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 : MB1-06972

*Private Proceeding*

*Huis clos*

**Claimant(s)**

**Demandeur(e)s d'asile**

**XXXXX XXXXX XXXXX**

**Date(s) of Hearing**

**Date(s) de l'audience**

August 7, 2013

**Place of Hearing**

**Lieu de l'audience**

**Videoconferencing heard in**

**Fait par vidéoconférence à**

Montréal, Quebec

**Date of decision**

**Date de la décision**

August 15, 2013

**Panel**

**Tribunal**

Eveline Fiset

**Claimant's Counsel**

**Conseil du demandeur**

M<sup>c</sup> Kibondo Max M Kilongozi

**Tribunal Officer**

**Agent du tribunal**

N/A

**Designated representative**

**Représentant désigné**

N/A

**Minister's Counsel**

**Conseil du ministre**

N/A

[1] XXXXX XXXXX XXXXX, a citizen of the Democratic Republic of Congo (DRC), is alleging that she is a “refugee” within the meaning of section 96 of the *Immigration and Refugee Protection Act* (IRPA) because she fears that she will be persecuted as a woman. She alleges that she was threatened, raped and tortured by police officers for having allegedly insulted Joseph Kabila and the Minister of Finance, and was allegedly accused of campaigning for Tshisekedi.

[2] The claimant states that she is a “person in need of protection” under section 97 of the IRPA because she fears torture by reason of having been detained, accused of treason and sexually assaulted after her arrest on XXXXX, 2010. The claimant alleges that she is sought by the Agence Nationale de Renseignements (ANR) [national intelligence agency].

### **SUMMARY OF ALLEGED FACTS**

[3] The claimant essentially alleged the following facts. She is a XXXXX XXXXXX. Married since 1985, she is the mother of nine children, several of them living abroad. Two of her sons live in Canada, two of her daughters live in South Africa and one lives in Belgium. The claimant accompanied her sisters on XXXXX to collect the pension of one of their deceased husbands. The civil servant told them that she was not entitled to anything. The claimant allegedly got angry and yelled that Joseph Kabila is a thief, and his ministers too. She told the civil servant that if Etienne Tshisekedi were elected, things would change. About a week later (phrase withdrawn by amendment at the beginning of the hearing), on XXXXXXXX, 2011, three police officers came to arrest the claimant and her sisters, who were at her home. The claimant, along with her sisters, was beaten and raped. On XXXXXXXX 2011, the claimant was freed when her husband paid a bribe. The claimant went to the XXXXX medical centre for treatment. The claimant had a visitor’s visa for South Africa, issued XXXXXXX, 2011. It was only two months later, on XXXXXXXXXX, 2011, that she visited her daughters in Johannesburg, South Africa, for a two-month vacation. On XXXXXXXX, 2011, after obtaining a visitor’s visa for Canada (stating that she wanted to meet her grandchildren in Canada, where she had never been before), the claimant went to live with her eldest son, XXXXXXXX, a refugee protection claimant who was accepted by the IRB in 1997. The claimant did not claim refugee protection upon arriving in Canada, but went to the CIC office XXXX days later, on XXXXXXXXXX, 2011.

## DETERMINATION

[4] The panel determines that the claimant is neither a “Convention refugee” nor a “person in need of protection” for the following reasons.

## ANALYSIS

### Identity

[5] The claimant presented as evidence her DRC passport, which had been seized by CIC.<sup>1</sup>

[6] The panel states that the claimant’s identity was established to its satisfaction pursuant to section 106 of the IRPA.

### Credibility

[7] The panel took into account the *Guideline on Women Refugee Claimants Fearing Gender-Related Persecution* (the Guideline),<sup>2</sup> since the claimant alleged that she is a female victim of rape and violence who cannot count on the state to protect her. However, the Guideline cannot make up for a lack of credibility in terms of the evidence and the testimony,<sup>3</sup> as was the case in this claim.

[8] Furthermore, even though the panel applied the Guideline, since in the present case the claimant is invoking violence against her because she is a woman, the panel is entitled to ask questions and request explanations on certain behaviours in order to assess the merits of the claim for refugee protection. Justice Scott had this to say in *Solis*,<sup>4</sup> a recent decision:

The case law of this Court is clear: taking the Guidelines into account must not be a fetter on the Board’s duty to assess the truthfulness of testimony. The Guidelines are to be used instead to make the panel sensitive to the factors which may influence the testimony of women who have been the victims of persecution (*Newton v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 738, 182 FTR 294 at para 17).

[9] The claimant is not credible, and her testimony was not trustworthy in respect of the essential elements of her claim for refugee protection, namely her fear of persecution related to her having

<sup>1</sup> Exhibit A-2: Immigration documents, in a bundle.

<sup>2</sup> *Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution*, Update, Guidelines issued by the Chairperson under subsection 65(3) of the Immigration Act, IRB, Ottawa, November 25, 1996, and continued in effect by the Chairperson on June 28, 2002, as amended.

<sup>3</sup> *Karanja, Anne Wanja v. M.C.I.* (F.C. No. IMM-3296-05), Pinard, May 11, 2006, 2006 FC 574.

<sup>4</sup> *Lysette Yanel Solis Morales v. Canada (Minister of Citizenship and Immigration)*, (F.C., No. IMM-7561-10), Scott, October 31, 2011, 2011 FC 1239.

supposedly insulted a civil servant and Joseph Kabila by calling them thieves. The claimant failed to credibly establish a fear prior to leaving the DRC. The claimant also failed to establish that she had been assaulted and raped. The claimant is unable to consistently recount the alleged facts.

[10] The claimant is not a reliable witness and she had great difficulty responding to the panel's requests for clarification. She knows her account by heart, but as soon as a clarification was asked of her, she hesitated, contradicted herself and got very flustered.

[11] Her delay in leaving the DRC, the fact that she did not seek asylum in South Africa where she lived with her daughters while on a two-month vacation, and the fact that she took two weeks to claim refugee protection in Canada even though her son, whose home she is residing in, lives in Canada because he was accepted as a refugee, are indications that she is not truly afraid and that the alleged facts are not true.

[12] The claimant stated that in XXXXX 2011, her sister applied to collect her husband's pension. On Wednesday, XXXXX 2011, the claimant allegedly called a civil servant and Joseph Kabila thieves. According to her account, on XXXXX XX, 2011, three police officers came to arrest her and her sisters. They were allegedly sent to jail, beaten and raped, and detained until XXXXX The claimant stated that she went to the XXXXX medical centre for treatment.

[13] The claimant initially recounted her story verbatim, as she knows it by heart. The panel then asked her to go over what had happened in more detail. She had a lot of trouble; she hesitated, looked down and did not answer.

[14] The panel asked her to describe what happened after she had insulted the civil servant on XXXXX 2011. She claimed to have been able to leave this place freely with her sisters. Back home, she began to cook with her two sisters when, all of a sudden, at 3 p.m., three police officers came to arrest them. They were led on foot to a police station where they were met by a commanding officer. They were thrown in a dark cell, beaten and raped, and then released on XXXXX.

[15] The panel confronted the claimant about the fact that, in addition to having amended her account, which stated that the police came about a week after she had insulted the civil servant, she was now testifying that she had been arrested the same day on which she insulted the civil servant, whereas according to her account, it was on XXXXX, which was the next day.

[16] The claimant then hesitated a long while, lowered her head and looked at her counsel, who had to repeat the panel's question for her, while she remained silent. The claimant was at a loss to respond. Her credibility is seriously undermined. It is reasonable to believe that she would have remembered being arrested the same day she insulted a civil servant, had this incident taken place.

[17] The panel confronted the claimant about the statement in her account that she had gone to the XXXXX medical centre for treatment. A few days before the hearing (outside the prescribed time limit), she submitted a medical report (sent by email), although it was signed on XXXXX 2011. The document was from the Centre Hospitalier XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX hospital], and not from the XXXXX clinic. Asked to explain, the claimant replied that the XXXXX district is next to the hospital. This reply is unreasonable.

[18] The panel asked the claimant where she had obtained this document. She hesitated a long while, looked over to her counsel, looked downward and sighed. When the panel pressed the issue, the claimant stated that she had this document at home, and that it was her husband who sent it. If that is the case, she had enough time to produce the original, within the prescribed time limit.

[19] The panel confronted the claimant about the fact that, according to this document, the doctor prescribed the claimant a contraceptive pill, when she was 64 years old at the time of the alleged rape. The claimant laughed and agreed that at 64, she could no longer have children. The panel attaches no probative value to this medical certificate given its lateness, its inconsistency in relation to the location where the claimant allegedly sought treatment, and its dubious content. It is reasonable to believe that this is a false document.

[20] According to Justice Martineau, submitting false documents to support a claim for refugee protection has consequences for the claimant's credibility:<sup>5</sup>

[7] Producing a false document to support allegations in a refugee claim must not be minimized by the Court and legitimately allows the tribunal to doubt a claimant's credibility (*Rahaman v. Canada (Citizenship and Immigration)*, 2007 FC 1008, at paras. 15 to 17).

[21] Responding to questions by the panel, the claimant alleged having obtained a visa for South Africa on XXXXX, 2011, as she had already planned to visit her daughters for a vacation. Though

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<sup>5</sup> *Gutierrez, Lesli Karina Castro v M.C.I.* (F.C. No. IMM-1693-07), Martineau, November 5, 2007, 2007 FC 1192.

supposedly accused of having insulted Joseph Kabila and being a traitor to the government (very serious accusation, potentially tantamount to a death sentence in her country), the claimant waited two months before leaving the DRC, despite having a visa to do so. Asked to explain, the claimant cited money problems in terms of the airfare. But if she had planned this trip, she should have been able to afford it—especially since she bought an airplane ticket to travel from South Africa to Montréal a few weeks later.

[22] Moreover, although her daughters knew that the claimant had been jailed and accused of having supposedly insulted President Kabila, she did not seek asylum in South Africa. She spent two full months on vacation. Asked to explain, she gave the excuse that her daughters did not know that she had been raped because she was embarrassed to tell them. The panel pointed out that her daughters knew that their mother had just spent three days in jail and had been accused of treason, so they did not need to know that their mother had been raped to advise her to seek asylum.

[23] The claimant then went to Canada to visit her son, himself a refugee protection claimant whose claim had been allowed. She stayed in his home. The claimant did not claim refugee protection upon her arrival, waiting 15 days to do so. She again gave the excuse that her son did not know that she had been raped. This explanation is not credible.

[24] The claimant's behaviour is not that of a person who went through the serious ordeals she alleges. In all likelihood she has no fear in her country, something that emerges from her behaviour and from her testimony, which is not credible.

[25] In his recent decision in *Gorostieta*,<sup>6</sup> Justice Boivin confirmed that the behaviour of a refugee protection claimant with a stated fear of violence who does nothing to protect himself/herself is a reason that can leave serious doubts as to the facts alleged in the account. Justice Boivin stated:

[30] With respect to the member's findings regarding the applicant's behaviour, the Court is of the view that the member committed no error. In analyzing the fact that the applicant never moved and/or changed jobs, the member revealed that the applicant's behaviour was inconsistent with the alleged fear of persecution. In light of the evidence, it was up to the panel to determine whether the applicant had a genuine and reasonable fear of being persecuted. As the respondent rightly noted, the case law of this Court has established that there are many ways to make determinations in matters of credibility. In this regard, a claimant's blatantly inconsistent conduct may, in itself, be enough to deny a refugee claim (see *Biachi*

<sup>6</sup> *Reza Gorostieta v. Canada* (Citizenship and Immigration) 2011 FC 343 Date: March 21, 2011.

*v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 589, [2006] F.C.J. No. 777, at para. 8).

[26] In P-3, the claimant submitted as evidence a report by psychologist XXXXX XXXXX, who wrote that the claimant had chronic fears and a post-traumatic symptom. The claimant allegedly saw the psychologist once for an hour and another time for 20 minutes.

[27] On this subject, Justice Lagacé, writing in *Esperjel*,<sup>7</sup> points out that doctors and psychologists issue opinions, but that IRB members have the authority to assess credibility.<sup>8</sup> Justice Lagacé stated:

[23] As for the medical report by Dr. de Margerie that was adduced to corroborate the fact that the principal applicant had been the victim of conjugal violence at the hands of her ex-spouse, it should not be given too much weight. The report limits itself to noting that the principal applicant currently suffers from post-traumatic stress which could be attributed to conjugal violence. However, this report was written for the purposes of the applicant's claim, and the medical expert neither heard nor was able to assess the patient's testimony. Its conclusion is based on what the applicant chose to report. However, it was up to the panel to assess the impact of this report on the principal applicant's credibility. It is in no way unreasonable for the panel to consider as non-corroborative a report that was not written at the time of the events described by the applicant and that was based, furthermore, on allegations that were not deemed credible.

[28] Counsel for the claimant stressed the documentary evidence in the package and the case law in *Dezameau*<sup>9</sup> and *Josile*<sup>10</sup> (violence against and rape of women), stating that women in the DRC face violence and rape without protection from the state.

[29] While the panel is familiar with this documentary evidence, it is of no assistance because the claimant failed to credibly establish the facts alleged in her account. What is more, the claimant did not establish that she was vulnerable, having a husband and four adult children who still live at home, and no particular problem, because the alleged problems are not credible. The case law is well established: documentary evidence on a country's problems is of no assistance where a person has

<sup>7</sup> *Esperjel, Marina Haydee Baena v. M.C.I.* (F.C., No. IMM-4201-08), Lagacé, May 5, 2009, 2009 FC 451.

<sup>8</sup> *Singh v. Canada (Minister of Citizenship and Immigration)* 2005 FC 368 Date: March 17, 2005:

(5) ...With respect to the assessment of the doctor's evidence, to find that that opinion evidence is only as valid as the truth of the facts on which it is based, is always a valid way of evaluating opinion evidence. If the panel does not believe the underlying facts it is entirely open to it to assess the opinion evidence as it did.

<sup>9</sup> *Dezameau, Elmancia v. M.C.I.* (F.C. No. IMM-4396-09), Pinar, May 27, 2010, 2010 FC 559.

<sup>10</sup> *Josile, Duleine v. M.C.I.* (F.C. No. IMM-3623-10), Martineau, January 17, 2011, 2011 FC 39.

failed to credibly establish a connection between their personal situation and the documentary evidence.<sup>11</sup>

[30] The claimant did not establish that she is a “refugee” within the meaning of section 96 for the alleged reasons. The claimant also did not establish that she is a “person in need of protection” within the meaning of subsection 97 (1).

## CONCLUSION

[31] Having considered all the evidence, the panel concludes that the claimant did not satisfactorily discharge her burden of establishing a serious possibility of persecution on a Convention ground or that she would be subjected, on a balance of probabilities, to a danger of torture, to a risk to her life, or to a risk of cruel and unusual treatment or punishment should she return to her country.

[32] For all these reasons, the claim for refugee protection filed by XXXXX XXXXX XXXXX is rejected.

*Eveline Fiset*

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**M<sup>e</sup> Eveline Fiset**

**August 15, 2013**

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**Date**

IRB translation

Original language: French

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<sup>11</sup> *Del Real, Maria Auxilio Valenzuela v. M.C.I.* (F.C., No. IMM-1019-07), Shore, February 5, 2008, 2008 FC 140:

[25] Indeed, it is not enough for claimants to file documentary evidence setting out problematic situations in their countries for them to be recognized as Convention refugees or persons in need of protection. The claimants must establish a connection between this evidence and their personal situation. In this case, Ms. Del Real did not establish such a connection (*Al-Shamhusband v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 364, [2002] F.C.J. No. 478 (QL)).