

DECIDED
16 January 2020

RAD File / Dossier de la SAR : TB9-21514 TB9-21515 TB9-21516 TB9-21517 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 XXXX XXXX XXXXXXXXXXX
XXXX XXXX XXXX XXXX Personnes en cause Appeal considered / heard at Toronto, ON Appel
instruct / entendu à Date of decision January 16, 2020 Date de la décision Panel Patricia Broad
Tribunal Counsel for the persons who are the subject of the appeal Sunday Adeyemi Barrister and
Solicitor 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] XXXX XXXX XXXX (the Principal Appellant, husband and father), XXXX XXXX XXXX (the Associate Appellant, wife and mother), XXXX XXXX XXXX XXXX XXXX (the Minor Associate Appellant and daughter) and XXXX XXXX XXXX XXXX XXXX (the Minor Associate Appellant and son), citizens of Nigeria, appealed a decision of the Refugee Protection Division (RPD), dated July 15, 2019, rejecting their claims for refugee protection. Having reviewed the entire record, I find that the Appellants are Convention refugees. I do so for the following reasons.
- The Appellants' Narrative
- [2] The Appellant have based their claims on the following.
- [3] The Appellants lived in Lagos. Their daughter, XXXX XXXX, was born on XXXX XXXX, 2015. The Principal Appellant's family, namely, his aunt and uncles, began to demand that the daughter undergo female genital mutilation (FGM). In particular, the Associate Appellant's aunt, a XXXX XXXX XXXX, insisted on it. It was necessary to bring good luck to the family. The Principal Appellant refused. In XXXX 2017, the Principal Appellant and his children were at a party. The aunt and others went to their home and argued with the Associate Appellant about the FGM. They pushed her, and she fell to the floor. A neighbour intervened, and they left. The family went away for the weekend. When they came back, the Associate Appellant had to be hospitalized for high blood pressure.
- [4] The Appellants avoided the family for as much as they could. However, in XXXX 2018, there was a family meeting. Again, they were told that the daughter would have to undergo FGM. The Associate Appellant and the Minor Associate Appellant, XXXX XXXX, received their travel visas in XXXX. They sold some items to acquire the capital to leave. They left on XXXX

XXXX, 2018 for the US. On July 25, 2018, they came to Canada and claimed protection. The RPD held a hearing and denied their claims. The Appellants have appealed to the Refugee Appeal Division (RAD).

- [5] The only evidence submitted by the Appellants upon appeal consists of the transcript of the recording of the hearing. I do not consider this to be new evidence as a recording of the hearing is already on record. In other words, the content of the testimony is already in evidence. Without new evidence, the RAD does not have jurisdiction to hold a hearing.¹ The RAD will not convene a hearing for this matter.

ANALYSIS

Preliminary Matter

- [6] The Appellants have provided documentation about the birth of another child in Canada. They have also indicated that it is not evidence in accordance with Rule 29. It is not placed on record.
- [7] The Appellants also provided a letter dated August 22, 2019 in response to a letter from the Immigration and Refugee Board (IRB). It states that all of the Appellants crossed the U.S. border in Lacolle, Quebec illegally. As such, the Safe Third Country (STC) rule does not apply. I do not find anything on the record to contradict this statement. Further, as it is in response to the IRB's letter, I have considered it. I do not find that the STC rule applies to the Appellants. The RPD's Assessment of the Testimony at the Hearing
- [8] The RPD found that the Appellant's testimony about the agents of persecution was not credible, as he was not forthcoming about saying that some of them were uncles. I do not find that there is an issue with his testimony about the uncles. Taking the transcript from the RPD decision itself, the dialogue shows that the Principal Appellant stated their names, that they were paternal members of the family, and that they were uncles. He also stated that they were part of a large family and that they were brothers of his father. I do not find that this is inconsistent, nor is it evasive or vague. The RPD asked the Principal Appellant why he did not describe them as uncles, but the Principal Appellant provided the names, and which family they were a part of when asked the vague questions such as who else was involved and who they were. I find that the Principal Appellant's answers were reasonable, and there is not a reason to find that it is not credible.
- [9] Further, I find that the answers given by the Principal Appellant were reasonable and consistent throughout the hearing. I do not find that the RPD is in a position where it had an advantage over assessing the Principal Appellant's credibility over the RAD's ability to do so. Its comments were about the content of the evidence and not the demeanor or any matter it could observe and the RAD could not. I do not find that the RPD is owed deference on this issue. I find that the Principal Appellant was a credible witness on issues related to the central aspects of the claim. Delay in Claiming Protection

- [10] I do not find that in this appeal the delay in leaving weighs against the Appellants. I accept that there was a meeting in XXXX 2018 about the FGM. It is consistent with all of the evidence on record, including an affidavit from the Appellant's mother.² There is insufficient evidence to contradict this point. I do not find that the discussion of credit cards in Nigeria is helpful; without sufficient evidence, not speculation, to conclude that it is more likely than not that the Appellants had sufficient credit to leave, it is plausible that they would have to sell items before leaving. The delay was only for several months, and the daughter was not turning three years old until XXXX 2018. I do not find that the delay weighs against their claims.
- [11] Similarly, the Appellants were only in the US for three weeks. The Principal Appellant testified that the price for lawyers was exorbitant. In this case, I find that the relatively short period of time that the Appellants were in the US without claiming does not weigh against their claims. The RPD erred in assessing the documentary evidence
- [12] The RPD found that the psychological evidence of the Principal Appellant and the Associate Appellant was based on their statements, which it found to not be credible. However, while the psychological assessment may not have strong probative value for the narrative of the appeal, it does provide evidence that the Principal Appellant and the Associate Appellant have Major Depressive Disorder, Generalized Anxiety Disorder and Post-Traumatic Stress Syndrome.
- [13] Further, in terms of the affidavits, medical report and the police documentation, it is not enough to say any printer could print them and that there are no security features on them. Effectively, the RPD is not giving any weight to the affidavits, the medical report and the police report because, as there are printers available, the documents could be inauthentic. That there are printers available is not a sufficient reason to find that a document is a forgery. Further, the only flaw mentioned was that they did not have a security feature. The RPD does not define what is meant by a security feature. It does not state where it states in the documentary evidence that these should have a security feature. The affidavits appear to be in the usual format. There is not a flaw identified in the application for a police record and the response. On the face of them, in this case, I have not seen one.
- [14] I am unaware of security features on medical reports. Certainly, the medical report may have limited probative value. It only shows that the Associate Appellant was hospitalized for five days because of high blood pressure;³ this is of limited probative value with regard to the narrative. However, there is insufficient reason to conclude that the Associate Appellant did not spend five days in hospital because of the high blood pressure. There is evidence about the source and the circumstances regarding how they acquired a copy of the medical report. The Appellant provided an e-mail requesting it and the response.⁴ Is the credible evidence sufficient?

- [15] In this appeal, the weight of the evidence leads to the conclusion that the Appellants are Convention refugees. The documentary evidence and the testimony consistently support the Appellants' account of the pressure from the family with regard to FGM. While there are some questions about some aspects of the evidence, there is insufficient evidence to contradict the accounts of pressure from the family. The Basis of Claim, the testimony, and the affidavits all support their facts.
- [16] The objective documentary evidence regarding the threat of FGM in Nigeria is mixed. There is reliable evidence that, in Lagos, parents can refuse, and consequences for the refusal are not persecution. However, the Appellants are Christian and Yoruba,⁵ and there is a significantly high rate of FGM for Christians and the Yoruba.⁶ Further, it tends to occur to the wealthy educated families⁷ such as the Appellants' family. This fits the profile of the Appellants. Further, while its popularity may be declining, it is still in existence. The weight of the evidence shows that it is more likely than not that the Appellants have had issues with forced FGM involving their daughter.
- [17] Already the Associate Appellant was assaulted and faced trauma in the past. The evidence leads to the conclusion that it is more likely than not that all of the Appellants would face consequences for the refusal to force the daughter to undergo FGM.
- [18] I have considered this objective evidence with the consistent credible account that the agent of persecution includes a retired police officer. I find that the evidence supports that the Appellants face a serious possibility of persecution in Nigeria because of their refusal to force their daughter to undergo FGM.
- [19] I do not accept all of the evidence. I do not believe the meetings from the Principal Appellant's mother in XXXX 2018 and XXXX 2019 occurred; it is too fortuitous to be credible. But still, in this case, the evidence that supports the Appellants outweighs the evidence that does not support them. Further, evidence of past persecution is a good indicator of future persecution. There is not sufficient evidence to conclude that the agents of persecution no longer wish to force the daughter to undergo FGM. Is there state protection?
- [20] I do not find that it is likely that state protection is available for the Appellants. The main agent of persecution, the aunt, is a retired police officer. Further, she is a member of a prominent family.
- [21] There is the Violence Against Persons Prohibition (VAPP) in Nigeria. However, it is not enforced in all of the states in Nigeria.⁸ There is also a general lack of enforcement with regard to issues pertaining to violence against women.⁹ The weight of the evidence leads to the conclusion that adequate state protection would not be available for the Appellants. Is there an internal flight alternative (IFA) for the Appellants in Nigeria?
- [22] The RPD considered Abuja, Ibadan, Port Harcourt and Benin City as possible IFAs.

- [23] The test for assessing an IFA is two-pronged and is set out in the Federal Court of Appeal's decision in *Rasaratnam*.¹⁰
- (1) The Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists and/or the claimant would not be personally subject to a risk to life or risk of cruel and unusual treatment or punishment or danger, believed on substantial grounds to exist, of torture in the IFA.
- (2) Moreover, the conditions in the part of the country considered to be an IFA must be such that it would not be unreasonable in all the circumstances, including those particular to the claim, for him to seek refuge there. [*Thirunavukkarasu, Sathiyathan v. M.E.I.* (F.C.A., no. A-81-92), *Heald, Linden, Holland*, November 10, 1993. Reported: *Thirunavukkarasu v. Canada* (Minister of Employment and Immigration), [1994] 1 F.C. 589 (C.A.); (1993), 22 Imm. L.R. (2d) 241 (F.C.A.)]
- [24] Both prongs must be satisfied to find that an appellant has an IFA. Once the issue of IFA has been raised and the potential IFAs have been identified, the burden of proof rests with an appellant to show that he/she does not have an IFA. The finding of an IFA must be based on a distinct evaluation of the region for that purpose. The evaluation must take into account an appellant's personal circumstances. An IFA must be a realistic and attainable option. An appellant cannot be required to encounter great physical danger or undergo undue hardship in traveling there and staying there. Is there a serious possibility of persecution throughout Nigeria?
- [25] I find that the weight of the evidence is that there is a serious possibility of persecution throughout Nigeria. The agent of persecution is police. In other words, the agent of persecution is closely linked to the state.
- [26] In addition, the Principal Appellant is a member of a prominent family. He testified that if he had any connection, such as church or a job hunt, his aunt would find them.¹¹ It would be more difficult for him to not be noticed; further, it is more likely than not that the agents of persecution have significant resources to find them. The weight of the evidence shows a serious possibility of persecution throughout Nigeria. Is it reasonable for the Appellants to relocate in Nigeria?
- [27] Given that there is sufficient evidence that the Appellants face a serious possibility of persecution in all of Nigeria, they do not have to show that it is unreasonable for them to relocate. However, there are still considerations worth noting.
- [28] The Appellants have argued that the RPD erred when it relied excessively on Jurisprudential Guide TB7-19851 (the JG) in considering the possibility of an IFA. It would not be as relevant for Abuja and Benin city. Further, I find that, as the Appellants are a family, it would not be as relevant. The most recent National Documentation Package (NDP) is additional and new evidence that was not available at the time of the JG; this evidence is relevant in the

assessment of the reasonableness of an internal flight alternative. Even with a JG, the RPD still must consider and address the evidence before it.

- [29] There is a combination of factors that weigh against the reasonableness for these Appellants to relocate. These issues include indigeneship, economic issues, and the Associate Appellant's health.
- [30] The Appellants argue that they would face issues with indigeneship. This can play a role in acquiring housing and finding work.¹² It is not disputed that there are steep rents in Nigeria. While the Appellants are educated, the Associate Appellant had to quit work for medical reasons. This would have significant impact on their economic resources and ability to relocate. In addition, in Nigeria, the evidence about accessibility to medical care is mixed.¹³ The Associate Appellant has high blood pressure to the point where she had to be hospitalized for five days. It is less likely that she would be able to acquire the special care she would need for this condition. This, too, weighs against the availability of a viable IFA.
- [31] For these reasons, I do not find that there is an internal flight alternative for these Appellants.

CONCLUSION

- [32] The appeal is allowed. Pursuant to paragraph 111(1)(b) of the Immigration and Refugee Protection Act (IRPA or Act), the RAD sets aside the determination of the RPD and substitutes its own determination that the Appellants are Convention refugees. (signed) "Patricia Broad" Patricia Broad January 16, 2020 Date 1 Subsection 110(6) of the Act. 2 Exhibit RPD-1, RPD Record, at p. 191. 3 Exhibit RPD-1, RPD Record, at p. 197. 4 Exhibit RPD-1, RPD Record, at p. 198. 5 Exhibit RPD-1, RPD Record, at p. 28. 6 Exhibit RPD-1, RPD Record, at pp. 228 and 242. 7 Exhibit RPD-1, RPD Record, at p. 228. 8 Exhibit RPD-1, RPD Record, at p. 243. 9 Exhibit RPD-1, RPD Record, at p. 248. 10 *Rasaratnam, Sivaganthan v. M.E.I.* (F.C.A., no. A-232-91), Mahoney, Stone, Linden, December 5, 1991. Reported: *Rasaratnam v. Canada* (Minister of Employment and Immigration), [1992] 1 F.C. 706 (C.A.). 11 Exhibit P-2, Appellants' Record, at p. 40, taken from the transcript. 12 NDP for Nigeria (November 29, 2019), item 13.1, IRB, Response to Information Request (RIR) NGA106361.E, Nigeria: Role of indigeneship in obtaining employment, housing and social services; how indigeneship is established and identified; ability of non-indigenes to relocate to Abuja, Lagos or Port Harcourt; assistance available to those who relocate, October 30, 2019. 13 NDP for Nigeria (November 29, 2019), item 13.1 (ibid.).

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