



RPD File No. / N° de dossier de la SPR : MA6-03043

Private Proceeding

Huis clos

Claimant(s)

Demandeur(e)s d'asile

XXXXX XXXXX

Date(s) of Hearing

Date(s) de l'audience

February 26, 2009

Place of Hearing

Lieu de l'audience

Montréal, Quebec

Date of Decision

Date de la décision

Date of decision: February 26, 2009
Reasons signed: April 6, 2009

Panel

Tribunal

M^c Alain Bissonnette

Claimant's Counsel

Conseil du demandeur d'asile

M^c Anita Martinez

Tribunal Officer

Agent du tribunal

[Filing of documents]

Designated Representative

Représentant désigné

XXXXXX

Minister's Counsel

Conseil du ministre

N/A

ORAL REASONS FOR DECISION

[1] Syntactical and grammatical corrections and references to documentary evidence and jurisprudence may be added to this oral decision.

INTRODUCTION

[2] Ms. **XXXXX XXXXX**, a 56-year-old illiterate citizen of Haiti, is claiming refugee protection under sections 96 and 97 of the *Immigration and Refugee Protection Act* (the Act). She is alleging a well-founded fear of persecution by reason of her membership in a particular social group and her political opinion, as well as being personally subjected to a risk to her life, to a risk of cruel and unusual treatment or punishment and to a danger of torture.

SUMMARY OF ALLEGED FACTS

[3] The claimant alleged that in 2000, while she was working as a **XXXXX - XXXXX** to **XXXXX XXXXX - XXXXX** in the **XXXXX** of **XXXXX - XXXXX**, her common-law husband, who was the father of her three children, was working as a **XXXXX XXXXX XXXXX** and that in **XXXXX** of that year, protesters belonging to the Lavalas movement accused him of having influenced the voting process at a polling station. She also alleged that her common-law husband died during this period and that a neighbour suggested that she seek shelter outside the city, which she did.

[4] The claimant alleged that she travelled to the Dominican Republic, where a smuggler helped her take a boat to the island of St. Thomas, where she made a request for asylum to the American authorities. She also alleged that she next travelled to Puerto Rico and then Miami in **XXXXX** 2001.

[5] The claimant alleged that she knew that her request for asylum in the United States had been rejected, but she had no supporting documents to prove this claim. She alleged that all of the supporting documents were destroyed during a hurricane.

[6] The claimant alleged that she left the United States to travel to Canada because she feared being sent back to Haiti. She arrived at the Canadian border on April 9, 2006, and immediately filed a refugee protection claim.

ANALYSIS

[7] Given that a copy of the claimant's birth certificate and several American identity documents were presented as evidence,¹ the panel is satisfied as to the claimant's identity.

[8] The medical reports presented as evidence indicate the claimant has HIV/AIDS.²

[9] In her Personal Information Form (PIF), the claimant did not indicate that she alleged a well-founded fear of persecution owing to the fact she is a poor woman with HIV/AIDS. According to the jurisprudence, however, the panel must consider all of the grounds for making a refugee protection claim, even if the grounds are not raised during a hearing by a claimant.³ Under the circumstances, the panel finds it appropriate to consider the situation of people in Haiti who, like the claimant, are poor women with HIV/AIDS. There are grounds to consider the persecution the claimant could face if she returned to Haiti from the perspective that she is a member of this class of people or, to put it in other words, of this social group.

[10] To satisfy the definition of a "Convention refugee", a claimant must show that he or she meets all of the components of this definition, beginning with the existence of both a subjective and objective fear of persecution. The claimant must also establish a link between himself or herself and the persecution for a Convention reason; and the claimant must be targeted for persecution in some way, either personally or collectively.⁴ According to the jurisprudence, the existence of persecution under section 96 of the Act may be established by analyzing the treatment of people in a situation similar to that of the claimant, who does not need to prove that he or she was persecuted in the past or will be persecuted in the future:

In the context of claims derived from situations of generalized oppression, the issue is not whether the claimant is more at risk than anyone else in his country, but rather whether the broadly based harassment or abuse is sufficiently serious to substantiate a claim to refugee

¹ The copy of the birth certificate and the American identity documents are included in the immigration documents submitted in evidence as A-2. The Florida Identification Card was submitted in evidence as D-4.

² Exhibit D-5: Medical report, Dr. XXXXX, XXXXX XXXXX XXXXX XXXXX, XXXXX 2007 and D-5 a): Medical reports, XXXXX XXXXX XXXXX in a bundle.

³ *Vilmond v. Canada (Citizenship and Immigration)*, No. IMM-5082-07, Beaudry, July 30, 2008; 2008 FC 926, paragraph 18.

⁴ *Osama Fi v. Canada (Minister of Citizenship and Immigration)*, No. IMM-2091-06, Martineau, September 19, 2006; 2006 FC 1125, paragraph 13, citing the decision by the Federal Court of Appeal in *Rizkalla v. Canada (Minister of Employment and Immigration)*, 1992, 156 N.R. 1 (F.C.A.).

status. If persons like the applicant may face serious harm for which the state is accountable, and if that risk is grounded in their civil or political status, then he is properly considered to be a Convention refugee.⁵

[11] “Unlike section 97 of the IRPA, there is no requirement under section 96 of the IRPA that the applicant show that his fear of persecution is ‘personalized’ if he can otherwise demonstrate that it is ‘felt by a group with which he is associated, or, even, by all citizens on account of a risk of persecution based on one of the reasons stated in the definition [of a Convention refugee]’.”⁶

[12] According to documentary evidence, “illnesses [in Haiti] are categorized as either natural (‘illnesses of God’) or supernatural (‘illnesses of Satan’). Natural illnesses are thought to be curable with biomedicine...[while s]upernatural illnesses, which cannot be cured with biomedicine, are addressed using a variety of strategies rooted in Catholicism, Protestantism, voodoo, or some combination thereof.”⁷ In this particular context, witchcraft has been invoked as the cause of HIV/AIDS, and accusations of witchcraft have been made against those with less money or power:

Sida-related accusations also reflect the concerns of a “people of poverty, ” to use one villager’s phrase, competing in a field of great scar-city....For much of the past 186 years, the foreign-supported elite has relied on village-level lackeys to implement its taxation and its repression. Most of these lackeys—rural constabulary, *mamma*, enlisted men—are themselves from the impoverished peasant class. And so there have been few struggles openly pitting the poor against their oppressors; there have been many struggles among the poor. Some of these struggles have been magical, in the Haitian sense of the term, and have yielded nothing in the way of advancement for the rural poor. That the tragedy of these arrangements does not escape popular consciousness is suggested by the often invoked proverb: “Rotten teeth can still sink into ripe bananas.” No matter how poor and disempowered one is, there will always be another who is even weaker.⁸

[13] The documentary evidence also indicates that, in response to the discriminatory accusations made in the United States about Haitians being responsible for the HIV/AIDS epidemic, part of the

⁵ *Supra*, footnote 4: At paragraph 14, Judge Martineau cited a decision by the Federal Court of Appeal in *Salibian v. Canada (Minister of Employment and Immigration)*, [1990], 3 FC 250, page 259 (F.C.A.) and a decision by the Federal Court in *Ali v. Canada (Minister of Citizenship and Immigration)*, (1999) 235 N.R. 316.

⁶ *Ibidem*: At paragraph 16, underlining by Judge Martineau.

⁷ Exhibit T-2: Hope Hempstone et al., *HIV/AIDS in Haiti: A Literature Review*, February 2004, 55 pages, page 6.

⁸ Exhibit T-1: Paul Farmer, *AIDS and Accusation: Haiti and the Geography of Blame*, 1992, 338 pages, page 262.

Haitian population launched a counterattack denouncing HIV/AIDS as a plot to destroy the Third World, in other words an American plan to subjugate Haiti.⁹

[14] The documentary evidence indicates that, historically, national leadership in the battle against HIV/AIDS in Haiti has not been strong although NGOs have continued to work in this sector. About five years ago, the fight against HIV/AIDS was introduced into a new national strategic plan.¹⁰

[15] The documentary evidence also refers to studies conducted between 1995 and 2000 that indicate the fear of infection resulting from occasional contact with persons living with HIV/AIDS is still relatively prevalent. Furthermore, these studies indicate that it is generally felt that HIV-positive persons should be obligated to reveal their serologic status and that only few people think that HIV-positive persons should be allowed to work with others.¹¹ These studies also indicate that “[p]eople living with HIV/AIDS in Haiti may be treated as less than human...[and that there is a] widely held belief that the souls of infected individuals have been stolen and replaced with those of the dead. Women living with HIV/AIDS are often the subjects of more severe stigma than their male counterparts....In discordant couples, it is more common that the man abandons his female partner than vice versa.”¹²

[16] The discrimination faced by women living with HIV/AIDS must be analyzed by taking into consideration the fact that Haitian women who are not so infected are regularly subjected to not only discrimination, but violence as well. And, despite the efforts to improve this situation, there are still many obstacles that prevent women from lodging complaints and having their rights and dignity respected,¹³ and “the perpetrators of violent acts against women still go unpunished.”¹⁴ This discrimination experienced by women with HIV/AIDS must also be analyzed in a context where the right to health is more often than not pure fiction and where the violence committed by different

⁹ *Idem*: Page 290 and following.

¹⁰ Exhibit T-2: Hope Hempstone et al., *HIV/AIDS in Haiti: A Literature Review*, February 2004, 55 pages, page 8.

¹¹ *Ibidem*: Pages 15-16.

¹² *Supra*, footnote 10: Page 16.

¹³ Exhibit A-1: National Documentation Package on Haiti, March 14, 2008: Section 2.1: U.S. Department of State, Haiti. Country Reports on Human Rights Practices – 2007, March 11, 2008, 11 pages, pp. 8 and 11.

¹⁴ *Ibidem*: Section 5.1: HTI102280.FE Research Directorate, Immigration and Refugee Board of Canada, Haiti: Domestic violence and, in particular, the protection, services and recourse offered to women who are victims of domestic violence (2005-2006), January 23, 2007, 3 pages.

individuals and groups is only sporadically countered by the country's authorities.¹⁵ In other words, security and stability remain fragile in Haiti and, owing to the problems of corruption and violence, the overall situation is horrible; common law crime has increased alarmingly and is only controlled with difficulty.¹⁶

[17] The United Nations High Commissioner for Refugees states that while discriminatory measures do not necessarily constitute persecution, they may attain the threshold of persecution “if measures of discrimination [lead] to consequences of substantially prejudicial nature for [the] person concerned eg. serious restrictions on right to earn livelihood, practise religion, or access to normally available educational facilities”¹⁷. “[I]n order to be characterized as persecution, incidents of discrimination or harassment must be serious or systematic or lead to a conclusion that there is a serious possibility of persecution in the future...[i]n all cases...conclusion[s must be drawn] in a particular factual context by proceeding with a careful analysis of the evidence adduced and proper balancing of the various elements contained therein”.¹⁸ In light of the aforementioned documentary evidence and the relevant criteria adopted by Canadian jurisprudence, the panel concludes that the current discrimination of poor women with HIV/AIDS in Haiti constitutes persecution.

[18] Considering the established conclusion that poor Haitian women with HIV/AIDS are persecuted, and considering that this persecution is the result of association with a social group, the

¹⁵ Exhibit D-11: IFHR, Haiti. Keeping the Peace in Haiti?, fact-finding mission, IFHR report no. 430, March 2005, 58 pages, pages 10, 11, 25, 28, 30 and 36.

¹⁶ Exhibit A-1: National Documentation Package on Haiti, March 14, 2008: Section 7.2: Research Directorate, Immigration and Refugee Board of Canada, Haiti: Criminality; measures taken by the government and the United Nations (UN) to combat crime (2006-2007), HTI102690.FE, February 5, 2008, 5 pages, page 1; Section 2.3: United Nations, Human Rights Council, Implementation of General Assembly resolution 60/251 of March 15, 2006, entitled “Human Rights Council.” Situation of human rights in Haiti—Report prepared by the independent expert, Louis Joinet, A/HRC/4/3, February 2, 2007, 26 pages, paragraph 21, page 11.

¹⁷ United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, HCR/1P/4/ENG/REV.1, Geneva, January 1992, 107 pages, paragraph 54, page 15. This Guide is an international instrument that serves to define the term “refugee” and lists certain principles used to determine refugee status. Canadian jurisprudence recognizes the persuasive nature of this Handbook: *Hernandez Utrera v. Canada (Citizenship and Immigration)*, No. IMM-2254-07, Shore, November 20, 2007; 2007 FC 1212, paragraph 18; *Soto v. Canada (Minister of Citizenship and Immigration)*, No. IMM-3734-01, Tremblay-Lamer, July 10, 2002; 2002 FCT 768, paragraph 15; *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, La Forest, pages 713 and 714.

¹⁸ *Perez v. Canada (Minister of Citizenship and Immigration)*, No. IMM-1919-04, Pinard, November 2, 2004; 2004 FC 1482, paragraph 11, where Judge Pinard refers to a decision by Judge Marceau in *Sagharichi v. Canada (M.E.I.)*, [1993] F.C.A. No. 796 (C.A.).

panel concludes that, as the claimant is part of this group, there is a strong likelihood she would be persecuted if she returned to live in Haiti.

CONCLUSION

[19] The panel determines that the claimant is a “Convention refugee” under section 96 of the Act.

[20] For these reasons, the refugee protection claim filed by **XXXXXX XXXXX** is allowed.

Alain Bissonnette

M^e Alain Bissonnette

April 6, 2009

Date

**REFUGEE PROTECTION DIVISION – ORAL DECISION – SOCIAL GROUP – POOR HAITIAN WOMEN
SUFFERING FROM HIV/AIDS – DOCUMENTARY EVIDENCE – WOMAN– POSITIVE – HAITI**