



RPD File No. / N° de dossier de la SPR : TA8-03456

*Private Proceeding / Huis clos*

## Reasons and Decision – Motifs et décision

<b>Claimant(s)</b>	<b>XXXXXX XXXXXX XXXXXX</b>	<b>Demandeur(e)(s) d'asile</b>
<b>Date(s) of Hearing</b>	May 3, 2010	<b>Date(s) de l'audience</b>
<b>Place of Hearing</b>	Toronto, Ontario	<b>Lieu de l'audience</b>
<b>Date of Decision</b>	June 16, 2010	<b>Date de la décision</b>
<b>Panel</b>	Edward C. Robinson	<b>Tribunal</b>
<b>Counsel for the Claimant(s)</b>	Kumar S. Sriskanda Barrister and Solicitor	<b>Conseil(s) du / de la / des demandeur(e)(s) d'asile</b>
<b>Tribunal Officer</b>	N/A	<b>Agent(e) de tribunal</b>
<b>Designated Representative(s)</b>	N/A	<b>Représentant(e)(s) désigné(e)(s)</b>
<b>Counsel for the Minister</b>	N/A	<b>Conseil du ministre</b>

2010 CanLII 97463 (CA IRB)

[1] **XXXXX XXXXX XXXXX** *Immigration and Refugee Protection Act (IRPA)*.<sup>1</sup>

## ALLEGATIONS

[2] The claimant alleged the following:

[3] She is a 31-year-old a citizen of Guyana, where she was born, and Antigua, where she had lived for several years with her husband and children. She seeks refugee protection because she fears her husband who has raped her several times even before they were married, which he had continued during the marriage. Not only was her husband into wife-swapping but he would allow other men to have sex with her so he could get work contracts. He would physically, verbally, emotional, psychologically and financially abuse her.

[4] She did not report the rape or other forms of abuse to the police because she did not believe she could receive any protection from the police in Guyana because she was from a poor family and her husband's family was affluent. In fact, her husband's step-father was a **XXXXXX** but corrupt **XXXXXX XXXXXX** there.

[5] The claimant, who was raped by her husband (before they were married and during the marriage) several times, beginning when she was only 16 years old and he was 26 years old, eventually became pregnant in 1996 and gave birth to their son. Her mother, with whom she had a close relationship, had recently passed away and she was living with her brother. Because of the pregnancy, her brother asked her to leave and she was forced to accept accommodation from the same person who had been raping her.

[6] The claimant alleged that he apologized to her and told her he would take care of her and the baby. She tried to forgive him for the sake of her son but he would still abuse her. In **XXXXXX** 1998 he left for Antigua to open an office there. He was a **XXXXXX** worker specializing in **XXXXXX XXXXXX** pools. In **XXXXXX** 1999, on his request, she joined him in Antigua for him to see his son. She alleged that she intended to return to Guyana after a week but he took away her passport and she was not able to leave. Soon the abuse began again and even got worse.

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<sup>1</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[7] She again became pregnant. Six months into the pregnancy, in XXXXX 2000, he kicked her and she passed out. A neighbor took her to the police station and a complaint was filed. The police looked for him but he avoided their attempts to arrest him. She alleged that she was scared because he had lots of money and friends in high places and he threatened to kill her. She said she ran away, but because of lack of resources, she had to return.

[8] On XXXXX, 2004 the claimant married Mr. XXXXX XXXXX XXXXX. The abuse continued and on XXXXX, 2008 she left Antigua after a friend brought a ticket for her and came to Canada. She filed for refugee protection on February 14, 2008.

## **DETERMINATION**

[9] The panel finds that the claimant is not a Convention refugee, as she does not have a well-founded fear of persecution in Guyana and Antigua. The panel also finds that the claimant is not a person in need of protection in that her removal to Guyana or Antigua would not subject her personally to a risk to her life, or a risk of cruel and unusual treatment or punishment, or a danger of torture.

## **ANALYSIS**

### **Identity**

[10] The panel is satisfied by reason of a certified copy of her passport<sup>2</sup> that the claimant is a citizen of Antigua and Barbuda and of Guyana.

### **Credibility**

[11] The panel, in considering the credibility of the claimant, made an assessment of all the evidence, both oral and documentary.<sup>3</sup> The evidence was also assessed as a whole so it could be treated in a consistent manner.<sup>4</sup> However, not every piece of evidence will be referred to, but those

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<sup>2</sup> Exhibit R/A-2, certified copy of the claimants' passports provided by Citizenship and Immigration Canada (CIC).

<sup>3</sup> *Owusu, Kweku v. M.E.I.* (F.C.A., no. A-1146-87), Heald, Hugessen, Desjardins, January 31, 1989.

<sup>4</sup> *Bosiakali, Mbokolo v. M.C.I.* (F.C.T.D., no. IMM-4948-00), Nadon, December 14, 2001 FCT 1381.

the panel finds relevant to its decision.<sup>5</sup> Even if a piece of evidence is not referred to, the panel carefully considered it as part of the evidence.<sup>6</sup> The panel is entitled to make reasonable findings based on implausibility, common sense and rationality, and may reject evidence if it is not consistent with the probabilities affecting the case as a whole.<sup>7</sup>

[12] The panel recognizes central elements in this claim as: she was a victim of domestic violence by her abusive husband beginning in Guyana where they first lived but continued in Antigua. The violence against her, however, began long before they were a couple (consensual relationship). In fact, her husband, Mr. **XXXXXX**, repeatedly raped the claimant before they became a couple. They became a couple only after she became pregnant with his child in 1995 or 1996 which resulted from one of his several rapes. The claimant, who was only sixteen when he first raped her, told no one about it or the subsequent rapes, certainly not any of her relatives or the police. After becoming a couple, he continued his physical aggression, only now he would hit her. They began living together in 1996. He would not allow her out of the house for fear she would have interest in other men.

[13] He left her in Guyana in **XXXXXX** 1998 and went to Antigua, sent for her in **XXXXXX** 1999 and she went. He held onto her passport so she could not return to Guyana and resumed his physical and sexual aggression. She became pregnant again. On one occasion in **XXXXXX** 2000 he kicked her when she was six months pregnant because he had seen her talking to the neighbor's son. She passed out and was taken to the police station where a complaint was filed. The police went to arrest him but he absconded and remained on the run. The claimant however did not follow-up on the police report. When Mr. **XXXXXX** was on the run from the police she had no financial support except for church charity. The claimant continued in the relationship. He would force her to have sex with his rich friends and gambling partners while he watched. He was also into wife swapping and would force her to have sex with people to get **XXXXXX XXXXXX**. However, the claimant married him **XXXXXX** 2004. He continued to physically, sexually and financially abuse the claimant. She left Antigua on **XXXXXX**, 2008 and filed for refugee protection on February 14, 2004.

<sup>5</sup> *Cepeda-Gutierrez, Carlos Arturo v. M.C.I.* (F.C.T.D., no. IMM-596-98), Evans, October 16, 1998.

<sup>6</sup> *Hassan, Jamila Mahdi v. M.E.I.* (F.C.A., no. A-831-90), Isaac, Heald, Mahoney, October 22, 1992. Reported: *Hassan v. Canada (Minister of Employment and Immigration)* (1992), 147 N.R. 317 (F.C.A.).

<sup>7</sup> *Alizadeh, Satar v. M.E.I.* (F.C.A., no. A-26-90), Stone, Desjardins, Décaray, January 11, 1993.

[14] The panel believes that the claimant lived in Guyana and then in Antigua and that she has two children and was married to Mr. XXXXX. It believes that there may have been some problems in their relationship but does not believe that she is a victim of domestic violence. The panel believes that the claimant has embarked on an elaborate scheme of fabrication based on exaggerations and embellishments to bolster her claim for refugee status. The panel notes that the claimant's allegations are entirely her own. There is no corroboration except for a letter<sup>8</sup> from a friend of the claimant dated XXXXX, 2008 which the panel will have more to say on. Even though this panel takes into careful consideration the Chairperson's Guidelines<sup>9</sup> and relates them to the case before it, it also notes that after several years of very serious physical violence against the claimant there is still no objective evidence of this abuse with the possible exception of her divorce paper and a letter from one Ms. XXXXX<sup>10</sup> which states that her husband, the Respondent, is guilty of malicious desertion. There is no mention of physical or any other form of violence against the claimant.

[15] The claimant was asked what the grounds for the divorce were; she said abuse. Asked how she defines abuse; she said physical, mental, emotional, torture, everything. However, the panel notes that the objective evidence before it is that the reason for the divorce was malicious desertion.<sup>11</sup> It says nothing about any physical abuse or domestic violence against the claimant. Asked why the document speaks of desertion and not abuse, which is what she testified was the grounds for her divorce, she said she gave the people she spoke to all the information but they summarized it down to malicious desertion. The panel rejects this explanation. It does not believe on a balance of probability that the person or persons taking the information about years of physical and sexual abuse, including being forced to have sex with other men, would somehow translate those events into malicious desertion unless they were asked to do so by the claimant, perhaps out of embarrassment or some other consideration. But the panel notes that the claimant didn't say she had asked the court official to write desertion instead of abuse. She said that they summarized it down to malicious desertion. As such, the panel rejects the claimant's allegations that she was

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<sup>8</sup> Exhibit C-3.

<sup>9</sup> *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution*: Guidelines issued by the Chairperson pursuant to section 65(3) of the *Immigration Act*, IRB, Ottawa, March 9, 1993, Update: November 1996, as continued in effect by the Chairperson on June 28, 2002 under the authority found in section 159(1)(h) of the *Immigration and Refugee Protection Act*.

<sup>10</sup> Exhibit C-3.

<sup>11</sup> Exhibit C-2.

physically and sexually assaulted by her husband; if she were, the divorce decree would have reflected it.

[16] And if she were not the victim of domestic violence as she purports, and the panel finds that she was not, then she does not have a well-founded fear and there is no basis for subjective fear. The Federal Court has ruled that the claimant must subjectively fear persecution, and this fear must be well-founded in an objective sense. Thus, a lack of evidence going to the subjective element of the claim is in itself sufficient for the claim to fail.<sup>12</sup> This appears to be so even when there is evidence that an objective basis for the fear exists.<sup>13</sup>

[17] Based on the evidence before it, the panel accepts that the claimant and her husbands seem to have had problems. For example, her husband's unfaithfulness and perhaps his not spending enough time at home with her and the children; but there is not persuasive evidence, in this panel's view, of domestic violence though Ms. **XXXXX** letter suggests there was violence. For instance, when it was pointed out to the claimant that the divorce papers speaks only of malicious desertion, she said, well he goes around fathering children with other women; gives her diseases and she has to stay with him because she is his wife. The panel empathizes with the claimant having contracted diseases because of her husband's infidelity and for deserting her and the children, but as terrible as that may be, it does not amount to persecution and is certainly not domestic violence. With respect to the letter from Ms **XXXXX**, The probative value of any piece of evidence will depend on such factors as the qualifications of the author, why it was written, the methodology used, and whether it is corroborated by other credible and trustworthy evidence.

[18] The panel also looked at the claimant's testimony that she was not allowed to have friends and even sit outside of the house because that meant to her husband that she was looking for other men<sup>14</sup> to be exaggerations and embellishments. For example, this is the same man who would force her to have sex with other men while he watches. As such the panel finds that the claimant's husband was hardly the kind of person to confine the claimant because of jealousy. Therefore, the panel finds the claimant's allegation that she couldn't have friends and allowed to sit outside because it would show that she was interested in other men to undermine her credibility, especially

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<sup>12</sup> *Kamana, Jimmy v. M.C.I.* (F.C.T.D., no. IMM-5998-98), Tremblay-Lamer, September 24, 1999.

<sup>13</sup> *Sinora, Frensel v. M.E.I.* (F.C.T.D., 93-A-334), Noel, July 13, 1993.

<sup>14</sup> Exhibit C-1, Personal Information Form (PIF) narrative, p. 2, lines 49-50.

as she testified that he left her in Guyana to open an office in Antigua leaving her in Guyana for over a year.

[19] According to the evidence before this panel, throughout the claimant's relationship with her husband, the panel got a sense it was being asked to believe that she was at the mercy of her husband for financial support which was, if not the primary reason she was forced to stay with her abusive husband, at least one of the reasons. For example, when she was in Guyana she said rarely he would send her money and what he sent was hardly enough to live on. She said she was struggling to survive.<sup>15</sup> In Antigua she ran away with the children a few times but was unable to sustain herself and the children for lack of money so she had to return to him<sup>16</sup> and on other occasions he left her with the children with just enough to eat.<sup>17</sup>

[20] However, the panel notes in her PIF<sup>18</sup> that the claimant had a job from **XXXXXX** 2006 to **XXXXXX** 2007 at **XXXXXX XXXXXX XXXXXX** as a **XXXXXX XXXXXX**. This panel finds this evidence important because it shows that she had an income, at least from **XXXXXX** 2006 to **XXXXXX** 2007 to assist her. So the panel rejects her allegation that she left her husband but had to return because of a lack of money, and further finds that it undermines her credibility and again finds that the claimant has a tendency to engage in exaggerations and embellishments to enhance her refugee claim.

[21] The panel also rejects the allegation that on one hand she had to return to the abusive home but at the same time she said he basically didn't live with her and the children.

[22] The claimant testified that she was severely assaulted by her husband and was taken to the police station by a neighbor where she filed a report and the police went in search of her husband. He avoided the police by staying away from the home. She testified that during the time he was on the run, he was not supporting the children and she found it hard. The panel notes that the claimant also said the police went to her home looking for her husband but did not find him. The police, however did not return to her home or call her, but neither did she follow up with the police. In

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<sup>15</sup> Exhibit C-1, PIF narrative, lines 54-55.

<sup>16</sup> Exhibit C-1, PIF narrative, lines 79-81.

<sup>17</sup> Exhibit C-1, PIF narrative, line 71.

<sup>18</sup> Exhibit C-1, p. 4, box 7a.

fact, the claimant accepted back her husband in her life, according to her, because during this time her husband was not supporting them.

[23] However, while the claimant omitted any information from her PIF that her husband was arrested and kept in jail for two days, in her oral testimony she said he was. The panel, in examining the evidence before it, notes that there is no police report. Counsel presented an email communication and a letter of request for a police report dated **XXXXXX**, 2010.<sup>19</sup> The panel further notes that the claimant, who has counsel, had made her refugee claim from February 2008 but had failed to make the request prior to **XXXXXX**, 2010 when the hearing was only a few weeks away, May 03, 2010. The claimant testified that she was told that she would have to make a request for the police report directly to the police commissioner of Antigua. No physical evidence of a letter having been sent to the police commissioner was presented. Noting that there is no mention of any arrest of Mr. **XXXXXX** in the claimant's PIF narrative, this panel places no weight on such a request.

[24] At the same time, the panel is cognizant of the principle established by the Federal Court in *Maldonado*<sup>20</sup> that "when a claimant swears to the truth of certain allegations this creates a presumption that those allegations are true, unless there be reason to doubt their truthfulness." The Federal Court of Appeal has also pointed out in *Orelien*<sup>21</sup> that, "One cannot be satisfied that the evidence is credible or trustworthy unless satisfied that it is probably so, not just possibly so."

[25] Case law also exists to support that a panel may reject testimony which is uncontradicted if that evidence does not accord with the probabilities affecting the case as a whole. In this respect the British Columbia Court of Appeal stated in *Faryna vs. Chorny*<sup>22</sup> that, "In short the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions."

[26] Given the problems with respect to major issues, the panel finds that the claimant was generally lacking in credibility. The panel simply does not believe, on a balance of probabilities,

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<sup>19</sup> Exhibit C-4.

<sup>20</sup> *Maldonado v. Canada (Minister of Employment and Immigration)* (1994), 23 Imm. L.R. (2d) 220 (F.C.T.D.).

<sup>21</sup> *Orelien v. Canada (Minister of Employment and Immigration)* [1992] 1 F.C. 592 (C.A.).

<sup>22</sup> [1952] 2 D.L.R. 354 (B.C.C.A.) at 357.



that any of the significant events that the claimant alleged happened to her, actually happened and therefore the claim pursuant to section 96 of the *IRPA* fails. There being no other persuasive evidence that would indicate that the claimant is, on a balance of probabilities, subject to the risks enumerated under section 97 of the *IRPA*, the claim pursuant to that section fails as well.

[27] The panel finds that pursuant to subsection 107(2) of the *IRPA*, that there was no credible or trustworthy evidence on which a favourable decision could be made and therefore there was no credible basis for the claim.

## CONCLUSION

[28] For all these reasons, the Refugee Protection Division therefore rejects the claim. The claimant is not a Convention refugee or person in need of protection.

*(signed)*

**“Edward C. Robinson”**

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**Edward C. Robinson**

**June 16, 2010**

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**Date**

REFUGEE PROTECTION DIVISION / DOMESTIC VIOLENCE / RAPE / DIVORCE /  
CREDIBILITY / FEMALE / NEGATIVE / GUYANA / ANTIGUA AND BARBUDA