

CANADA / JUDGMENT

TB9-17400

COURT

Refugee Appeal Division

DECIDED

8 January 2020

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RAD File / Dossier de la SAR : TB9-17400

TB9-17401 / TB9-17402 / TB9-17403

TB9-17404

Private Proceeding / Huis clos

Reasons and Decision ? Motifs et Décision

Persons who are the subject of the appeal

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Personnes en cause

Appeal considered / heard at

Calgary, AB

Appel instruit / entendu à

Date of decision

January 8, 2020

Date de la décision

Panel

Rita Aggarwala

Tribunal

Counsel for the persons who are the subject of the appeal

Robert Gertler

Barrister and Solicitor

Conseil des personnes en cause

Designated representative

XXXX XXXX XXXX XXXX XXXXXXXXXX XXXX XXXX XXXX

(a.k.a. XXXX XXXX XXXX)

XXXX XXXX XXXX XXXX

XXXX XXXX XXXX

Représentant(e) désigné(e)

Counsel for the Minister

N/A

Conseil du ministre

REASONS FOR DECISION

BACKGROUND

- [1] The family of Mr. XXXX XXXX XXXX, Mrs. XXXX XXXX XXXX, and their three minor daughters, XXXX XXXX XXXX XXXX, a.k.a. XXXX XXXX XXXX, XXXX XXXX XXXX XXXX and XXXX XXXX XXXX, were denied Convention¹ refugee status by the Refugee Protection Division (RPD), on May 30, 2019. They were also told that they are not persons in need of protection. They are appealing that decision to the Refugee Appeal Division (RAD).
- [2] For the reasons that follow, the appeal is allowed.
- [3] Mr. XXXX is the Principal Appellant. I will refer to all five Appellants collectively as the XXXX Family. I will refer to Mrs. XXXX father's family in Nigeria as the Extended Family. The XXXX Family say they fear the Extended Family, which is headed by two elders and includes the sons and other relatives of those elders. Note my use of the term Extended Family does not include Mrs. XXXX sister, who is sympathetic to the XXXX Family.
- [4] The Minister intervened in this matter at the RPD level, in writing only, by providing immigration documentation and accompanying submissions. The Minister has not intervened in the appeal to the RAD.
- [5] Mr. and Mrs. XXXX say that the XXXX Family is in danger from both a business partner of Mr. XXXX and the Extended Family. They say the business partner has threatened the XXXX Family's life over a debt owed by Mr. XXXX. They say the Extended Family has threatened to kill the twin daughters, XXXX and XXXX, and to force the rest of the XXXX Family to undergo various cleansing rituals. The Extended Family's threats stem from Mr. and Mrs. XXXX refusal to allow their daughters to undergo Female Genital Mutilation (FGM), According to Mr. and Mrs. XXXX, the actual threat has now moved past FGM, to sacrificing the twins and performing cleansing rituals on the others.

- [6] As I will explain, the XXXX Family are Convention refugees based on the risk of persecution from the Extended Family. Therefore, I need not consider the evidence regarding Mr. XXXX business partner, and I have excluded it from the remainder of this decision.
- [7] The main issues in this case relate to the evaluation of the XXXX Family's fear of persecution, and whether any or all of the family can safely relocate within Nigeria to avoid the persecution or harms they fear.

THE RPD DECISION

- [8] The RPD found that the XXXX Family could safely relocate to Ibadan, Abuja or Port Harcourt, and that it would not be unduly harsh for them to do so.
- [9] The RPD found that the Extended Family would not have the ability to locate the XXXX Family if they were to relocate, as the Extended Family are mainly located in XXXX. The presence of one or two family members in large centres such as XXXX, even if they have some political ties, was not sufficient to establish that the XXXX Family could be located in one of the large centres proposed for relocation.
- [10] Because the RPD's focus was on internal relocation, the RPD did not fully explore the merits of the XXXX Family's claims of persecution and harm. I view the evidence regarding the viability of internal relocation differently from the RPD, and I find the RPD erred in finding the XXXX Family could viably relocate in Nigeria. For that reason, I must consider the merits of the claims of fear of persecution for each XXXX Family member.

ARGUMENTS ON APPEAL

- [11] Mr. XXXX, as the Principal Appellant, believes the RPD was wrong to ignore certain documents that he provided, including a psychological report.
- [12] Mr. XXXX believes the RPD was wrong to decide that the family could safely relocate within Nigeria without any undue hardship.
- [13] Mr. XXXX believes the RPD was wrong to consider internal relocation without considering the availability of police protection within the proposed Internal Flight Alternative.
- [14] My analysis will focus on the second of these arguments.

DECISION

- [15] For the reasons that follow, I find that all five members of the XXXX Family are Convention refugees.
- [16] I have made this decision independently, without any deference to the reasons of the RPD. This is because the RPD did not enjoy any special advantage over the RAD in its review of the evidence.

- [17] In arriving at my decision, I have considered and applied the Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution.² The risk faced by the XXXX Family is on account of their refusal to allow the Extended Family to force the minor daughters to undergo FGM, a gender-based harm. I have also considered Chairperson Guidelines 3: Child Refugee Claimants: Procedural and Evidentiary Issues.³

THE FAMILY'S STORY

- [18] I agree with the RPD that all of the XXXX Family members have established that they are Nigerian citizens.
- [19] The XXXX Family's story, told through Mr. and Mrs. XXXX and their supporting documents, is summarized as follows. These are not my findings of facts, rather they are a recap of Mr. and Mrs. XXXX evidence related to their fear of the Extended Family.
- a. In XXXX of 2011, Mr. and Mrs. XXXX allowed their first daughter to undergo FGM at the age of seven months. They allowed the FGM because they were afraid that if they refused, they would be cursed by the Extended Family and die at a young age;
 - b. Their first daughter died five days after the FGM was performed;
 - c. On XXXX XXXX, 2012, Mrs. XXXX gave birth to twin daughters. A few months later, the elders from the Extended Family visited her and informed her that these daughters would have to undergo FGM, but that they would give her some time to heal given the ordeal she went through with her first daughter;
 - d. On XXXX XXXX, 2014, Mrs. XXXX gave birth to another daughter;
 - e. On XXXX XXXX, 2017, the elders visited again and informed Mr. and Mrs. XXXX that they were ready to carry out the FGM. Mr. and Mrs. XXXX refused. The elders informed Mr. and Mrs. XXXX that they should prepare for the consequences of refusal, including insanity, financial ruin and death, and that there was nothing Mr. and Mrs. XXXX could do to stop the elders from carrying out the FGM. Mr. and Mrs. XXXX did not take these threats seriously at the time;
 - f. Nevertheless, on XXXX XXXX, 2017, the XXXX Family moved from their home in XXXX to Mr. XXXX mother's house close by in Ogun state. They say they moved as a safety precaution. Mr. XXXX mother does not insist on FGM for Mr. and Mrs. XXXX daughters;
 - g. Mrs. XXXX resigned from her job at a XXXX in order to home school her daughters and keep them safe. Mr. XXXX continued to commute regularly to his job at XXXX in XXXX;
 - h. Mr. XXXX said at the RPD hearing that Mrs. XXXX and their daughters did not leave the compound where Mr. XXXX mother lived for seven months. However, Mrs. XXXX Basis of Claim (BOC) form indicates that the family "shuffled between our house and my in-law's house," indicating that she and her daughters did leave the compound;

- i. Mr. XXXX said at the RPD that no family members visited them at his mother's house. However, Mrs. XXXX BOC states that in XXXX 2017, Mrs. XXXX sister, who is sympathetic to the XXXX Family's beliefs against FGM, visited Mr. and Mrs. XXXX on behalf of the elders. She told Mr. and Mrs. XXXX that the Extended Family was still waiting to perform the FGM. Mr. and Mrs. XXXX re-stated that they would not allow their daughters to undergo FGM. They still did not take the threats seriously;
- j. On XXXX XXXX, 2017, shortly after Mrs. XXXX sister's visit, a truck hired by a business that Mr. XXXX owned was involved in an accident on the highway, and approximately 30 million naira worth of goods was lost. The truck and the goods it carried were not insured;
- k. Following this accident, Mr. and Mrs. XXXX began to worry that the threats from the elders were real;
- l. Some time in XXXX 2017, Mr. and Mrs. XXXX applied for United States (US) visas. They applied for visas for their daughters in XXXX 2018. Mr. XXXX already had a Canadian visa for studying, which he obtained in XXXX 2017. American visas for everyone in the XXXX Family were obtained by XXXX XXXX, 2018;
- m. In XXXX of 2018, Mr. XXXX applied for a study permit in Canada after being accepted to a program at Centennial College. He was refused the visa;
- n. On XXXX XXXX, 2018, Mrs. XXXX sister phoned Mrs. XXXX to tell her that she had overheard a discussion about a plan by the elders to kidnap the XXXX daughters for FGM;
- o. On XXXX XXXX, 2018, Mr. and Mrs. XXXX reported the planned kidnapping to the police. The police provided them with a copy of the police report and told them to keep an eye on their daughters;
- p. On XXXX XXXX, 2018, the XXXX Family left Nigeria for the US. They landed in the US on XXXX XXXX and left for Canada the following day. They did not apply for refugee status in the US because they believed president Trump's immigration policy would deny them status in the US. They had read about this policy in the days preceding their departure from Nigeria;
- q. In XXXX 2018, the elders visited Mr. XXXX mother's house. They told her they would return when it was time to carry out the FGM, and they threatened to harm the XXXX Family should the parents refuse to provide the children for the procedure;
- r. In XXXX 2018, the elders from the Extended Family consulted an oracle for a divination. Following this consultation, they visited Mrs. XXXX sister to tell her that the oracle had reported that various unfortunate incidents which had happened in the Extended Family were because of Mrs. XXXX and the XXXX Family. The oracle said the XXXX twin daughters must be sacrificed to appease the gods, and that the rest of the XXXX Family must go through cleansing rituals;

- s. At some point before XXXX 2019, Mrs. XXXX uncle lost a son in a car accident; another apparently healthy uncle died; and a cousin died during child birth. The XXXX Family has been blamed by the elders for these misfortunes.

MY VIEW OF THE FAMILY'S STORY

- [20] The evidence regarding the threats from the Extended Family is generally consistent and uncontradicted. There are supporting affidavits from Mrs. XXXX aunt and older sister, and Mr. XXXX mother, that confirm what Mr. and Mrs. XXXX said about the threats made by the Extended Family, and the Extended Family's firmly held beliefs and traditions.
- [21] As indicated in the recitation of the XXXX Family's story above, there are a few inconsistencies and contradictions in the evidence. For example, Mr. and Mrs. XXXX said they were not worried about the threats made by the Extended Family elders in XXXX of 2017. However, they still decided to move to Mr. XXXX mother's house as a safety precaution for their daughters; There was contradictory evidence around whether Mrs. XXXX and her daughters left Mr. XXXX mother's house; There was inconsistent evidence around whether any family members visited the XXXX Family while at Mr. XXXX mother's house.
- [22] I find these contradictions and inconsistencies do not go to the heart of the claim. I find, on a balance of probabilities, based on the evidence, that the Extended Family is extremely traditional and believes FGM is a requirement for girls. I find the Extended Family believe Mr. and Mrs. XXXX refusal to allow the FGM has resulted in deaths in the family, and that they believe the oracle divination that the twins must be sacrificed and others in the XXXX Family must go through cleansing rituals in order for their bad fortunes to abate. I find the Extended Family have threatened to harm Mr. and Mrs. XXXX if they do not present their children, and that they have threatened to take the children without consent and to harm them, if the children are not presented.

Minister's evidence

- [23] The Minister's evidence included evidence that Mr. XXXX had applied for non-immigrant US visas in 2004 and 2009, and those applications had been rejected. The failed applications were not listed in the information Mr. XXXX provided to Canadian officials. The Minister submitted at the RPD (in writing) that these omissions undermine Mr. XXXX credibility.
- [24] The Minister also provided evidence that Mr. XXXX had only applied for one study permit in XXXX 2018, not two, as stated in his BOC. The Minister submitted at the RPD (in writing) that these omissions further undermine Mr. XXXX credibility, and that Mr. XXXX is attempting to circumvent the immigration regulations by making a refugee claim.
- [25] Mr. XXXX explained that he was under a lot of pressure when he was filling out the refugee forms. The rejections had occurred long ago, and he had subsequently been accepted for US visas, so those rejections were not in his contemplation when he was filling out the forms.

- [26] Mr. XXXX also explained that he had made a typographical error in his forms by indicating he had applied for two Canadian study visas in XXXX 2018, when he had only applied for one.
- [27] I accept Mr. XXXX explanation regarding the discrepancies in his reported visa history. Had he disclosed his failed US visa applications from 2004 and 2009, I find his refugee claim would not have been negatively affected. Similarly, had he indicated he had been refused one study permit instead of two, his refugee claim would not have been negatively affected. In my view, these discrepancies do not affect his credibility when it comes to risks he faces in Nigeria.

THE XXXX FAMILY ARE CONVENTION REFUGEES

- [28] In order to establish that they are Convention refugees, each member of the XXXX Family must prove that they have a well-founded fear of persecution, where they face a serious possibility of persecution based on a Convention refugee ground, throughout the entire country. This means they must prove that they have a subjective fear of persecution and that their fear has an objective basis based on what is known about the situation they face and the conditions in Nigeria. They must also demonstrate the state is unwilling or unable to provide them with adequate protection from the persecution they fear.

Ground of persecution

- [29] I agree with the RPD's finding that the entire XXXX Family have a connection or nexus with a Convention ground. Specifically, I find the daughters have a nexus to the ground of membership of a particular social group, namely women: they are at risk of gender-based persecution by the Extended Family. Mr. and Mrs. XXXX have a nexus to the ground of membership of a particular social group, namely the family: they are at risk of persecution by reason of being members of the family of their daughters and they are being threatened directly by the Extended Family for refusing to present the daughters to them.

Agents of persecution

- [30] The agents of harm in this case are the Extended Family.

There is a subjective fear of persecution

- [31] The RPD focused its analysis on internal relocation of the XXXX Family. In doing so, it did not examine the claims of the XXXX Family in respect of their fear of persecution from the Extended Family. In particular, they did not make any negative credibility findings regarding the evidence given by Mr. and Mrs. XXXX relating to the Extended Family.
- [32] As mentioned above, I find Mr. and Mrs. XXXX testimony was consistent and corroborated in regards to the threats faced from the Extended Family.

- [33] Mr. and Mrs. XXXX say that if they return to Nigeria, the Extended Family will kill their twin daughters and force the other three members of the family to undergo cleansing rituals. There is affidavit evidence from Mrs. XXXX sister that the Extended Family has threatened to harm the XXXX Family if they return to Nigeria and continue to resist the FGM.
- [34] The sworn evidence in this case establishes that the Extended Family was extremely insistent upon having FGM performed on the three daughters. Because of their insistence, Mrs. XXXX allowed her first daughter to undergo FGM with fatal consequences. Mrs. XXXX sister also allowed her daughter to undergo FGM following the Extended Family's insistence, and that daughter has had physical problems ever since she underwent the procedure. I find that the Extended Family are very dedicated to their traditions, including the traditions of FGM and oracle divination.
- [35] I find that the Extended Family consulted an oracle in August of 2018. As a result, the Extended Family believes that Mrs. XXXX and the XXXX Family are the cause of a number of misfortunes, including deaths, that have happened following Mr. and Mrs. XXXX refusal to allow FGM to be performed on their daughters. The Extended Family believe that the twin daughters must now be sacrificed and the rest of the family members must undergo cleansing rituals in order to appease the gods. They have threatened to remove the girls without consent if they are not presented, and have threatened to harm the family if the girls are not presented.
- [36] Based on all of this evidence and the direct testimony regarding their fear, I find all of the members of the XXXX Family have a subjective fear of persecution should they return to their home in Nigeria.

There is an objective basis for the fear of persecution

- [37] The National Documentation Package (NDP) for Nigeria includes commentary that parents in Nigeria can generally refuse FGM without severe consequences.⁴ However, each case must be examined individually on its own facts. The evidence in this case establishes that the Extended Family are very insistent on the XXXX Family adhering to their traditions, and they have threatened to forcefully carry through with what they believe must happen to appease the gods. In this case, that includes the killing of the twins and the "cleansing" of the other three family members.
- [38] The precise nature of the cleansing rituals was not explained in detail in testimony. Mrs. XXXX referred to the Extended Family as "fetish." The term "fetish" appears in the NDP only a few times, mainly in conjunction with ritual killings. There is also reference in the NDP to cleansing rituals possibly including FGM for both adults and children.⁵ FGM has already been threatened against all three daughters, and I find the threat of FGM continues for the third (non-twin) daughter. Given the degree to which the Extended Family appears to adhere to tradition; the kidnapping and FGM threats already made by the Extended Family; and the threat made by the Extended Family to harm the XXXX Family if they do not voluntarily

present their daughters, I find there is an objective basis for the XXXX Family's fear of persecution should they return to Nigeria. This is not a case where the parents' refusal of FGM results in little more than social ostracism.⁶

- [39] Based on all of the evidence before me, I find the entire XXXX Family face a serious possibility of harm that rises to the level of persecution from the Extended Family if they were to return to Nigeria.

State protection is inadequate

- [40] To establish an objective basis for the fear of persecution, Mr. and Mrs. XXXX must also prove that state protection is not adequate in Nigeria.
- [41] Mr. and Mrs. XXXX have established that state protection in Nigeria with respect to the Extended Family is not adequate. They reported a kidnapping threat by the Extended Family to police in XXXX 2018. The police did not take any action, such as following up with the Extended Family to assess the threat. The NDP for Nigeria contains several references stating that state protection in Nigeria for issues dealing with traditions and family matters such as FGM and rituals is not adequate.⁷ I accept that the police will not be able or willing to provide adequate protection to the XXXX Family for harms involving the Extended Family.

Internal relocation is not viable and is unduly harsh

- [42] The XXXX Family must also establish that they face a serious possibility of persecution everywhere in Nigeria, not just in their home region, or that it would be an undue hardship for them to internally relocate to a proposed location. In this case, I find the XXXX Family have shown that the Extended Family have the means and motivation to locate them even if they relocate within Nigeria, such that they face a serious possibility of persecution everywhere in Nigeria.
- [43] I find that the Extended Family have a strong motivation to find the XXXX Family if they relocate within Nigeria, given that they believe the XXXX Family are the source of their misfortunes. With respect to the ability or means of the Extended Family to locate the XXXX Family, Mr. XXXX testified that in large centres in Nigeria, there are community meetings, called "gajjun" amongst ethnic and regional groups in which people discuss the whereabouts of family members who have relocated or who are otherwise being sought out. It appears members of the Extended Family would not need to actually attend these meetings, they would just need to put a word out to communities that they are looking for the XXXX Family. Such meetings may be effective in locating families such as the XXXX Family, particularly where the family includes a set of twins, which is relatively uncommon.

- [44] I accept that these types of meetings do happen and may be effective in locating people being sought out in different regions of Nigeria, particularly families with twins. The evidence indicates that the Extended Family has connections throughout Nigeria, including with politicians. I find the Extended Family has enough connections throughout Nigeria that they could bring the XXXX Family to the attention of communities in large cities in Nigeria, putting them at risk of being discovered.
- [45] The RPD did not address Mr. XXXX testimony about these meetings in its reasons. This was an important part of Mr. XXXX testimony, and the RPD erred in not addressing it.
- [46] The ability of social media to assist in tracking down individuals further exacerbates the risk of being located. The RPD found that social media could be managed with privacy settings, or by choosing not to engage with social media. In my view, although privacy settings can be adjusted on social media and one can opt out of social media altogether, this does not prevent others from posting information about the XXXX Family on social media. The XXXX Family cannot control what other people post on social media.
- [47] I find that the Extended Family's particular motivation in this case, coupled with their means and connections, the XXXX Family composition, the presence of community meetings and the availability of social media, are such that the XXXX family faces a serious possibility of persecution from the Extended Family throughout the entire country should they return to Nigeria.
- [48] I realize there is a Jurisprudential Guideline (JG) dealing with internal relocation in Nigeria.⁸ However, that Guideline does not discuss the impact of social media or community meetings on internal relocation. I find that the JG is not helpful in this case.

CONCLUSION

- [49] For the reasons above, I find XXXX XXXX XXXX, XXXX XXXX XXXX, XXXX XXXX XXXX XXXX, a.k.a. XXXX XXXX XXXX, XXXX XXXX XXXX XXXX and XXXX XXXX XXXX are Convention refugees. The appeal is allowed.

(signed)

"Rita Aggarwala"

Rita Aggarwala

January 8, 2020

Date

1 1951 Convention Relating to the Status of Refugees: Office of the United Nations High Commissioner for Refugees, "Handbook on Procedures and Criteria for Determining Refugee Status", under the 1951 Convention.

2 Immigration and Refugee Board of Canada, Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act: Guideline 4 - Women Refugee Claimants Fearing Gender-Related Persecution, Effective date: 13 November 1996.

3 Child Refugee Claimants: Procedural and Evidentiary Issues, Guidelines issued by the Chairperson pursuant to Section 65(3) of the Immigration Act, September 30, 1996.

4 National Documentation Package (NDP) for Nigeria (November 29, 2019), Item 5.12.

5 NDP for Nigeria (November 29, 2019), Item 5.13.

6 NDP for Nigeria (November 29, 2019), Item 5.12.

7 See, for example, NDP for Nigeria (November 29, 2019), Item 5.16 and Item 10.8.

8 X (Re), 2017 CanLII 144407 (CA IRB).

RAD File / Dossier de la SAR : TB9-17400

TB9-17401 / TB9-17402 / TB9-17403

TB9-17404

RAD.25.02 (April 04, 2019)

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Immigration and Refugee

Board of Canada

Refugee Appeal Division

Commission de l'immigration

et du statut de réfugié du Canada

Section d'appel des réfugiés

RAD.25.02 (April 04, 2019)

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