

Federal Court



Cour fédérale

**fDate: 20210702**

**Docket: IMM-3932-20**

**Citation: 2021 FC 701**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, July 2, 2021**

**PRESENT: The Honourable Mr. Justice Pamel**

**BETWEEN:**

**LUCIA LA GUERRE AND KYESHA  
CYPRIEN**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The applicants, Lucia Laguerre [Ms. Laguerre] and her minor daughter from a first marriage, Kyesha Cyprien [Ms. Cyprien], who will turn 17 at the end of this month, are seeking judicial review of the decision rendered August 4, 2020 by the Refugee Appeal Division (RAD) confirming a decision of the Refugee Protection Division (RPD) rejecting the applicants' claim

for refugee protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act* (IRPA).

[2] The applicants allege that the RAD misjudged the alleged breaches of procedural fairness by the RPD. However, they are only arguing their case *de novo*, which is not sufficient to demonstrate that the RAD's findings on this point are unreasonable.

[3] In addition, the applicants argued before me that it was unreasonable for the RAD to confirm the RPD decision given the multiple findings of error by the RAD in that decision. I do not agree. While the RAD acknowledged errors on the part of the RPD with respect to certain issues of procedural fairness and the evaluation of certain evidence, the RAD nonetheless undertook its own evaluation of the evidence and ultimately found that these errors were not determinative of the final analysis.

[4] Finally, the applicants also argue that the RAD's assessment of the forward-looking risk faced by the applicants is unreasonable. However, the points raised by the applicants do not convince me that the RAD's decision is unreasonable on this point.

[5] For the reasons that follow, the application for judicial review is dismissed.

II. Facts

[6] The applicants are Haitian citizens with family in Haiti. Ms. Laguerre was born in 1978 in Jacmel, Haiti, and has six brothers and a sister. After high school, she studied secretarial studies from 1998 to 1999.

[7] Ms. Laguerre's problems started in September 2001, when Ms. Laguerre's brother Ancier and sister Sourcelette were allegedly victims of violence. This violence was brought on by Ancier's job as the driver of a senator who disagreed with the policies of the president at the time, Aristide. This former president allegedly attacked Ancier because of the secrets that the senator entrusted to him and also to send a [TRANSLATION] "strong message" to the senator. In the same context, the former president allegedly attacked Sourcelette by burning her store, among other things.

[8] Ancier and Sourcelette left Haiti in September 2001 and were granted refugee protection in Canada in 2002.

[9] In October 2001, Ms. Laguerre went to the United States, where she applied for asylum. This application was denied; it appears that Ms. Laguerre did not receive notice of her hearing and therefore did not attend, which led to the issuance of a removal order against her. She had to return to Haiti where she got married in 2003 but separated from her husband in 2004. In July 2004, Ms. Cyprien was born in Haiti from this first marriage.

[10] Between 2004 and 2007, Ms. Laguerre allegedly lived in Panama and the Dominican Republic while visiting family in Haiti. During the same period, Ms. Laguerre was allegedly granted sole custody of her daughter. In 2007, having obtained a new visa based on her statement that she had never traveled to the United States in the past and, I must assume, not disclosing the prior issuance of a removal order against her, Ms. Laguerre returned to the United States and sent her daughter, then three years old, to a guardian in the Dominican Republic.

[11] In the United States, Ms. Laguerre studied to become a nurse's aide in 2012, worked, saved, and eventually became involved in the trade of various products between the United States, Panama, and Dominican Republic where her daughter lived. She returned to Haiti several times on business, staying a few days to deliver merchandise to retailers.

[12] In 2013, Ms. Laguerre divorced her first husband and in 2014 married her second, a United States citizen who would accompany her on international trips. The second husband attempted to sponsor her, but this effort was unsuccessful.

[13] Ms. Laguerre alleged that while Ms. Cyprien was residing and studying in the Dominican Republic, she was abducted by her father and subsequently recovered by the lawyers retained by her mother. Ms. Cyprien's father, who resides in Haiti and, according to the custody order, is now living with another woman, did not attend the subsequent custody hearing.

[14] On December 26, 2016, while in Haiti and on the eve of a planned departure to Panama, Ms. Laguerre believes she was stopped at a gas station by the individuals who persecuted her brother and sister in 2001. However, she managed to escape to safety.

[15] Once back in Panama, Ms. Laguerre made the decision to leave Haiti for good and seek refuge in Canada. She still returned to Haiti for six days in April 2017, as she [TRANSLATION] “had belongings to bring back to Haiti,” and on April 18, 2017, Ms. Laguerre reportedly travelled with her then 12-year-old daughter to Canada to submit her refugee protection claim.

[16] Ms. Laguerre alleges that if she returns Haiti:

- a) she would face a risk from the individuals who threatened her brother and sister in 2001;
- b) Ms. Cyprien would face a risk of abduction by her father; and
- c) the applicants would be personally at risk as Haitian women.

A. *RPD decision*

[17] On October 1, 2018, the RPD denied the applicants’ claim and found them not to be credible. In questioning Ms. Laguerre about the December 26, 2016 incident, the RPD uncovered inconsistencies in her testimony and found that Ms. Laguerre had stated that the connection between these individuals and those who allegedly threatened her brother and sister in 2001 was speculative. The RPD found that the evidence did not indicate that the principal applicant’s family members are still sought by the criminal group in 2020.

[18] Next, the RPD interviewed Ms. Cyprien with a certified interpreter and concluded that her testimony did not corroborate Ms. Laguerre's. In particular, the RPD doubted the allegation that Ms. Cyprien was abducted by her father in the Dominican Republic. The RPD also questioned the allegation that was raised for the first time during Ms. Laguerre's testimony that her ex-husband attacked her with a weapon.

[19] Finally, the RPD considered that the applicants benefit from the protection of Ms. Laguerre's current husband and the substantial financial means at their disposal and found that the applicants would not face a serious risk of persecution on the basis of their gender should they return to Haiti.

B. *RAD decision*

[20] On August 4, 2020, the RAD dismissed the applicants' appeal and, although it identified some errors made by the RPD, it concluded that the applicants had not established that they would be personally exposed to a serious possibility of persecution or that they would be subjected, on a balance of probabilities, to a risk to their lives or a risk of cruel and unusual treatment or punishment, or to a danger of torture pursuant to section 97 of the IRPA.

[21] The RAD first considered the principles of procedural fairness observed by the RPD during the examination of Ms. Cyprien, who is a minor. The RAD noted that it would have been more appropriate to take a break when Ms. Cyprien began to cry and found the RPD's comments about the witnesses' behaviour unnecessary. However, in listening to the tape of the hearing, the RAD

concluded that there was no breach of procedural fairness, as the RPD's approach was generally correct.

[22] The RAD found that the RPD erroneously considered that Ms. Laguerre had agreed with the suggestion that the link between the individuals and those who allegedly threatened her brother and sister in 2001 was speculative. The RAD agreed with the RPD that this connection was speculative because the December 26, 2016 incident appeared to be coincidental and there was no evidence that these individuals were from the same group that allegedly threatened Ms. Laguerre's brother and sister in 2001. In addition, the RAD doubted Ms. Laguerre's subjective fear.

[23] Regarding the alleged attempted kidnapping, the RAD found that the RPD gave too much weight to Ms. Cyprien's testimony. The RAD found that the evidence supported the allegations of an attempted kidnapping. However, it found that the evidence did not support the allegations that the applicant had suffered an armed assault first raised during the RPD hearing, and that the applicants had failed to prove that the father posed a risk to the applicants' lives or integrity.

[24] Finally, the RAD agreed with the RPD's analysis of the applicants' forward-looking risk on the basis of their gender, adding that they benefit from a network of family and friends.

[25] The applicants attack the reasonableness of the RAD's decision on two main fronts. First, that the RAD erred in its assessment of the alleged breaches of procedural fairness by the RPD and second, that the RAD erred in its assessment of the evidence as to forward-looking risk.

III. Issues

[26] This application for judicial review raises two issues:

- i. Did the RAD err in its assessment of the alleged breaches of procedural fairness committed by the RPD?
- ii. Did the RAD err in its assessment of the evidence as to the forward-looking risks?

IV. Standard of review

[27] While the applicants believe that the issue of procedural fairness is reviewable on a standard of correctness, the issue is actually reviewable on a standard of reasonableness. The issue is the reasoning of the RAD and its analysis of the evidence of the alleged breaches of procedural fairness by the RPD, not the inability of the applicants to present their case adequately before the RAD (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at para 23 [*Vavilov*]; *Ma v. Canada (Citizenship and Immigration)*, 2019 FC 392, para 17; *Abiodun v. Canada (Citizenship and Immigration)*, 2021 FC 642, paras 6–10).

[28] It is clear that the other issue in the case is reviewable under the standard of reasonableness (*Vavilov*, para 23; *Vall v. Canada (Citizenship and Immigration)*, 2019 FC 1057, at para 13). To be reasonable, the decision must be based on reasoning that is both rational and logical, having regard to the expertise of the decision maker, the history and context of the proceeding, and the evidence before the decision maker in the case (*Vavilov*, paras 94 and 102).



V. Analysis

A. *Did the RAD err in its assessment of the alleged breaches of procedural fairness committed by the RPD?*

[29] The applicants submit that the RAD erred in its assessment of the alleged breaches of procedural fairness by the RPD. The applicants raise the fact that the RPD was hostile to Ms. Cyprien, who was 14 years old at the time. The applicants argue that the RPD failed to show empathy.

[30] The applicants cite *Duversin v Canada (Citizenship and Immigration)*, 2018 FC 466, and argue that the RAD ignored the teachings of that case where counsel for the applicants (the same counsel as in the present proceeding) argued that there was a breach of procedural fairness because of the examination of an elderly woman who was not the principal applicant prior to the examination of the principal applicant. This argument is misleading, however, since Justice Gagné ruled that there was no breach of procedural fairness in that case [*Duversin*, para 27].

[31] The applicants again cite *Duversin* at paragraph 24 to say that the RPD should have given Ms. Cyprien a few minutes with her mother, who was designated as her representative at the beginning of the hearing. In addition, the applicants criticize the RPD for not explaining the role of representative to the mother or, at the very least, allowing the applicants' counsel time to do so.

[32] The applicants again rely on *Duversin* at paragraph 24 to say that the RPD should have stopped questioning Ms. Cyprien, since her testimony would have been inconsistent, especially considering the objections of Ms. Cyprien's counsel and her mother.

[33] The applicants also blame the RPD:

- a) for not taking a break when Ms. Cyprien began to cry following her lengthy examination.

The applicants point out that even the RAD should have recognized that it would have been more appropriate to take a break at that point;

- b) for not taking into account the translation in its assessment of the answers given by the applicants. The applicants also believe that the descriptions given to them by the RPD were arbitrary. The RAD should have recognized that these comments were unnecessary; and

- c) for not hearing the testimony of Ms. Laguerre's brother, which had been planned for a long time.

[34] The applicants submit, therefore, that the RAD was overly deferential to the many wrongs committed by the RPD identified above. The RAD should have reversed the RPD's decision in these circumstances.

[35] I do not agree with the applicants.

[36] The RAD did indeed note that the minor applicant was a refugee protection claimant, not a mere witness. Her claim for refugee protection was based on her own fear of potential abduction by her father. I agree with the Minister's submission that the RPD could therefore ask her about this subjective fear as is the practice in refugee protection claims by minor applicants [*Bedjaoui v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1230 at paras 17–19; *Obando v Canada (Citizenship and Immigration)*, 2019 FC 1059 at paras 29–30].

[37] In addition, the RPD was not required to appoint a representative for the minor applicant because her claim was joined with her mother's [*Refugee Protection Division Rules*, SOR/2012-256, s 20(2)].

[38] I agree with the Minister that the RAD validly found that the RPD had followed the approach recommended by Chairperson's Guideline 3, including asking whether the minor applicant knew the difference between a lie and the truth, and obtaining a certified interpreter.

[39] According to the RAD, no objection or request was made by the legal representative or her counsel to object to the examination, to confer with the minor applicant prior to the examination, or to take a break. It is well established that where there is a breach of procedural fairness, the issue must be raised at the earliest opportunity, and that a "failure to object at the hearing amounts to an implied waiver of any perceived breach of procedural fairness or natural justice that may have occurred" (*Kamara v Canada (Citizenship and Immigration)*, 2007 FC 448 at para 26).

[40] The applicants conceded before me that the RPD paused briefly when Ms. Cyprien began to cry and then continued to ask her only two questions before ending its examination. I do not see any failure on the part of the RPD in this regard, or in the assessment made by the RAD with respect to Ms. Cyprien's testimony. Equally important, counsel for the applicants did not object to the order of questioning by the RPD and did not ask the panel to adjourn the hearing.

[41] As for the allegations that the RPD did not examine the principal applicant's brother, counsel for the applicants did not raise the issue. The Minister argues that the RAD could therefore reasonably rely on the legal principle that any issue of procedural fairness must be raised at the earliest opportunity [*Al-Farran v Canada (Citizenship and Immigration)*, 2017 FC 985 at para 27]. The Minister is correct.

[42] In the end, the applicants are attempting to make the same arguments here that they made before the RAD. They do not argue in any way that the RAD's conclusion as to its assessment of the alleged breaches of procedural fairness is unreasonable. In other words, the applicants do not explain how it was unreasonable for the RAD to conclude that their procedural rights were not infringed.

[43] A judicial review is not a *de novo* proceeding. Moreover, it is the RPD, not the RAD, that is alleged to have committed the breach of procedural fairness. As noted above, the standard of review is reasonableness, and it is the RAD's decision that must be reviewed.

[44] The applicants base their arguments primarily on *Duversin*. In that case, it was found that there was no breach of procedural fairness where an elderly person was allegedly confused and contradicted the narrative of the principal claimant. That decision is directly contrary to the applicants' arguments. Continuing to question an applicant despite an apparent contradiction is not a violation of procedural fairness. As the Associate Chief Justice noted in that case, "since it is for the RPD to determine the truthfulness of the facts alleged, the credibility of the claimants and the basis of each refugee claim submitted to it, it would be quite incongruous to ask it to cease questioning once it notes contradictions in the evidence" (*Duversin*, para 25).

[45] The RAD's assessment of the alleged breaches of procedural fairness appears reasonable to me. It was reasonable for the RAD to conclude that despite the imperfect conduct of the RPD at the hearing, the procedural rights of the applicants were respected, and they were given a fair opportunity to present their case.

B. *Did the RAD err in its assessment of the evidence as to the forward-looking risks?*

(1) Forward-looking risk of individuals regarding 2001 incident

[46] The applicants see an [TRANSLATION] "excess of deference" and a contradiction in the RAD's reasoning when it says that the RPD erred in finding that the applicant admitted that the link between the incidents of 2016 and 2001 was speculative while concluding that the link was, in any event, speculative. They attack the RAD's conclusion that there is no evidence that Ms. Laguerre's family is still being persecuted in 2020 by the same group as in 2001 for several reasons:

- i. the RAD erred in concluding that the 2016 incident appears fortuitous and isolated;
- ii. the RAD did not consider that Ms. Laguerre does not have much family left in Haiti;
- iii. the RAD did not consider that another individual keeping secrets about the same incident was murdered in March 2015 after returning from the United States; and
- iv. the RAD did not consider that Ms. Laguerre was required to return to Haiti briefly after the 2016 incident and remained in a secure hotel.

[47] The applicants argue that their fear of returning to Haiti is justified given the situation in the country and that the RAD has demonstrated a lack of knowledge of the Dominican Republic's migration policy towards Haitian migrants.

[48] I see nothing unreasonable in the RAD's findings that there was no objective evidence that Ms. Laguerre was still being pursued by the same individuals as in 2001; the RAD could reasonably conclude that the link between the incidents of 2001 and 2016 was speculative in the circumstances.

[49] Given Ms. Laguerre's multiple trips to Haiti between 2001 and 2017, including a visit after the 2016 incident, in April 2017, I see nothing unreasonable in the RAD's conclusions that the 2016 incident appeared to be isolated and incidental and did not indicate the presence of a threat.

[50] The Minister added that the RAD reasonably found that Ms. Laguerre's behaviour was inconsistent with that of a refugee protection claimant with a serious fear of persecution: the

RAD was not satisfied that the principal applicant was protected when she stayed in hotels in Haiti, stayed with her cousin in Jacmel or walked alone in Haiti.

[51] Finally, the RAD could reasonably draw a negative inference from the fact that Ms. Laguerre did not make efforts to claim refugee protection as soon as she had the opportunity to do so and while travelling frequently between countries [*Mulliqi v Canada (Minister of Citizenship and Immigration)*, 2006 FC 563 at para 22].

[52] I think it appropriate to repeat the points raised by the applicants.

- a) *The RAD erred in concluding that the 2016 incident appears fortuitous and isolated*

[53] The applicants do not explain how this conclusion is unreasonable other than to say, before me, that the RPD's conclusion, that there was no connection between the 2016 incident and the 2001 persecution group, was speculative. In substance, the applicants are asking me to reverse their burden of proof to establish their position. That is something I will not do.

[54] The only connection Ms. Laguerre makes between these two incidents is that her assailants in 2016 mentioned her brother and the senator for whom her brother worked. It was not unreasonable for the RAD to conclude that the 2016 incident appears fortuitous and isolated and that the connection between this incident and those in 2001 is "tenuous, even speculative".

- b) *The RAD did not consider that Ms. Laguerre does not have much family left in Haiti*

[55] The RAD did consider that five of Ms. Laguerre's six siblings were granted refugee status. The RAD also concluded that the reason Ms. Laguerre's mother was not persecuted may have been because of her personal circumstances. However, it is not the presence of family members in Haiti that led the RAD to conclude that the claim for refugee protection was unfounded, but rather the lack of evidence that the persecuting agents are still looking for Ms. Laguerre. It is not unreasonable to conclude that this lack of evidence is sufficient to reject the application.

- c) *The RAD did not consider that another individual keeping secrets about the same incident was murdered in March 2015 after returning from the United States*

[56] Just because a piece of evidence is not mentioned by the decision maker does not mean that the decision maker did not consider it. There is a presumption that all evidence has been considered by the decision maker, except that which contradicts the decision maker's conclusions. A newspaper article announcing that a person was murdered because he or she was keeping secrets about the events in 2001 does not contradict the RAD's conclusion that there is no evidence in this refugee protection claim. On the one hand, the newspaper article reports from a source [TRANSLATION] "close to the police" that it was an execution, but it could just as well have been a random attack. The probative value of this evidence, if any, is very low. On the other hand, there is no evidence that Ms. Laguerre is also keeping secrets about the events of 2001, and unlike the person who was murdered, Ms. Laguerre never made any public denunciations against the former president.



- d) *The RAD did not consider that Ms. Laguerre was required to return to Haiti briefly after the 2016 incident and remained in a secure hotel*

[57] The RAD specifically considered that Ms. Laguerre stayed in a secure hotel but found that hotels do not guarantee safety or anonymity. The RAD also noted that Ms. Laguerre was unaccompanied during the 2016 incident and that she was staying with her sister in Jacmel prior to 2014. The RAD reasonably found that walking alone was not consistent with the behavior of someone who believes she is at risk of persecution.

[58] There is therefore no basis for intervention here. The RAD reasonably concluded that there was no forward-looking risk as to the events of 2001.

(2) Forward-looking risk caused by Ms. Cyprien's father

[59] The applicants criticize the RAD for playing down the violence of Ms. Cyprien's father toward Ms. Laguerre. The applicants argue that the RAD erred in finding that the armed robbery had not been established. According to the applicants, the RAD ignored the presumption of truthfulness of sworn testimony established in *Maldonado v M.E.I.*, [1980] 2 FC 302 (CA), at page 305.

[60] The applicants explain that the reason the armed incident was not mentioned before the hearing was because the women were reluctant to give details of the persecution they experienced. The RAD and RPD should have given Ms. Laguerre the benefit of the doubt. The applicants argue that the father pays no heed to the justice system and reiterate that they are at risk if they return to Haiti.

[61] I find that the RAD reasonably concluded that there was no evidence of forward-looking risk from the father. Clearly, Ms. Laguerre was able to get her daughter back simply by the intervention of her counsel. Moreover, the father refuses to speak to the applicants and did not appear at the custody hearing for this daughter.

[62] I would add that the presumption of truthfulness of sworn testimony is not absolute. It prevails until there is reason to doubt the veracity of those statements. The lateness of this information and the fact that it is not independently mentioned anywhere else in the documentation are reasonable grounds to doubt the claim that an armed robbery occurred.

[63] In any event, the RAD specifically mentions that the question of whether Ms. Laguerre actually experienced an armed robbery has no impact given the absence of forward-looking risk. The applicants do not appear to be addressing the RAD's findings in this regard, and the armed robbery issue is a red herring in the circumstances. The RAD's findings as to the forward-looking risk of Ms. Cyprien's father are reasonable.

(3) Forward-looking risk based on gender

[64] The applicants point out that kidnapping for ransom has become very widespread in Haiti. They cite an incident similar to the one that Ms. Laguerre allegedly experienced, in which a woman was the victim of an attempted kidnapping at a gas station that ended in her murder.

[65] The applicants argue that the RAD erred in concluding that male protection was sufficient, since the persecuting officers could be aware of the whereabouts of Ms. Laguerre's husband.

[66] However, the RAD did note that the evidence showed that the applicants benefit from several protective factors: the presence of the principal applicant's husband, substantial financial means and a network of acquaintances and family members in Haiti.

[67] I would add, as was mentioned to me, that Ms. Laguerre's new husband also travels with a security detail. The applicants argue that they would clearly be targeted because they would be perceived as affluent upon their return to Haiti. However, the risk of criminality targeting the wealthy is not a ground of persecution.

[68] Considering all the evidence, the RAD reasonably concluded that their personal circumstances were not sufficient to demonstrate the existence of a forward-looking risk that is more than a mere possibility.

[69] As in *Henry v Canada (Citizenship and Immigration)*, 2021 FC 24, at para 42, the applicants have not been able to establish an individualized risk beyond membership in the particular social group of women. I see nothing unreasonable in this conclusion of the RAD.

VI. Conclusion

[70] The applicants argue that if I consider the RAD's decision with all the errors it raises with respect to the RPD's decision, the RAD's conclusions confirming the RPD's findings cannot be reasonable. I disagree. My reading of the RAD's decision leads me to believe that the RAD did its job, and I have not otherwise been convinced of any unreasonableness in its approach or in its final decision. I would therefore dismiss the application for judicial review.

**JUDGMENT in IMM-3932-20**

**THIS COURT'S JUDGMENT** is as follows:

1. The application for judicial review is dismissed.
2. The question of general importance is certified.

“Peter G. Pamel”

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Judge

Certified true translation  
Michael Palles, Reviser

**FEDERAL COURT**  
**SOLCITORS OF RECORD**

**DOCKET:** IMM-3932-20

**STYLE OF CAUSE:** LUCIA LA GUERRE AND KYESHA CYPRIEN v  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** HELD VIA VIDEOCONFERENCE

**DATE OF HEARING:** JUNE 30, 2021

**JUDGMENT AND REASONS:** PAMEL J.

**DATED:** JULY 2, 2021

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