

CANADA / JUDGMENT

TC0-05903

COURT

Refugee Appeal Division

DECIDED

25 March 2021

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RAD File / Dossier de la SAR : TC0-05903 Private Proceeding / Huis clos Reasons and decision ?
Motifs et décision Person who is the subject of the appeal XXXX XXXX Personne en cause Appeal
considered / heard at Toronto, ON Appel instruit / entendu à Date of decision March 25, 2021 Date
de la décision Panel Nadra Qadeer Tribunal Counsel for the person who is the subject of the
appeal Aadil Mangalji Conseil de la personne en cause Designated representative N/A
Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR
DECISION Overview and decision

- [1] The following reasons explain why I am dismissing the appeal of XXXX XXXX, the Appellant. She is a citizen of Uganda and she appeals the decision of the Refugee Protection Division (RPD) denying her claim for refugee protection. She asks the Refugee Appeal Division (RAD) to allow her appeal and either accept her claim or remit it back to the RPD for redetermination.
- [2] I find the RPD was correct in finding that the Appellant is not a Convention refugee or person in need of protection.

Background

- [3] The Appellant alleges that she fears her uncle and his family who reside in the United States (US), as well as her family in Uganda. After she completed university in Uganda, the Appellant travelled to the US in XXXX 2016 to visit her uncle and family. Once she arrived, she was told she had to pay for her past education, her travel, and was expected to send money back to Uganda to her mother. She alleges that while in the US her extended family forced her to do babysitting and proposed she enter a marriage of convenience, which did not materialize.
- [4] She further alleges that this family sent her to Canada to make a false refugee claim to gain immigration status in Canada and continue to repay the money she owed. She fears that if she were to return to Uganda her family there will harm her for not obtaining refugee status, pursuing a false refugee story, and failing to provide financial support.

- [5] The Appellant left the US in 2018 and made an inland claim for refugee protection in Canada in May 2018. The Appellant's claim was heard by the RPD over two sittings, May 8 and October 2, 2019.
- [6] The RPD rejected the claim in a written decision on February 5, 2020, finding that the Appellant did not establish a forward-looking risk. Appellants Arguments on Appeal
- [7] The Appellant submits that the RPD erred in its analysis in the following ways: * The RPD failed to consider all the evidence, including oral testimony and her Basis of Claim (BOC) narrative and addendum; * The RPD failed to apply the presumption of truth in considering her evidence; * The RPD erred in its analysis of the Appellant's social media presence ignoring contradictory evidence; * The RPD failed to apply the Gender Guidelines¹, specifically failing to consider the social, cultural and economic context of the Appellant.
- [8] The Appellant also made submissions on state protection and Internal Flight Alternative (IFA). New evidence is not admissible
- [9] The Appellant submits two different kinds of evidence in support of her appeal:
- a) A set of documents from the National Documentation Package (NDP) for Uganda dated 28 June 2019². The Appellant submits that this NDP was not available at the initial RPD hearing, but was available at the second RPD hearing. The Appellant argues that the new NDP was not added to the record during the RPD resumption.
 - b) The second set of documents relate to the Appellant's registration email from LinkedIn social media, as well as excerpts from various public websites providing statistical information on the number of LinkedIn users in various countries and regions around the world. The Appellant submits that this evidence is in response to an issue raised in the second RPD hearing (held in October 2019) related to the Appellant's use of the website for her job search in Canada and whether it contradicts her subjective fear.³ The Appellant submits that the new evidence meets the legislative and jurisprudential tests for admissibility.
- [10] The Immigration and Refugee Protection Act (IRPA) limits the ability of Appellants to present new evidence on appeal to the Refugee Appeal Division (RAD). Subsection 110(4) of the IRPA states that, on appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the claim's rejection. If the new evidence meets one of the requirements of subsection 110(4) of the IRPA, the RAD must then consider factors around the credibility, relevance, and newness of the evidence.⁴
- [11] It has been held that a RAD appeal is not a second chance to submit evidence to answer weaknesses identified by the RPD and supplement a deficient record. Refugee claimants are expected to put their best foot forward at the RPD stage.⁵

- [12] With respect to this new evidence, I find it is already part of the record and available for my consideration.
- [13] The NDP excerpts relate to an NDP that the Appellant argues did not form part of the RPD record when they reconvened for a second sitting. The Immigration and Refugee Board Policy on National Documentation Packages in Refugee Determination Proceedings instructs that the RPD and RAD will consider the most recent NDP(s) in support of assessing forward-looking risk.⁶ This was also articulated in the case of Oymali, in which it was held that the latest NDP should be considered in assessing risks.⁷
- [14] I will consider the most recent NDP for Uganda in analyzing this appeal.
- [15] The second set of new evidence pertains to issues that were live in the RPD hearings. I have reviewed the RPD record and hearings and the issue of the Appellant's LinkedIn profile and social media presence was discussed at both sittings. This evidence was reasonably expected and available prior to the RPD rendering its decision in the four months between the last RPD sitting and the RPD decision. For these reasons, the new evidence is not admissible.
PRELIMINARY MATTERS No new evidence and no oral hearing
- [16] The Appellant has not adduced admissible new evidence in support of this appeal. As no new evidence was admitted, no oral hearing is permitted. The role of the RAD
- [17] I have reviewed the entirety of the written record and have reviewed the RPD hearing. The RPD had no meaningful advantage over me in assessing the credibility of oral testimony. I have undertaken a review of the correctness of the RPD decision throughout. RAD Analysis of the Appeal The RPD erred in its analyses of the Appellant's experience in the USA
- [18] The Appellant submits that the RPD's finding regarding her experience in the USA at the hands of her uncle and aunt ignores her testimony and narrative. I agree. The Appellant stated in her Basis Of Claim (BOC) and testified that her uncle threatened her and she witnessed him assaulting his own children while living with them in Texas. The RPD finding that she was not threatened in the USA is in error, as the RPD failed to consider all of her evidence, including her testimony, on this issue.
- [19] I accept that the Appellant was threatened while residing in Texas. However, I do not find this issue to be central in this appeal. It does not resolve the question of the Appellant's risk, if she were to return to Uganda. As I will go on to explain, while the experiences of the Appellant while residing in Texas are unfortunate, I do not find that they indicate that she would face a serious possibility of persecution in Uganda. No error in the forward-looking risk analysis
- [20] The Appellant submits that the RPD erred in making a credibility finding related to the forward-looking risk and lack of contact from her family.

- [21] The RPD found that the Appellant's explanation for why her family did not make contact with her after she arrived in Canada (because she was given a "grace period" to establish herself), was lacking in credibility. The Appellant argues on appeal that this credibility finding is in error. While I agree that the finding of lack of credibility is an error, the larger, and more central issue, relates to the lack of contact the Appellant has had with her family.
- [22] While I agree with the Appellant that sworn evidence is presumed to be true, in this case the Appellant speculated on why her family has not contacted her since she arrived in Canada in 2018. There is no evidence to establish that she faces a forward-looking risk. She has not had contact with anyone in her family since arriving in Canada in 2018. The Appellant's belief that she would face a serious possibility of persecution by her family in Uganda is not supported by her evidence. When I read the RPD analysis on forward-looking risk, despite the errors I have cited, I agree with the RPD that there is "no evidence that anyone is monitoring " the Appellant in Canada. While the Appellant had argued that forcing her to pursue a false narrative and use the contact who provided her with the false BOC was part of a way to monitor her in Canada, there is simply no evidence that anyone has tried to locate her, contact her, or monitor her since her arrival in Canada.
- [23] While the Appellant submits that there is a cultural context to consider, that she believes that her family expects her to conform to their wishes and the norms within her family, there is nothing to indicate that her failure to do so would lead to a risk of harm to her. The RPD findings on social media
- [24] The Appellant submits that the RPD erred in its analysis of her LinkedIn profile and social media activity.
- [25] I agree with the Appellant that the RPD erred in drawing conclusions about her LinkedIn profile without considering her explanations, I do not find this issue to be determinative. The determinative issue relates to the sufficiency of the evidence to establish a forward-looking risk to the Appellant. Risk in Uganda
- [26] The Appellant was asked by the RPD who she fears. She testified that she fears her sister in Uganda, as well as other members of her family, and her uncle and aunt who live in Texas.
- [27] When asked specifically about her family in Uganda, she testified that she has not had contact with anyone in her family since 2018. While she submitted that they expect her to send money to them, I find that there is no evidence that that expectation has continued. While it was her testimony that a portion of her earnings in Texas were sent to Uganda for her mother, there is no evidence to indicate that there are consequences to her not sending money. She has been in Canada since 2018 and she has not submitted any evidence to corroborate her speculation that the family continues to wait for money or are threatening that she send money. Her evidence indicates that there has been no contact with her family since she arrived in Canada in 2018.

- [28] I have reviewed the Appellant's testimony before the RPD on her fears in Uganda. RPD MEMBER (RPD): So who are you afraid of? Why can't you go back to Uganda? Appellant (A): I'm afraid of XXXX8 because I've always - she's always been like a mother figure to me. RPD: You are afraid of XXXX? A: Yes, because she's actually the head of the family. She has always been the one who makes the decisions. So when she gave me that phone call in 2018, she told me with - it was a very, I can say, threatening voice. She told me, "if you don't do this, you know what will happen to you." That's what she told me. MEMBER: What does she want you to do? CLAIMANT: She wanted me to come, to come to Canada and make the false claim. And we have always been afraid of her in the family because anything that she says is what goes. You can never object her. What she says is right.
- [29] The Appellant submits that her family in Uganda wanted her to pursue a false refugee claim in Canada, and the fact that she did not do so will put her at risk if she were to return. In reviewing the Appellant's evidence of the false claim that was prepared for her⁹, she was in contact with her cousin XXXX XXXX in Texas, who provided her with the email for the contact in Canada and the attached BOC narrative she was supposed to use. This exchange happened in 2018. During the RPD hearing, the Appellant testified that she moved from her uncle's home to this cousin's home in Texas. She continued to babysit, and XXXX would send money to her mother in Uganda on the Appellant's behalf. The Appellant submitted that XXXX also took the same position of her family that she must continue to do as they say and pursue the false claim and send money. However, I find that since the email from XXXX to the Appellant on XXXX XXXX XXXX 2018, there is no evidence that there is continued interest in or pursuit of the Appellant.
- [30] In addition, there is no evidence that the contact in Canada who was contracted to provide the false narrative has attempted to contact or locate the Appellant.
- [31] The Appellant also testified that her uncle in Texas had threatened her that she must continue to send money, or she will be "cast out" or shunned by her family. However, when asked by the RPD if she had had contact with her family, including her uncle and aunt in Texas, she indicated that she had not. She also indicated that she had not sent any money since arriving in Canada. While the Appellant believes that there is a risk to her if she were to return, I do not find that her evidence establishes this belief is accurate, on a balance of probabilities.
- [32] While the Appellant submits that her failure to follow through on the false refugee claim and failure to send funds continues to put her at risk, I find there is insufficient evidence to support this belief.

- [33] The Appellant also submits that she will be harmed by her family based upon her past experiences in Uganda. The Appellant described in her BOC narrative an incident when she was 12 and her father's cousin attempted to touch her, and she pushed him away. As result, she told her mother who told her father, and she was beaten by her father. The Appellant indicated in her testimony before the RPD that her parents are divorced, and she has had no contact with her father since 2006.
- [34] The Appellant recounted other incidents from her childhood in which she was mistreated. While I find these unfortunate, I do not find these incidents support a forward-looking risk. These incidents occurred many years ago when the Appellant was a child. The Appellant is currently 28 years of age. The Appellant has studied at XXXX XXXX, and had the opportunity to travel to the US in 2015 to attend a program at XXXX XXXX in Iowa. I do not find there is sufficient evidence on the record to establish that the Appellant would face a serious possibility of persecution if she were to return to Uganda. Fear of uncle and aunt in Texas
- [35] The Appellant also submitted that she fears her uncle and aunt in Texas. She alleged that they arranged for her to travel to Canada and pursue a false refugee claim. While I accept the Appellant's evidence that she was mistreated while at her uncle's home in Texas, I do not find this relevant to the forward-facing risk in Uganda. There is insufficient evidence that her uncle has directed or leveraged family in Uganda to harm her. In fact, the Appellant testified before the RPD that her family in Uganda were unaware of the mistreatment she faced by her uncle and aunt, as her uncle was the one who spoke to her family in Uganda, assuring them everything was fine. The Appellant's evidence was that her uncle was misleading her family that she was well taken care of while in Texas. Applicability of the Gender Guidelines
- [36] The Appellant submits that the RPD failed to apply the Gender Guidelines by failing to consider the context that the Appellant is in, if she were to return to Uganda. I do not agree. The RPD considered the Appellant's situation and found no forward-looking risk. In my own analysis of the appeal and record I agree. While the Gender Guidelines do apply in this case, the Appellant was a victim of trafficking at the hands of her uncle in Texas, the RPD analyzed the risk to the Appellant in Uganda.
- [37] While the Appellant may believe that that her family may wish to harm her if she were to return to Uganda, there is insufficient evidence to establish that any threats have been made, or even contact has been attempted. In my review of the record the Appellant provided no details of the type of harm she would face if she were to return to Uganda. The only threat was when her half-sister said to her to listen to her uncle. In my view, this is insufficient to establish a forward-facing risk.
- [38] I find in this case that the Gender Guidelines were applied and considered and in my own assessment I have considered the Appellant's context and find there is no forward-looking risk to the Appellant. RPD erred in not considering Program Integrity

- [39] In my review of the record the Appellant alleges that an individual who resided in Canada provided her with a false narrative with the expectation that she would use it as the basis for claiming refugee protection.
- [40] The RPD record includes copies of an email and draft narrative that were allegedly written by that individual, XXXX XXXX10. The content of the email and various prompts for additional information in the draft narrative strongly suggest the author knowingly prepared a false narrative for the Appellant's refugee claim.
- [41] The RPD did not notify the Minister of this evidence under RPD Rule 27, and the RAD Rules lack an analogous provision.
- [42] The panel finds this possible program integrity issue quite concerning, but recognizes it is not material to the appeal. The email and draft narrative have not had any bearing on the RAD's determination of the appeal. Summary
- [43] I find, when I consider the totality of the evidence, that there is no forward-looking risk in this case. The Appellant has not established, on a balance of probabilities, that she will be harmed or sought if she were to return to Uganda. She has been in Canada since 2018 and while she testified that her family wanted her to continue to send money, she has not. There have been no consequences, contact, threats of any kind since the Appellant made her refugee claim. This is despite her contact with her cousin in Texas after she arrived and claimed in 2018. Whether it is her uncle and aunt in Texas or her siblings, parents and extended family in Uganda there is insufficient evidence to indicate that the family will harm her for failing to fulfill their expectations. For these reasons, I dismiss the appeal.

Conclusion

- [44] I find that the Appellant has not established a serious possibility of persecution under section 96, nor has she established, on a balance of probabilities, a risk of harm under subsection 97(1).
- [45] The Appellant is not a Convention refugee, nor a person in need of protection. The appeal is dismissed pursuant to paragraph 111(1)(a) of the IRPA. (signed) Nadra Qadeer Nadra Qadeer March 25, 2021 Date 1 Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act, IRB, Ottawa, November 25, 1996. 2 Exhibit P-2, Appellant's Record. 3 Ibid. 4 Raza, Syed Masood v. M.C.I. (F.C.A., no. A-11-07), Linden, Sharlow, Ryer, December 6, 2007, 2007 FCA 385, cited in Singh, 2016 FCA 96, at para 64. 5 Eshetie v. Canada (Citizenship and Immigration), 2019 FC 1036 (CanLII), at paras 33-34; see also Canada (Citizenship and Immigration) v. Singh, 2016 FCA 96 (CanLII), at para 54. 6 Policy of National Documentation Packages in Refugee Determination Proceedings, June 5, 2019. 7 Oymali, Leyla v. M.C.I. (F.C., no. IMM-1097-17), Locke, October 6, 2017; 2017 FC 889. 8 Exhibit RPD-1, RPD Record, Exhibit 2, Basis of Claim, question 5, indicates XXXX is the half-sister of the Appellant. 9 Exhibit RPD-1, RPD Record, Exhibit 5. 10 Exhibit RPD-1, RPD Record, Exhibit 5.

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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 (January,
2020) Disponible en français

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Prepared on 29 October 2026 · Esheria