

CANADA / JUDGMENT

MB9-12500

COURT

Refugee Appeal Division

DECIDED

9 January 2020

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RAD File / Dossier de la SAR : MB9-12500 MB9-12501 / MB9-12502 / MB9-12503 Private Proceeding / Huis clos Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX Personnes en cause Appeal considered / heard at Toronto, ON Appel instruit / entendu à Date of decision January 9, 2020 Date de la décision Panel D. Goff Tribunal Counsel for the persons who are the subject of the appeal Melissa Singer Conseil des personnes en cause Designated representative XXXX XXXX XXXX Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION OVERVIEW

[1] The appellants XXXX XXXX XXXX (the principal appellant, "PA") and her three sons XXXX XXXX XXXX (eleven years old), XXXX XXXX XXXX (eight years old) and XXXX XXXX XXXX (twelve years old) (the minor appellants, "MAs"), citizens of Nigeria, appeal a decision of the Refugee Protection Division (RPD) denying their claim for refugee protection. The appellants ask the Refugee Appeal Division (RAD) to set aside the negative determination of the RPD and either grant their claim for protection or, refer the matter back to the RPD for redetermination before a differently constituted panel. They have submitted new evidence and requested an oral hearing.

DETERMINATION

[2] Pursuant to paragraph 111(1)(a) of the Immigration and Refugee Protection Act (the "Act"), the RAD confirms the decision of the RPD that the appellants are neither Convention refugees nor persons in need of protection. This appeal is dismissed.

BACKGROUND

- [3] In XXXX 2016, the appellants obtained visas to travel to the United States (USA).
- [4] The appellants previously obtained visas to visit family in the United Kingdom (UK), including visas valid in 2013, 2014 and until 2016. They did not seek asylum in the UK.
- [5] In XXXX 2017, the appellants travelled to the USA. The appellants remained in the USA for approximately three (3) months. They did not seek asylum in the USA.

- [6] In XXXX 2018, the appellants entered Canada via an unmarked border crossing in Lacolle, Quebec thereby eluding the official port of entry. Upon questioning, they initiated a claim for protection alleging a fear of persecution by the PA's in-laws, who in 2014 insisted the first-born MA be initiated to the village deity. The PA and her husband are Christian, well-educated, and against the initiation rituals. The PA's husband, "XXXX XXXX XXXX" (and father of the MAs) remains in Nigeria. He consented to the appellants travel to the USA and Canada.
- [7] The appellants' claim was heard on April 25, 2019. In a decision of May 28, 2019, the RPD rejected the appellants' claim.
- [8] The appellants argue the RPD erred in its findings. The RAD is not persuaded the RPD erred. The RPD correctly concluded the appellants failed to establish their claim for protection.

ANALYSIS

The Role of the RAD

- [9] The responsibility rests with the appellants to raise any potential grounds of appeal.¹
- [10] The RAD is to review raised issues with the RPD's findings of law, fact (and mixed fact and law), which raised no issue of credibility of oral evidence, applying the correctness standard.² In assessing the credibility of oral evidence, the RPD may have a meaningful advantage over the RAD, as the RPD directly sees, observes, and questions the witnesses and reviews any originals of the documents etc.
- [11] The role of the RAD is not to undertake a microscopic search for errors. Admissibility of new evidence presented on appeal
- [12] The admissibility of new evidence before the RAD is subject to strict criteria.³ Further, the burden of proof for admitting new evidence lies with the appellants. Subsection 110(4) of the Act provides that the appellants may present only evidence that arose after the rejection of their claims or that was not reasonably available, or that they could not reasonably have been expected in the circumstances to have presented, at the time of the rejection of their claims.
- [13] The appellants seek to submit the following: an affidavit from "XXXX XXXX XXXX" dated XXXX XXXX, 2019, indicating some unknown person tried to drag the PA from a car on XXXX XXXX, 2016; an affidavit from the PA dated June 6, 2019, alleging she was attacked by her father-in-law in 2014 and 2016, as well as by some unknown individuals in 2014 and 2016; and, an undated photograph of the PA. The appellants submit the documents were not reasonably available prior to the rejection of their claim, and that they could not reasonably have been expected in the circumstances to have presented them to the RPD because the PA's husband told her to be "silent" during the RPD hearing so as not to denigrate the father-in-law.

- [14] Having carefully reviewed the proposed documents and the appellants' submissions, the RAD finds the appellants have failed to meet their burden for admitting new evidence in compliance with the statutory requirements of the Act, as well as the Raza4 factors. The appellants were represented by counsel in the preparation of their documents and at their hearing held on April 25, 2019. The PA is also fluent in English and well-educated. The alleged incidents described in the proposed documents occurred in 2014 and 2016. The appellants' Basis of Claim (BOC) forms were submitted in March 2018. The appellants' amended narrative to their Basis of Claim forms were submitted in April 2019. Moreover, the alleged agent of persecution (the father-in-law) was already identified as the agent of persecution at the outset of their claim in their BOCs. There is furthermore no indication that the appellants (nor their counsel) sought to provide any additional documents to the RPD, including after their hearing when the alleged threats and attacks by the father-in-law were canvassed by the RPD and counsel. Finally, the panel notes the RPD decision was rendered a full month after the hearing on May 28, 2019.
- [15] The Courts have been clear that the role of the RAD is not to complete a deficient record before the RPD. The panel therefore finds the appellants have failed to meet their burden to explain why they could not reasonably have been expected in the circumstances to have presented the proposed evidence at the time of the rejection of their claim. The RAD does not have discretion to admit evidence that does not meet the statutory requirements. As no new evidence has been admitted, the request for an oral hearing is dismissed. Did the RPD Err in its Findings?
- [16] The onus is also on the appellants to demonstrate how the RPD erred. The appellants have failed to do so. Instead, the appellants have provided brief submissions on alternative interpretations of the evidence. They are thus essentially asking the RAD to reweigh the evidence in their favour without demonstrating how the RPD erred. This is not the role of the RAD.
- [17] Having nevertheless independently reviewed the evidence, the RAD has addressed the appellants' main arguments as follows. Merits of the Claim
- [18] The onus is on refugee claimants/appellants to establish their claim for protection. The RPD determined the appellants failed to meet their burden to do so.
- [19] The appellants argue the RPD committed "an [sic] patent error in its failure to properly examine the totality of evidence" and "failing to examine the case from a Nigeria perspective".
- [20] Having independently reviewed the evidence, the RAD does not agree with the appellants' arguments. It is trite to note the RPD is presumed to have considered all of the evidence before it in assessing the appellants' claim. There is no evidence to the contrary. Furthermore, the RAD has reached the same conclusion as the RPD. In this regard, the panel does not agree with the appellants' argument that the RPD found their testimony and allegations to be credible. For example, the RAD agrees with the RPD's finding that the

appellants' allegation that the MAs' future male children, if they have any, would be forcibly initiated to be speculative, only. Similarly, the RAD finds the PA's testimony that she believed two other boys died after refusing initiation by the village deity to also be speculative, as no corroborating evidence was provided, particularly to corroborate the deaths, and that the father-in-law and "village men" were responsible.

- [21] The RAD accordingly agrees with the RPD's conclusion that the appellants failed to provide sufficient trustworthy and credible evidence to establish their allegations, including that their first-born son would be forcibly initiated by the in-law's "village deity" and that they would suffer persecution for refusing to do so. In this regard, the panel notes the PA and her husband married and resided in Abuja with their children. Abuja is a large, urban city with a population of over 3 million. It is also the capital city of the country. The PA and her husband are Christian and well-educated, with the PA having completed a Bachelor of XXXX XXXX from the University of XXXX. Her husband has completed a Master's degree. Both parents remain strongly opposed to any initiation rituals by the "village deity".
- [22] In conducting its own assessment of the evidence, the panel also carefully assessed the appellants' documents. For example, the panel notes that despite submitting several photographs of the PA's alleged brother-in-law (a priest in Italy), they failed to provide evidence from him corroborating the alleged forced initiations conducted by his family and/or their village deity. As such, the panel assigns little weight and probative value to the appellants' evidence about the brother-in-law in corroborating the allegations. The panel further notes the appellants failed to provide any objective evidence to corroborate the father-in-law's existence much less that he is "powerful" and has the motivation and means/ability to force initiations upon the first-born MA - whether spiritually or otherwise etc. Finally, the appellants also failed to credibly establish that they have or would suffer banishment or even death for refusing to have the first-born MA undergo rituals. In this regard, the panel notes the alleged threats first arose in XXXX 2014 and again in XXXX 2015.
- [23] Accordingly, having independently assessed the evidence, including having considered the Chairperson's Guideline 3: Child Refugee Claimants,⁵ the RAD finds that the appellants have failed to provide sufficient credible and trustworthy evidence to establish their allegations, including of forced initiation rituals and banishment by the husband's family and/or village deity.
- [24] The RAD therefore finds that there is not a serious possibility the appellants would be persecuted if they were returned to Nigeria pursuant to section 96 of the Act. The panel similarly finds that on a balance of probabilities the appellants would not be personally subjected to a danger of torture, or face a risk to life, or a risk of cruel and unusual treatment or punishment in Nigeria pursuant to section 97 of the Act. DECISION
- [25] Pursuant to paragraph 111(1)(a) of the Act, the RAD confirms the decision of the RPD that the appellants are neither Convention refugees nor persons in need of protection.

[26] The appeal is dismissed. (signed) "D. Goff" D. Goff January 9, 2020 Date 1 Ilias, Mohammed Kamal Deen v. M.C.I. (F.C., no. IMM-5152-17), Bell, June 27, 2018, 2018 FC 661, at para. 39. 2 M.C.I. v. Huruglica, Bujar (F.C.A., no. A-470-14), Gauthier, Webb, Near, March 29, 2016, 2016 FCA 93. 3 M.C.I. v. Singh, Parminder (F.C.A., no. A-512-14), Nadon, Gauthier, de Montigny, March 29, 2016, FCA 96. 4 Raza, Syed Masood v. M.C.I. (F.C.A., no. A-11-07), Linden, Sharlow, Ryer, December 6, 2007, 2007 FCA 385. 5 Chairperson's Guideline 3: Child Refugee Claimants: Procedural and Evidentiary Issues, Guidelines issued by the Chairperson pursuant to section 65(3) of the Immigration Act, IRB, Ottawa, September 30, 1996, as continued in effect by the Chairperson on June 28, 2002 pursuant to section 159(1)(h) of the IRPA.

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