

Federal Court



Cour fédérale

Date: 20101006

Docket: IMM-3335-09

Citation: 2010 FC 998

Ottawa, Ontario, October 6, 2010

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

**EVENS PLAISIMOND and
ROSE ADELLE PLAISIMOND**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of the decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated June 1, 2009 (Decision), which refused both the Male Applicant's and the Female Applicant's applications to be deemed Convention refugees or persons in need of protection under sections 96 and 97 of the Act.

BACKGROUND

[2] The Male Applicant and the Female Applicant are siblings and citizens of Haiti. Although they fled Haiti at different times, they claim that their reasons for leaving the country are related.

[3] The Male Applicant claims to have joined the Mouvement Chrétien pour une Nouvelle Haiti [the Christian Movement for a New Haiti] (MOCHRENHA) in 1999. This group opposed the regime of Jean-Bertrand Aristide. The Male Applicant's involvement included attending meetings and public demonstrations, distributing information about the party and training new members.

[4] The Male Applicant alleges that he was repeatedly attacked by members of the Lavalas party, which supported the Aristide regime. On April 15, 2000, a member of the Lavalas party warned the Male Applicant to stop handing out pamphlets or he would be beaten or killed. The man returned fifteen minutes later with other men, and they began punching the Applicant. Following the May 21, 2000 elections, the Male Applicant participated in at least four demonstrations and was beaten by Lavalas members and police at all of these demonstrations. On June 20, 2000, Lavalas members again attacked the Male Applicant after a demonstration. The Male Applicant then went to live with his parents in Camp-Perrin until August 2, 2000, when he returned to his home in Christ Roi. Finally, on August 3, 2000, he was in his home with his cousin and his girlfriend when three Lavalas members, or "Chimères", forced their way in. They beat all three occupants. The Male

Applicant travelled to the home of the Female Applicant, where he remained until September 15, 2000.

[5] The Male Applicant left Haiti on October 11, 2000. He arrived by boat in the United States on or about October 17, 2000. He was married in the U.S. in 2001. Because the Male Applicant did not enter through a formal immigration checkpoint, his applications for asylum and to remain in the United States pursuant to a spousal sponsorship were denied. He divorced his first wife in 2006; there is one deceased child of the marriage. The Male Applicant married again in 2006 and came to Canada in October 2006 to make a refugee claim. He resides in Ontario with his current wife; there is one child of that marriage. Pursuant to Rule 49(1) of the *Refugee Protection Division Rules*, the Male Applicant's claim was joined to that of the Female Applicant because they are siblings.

[6] The Female Applicant alleges that while the Male Applicant was living with her, his friends would come to her house and together they would listen to the news on the radio. They continued this practice even after the Male Applicant left Haiti.

[7] The Female Applicant also claims that, on January 23, 2002, five men forced their way into her home. They asked for her brother and she informed them that he had left. In her PIF she stated that one of the men pointed a gun at her and said "This is for terrorists who don't like the president."

[8] On March 9, 2002, following a day and a half of heavy gunfire in her neighbourhood, the Female Applicant claims that she and her husband were awakened at 4 a.m. by banging on the door of their home. Two men forced their way in, hit her husband, tied one of her daughters to a chair

and ransacked the house. One man attempted to rape the Female Applicant and then beat her. The men left the home after about thirty minutes but said they would return. She obtained a Canadian visa to leave Haiti in August 2002. Her husband and children remain in Haiti.

[9] The Female Applicant did not apply for refugee status when she arrived in Canada in August 2002. Instead, at the urging of her cousin in the United States, she entered the U.S. illegally in October 2002. She remained there until April 2008, when she returned to Canada to make a refugee claim.

DECISION UNDER REVIEW

The Male Applicant

[10] The RPD determined that the Male Applicant provided inconsistent evidence regarding three incidents and that his failure to provide reasonable explanations for those inconsistencies cast doubt on his credibility.

[11] First, with respect to the beating on April 15, 2000, the Male Applicant said in his port of entry statement (POE) that he was beaten by a total of three men. In his Personal Information Form (PIF), he said there were four men. In his testimony at the RPD hearing, he said there were five men. When asked to explain the inconsistencies, he said it was a misinterpretation.

[12] Second, at the hearing the RPD asked the Male Applicant how much time had passed between the beating he suffered at the June 20, 2000 demonstration and his subsequent move to Camp-Perrin. The Male Applicant initially said a few days but later said a few weeks. When questioned about the inconsistency, the Male Applicant said a few days and a few weeks mean the same to him.

[13] Third, at the hearing the RPD questioned the Male Applicant about the home invasion and assault by Lavalas members on August 3, 2000. In his PIF, he had said that the men entered the house and asked "Where's Evens?" At the hearing, however, in recounting what the invaders said, he failed to mention them asking "Where's Evens?" Instead, he stated that the men broke into his house because they were looking for MOCHRENHA members and recognized him. Having mentioned some of what the men said, the Male Applicant was asked if could remember anything else that they said. The Male Applicant replied that he had told them everything that he could remember for now. When the RPD reminded him that in his PIF he had said that the invaders asked "Where's Evens?", the Male Applicant said that the invaders did ask that question; it was while they were knocking at the door. The RPD reminded him that, in his PIF, he said that the invaders were already in the house when they asked for him by name. The Male Applicant said that, at the time, he was trying to escape through the rear door of the house. They asked why he hadn't mentioned that the men asked for him by name. He hesitated and then replied that he didn't know why. The RPD stated that the Male Applicant's inconsistent testimony concerning whether or not the men entered his house purposely looking for him cast doubt on his credibility.

[14] Ultimately, the RPD concluded that men may have entered the house but that the invasion was criminally motivated. According to the Male Applicant's testimony, there had been a lot of shootings in the area. The RPD relied on documentary evidence that violent crime was then rampant in Haiti but that the levels of political violence were low. This finding was consistent with a report generated by a justice of the peace that the Male Applicant's house had been the object of vandalism committed by non-identified armed individuals.

[15] The RPD also found that the Male Applicant's assertions that he was a member of MOCHRENHA were not credible. Although he had produced a letter from that organization, stating that he had been a member since 1999 and had been responsible for training new members, he was unable to provide much information about the party's platform and ideology. Furthermore, the letter said nothing about the abuse suffered by the Male Applicant, abuse that, in the opinion of the RPD, the party would have referenced in support of their member's testimony because of his association with the party. The Male Applicant's argument that the letter lacked this information simply because he didn't ask the party to include it was not accepted by the RPD.

[16] Finally, the report of the home invasion generated by the justice of the peace stated that the men said "We will destroy all the members of the Democratic Convergence" and not "We will destroy all the members of MOCHRENHA." The RPD asked the Male Applicant why he did not testify that he was a member of the Democratic Convergence. He hesitated and then explained that MOCHRENHA is part of the Democratic Convergence and that the justice of the peace knew that he was a member of MOCHRENHA. This explanation did not satisfy the RPD, on a balance of

probabilities, that the Male Applicant was a member of MOCHRENHA, a factor which “affects the heart of his claim.”

[17] Although the RPD did not disbelieve everything the Male Applicant said, it found him not to be credible and trustworthy. The RPD relied upon the words of Justice MacGuigan in *Sheikh v. Canada (Minister of Employment and Immigration)*, [1990] 3 F.C. 238 (C.A.) (QL) at paragraph 8:

... even without disbelieving every word an applicant has uttered, a first-level panel may find him so lacking in credibility that it concludes there is no credible evidence relevant to his claim

Moreover, the RPD concluded that the Male Applicant had not satisfied the burden of establishing a serious possibility of persecution on a Convention ground.

The Female Applicant

[18] The RPD found that, on a balance of probabilities, the testimony of the Female Applicant was not truthful.

[19] The Female Applicant claims that her problems began as a result of the Male Applicant’s activities. At the hearing she testified that men burst into her house in the early hours of March 9, 2002, asking for the Male Applicant. However, in her PIF she had failed to state that the men asked for the Male Applicant by name. When asked about this inconsistency, she said that she forgot to include it. The RPD did not believe this explanation. It found that lack of credibility on this point went to the heart of her claim that she fears persecution because she is the sister of the Male Applicant.

[20] With respect to the same incident, the RPD asked the Female Applicant why her husband would open the door to strangers in the middle of the night when, according to her own testimony, this was a dangerous neighbourhood and there had been shooting all night. She responded that they thought it might be a neighbour in trouble and that the men were knocking loudly. The RPD found this explanation implausible.

[21] The RPD agreed with the observations of counsel for the Applicants that if the Convention refugee claim of the Male Applicant failed, then so would that of the Female Applicant.

[22] The RPD concluded that the Male and Female Applicants had not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, and therefore were not Convention refugees.

[23] The RPD also stated that it had considered the Female Applicant's claim in accordance with the Chairperson's Guidelines for *Women Refugee Claimants Fearing Gender-Related Persecution*.

Section 97 Claims

[24] Having disposed of the section 96 claims, the RPD turned to the section 97 protected person claims.

[25] The RPD acknowledged that Haiti's security and stability remained fragile and its human rights situation was dire, with impunity prevailing for most abuses. However, relying on the conclusion of this Court in *Prophète v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 331, the RPD found that "the risk feared in Haiti was a generalized risk faced by all citizens of Haiti." On a balance of probabilities, removal to Haiti would not personally subject the Male and Female Applicants to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment.

ISSUES

[26] The Applicants raise the following issues:

- a. Whether the RPD erred with respect to its credibility findings;
- b. Whether the RPD ignored or failed to assess properly the documentary evidence related to the political context in Haiti, in particular by assessing the Male Applicant's fears in 2000 in light of documentary evidence from 2008;
- c. Whether the RPD failed to consider duly the Female Applicant's gender-related claim of persecution;
- d. Whether the RPD erred in its assessment of the applicability of section 97 of the *Immigration and Refugee Protection Act*.

STATUTORY PROVISIONS

[27] The following provisions of the Act are applicable in these proceedings:

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality,

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a

their country of former habitual residence, would subject them personally

pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Person in need of protection

Personne à protéger

(2) A person in Canada who is a member of a class of persons

(2) A également qualité de personne à protéger la

prescribed by the regulations as being in need of protection is also a person in need of protection.

personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

[28] The following provisions of the Guidelines Issued by the Chairperson pursuant to Section 65(3) of the *Immigration Act*, Guideline 4: "Women Refugee Claimants Fearing Gender-Related Persecution" are also applicable to these proceedings:

A. DETERMINING THE NATURE AND THE GROUNDS OF THE PERSECUTION

...

I. GENERAL PROPOSITION

Although gender is not specifically enumerated as one of the grounds for establishing Convention refugee status, the definition of Convention refugee may properly be interpreted as providing protection for women who demonstrate a well-founded fear of gender-related persecution by reason of any one, or a combination of, the enumerated grounds.

Before determining the appropriate ground(s) applicable to the claim,

A. DÉTERMINATION DE LA NATURE ET DES MOTIFS DE LA PERSÉCUTION

...

I. PROPOSITION GÉNÉRALE

Même si le sexe n'est pas mentionné de façon explicite comme l'un des motifs permettant d'établir le statut de réfugié au sens de la Convention, la définition de *réfugié au sens de la Convention* peut être interprétée à bon droit de façon à protéger les femmes qui démontrent une crainte justifiée de persécution fondée sur le sexe pour l'un des motifs énumérés ou une combinaison de ceux-ci.

Avant de déterminer le ou les motifs qu'il convient d'appliquer dans un cas donné,

decision-makers must first identify the **nature** of the persecution feared by the claimant.

Generally speaking, women refugee claimants may be put into four broad categories, although these categories are not mutually exclusive or exhaustive:

1. Women who fear persecution on the same Convention grounds, and in similar circumstances, as men. That is, the risk factor is not their sexual status, per se, but rather their particular identity (i.e. racial, national or social) or what they believe in, or are perceived to believe in (i.e. religion or political opinion).

In such claims, the substantive analysis does not vary as a function of the person's gender, although the nature of the harm feared and procedural issues at the hearing may vary as a function of the claimant's gender.

2. Women who fear persecution solely for reasons pertaining to kinship, i.e. because of the status, activities or views of their spouses, parents, and siblings, or other family members . Such cases of "persecution of kin" typically

les décideurs doivent d'abord préciser la **nature** de la persécution que la revendicatrice redoute.

Généralement, les revendicatrices du statut de réfugié peuvent être classées en quatre grandes catégories, bien que ces catégories ne soient pas mutuellement exclusives ou exhaustives:

1. Les femmes qui craignent d'être persécutées pour les mêmes motifs et dans les mêmes circonstances que les hommes. Dans ce cas-ci, le facteur de risque ne réside pas dans leur sexe en tant que tel, mais plutôt dans leur identité particulière (sur les plans racial, national ou social) ou dans leurs croyances, imputées ou véritables (c'est-à-dire leurs croyances religieuses ou leurs opinions politiques).

Dans ces cas, l'analyse essentielle ne varie pas en fonction du sexe de la personne, mais la nature du préjudice redouté et les questions de procédure à l'audience peuvent varier.

2. Les femmes qui craignent d'être persécutées uniquement pour des motifs liés à la parenté, c'est-à-dire en raison du statut, des activités ou des opinions de leurs conjoints, père et mère, et frères et soeurs, ou autres membres de leur famille.

involve violence or other forms of harassment against women, who are not themselves accused of any antagonistic views or political convictions, in order to pressure them into revealing information about the whereabouts or the political activities of their family members. Women may also have political opinions imputed to them based on the activities of members of their family.

3. Women who fear persecution resulting from certain circumstances of severe discrimination on grounds of gender or acts of violence either by public authorities or at the hands of private citizens from whose actions the state is unwilling or unable to adequately protect the concerned persons. In the refugee law context, such discrimination may amount to persecution if it leads to consequences of a substantially prejudicial nature for the claimant and if it is imposed on account of any one, or a combination, of the statutory grounds for persecution. The acts of violence which a woman may fear include violence inflicted in situations of **domestic**

Dans ces cas de « **persécution de la parenté** », les femmes craignent habituellement que l'on commette des actes de violence à leur endroit ou d'autres formes de harcèlement sans qu'elles soient elles-mêmes accusées d'avoir des opinions ou convictions politiques opposées, pour les inciter à révéler des renseignements concernant les allées et venues ou les activités politiques des membres de leur famille. Elles peuvent également se faire attribuer des opinions politiques en raison des activités des membres de leur famille.

3. Les femmes qui craignent d'être persécutées à la suite de certains actes de grave discrimination sexuelle ou d'actes de violence de la part des autorités publiques ou même de citoyens privés, lorsque l'État ne veut pas ou ne peut pas les protéger de façon appropriée. Dans le contexte du droit des réfugiés, cette discrimination peut équivaloir à de la persécution, si elle cause un grave préjudice pour la revendicatrice et qu'elle est imposée en raison de l'un des motifs de persécution énumérés dans la loi ou d'une combinaison de ceux-ci. Les actes de violence qu'une femme peut redouter comprennent les situations de **violence familiale** et de **guerre civile**.

violence and situations of civil war.

4. Women who fear persecution as the consequence of failing to conform to, or for transgressing, certain gender-discriminating religious or customary laws and practices in their country of origin. Such laws and practices, by singling out women and placing them in a more vulnerable position than men, may create conditions for the existence of a **gender-defined social group**. The religious precepts, social traditions or cultural norms which women may be accused of violating can range from choosing their own spouses instead of accepting an arranged marriage, to such matters as the wearing of make-up, the visibility or length of hair, or the type of clothing a woman chooses to wear.

...

D. SPECIAL PROBLEMS AT DETERMINATION HEARINGS

Women refugee claimants face special problems in demonstrating that their claims are credible and trustworthy. Some of the difficulties may arise because

4. Les femmes qui craignent d'être persécutées pour avoir violé certaines coutumes, lois et pratiques religieuses discriminatoires à l'endroit des femmes dans leur pays d'origine. En isolant les femmes et en les plaçant dans une position plus vulnérable que les hommes, ces lois et pratiques peuvent créer des conditions préalables à l'existence d'un **groupe social défini par le sexe**. Les préceptes religieux, traditions sociales ou normes culturelles que les femmes peuvent être accusées de violer sont variés, qu'il s'agisse du choix de leur propre conjoint plutôt que de l'obligation d'accepter un mariage imposé, du maquillage, de la visibilité ou de la longueur des cheveux ou du type de vêtements qu'elles choisissent de porter.

...

D. PROBLÈMES SPÉCIAUX LORS DES AUDIENCES RELATIVES À LA DÉTERMINATION DU STATUT DE RÉFUGIÉ

Les femmes qui revendiquent le statut de réfugié font face à des problèmes particuliers lorsque vient le moment de démontrer que leur

of cross-cultural misunderstandings. For example:

1. Women from societies where the preservation of one's virginity or marital dignity is the cultural norm may be reluctant to disclose their experiences of sexual violence in order to keep their "shame" to themselves and not dishonour their family or community.

2. Women from certain cultures where men do not share the details of their political, military or even social activities with their spouses, daughters or mothers may find themselves in a difficult situation when questioned about the experiences of their male relatives.

Women refugee claimants who have suffered sexual violence may exhibit a pattern of symptoms referred to as Rape Trauma Syndrome, and may require extremely sensitive handling. Similarly, women who have been subjected to domestic violence may exhibit a pattern of symptoms referred to as Battered Woman Syndrome and may also be reluctant to testify. In some

revendication est crédible et digne de foi. Certaines difficultés peuvent survenir à cause des différences culturelles. Ainsi,

1. Les femmes provenant de sociétés où la préservation de la virginité ou la dignité de l'épouse constitue la norme culturelle peuvent être réticentes à parler de la violence sexuelle dont elles ont été victimes afin de garder leur sentiment de « honte » pour elles-mêmes et de ne pas déshonorer leur famille ou leur collectivité.

2. Les femmes provenant de certaines cultures où les hommes ne parlent pas de leurs activités politiques, militaires ou même sociales à leurs épouses, filles ou mères peuvent se trouver dans une situation difficile lorsqu'elles sont interrogées au sujet des expériences de leurs parents de sexe masculin.

Les revendicatrices du statut de réfugié victimes de violence sexuelle peuvent présenter un ensemble de symptômes connus sous le nom de syndrome consécutif au traumatisme provoqué par le viol et peuvent avoir besoin qu'on leur témoigne une attitude extrêmement compréhensive. De façon analogue, les femmes qui ont fait l'objet de violence

cases it will be appropriate to consider whether claimants should be allowed to have the option of providing their testimony outside the hearing room by affidavit or by videotape, or in front of members and refugee claims officers specifically trained in dealing with violence against women. Members should be familiar with the UNHCR Executive Committee *Guidelines on the Protection of Refugee Women*.

familiale peuvent de leur côté présenter un ensemble de symptômes connus sous le nom de syndrome de la femme battue et peuvent hésiter à témoigner. Dans certains cas, il conviendra de se demander si la revendicatrice devrait être autorisée à témoigner à l'extérieur de la salle d'audience par affidavit ou sur vidéo, ou bien devant des commissaires et des agents chargés de la revendication ayant reçu une formation spéciale dans le domaine de la violence faite aux femmes. Les commissaires doivent bien connaître les *Lignes directrices pour la protection des femmes réfugiées* publiées par le comité exécutif du HCR.

STANDARD OF REVIEW

[29] The Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[30] The RPD's decision is based on its assessment of the Applicants' credibility. The determination of credibility is within the expertise of the Board. For this reason, credibility findings attract a standard of reasonableness on review. See *Aguirre v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 571, [2008] F.C.J. No. 732 at paragraph 14.

[31] The Applicants have also brought an issue before the Court concerning the RPD's treatment of the evidence before it. In considering whether the Officer ignored material evidence or incorrectly dismissed the probative value of certain documents, the appropriate standard is one of reasonableness. See *Dunsmuir*, above, at paragraphs 51 and 53.

[32] The Female Applicant alleges that the RPD failed to consider her claim in the context of the Gender Guidelines issued by the Chairperson pursuant to section 65(3) of the Act, concerning *Women Refugee Claimants Fearing Gender-Related Persecution*, dated March 9, 1993 (the Gender Guidelines). In the context of an assessment of credibility, the consideration of the Guidelines "become[s] subsumed in the standard of review of reasonableness as applied to credibility findings." See *Hernandez v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 106, [2009] F.C.J. No. 109 at paragraph 11. As such, this issue will be considered on a standard of reasonableness.

[33] The Board's application of section 97 of the *Immigration and Refugee Protection Act* to the facts will also be considered on a standard of reasonableness. See *Dunsmuir*, above, at paragraph 164.

[34] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with “the existence of justification, transparency and intelligibility within the decision-making process and [also] with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.” See *Dunsmuir*, above, at paragraph 47. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

ARGUMENTS

The Applicants

Credibility Findings Flawed

[35] The Applicants submit that the RPD did not base its credibility findings on relevant considerations. Instead, the RPD was what the Federal Court of Appeal described in *Attakora v. Canada (Minister of Employment and Immigration)* (1989), 99 NR 168, as “over-vigilant in its microscopic examination of the evidence.” The RPD’s concern with whether three, four or five men attacked the Male Applicant and with whether the Male Applicant left for Camp-Perrin a few days or a few weeks after the demonstration on June 20, 2000 is picayune. These events took place nine years before the hearing. What is important is that the Male Applicant’s evidence demonstrated overall consistency.

[36] The Applicants also submit that some of the inconsistencies raised by the RPD could be the result of cultural differences. As Justice Muldoon observed in *Valtchev v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 1131 :

A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu.

For example, it was unreasonable for the RPD to expect that the letter offered by the Male Applicant to prove his membership in MOCHRENHA should have confirmed his mistreatment. That was not the party's official duty in the situation. The letter stated that the Male Applicant was a member of the party. It was unreasonable for the RPD to remain unsatisfied on this point.

[37] Similarly, the RPD should have considered whether cultural differences might explain why the Female Applicant decided to answer her door the night she was attacked in her home. She had explained that the men were insistent. It was unreasonable for the RPD to assume that if she ignored the knocking it would go away.

[38] The Applicants submit that the RPD was unreasonable in impugning the Female Applicant's credibility because she failed to mention in her PIF that her assailants on one occasion asked for her brother by name. The Refugee Protection Division Rules provide claimants an opportunity to amend a PIF (*Ameir v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 876, at paragraphs 21-26), and she had noted in her PIF that additional information might be forthcoming upon further reflection. The PIF is an initial recitation. The RPD was unreasonable in expecting a

full narrative at the outset (*Singh v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 1034 (F.C.)).

RPD Erred in Reviewing the Evidence

[39] The RPD erred in concluding that the home invasion suffered by the Male Applicant was criminally and not politically motivated. The RPD's observation that his girlfriend and cousin were also beaten implied that the Male Applicant was not being targeted.

[40] The events in question took place in 2000, yet the RPD relied on documentary evidence that described conditions in Haiti in 2008. The Board used this evidence to conclude that criminal violence was rampant and that it far outstripped political violence, which was low. This was improper, especially since there was evidence before the RPD that during the 2000 election there was much politically motivated violence.

[41] Finally, the RPD disregarded documentary evidence that the Democratic Convergence was an umbrella organization for opposition groups such as MOCHRENHA. In addition, it erred in finding that the reference in the justice of the peace report to the "Democratic Convergence," rather than "MOCHRENHA," undermined the Male Applicant's credibility.

Gender-Based Persecution Claim Was Not Properly Assessed

[42] The Board erred by not adequately assessing the Female Applicant's claim of gender-based persecution. In *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 (*Ward*), the Supreme Court of Canada confirmed that a board must consider all of the grounds for making a claim for refugee status, even if the grounds are not raised during a hearing by a claimant. As noted by Justice Dawson in *Viafara v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 1914 at paragraph 6:

This flows from the direction at paragraph 67 of the United Nations High Commissioner for Refugees (UNHCR) Handbook on Procedure and Criteria for Determining Refugee Status that it is not the duty of a claimant to identify the reasons for their persecution.

[43] The RPD stated that it had considered the claim in light of the Gender Guidelines, but it did not actually direct its attention to an assessment of the gender-related claim. In *Bastien v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 1218 at paragraphs 8 and 10-13, Justice Mactavish observed:

The fact that the Board did not believe Ms. Bastien's story is not, however, the end of the matter, as Ms. Bastien also claimed to be at risk in Haiti because she was a woman. Moreover, in her Personal Information Form, Ms. Bastien also claimed to be at risk in Haiti because she would be returning from abroad, and would thus be targeted by armed bandits.... The fact that she has been found not to be credible with respect to the facts underlying the portion of her claim based upon the political activities of Ms. Bastien and her partner was irrelevant to this aspect of her claim.

[44] Justice Mactavish noted in *Bastien*, above, that the questions before the Board were whether women in Haiti generally, as well as those returning from abroad, constituted social groups and whether the country conditions indicated that Ms. Bastien would face a personal risk in Haiti.

[45] Exhibits C and D, which were before the RPD, contain ample documentary evidence concerning the situation of women in Haiti, including Amnesty International's recognition of sexual violence against women in 2008. The RPD was adequately equipped to undertake the kind of analysis referred to by Justice Mactavish in *Bastien*, above, and it erred in failing to do so.

Section 97 Analysis Incomplete

[46] This Court has provided recent jurisprudence dealing with the applicability of section 97 to situations of generalized violence. Although the RPD referred to *Prophète*, above, it failed to engage in the analysis of whether or not there was a present or prospective risk for the Female Applicant. The RPD's statement that the risk the claimants face is one that all Haitians face is unsubstantiated.

The Respondent

Credibility Findings Were Reasonable

The Male Applicant

[47] The RPD did not err in finding that the Male Applicant failed to satisfy the burden of proof that he was a member of MOCHRENHA. Given his lack of knowledge concerning the platform and ideology of the party, matters that one would expect to be familiar to someone responsible for training new party members, the RPD reasonably gave little weight to the letter. See *Houssou v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1375 at paragraph 20.

[48] The Male Applicant contradicted his PIF and/or his own testimony on a number of points. First, he progressively inflated the number of men who attacked him on April 15, 2000.

[49] Second, he gave inconsistent answers when asked how much time had passed between the alleged beating on June 20, 2000 and his move to Camp-Perrin. When asked if it was a few days or a few weeks, the Male Applicant said that a few days and a few weeks mean the same thing to him.

[50] Third, the Male Applicant gave inconsistent answers with respect to whether or not he was targeted during the home invasion of August 3, 2000. When asked to explain why, in his initial retelling of the incident at the interview, he did not mention that the men had asked for him by name; rather, he said that he did not know.

[51] These contradictions go to the heart of the claim. It was reasonable for the RPD to find the Male Applicant untrustworthy and not credible.

[52] With respect to the RPD's use of 2008 documentation to deal with events that allegedly occurred in 2000, the Respondent submits that the RPD may have erred. However, there is other evidence to support the RPD's finding that the home invasion was criminally and not politically motivated. Such evidence includes the justice of the peace report indicating that the Male Applicant's house had been vandalized by unidentified armed individuals, as well as the Male Applicant's testimony that there had been numerous shootings in the area that night and that his cousin and girlfriend had also been beaten.

[53] The RPD commented on the Male Applicant's demeanour during his testimony. The Respondents note that the Male Applicant hesitated when describing key aspects of his claim: the home invasion and his membership in MOCHRENHA. The RPD's adverse credibility findings are deserving of significant deference, given its expertise and the advantage it had in witnessing firsthand the Male Applicant's testimony: *Camara v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 362 at paragraph 12; *Aguebor v. Canada (Minister of Employment and Immigration)*, (1993) 160 N.R. 315 (FCA) at paragraph 4.

The Female Applicant

[54] The Respondent submits that the RPD did not err in finding the Female Applicant to be untruthful.

Key Detail Omitted from the PIF

[55] In her testimony at the hearing, the Female Applicant stated that the men who burst into her house on March 9, 2002 had asked for her brother by name. When asked why this detail was not included in her PIF, she explained that she had forgotten to say it. The Respondent notes that the Female Applicant had not seen her brother's PIF before completing her own and that she was represented by counsel. The RPD was reasonable in finding both that the explanation was not credible and that the inconsistency went to the heart of her claim.

Implausibility Finding Reasonable

[56] The RPD did not err in finding implausible the Female Applicant's explanation that her husband opened the door to strangers in the middle of the night, despite the dangerous neighbourhood and the recent gunfire, because the men knocked loudly. The RPD is entitled to make reasonable findings based on implausibility, common sense and rationality: *Aguebor*, above, at paragraph 4; *Shahamati v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. (C.A.) (QL).

Claim Considered in Light of the Gender Guidelines

[57] The RPD explicitly considered the Gender Guidelines, even though the Guidelines did not apply in this case because the Female Applicant's testimony was found not credible. The Guidelines are not intended as a cure for all deficiencies in the Female Applicant's claim. The Respondent relies upon *Semextant v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 29 at paragraph 28, and quotes from *Munoz v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1273 at paragraphs 31 and 33:

31 Second, the RPD was presented with an account that was not credible, in which there was no credible allegation related to the claimant's gender. Moreover, as mentioned above, the RPD stated in clear, explicit and intelligible terms the valid reasons why it doubted the truthfulness of Ms. Munoz's allegations, given her lack of credibility.

[...]

33 The Guidelines are used to ensure that gender-based claims are heard with sensitivity. In this case, the RPD followed the "spirit" of the Guidelines by means of active listening, despite the fact that this particular case does not even lead to the application of the Guidelines primarily because the RPD considered Ms. Munoz and the basis of her evidence to be not credible.

[58] This Court has dismissed judicial review applications from female Haitian applicants where adverse credibility findings were made. See *Newton v. Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15385 (F.C.) at paragraph 18; *Semextant*, above, at paragraphs 24, 29-31; *Mathurin v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 147 at paragraphs 2, 17-18.

Neither Applicant Was a Person in Need of Protection: Risk Was Generalized

[59] The Respondent submits that, as in *Prophète*, above, at paragraphs 4 and 10, the Male and Female Applicants argued that Haitians returning from abroad may be perceived as wealthy and therefore be targeted. In this case, as in *Prophète*, the documentary evidence showed that the risk feared was a generalized risk faced by all Haitians.

Situation of Sexual Violence in Haiti Had Improved

[60] The Respondent submits that, contrary to the Applicants' assertions, only one set of documents entered into evidence made more than a passing reference to sexual violence. Most of the exhibits focused on sexual violence in the context of kidnapping, which was perpetrated against men and women equally. Evidence was submitted to indicate an improved situation: a law had been adopted to make rape a crime, and efforts to strengthen women's rights organizations were being undertaken. The RPD has complete authority to weigh the evidence before it. See *Kamilov v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 638 at paragraph 21.

The Applicants' Reply

[61] The Applicants submit that they are not requesting a Gender Guidelines "cure-all." The RPD's failure duly to analyze the Female Applicant's claim of gender-related persecution as a claim

separate and apart from that of the Male Applicant is warranted by the serious issues raised in their Memorandum.

[62] Contrary to the Respondent's submission, the documentary evidence does make more than "passing reference" to sexual violence against women. The Respondent refers to Exhibit D, located at page 186 of the Applicant's Record, which states: "women who are sexually assaulted receive little or no support in the police stations and have little or no access to legal mechanisms." The improvements cited in the document, upon which the Respondent relies, must be considered in light of this statement.

[63] With respect to gender-related persecution, the Applicant relies on Justice Mactavish's articulation of the "profile of Haitian women" in *Bastien*, above, at paragraphs 11 and 12:

The question for the Board at this juncture in its analysis was not whether her story of past persecution was credible. Rather, the questions that the Board ought to have addressed in relation to this aspect of Ms. Bastien's claim included determining whether there was documentary or other evidence before it as to the generalized persecution of women in Haiti.

[64] The Respondent refers to *Semextant*, above, which can be distinguished on its facts. Justice Shore found at paragraph 19 of *Semextant* that the claimant's failure to claim asylum while living in the U.S. negated her subjective fear of persecution. In the instant case, the matter of when the Female Applicant made her asylum claim was not determinative.

[65] Indeed, all of the cases upon which the Respondent relies are distinguishable on their facts because, in the instant case, the RPD undertook no specific consideration of the gender-related persecution claim.

[66] The RPD erred in failing to consider whether the documentary evidence indicated the availability of state protection for the Female Applicant and in failing to consider the underlying merits of the gender-related claim.

Respondent's Further Memorandum

[67] On conceding at the RPD hearing that the Female Applicant's claim could not succeed independently of her brother's claim, the Applicants essentially conceded that the Female Applicant had no claim of gender-based persecution. It is not now open to the Applicants to argue that the RPD erred in agreeing with their concession.

[68] The Male Applicant's evidence was inconsistent with respect to how many men attacked him on April 15, 2000, when he left his home for Camp-Perrin and whether he was directly targeted by the men who invaded his home on August 3, 2000. Also, he lacked knowledge of the platform of the party to which he claimed to belong. It was open to the RPD to reject as insufficient the Male Applicant's explanations regarding these inconsistencies. See *Sinan v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 87 at paragraph 10. Moreover, it is trite law that matters of weight of evidence afford no ground for judicial review.

[69] The Female Applicant's evidence as to why her husband opened the door to strangers in the early hours of March 9, 2002 was implausible. The RPD is entitled to make findings based on common sense.

[70] The RPD was entitled to draw an adverse inference from the Female Applicant's omission from her PIF that the men who invaded her home on March 9, 2002 specifically asked for the Male Applicant.

[71] In summary, the Applicants have failed to demonstrate that the RPD's credibility findings were unreasonable and that a gender-based analysis was warranted.

ANALYSIS

The Male Applicant's Claim

[72] As regards the Male Applicant's claim, the RPD found that "[a]s a result of the number of inconsistencies, which were brought to the principal claimant's attention at the hearing, the panel finds him not to be credible and trustworthy."

[73] So this aspect of the Decision was based upon credibility; what counted against the Male Applicant was the cumulative weight of the "inconsistencies" found by the RPD.

[74] When each of the inconsistency findings is examined in turn, we find the following:

- a. There was an inconsistency about the number of men who attacked him in the street in 2000. At the hearing he said that the first man to approach him returned with four other men for a total of five. In his PIF he had said it was four, and in the POE he had said three;
- b. He first of all said that he left Port-au-Prince for Camp-Perrin a few days after the June 20, 2000 protest, but then he later said it was a few weeks;
- c. He testified that the reason the men broke into his house on August 3, 2000 was because they were looking for MOCHRENHA members and saw him and that the reason the men recognized him was that he used to be on the street all the time and on television. According to his PIF, however, it was three members of the *Chimères* who forced their way into the house and asked his cousin “where is Evens?”

[75] The RPD found that men may have entered his house but that this was a result of criminal activity because:

- a. There was a lot of shooting in the area that night;
- b. The documentary evidence establishes that the levels of politically motivated violence remain low in Haiti, and that “criminal violence exceeds by far political violence and crime remains rampant in Haiti;
- c. The report made by the justice of the peace said that the house was the object of “vandalism” committed by “non-identified armed individuals.”

[76] The Respondent concedes that, at this point, the RPD has made an error. In arriving at its conclusions on the levels of violence and the nature of that violence, the RPD relies upon 2008 documentation. The problem with this is that the attack took place in 2000. There was evidence to show that during the election campaign of 2000 there was significant politically motivated violence.

[77] The Respondent says this error does not matter and that “[e]ven if the RPD erred by referring to recent country evidence, the finding is reasonable since it is supported by the other evidence.”

[78] The problem with this suggestion is that the RPD makes it very clear in its Decision that its credibility concerns regarding the Male Applicant are cumulative, so that it is not possible to tell whether the RPD might have come to a different conclusion about the house invasion if it had not made the mistake of relying upon 2008 documentation that does not address the kind of violence that was taking place in 2000.

[79] Other “inconsistencies” referred to by the RPD – the letter from MOCHRENHA establishing his membership does not mention the problems he experienced, and his inability to provide much information about MOCHRENHA’s platform, ideology, mandate or objectives – are also considered together with the 2008 documentation.

[80] The RPD also refers to the mention in the Justice of Peace report of the “Democratic Convergence” instead of “MOCHRENHA.” The Applicant explained that MOCHRENHA was a part of the Democratic Convergence and this was supported by the documentary evidence.

[81] What we are left with is an obvious material mistake by the RPD – repeated use of 2008 documentation to refute what the Male Applicant says occurred in 2000 – and other “inconsistencies,” some of which, on their own, are not particularly compelling as grounds for an adverse credibility finding. For example, I do not see why the documentary evidence connecting the MOCHRENHA and the Democratic Convergence was not mentioned and addressed as an answer to that “inconsistency.”

[82] In the end, the mistake about documentation appears highly material. The RPD relies upon the 2008 documents for both the nature of the house invasion and the failure of the MOCHRENHA letter attesting to the Male Applicant’s membership to mention the problems he had experienced and why he had left Haïti. I have to agree with the Male Applicant on this point because the RPD is relying on the MOCHRENHA letter for what it does not say rather than for what it does. See *Bagri v. Canada (Minister of Citizenship and Immigration)*, (1999) 168 F.T.R. 283, [1999] F.C.J. No. 784 (QL), at paragraph 11, Justice Campbell of this Court stated:

In the present case, in effect, the CRDD apparently found the medical report submitted by the Applicant to be contradictory of the applicant's evidence, not for what it said, but for what it did not say. To follow established authority, the medical report must be considered for what it did say. On its face it supports the Applicant's evidence, and does not contradict it.

[83] It is just not possible for the Court to say that the Decision would have been the same had the RPD not relied upon 2008 documentation and had looked at the objective evidence regarding the nature of the violence that took place in 2000 following the election when the Male Applicant says he was attacked. For this reason, then, the Decision concerning the Male Applicant is unreasonable and needs to be reconsidered.

The Female Applicant's Claim

[84] I can find nothing unreasonable about the RPD's credibility findings in relation to the Female Applicant. They fall well within the *Dunsmuir* range, and the Court cannot interfere with this aspect of the Decision. The negative credibility finding is a separate and alternative ground for the Officer's Decision with respect to the Female Applicant. While the Female Applicant disagrees with it and says that the basis for the finding is picayune and unreasonable, I cannot agree. The connection between the home invasion and the Female Applicant's brother, Evens, was central to her claim and yet it was not mentioned in her PIF. In essence, the Female Applicant is asking the Court to re-weigh the evidence on her credibility and provide a result that is favourable to her. The Court cannot do this. Even if the Court might have concluded otherwise, this does not render the RPD's conclusions on this issue unreasonable.

[85] The RPD also refers to the dependence of the Female Applicant's claim upon her brother's claim as a basis for a negative decision. However, this is clearly an alternative finding, and the fact

that the Court finds the Decision unreasonable as regards the Male Applicant's claim does not, *per se*, make the RPD's findings regarding the Female Applicant unreasonable.

[86] As the RPD points out, the Female Applicant, through counsel, advised the RPD that if it found the Male Applicant not to be a Convention Refugee, then the Female Applicant's claim must also fail. The only reasonable interpretation of counsel's words, in my view, is that the Female Applicant based her refugee claim upon that of her brother and not, as in *Bastien*, above, upon her status as a Haitian woman. I do not think the RPD can be faulted for failing to consider a ground it was told was not before it.

[87] The Female Applicant made it clear in her own testimony that she feared to return to Haiti because of her association with her brother and "because they would think that I have money" because "I've been abroad for a long time." She was afraid of being kidnapped upon her return because she would be perceived to have money.

[88] Neither the Female Applicant nor her legal counsel indicated a fear of gender-based violence as an aspect of the Female Applicant's claim. In fact, legal counsel went out of his way to indicate the following:

In terms of the issues and the testimony of the Claimants, I'm going to make it relatively easy for you, because I'm going to acknowledge that if you find that Evens Plaisimond is not a Convention refugee, then the claim of his sister must fail. It is based on that.

[89] It seems to me that this is not entirely accurate because, in her testimony, the Female Applicant said that her fears in Haiti were based upon her ties to her brother (the political aspect) and her fear of being kidnapped upon return because she would be perceived as wealthy. However, there is nothing in her testimony to suggest that she feared and wanted the RPD to consider gender-based violence.

[90] The Applicants have drawn the Court's attention to two cases which establish that the RPD has a duty to consider gender-based violence even if an applicant does not herself articulate such a basis for her claim. See *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 589 at pages 745-46; and *Viafara v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1526 at paragraph 6.

[91] The position of the Female Applicant in the present case, however, is clearly distinguishable from the applicants in those cases. In the present case, the Female Applicant did not mention gender-based violence and provided no evidence to infer that gender-based violence could, for her, be a consideration before the RPD. In fact, the Female Applicant, through her legal counsel, went out of her way to inform the RPD that her claim had an altogether different basis. The reasoning of Justice Gibson in *Walcott v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 505, is equally applicable to the case before me:

22 Counsel for the Applicant referred the Court to *Frejuste v. Canada (Minister of Citizenship and Immigration)* where Justice O'Keefe wrote at paragraph 34 of his reasons:

Given the applicant's framing of the issue in terms of her status as a returnee who happens to be female, rather than as a returnee and also as a woman in Haiti, it is perhaps not surprising that the

Board did not undertake a separate analysis on gender-based grounds. Nonetheless, a separate analysis was warranted. As the documentary evidence reveals, the risk of sexual violence is one widely faced by women in Haiti, irrespective of whether or not they are returnees. ... [emphasis added]

Justice O'Keefe concludes at paragraph 37 of his reasons:

I am of the opinion that the Board erred in failing to include in her reasons a gender-based analysis taking into account the evidence of violence directed at women in Haiti. ...

23 The Tribunal Record here before the Court clearly reflects that a high level of violence is directed at women in Jamaica as well and further, that women are less likely to receive the protection of the law in Jamaica than are men. That being said, as noted by Justice O'Keefe in the first paragraph quoted from his reasons in *Frejuste* above, it is here also not surprising that the RPD did not undertake a separate analysis on gender-based grounds given the way the issues were here framed. Further, the Applicant here did not fear gender-based violence but rather death by reason of what she assumed might be her failure to submit to extortion which arose not out of her gender, but by reason of her successful career.

24 Counsel for the Respondent referred the Court to an exchange between counsel for the Applicant and the presiding member of the RPD during closing argument at the hearing of the Applicant's refugee claim. Counsel acknowledged that the Applicant's claim was as a victim of crime which she urged was personalized rather than generalized but certainly not gender related.

25 In all of the circumstances of this matter I am satisfied that Justice O'Keefe's conclusion in *Frejuste* is entirely distinguishable and that the RPD, against a standard of review of reasonableness, made no reviewable error in its determination that there was no link between the Applicant's claim for protection and a Convention ground or in its failure to place special emphasis on the Applicant's gender in its section 97 analysis.

[92] Unlike the situation in *Bastien*, above, the Female Applicant in the present case did not claim to be at risk because she was a woman. In fact, her counsel specifically advised the RPD that the Female Applicant's claim was so connected with the Male Applicant's political claim that it must fail if the Male Applicant's claim failed. On these facts, I do not think that the RPD can now be faulted for not addressing gender-based persecution. The Female Applicant's concession must surely be taken to mean that, as far as she was concerned, there was no evidence to support a gender based claim in her case. Otherwise, why would she link her claim exclusively to her brother's political claim?

[93] Consequently, I do not believe that the RPD has committed a reviewable error with regards to the Female Applicant's refugee claim.

Section 97 Analysis

[94] As regards section 97 and generalized risk, I cannot say that the Board committed a reviewable error with regard to either Applicant.

[95] Consequently, I think that the Decision must be returned for reconsideration, but only as regards the Male Applicant.

Certification

[96] Counsel for the Applicant has raised two questions for certification in relation to the Female Applicant:

When objective documentary evidence before the Immigration and Refugee Board suggests more than a mere possibility of persecution, what is the extent of the Board's duty to consider grounds for a claim to refugee status not raised by counsel?

When objective documentary evidence before the Immigration and Refugee Board suggests more than a mere possibility of persecution, what is the extent of the Board's duty to ensure the applicant understands all grounds to be considered?

[97] I think that both suggested questions have to be rejected for certification because, on the facts of the present case, they are purely hypothetical. In effect, the Female Applicant conceded and advised the Board that she had no claim of gender-based persecution to advance. This has to be taken as a concession that there was no evidence to support such a claim in her case.

[98] As the Respondent points out, the Federal Court of Appeal in *Canada (Minister of Citizenship and Immigration) v. Sellan*, 2008 FCA 381, held that where there is a general finding that the claimant lacks credibility, that determination is sufficient to dispose of the claim unless there is independent and credible documentary evidence in the record capable of supporting a positive disposition of the claim. I see no serious issue raised by the Applicants' assertion that the Board ought to have included a gender-based analysis simply because country documentation for Haiti discusses the prevalence of gender-related violence. Given *Sellen*, and the Federal Court of Appeal in *Prophète v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 331, which

affirmed that mere reference to general documentary evidence about human rights in a country is insufficient for a positive disposition of the claim, the second question would not be dispositive of the appeal.

[99] Further, as the Respondent also points out, the Applicants' submissions implicitly raise the issue of solicitor incompetence. The submissions refer to "counsel's tactics" which "possibly prejudice the rights of the applicant"; the submissions thus imply that the Board ought to have questioned whether Applicants' counsel, when conceding a point at the refugee hearing, was acting in accordance with his clients' instructions. The Federal Court of Appeal in *Gogol v. Canada* 1999 CanLII 9262 (F.C.A.) has already confirmed that the conduct of counsel should generally not be separated from that of the client. In any event, this was not an issue raised before me in any fulsome way.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. As regards the Male Applicant, the application is allowed and the matter is returned for reconsideration by a differently constituted RPD;
2. As regards the Female Applicant, the application is dismissed;
3. There is no question for certification.

“James Russell”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-3335-09

STYLE OF CAUSE: EVENS PLAISIMOND and ROSE ADELLE
PLAISIMOND

APPLICANTS

- and -

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

RESPONDENT

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 1, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** HON. MR. JUSTICE RUSSELL

DATED: October 6, 2010

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