



RPD File No. / N° de dossier de la SPR : MA8-02620
MA8-02621 MA8-02622

Private Proceeding

Huis clos

Claimant(s)

Demandeur(e)s d'asile

XXXXX XXXXXX
XXXX XXXX XXXX-XXXX
XXXX XXXX XXXX-XXXX

Date(s) of Hearing

Date(s) de l'audience

June 21, 2010

Place of Hearing

Lieu de l'audience

Montréal, Quebec

Date of Decision

Date de la décision

August 2, 2010

Panel

Tribunal

Youssoupha Diop

Claimant's Counsel

**Conseil du demandeur
d'asile**

M^c Marie Saintil

Tribunal Officer

Agent du tribunal

Annie Lemaine
[Filing of documents]

Designated Representative

Représentant désigné

XXXX XXXX

Minister's Counsel

Conseil du ministre

N/A

[1] The claimant, **XXXX XXXXX**, a citizen of Haiti, is alleging a well-founded fear of persecution in her country of citizenship by reason of her political opinion.

[2] Considering herself a person in need of protection, she is also seeking Canada's protection because of a risk to her life or a risk of cruel and unusual treatment or punishment.

[3] At the start of the hearing, the claimant was confirmed as the designated representative of her minor children, **XXXX XXXX XXXX-XXXX** and **XXXX XXXX XXXX-XXXX**. Since her minor children are American citizens, the panel asked the claimant whether she was planning to file evidence against their country of citizenship. The claimant and her counsel confirmed that no evidence would be filed against the United States.

[4] Accordingly, the panel's assessment of this refugee protection claim will focus exclusively on the claim filed by the principal claimant, **XXXX XXXX**.

ALLEGED FACTS

[5] The panel would like to point out that the claimant presented three versions of her Personal Information Form (PIF). In the first version, the claimant stated that she feared kidnappers and criminals, which was why she did not want to return to her country, for fear of being their victim. In the second version of her PIF, presented on November 11, 2008, the claimant stated that she feared returning to her country, because her family has always been persecuted by Lavalas supporters, and that it was because she was afraid of falling victim to those same Lavalas supporters that she feared returning to her country. Finally, in the very last version of her PIF, dated April 5, 2010, the claimant once again stated that she feared the Lavalas supporters,, who continued to persecute her family, but she also added that she was afraid to return to her country, where she was a social outcast because she was considered to be a "restavec," and that because of her social status, she faced many forms of discrimination.

[6] She arrived in Canada on December 21, 2007, and claimed refugee protection on the same day, in Fort Erie, Ontario.

DETERMINATION

[7] The panel determines that the claimant is not a Convention refugee or a person in need of protection, for the following reasons.

ANALYSIS

[8] The panel is satisfied as to the claimant's identity. Upon arrival in Canada, she presented her Haitian passport, as well as other identification documents that were seized by Citizenship and Immigration Canada. Copies were filed on the record.

[9] Various challenges were encountered during this case, not least of which was the change of hearing venue, which was initially in Montréal. The claimant had wanted her case to be heard in Toronto. Then, she requested that it be returned to Montréal. Finally, her counsel insisted that the case return to Toronto. The Immigration and Refugee Board (IRB) rejected that request from the claimant's counsel. In the end, the case stayed with the Refugee Protection Division in Montréal. Subsequently, counsel for the claimant also submitted an application for the recusal of the member assigned to the case, XXXX XXXX. That application was also rejected, and the reasons for this are attached to this decision. This claim for refugee protection had three PIFs: the first one, dated January 18, 2008, immediately after the claimant arrived in Canada; the second one, dated ten months later, on November 11, 2008; and finally, the last one, dated April 5, 2010, while the hearing (which had started on January 5, 2010) was adjourned.

[10] In the responses to question 31 of her different PIFs, the claimant presented a new story each time. When she arrived, the claimant stated that she was living with her cousin, who was involved in politics and a collaborator of President Aristide. According to the claimant, in early 1997, there was a shooting at her school and three children were killed. However, nothing happened to her. In this first version, she added that everything calmed down for her family from 1997 to 2001. She stated that her cousin left Haiti for the United States. After he left, Lavalas supporters continued killing people and kidnapping adults and children. In this version, Lavalas supporters allegedly beat her brother in 2001, and the police arrested one of the assailants. Her brother's daughter was kidnapped in 2003, and the criminals were arrested and then released. The panel insisted on presenting this version of the

claimant's allegations *in extenso*. It appears, first, that she was living with her cousin, who was a collaborator of President Aristide; second, that an attack was committed at her school and that nothing happened to her; third, that her family faced no subsequent problems until 2001; fourth, that she left Haiti with the help of her cousin, with whom she was living and who left Haiti sometime after her; and fifth, that she was against those involved in the Lavalas movement because of the crimes they committed. She ended her story by stating that she was afraid to return to her country, because she feared she would be a victim of those crimes.

[11] Subsequently, on November 11, 2008, the claimant changed her story, after she changed lawyers. Although she confirmed the attack on her school in 1997, she was more explicit in this version as to why her cousin was subjected to reprisals. According to the claimant, it was because they had been accused of providing information to their uncle that led to him making harsh criticisms against the Lavalas movement. In this version, she added that, in 2000, when she had just returned from vacation, some individuals attacked her cousin's home in the middle of the night. Her cousin escaped; however, she was forcibly confined and taken away by the individuals who attacked their home. She claimed that she escaped, and that, later, her cousin organized her exile to the United States by boat. In this version, she stated that she feared returning to her country for fear of becoming a victim of Lavalas supporters, who never forgave her family. In this version of the story, the claimant clearly explained that her fear of returning to her country¹ is based on the fact that she could be targeted by Lavalas supporters, who, should they encounter her, could recognize her as the cousin of XXXX and XXXX.

[12] On April 5, 2010, while the hearing was adjourned at the request of counsel for the claimant, a new story was presented to the panel. In this story, the claimant made significant amendments to her initial statement, still in response to question 31. First, she amended the answer provided at question 7 of her PIF. She added, with respect to her professional experience, that from 1995 to 2000, she worked at her cousin's home as a "restavec," in other words, according to her, as a domestic servant.² She claimed that she was deprived of meals and that her cousin worked from 6:00 a.m. until very late

¹ Exhibit D-1A: Claimant's amended Personal Information Form, dated November 11, 2008, question 31, paragraph 9.

² Exhibit D-6: Claimant's amended Personal Information Form, dated April 5, 2010, question 31, paragraph 3.

at night, after everyone had gone to sleep. She did repeat that she feared Lavalas supporters, but added that, as a social outcast because of her status as a “restavec,” she would face discrimination and stigma, and her children would be at risk of becoming social outcasts themselves and of becoming prostitutes, should she return to her country. In this last version, the claimant’s cousin was the one allegedly abusing her.

[13] In light of these three versions, the panel asked the claimant why the various changes were made in her account of the incidents and events she allegedly experienced. The claimant explained that, because immigration services had not asked her any questions, she could not answer them. According to her, that was why it was only in front of her lawyer that she clarified some of the elements of her narrative; she was not comfortable raising them in front of the immigration officers. The panel does not find the explanation provided by the claimant to be credible. The versions of her narrative that she provided were not completed in front of the immigration officers. They were all completed later: the first, on January 18, 2008, a little over three weeks after she appeared before the immigration officers; the second, on November 11, 2008, that is, nearly 12 months after she arrived and appeared before the immigration officers; and finally, on April 5, 2010, that is, over two years after she appeared before the immigration officers. Fear before the immigration officers does not explain these different versions, which were not made in their presence in any case.

[14] The panel therefore finds that the claimant is not credible; first, because she changed her story three times; and second, because she attempted to explain this by a fear of disclosing events to the immigration officers that could have resulted in her deportation. In the panel’s opinion, this is not accurate, because she never completed a form before the officers in question. The claimant then explained that if she was more explicit in her account of what happened to her and in her description of her fear, it was because her lawyer required her to disclose everything, without leaving anything out. When the panel asked her why she left her country, she stated that she was in danger in Haiti because, she added, she had been raped. According to the claimant, that rape occurred in 2000, when Lavalas supporters kidnapped her cousin, based on her statements. She added that the rape occurred at her cousin’s home, in the middle of the night.

[15] In assessing this case, the panel considered the IRB Chairperson's guidelines.³ The panel noted that the claimant's statements do not match those in the different versions of her PIF. First of all, in the last two versions of the PIF, her cousin was not kidnapped by Lavalas supporters, but managed to escape. Also, there was never any mention of a rape. She stated that Lavalas supporters kidnapped her when her cousin managed to escape and forced her, handcuffed, into a vehicle. She added that she managed to escape when their vehicle broke down. She also provided—if in fact her story is true, which the panel does not believe—the details of her escape and the place where she managed to hide until the following morning. Therefore, contrary to her statements, she could not have been in the house, because she claimed that she had been kidnapped by Lavalas supporters. Also, she never stated that she had been raped, because she claimed that she had escaped her kidnappers. On learning that her counsel allegedly asked her, as she claimed, to disclose everything in explaining the three versions of her PIF, the panel pointed out that she could certainly not have disclosed everything, because she never mentioned a rape. Furthermore, to explain herself, she claimed that it was because she was afraid of her lawyer. When the panel asked her which lawyer she was referring to, the claimant stated that it was Ms. XXXX and that it was because she was afraid of her that she never mentioned the rape. She added that in Haiti, rape is so stigmatized that victims do not want to discuss it. The panel pointed out to the claimant that when she completed her last statement in response to question 31, on April 5, 2010—at which time she stated that she had provided all the elements that her lawyer had asked her to disclose—she was no longer in Haiti, for one thing. However, she precisely restated the circumstances under which she managed to escape from the hands of the Lavalas supporters who had forcibly confined her in their car. Therefore, the claimant was not telling the truth, once again. The panel rejects the explanations that she was afraid of her lawyer and that rape cannot be discussed in Haiti, for the simple reason that her own sister, whose PIF is attached to this file,⁴ clearly and expressly stated that she had been raped. Finally, the circumstances stated by the claimant are inconsistent with what she stated in her PIF, in the second and third PIFs, particularly that she was raped at home, whereas in the different versions of her answer to question 31, she stated that her captors had taken her away and that she had managed to escape them.

³ Chairperson's *Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution*, IRB, Ottawa, November 13, 1996.

⁴ Exhibit D-7: Personal Information Form of the claimant's sister, Islande Borgella, dated April 5, 2010.

[16] Moreover, in her narrative dated January 18, 2008, the claimant stated that things calmed down for her family from 1997 to 2001. However, she alleged that all of the incidents took place in 2000, that is, during this calm period for members of her family. When questioned about this, she explained that when she stated that “everything started to calm down for my family”, she did not mean that things had calmed down, but rather that the situation had worsened and that things were going badly. While the panel is not a language expert, it is perfectly clear that when a person says “calm down,” the person clearly means that the situation has calmed, not that it has worsened. The panel is of the opinion that, in addition to omitting key facts concerning her claim, the claimant was also attempting to adjust her testimony by deliberately mistranslating her statement. This undermines her credibility.

[17] Given all these contradictions, omissions and inconsistencies, the panel asked the claimant whether she had experienced any other problems in Haiti. She explained that she is afraid to return to her country because she was a social outcast and was mistreated by her cousin, whom she calls “XXXX” out of respect, because of her social status. In the panel’s opinion, this is yet another new element, since until then, the cousin was Mr. XXXX; he became “XXXX” in her most recent version. She explained that she was a “restavec,” that is, a general servant who could be exploited at will and who was deprived of food. The panel asked her why she had not mentioned this until the most recent version of her PIF, particularly since this third version was submitted after the hearing had started on January 5, 2010, and had been postponed on two occasions. She explained that she had not mentioned it earlier because she was afraid that she would continue to experience discrimination here in Canada. The panel notes that if this version of her story were true, the claimant would have already raised this subject in the United States, where she lived from 2000 until XXXX 2007 and where she apparently claimed asylum in 2000. The panel is of the opinion that if her alleged “restavec” status were the primary motive for her claim for refugee protection, the claimant would never have omitted it, neither when she arrived in Canada nor in the first two versions of her narrative. On the contrary, she gave the impression that she was fairly close to her cousin: she stated that he was involved in the same political activities, that she attended political meetings with him (according to the second version of her

narrative),⁵ and that they had decided together to stop going to political meetings, a decision that was therefore not forced on her, but that she made at the same time as her own cousin. In the same narrative, in paragraph 7, the claimant herself states that this cousin (who was allegedly mistreating her) had such serious concerns about her situation that he managed to make arrangements from the place where they had gone into hiding to get her to safety in the United States.

[18] The panel took care in analyzing the documentation submitted concerning “restavecs.”⁶ There is no question that, in some circumstances, “restavecs” are subjected to discrimination, and even slavery; however, the same document describes the treatment of the same “restavecs” as a factor in social advancement, of assistance for the destitute, helping them to combat poverty. Therefore, not all “restavecs” are necessarily mistreated. This is often the case when these people are given to relatives, which, according to her story (if her story is in fact true, which the panel does not believe), seems to be what the claimant has alleged. The panel notes that, in response to question 7 of her PIF, she did not mention that she had worked for her cousin. She added this information about having worked at her cousin’s home in her last version, dated April 5, 2010.

[19] In light of the foregoing, the panel finds that the claimant is not credible. She submitted different versions of her story, and although she stated that this was done in order to provide further details, these versions nevertheless still fail to include key elements of her allegations to the panel. Her explanations are not credible or trustworthy, for the reasons above. The panel is of the opinion that the story in this case was completely fabricated to support a claim for refugee protection. The underlying story was modified, amended and altered, as was the claimant’s testimony before the panel.

[20] For all these reasons, the panel finds that XXXX XXXX is not credible, and therefore that her claim for refugee protection in Canada cannot be allowed.

⁵ Exhibit D-1A: Claimant’s amended Personal Information Form, dated November 11, 2008, question 31, paragraph 4.

⁶ Exhibits D-9 and D-9A: *Restavek No More : Eliminating Child Slavery in Haiti*, National Coalition for Haitian Rights, Jocelyn McCalla, April 2002.

CONCLUSION

[21] For the foregoing reasons, having examined all of the evidence, the panel determines that the claimant, **XXXX XXXX**, did not show that there is a serious possibility that she would be persecuted on a Convention ground should she return to her country. In the panel's opinion, she also failed to show, on a balance of probabilities, that should she return, she would be subjected to a risk to her life or to a risk of cruel and unusual treatment or punishment.

[22] Accordingly, her claim for refugee protection is rejected. With respect to her children, **XXXX XXXX XXXX-XXXX** and **XXXX XXXX XXXX-XXXX**, the claimant and her counsel stated at the hearing that no evidence would be filed against either Haiti or the United States, their country of citizenship. Their claim is therefore rejected.

Youssoupha Diop

Youssoupha Diop

August 2, 2010

Date

IRB translation

Original language: French

REFUGEE PROTECTION DIVISION / COUNSEL / APPLICATION / CHANGE OF VENUE /
RECUSE / REFUSAL / IMPUTED POLITICAL OPINION / CREDIBILITY / PERSONAL
INFORMATION FORM / AMENDMENTS / CONTRADICTIONS / FEMALE / CHILDREN
/ NEGATIVE / HAITI