

CANADA / JUDGMENT

MB9-20824

COURT

Refugee Appeal Division

DECIDED

2 January 2020

Research copy typeset by Esheria. Not court-issued or certified. A source URL was not supplied in the case record.

RAD File / Dossier de la SAR : MB9-20824 MB9-20825 / MB9-20826 Private Proceeding / Huis clos
Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXX XXXXXXXXXX XXXX XXXX XXXXXXXXXX XXXX XXXX Personnes en cause Appeal considered /
heard at Toronto, ON Appel instruit / entendu à Date of decision January 2, 2020 Date de la
décision Panel Maureen Carter-Whitney Tribunal Counsel for the persons who are the subject of
the appeal Lisa Winter-Card Conseil des personnes en cause Designated representative N/A
Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR
DECISION OVERVIEW

- [1] XXXX XXXX XXXX (Principal Appellant), XXXX XXXX XXXX (Minor Male Appellant), and
XXXX XXXX XXXX (Minor Female Appellant), citizens of Nigeria, appealed a decision of the
Refugee Protection Division (RPD), dated July 26, 2019, rejecting their claims for refugee
protection. The Appellants argue that the RPD erred in assessing their claims, and ask the
Refugee Appeal Division (RAD) to allow their appeal and determine that they are Convention
Refugees.

DETERMINATION

- [2] The RAD dismisses the appeal and confirms the decision of the RPD that the Appellants are
neither Convention refugees nor persons in need of protection, pursuant to section 111(1)(a)
of the Immigration and Refugee Protection Act (IRPA).

BACKGROUND

- [3] The Appellants allege that they fear persecution from the Principal Appellant's husband's
family due to her refusal to have the Minor Female Appellant undergo Female Genital
Mutilation (FGM).¹ The Principal Appellant testified that her elder daughter was born on
XXXX XXXX, 2009 and circumcised 11 days after birth, and that she died almost four years
later on XXXX XXXX, 2013.

- [4] The RPD found that the Appellants failed to demonstrate a serious possibility of persecution or a danger of torture, risk to their lives or risk of cruel and unusual punishment if they were to return to Nigeria. The RPD noted contradictions, significant confusion and major testimony adjustments in the Principal Appellant's allegations and reasons explaining why she fled from Nigeria with her children. The RPD also had credibility concerns relating to the documentary evidence.
- [5] On appeal, the Appellants argue that the RPD erred in: its negative credibility findings on the timing of the Principal Appellant's initial meetings with her husband's family; raising credibility concerns about the existence of her eldest daughter; rejecting the medical report and death certificate; and not giving weight to supporting affidavits.
- [6] The Appellants have not submitted new evidence and, having admitted no evidence, the RAD did not convene an oral hearing.² DETERMINATIVE ISSUE
- [7] The determinative issue is the credibility of the Appellants' evidence. ROLE OF THE RAD
- [8] In determining this appeal, I have considered whether the decision of the RPD is correct on all questions of law, fact or mixed law and fact.³ In doing so, I have carried out my own independent analysis of the evidence before the RPD to determine whether, as the Appellants submit, the RPD erred. In this matter, I am reviewing the RPD's decision on the standard of correctness, as I do not find that the RPD enjoyed any meaningful advantage on a finding of credibility on the oral evidence.

ANALYSIS

- [9] For the reasons that follow, I find that the Appellants' evidence is not credible.
- [10] In my independent assessment of the Principal Appellant's credibility, I have kept in mind that while sworn evidence is presumed to be true unless there is a valid reason to doubt its truthfulness,⁴ this presumption may be rebutted by credibility concerns arising from contradictions, inconsistencies, omissions, and incoherent or vague testimony. The RPD did not err in making negative credibility findings regarding when the Principal Appellant first met her husband's family
- [11] The RPD made negative credibility findings on the Principal Appellant's evidence about when she met her in-laws for the first time, based on her inconsistent testimony. The RPD found the Principal Appellant's explanation to be unreasonable, and noted her inability to establish the sequence of significant events in her testimony. The Appellants submit that the RPD's negative credibility finding is unreasonable because a refugee claim should not be determined on the basis of a memory test.
- [12] The Principal Appellant's testimony about when she first met her husband's family was inconsistent, and changed over the course of the RPD hearing. She provided several different responses and explanations when questioned about this meeting: * The Principal Appellant initially testified that she met her in-laws six months before her XXXX 2010

wedding, and then that she met her husband's family in XXXX or XXXX 2010.⁵ However, she had testified earlier in the hearing that her firstborn daughter had been circumcised by a woman from her husband's family 11 days after the child's birth.⁶ * The RPD member then asked the Principal Appellant how long after the birth it was before she met the important family members, and she responded that it was four months later.⁷ The RPD member noted her evidence had been that she gave birth in XXXX 2009, more than a year before the wedding in XXXX 2010, and asked why she was now saying that she met his family in 2009.⁸ * Later in the hearing, the Principal Appellant testified that her husband's mother and uncle came for the naming ceremony for her firstborn daughter, seven days after the child was born.⁹

- [13] The Principal Appellant was given several opportunities to explain these discrepancies. She testified that the woman who circumcised her daughter was the only member of her husband's family that she met prior to the time before her wedding, when she met the important members of his family.¹⁰ Regarding the time between the June 2009 birth and December 2010 wedding, the Principal Appellant said there was a mistake and counted out the months, repeating her evidence that she met them a few months before the wedding.¹¹ She explained that she was confused about the date, and that she considered her first meeting with the family to be with the majority of the family.¹²
- [14] I do not find the Principal Appellant's explanations to be adequate. It is not credible that she would not consider the family member who circumcised her daughter, which ultimately led to her death, to be important. The RPD member asked when she first met her husband's family, not when she met the important members of the family or the majority of the family. It also is not credible that the Principal Appellant would have so much difficulty recounting when she first met her husband's family, the alleged agents of persecution. I do not find it credible that the Principal Appellant's evidence about this sequence of events in the time between the daughter's birth and circumcision in 2009 and her wedding in 2010 would be so inconsistent and confusing, given the significance of these events. These discrepancies and adjustments to her testimony cast doubt on the evidence concerning her firstborn daughter.
- [15] In assessing the Principal Appellant's evidence, I have considered the Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution¹³ and, in particular, the special problems that women refugee claimants may face in demonstrating that their claims are credible and trustworthy. However, the Principal Appellant is well-educated, having completed a university degree, and she did not provide evidence of any psychological conditions that might have an impact on her testimony.
- [16] The Appellants cite the Federal Court's decision in Sheikh, which held that a refugee claim should not be determined on the basis of a memory test.¹⁴ The Court found that the tribunal was unreasonable in concluding that a claimant was unable to inability to accurately identify one of his political party's slogans, given that he was able to recall four of the five mottoes on a membership card. I find that the RPD's questions concerning the Principal Appellant's evidence were not memory tests in the sense of the questions in Sheikh. The

Principal Appellant was not able to fully answer fundamental questions about the timeframe of events central to the Appellants' claim and her first meeting with her alleged agents of persecution.

- [17] Therefore, I find that the RPD did not err in making negative credibility findings regarding the Principal Appellant's evidence about when she first met her husband's family. The Principal Appellant's evidence on this point was not credible as a result of her inconsistent, confused and evolving testimony. This evidence is central to her claim in that it relates to her relationship with the alleged agents of persecution, her husband's family. I give this evidence little weight. The RPD did not err in making negative credibility findings about the existence of the Principal Appellant's firstborn daughter
- [18] The RPD made a negative credibility finding relating to the existence of the Principal Appellant's firstborn daughter because of information concerning her visa applications to the United States in 2010 and 2012, for which visa notes contained no reference to this child. The Appellants argue that: the visa notes are a brief synopsis drafted by an immigration officer describing why her visa applications were refused and not the actual applications signed by the Principal Appellant; and the failure of the officer to mention the Principal Appellant's first child cannot reasonably detract from her evidence regarding that child.
- [19] Notes made by United States officials, concerning the Appellants' applications for a United States visa from 2010 to 2018, were entered into evidence and put to the Principal Appellant during the RPD hearing.¹⁵ There is no mention of the Principal Appellant's firstborn daughter in the notes relating to her visa applications in 2010 and 2012, all of which were refused. It is significant that the notes of the November 14, 2012 refusal contain no mention of her daughter because they state that the Principal Appellant and her son were refused and that she appeared to be expecting a child. (The Minor Male Appellant was born on XXXX XXXX, 2011 and the Minor Female Appellant was born on XXXX XXXX, 2013.)
- [20] When asked why there was no information about her daughter in the visa notes, the Principal Appellant testified that she couldn't remember what she was asked at the time, and that she would only have answered the questions asked of her.¹⁶
- [21] I find that the Principal Appellant's explanation does not address the negative inference that arises from the 2012 visa notes. While these are the notes of an officer and not a full visa application, they reflect the information the Principal Appellant provided to the official at the time. The notes indicate that the officer was interested in the Principal Appellant's children, including reference to her son and the fact that she appeared to be pregnant. The Principal Appellant testified that she would have answered the questions asked by the visa officer. It is a major omission that these notes do not mention her daughter, when a question was asked that elicited a response from her about her son.

- [22] Therefore, I find that the RPD did not err in making negative credibility findings about the existence of the Principal Appellant's firstborn daughter. I give the visa notes some weight in assessing the credibility of the Principal Appellant's evidence in this regard. The RPD did not err in giving little weight to the death certificate and medical report for the Principal Appellant's firstborn daughter
- [23] The RPD gave little weight to the medical report and death certificate provided by the Principal Appellant in connection with her firstborn daughter's death, finding that her explanations about obtaining these documents were unreasonable and resulted in an adjustment of her testimony. The RPD determined that these documents did not have probative value and were not sufficient to overcome other credibility problems with the Principal Appellant's evidence. The Appellants submit that the RPD had no rational basis for rejecting the medical report and death certificate, arguing that the Principal Appellant's testimony was consistent with her Basis of Claim Narrative, in which she stated that she herself was hospitalized for two weeks after her daughter died and therefore did not know the exact procedures for obtaining a death certificate because her mother and husband took care of it.
- [24] The Appellants produced a medical report about the daughter's death, dated "XXXX XXXX, 2018"; the Principal Appellant testified that she asked her mother to go to the hospital to get the report for her.¹⁷ They also produced a death certificate for the Principal Appellant's firstborn daughter, issued by Nigeria's National Population Commission (NPC). The death certificate records her date of death as "XXXX XXXX 2013" and certifies that the details of death were registered and the certificate issued on "XXXX XXXX 2013", the day after her death in the hospital. The objective country condition evidence for Nigeria includes information on the procedure to obtain a death certificate from the NPC, which indicates that if someone tries to obtain a death certificate from the NPC, they must present a death certificate issued by the hospital where the person died, which is considered to be a legal document. The objective evidence states that it is not common for the NPC to issue death certificates because few people see the need to do so.¹⁸
- [25] The Principal Appellant first testified that she asked her mother to help her get the death certificate and that they went to the local government for it because they did not get it at the hospital. She also testified that she did not receive a medical report from the hospital in 2013 when her daughter died. After the RPD confronted her with the process to obtain a death certificate from the NPC set out in the objective evidence, the Principal Appellant adjusted her testimony. She stated that she was not aware of the process to get the death certificate because she was in grief and shock after the death and was hospitalized for about three weeks, so her mother and husband took care of the process.¹⁹
- [26] I do not find the Principal Appellant's testimony about the death certificate to be credible due to the adjustments she made to her testimony after being confronted with the objective country condition evidence, and because I find, on a balance of probabilities, that the death certificate is fraudulent. The objective evidence further indicates that the Lagos State

government hospital in which a patient has died issues a medical certificate of cause of death,²⁰ and this medical certificate would have been required to obtain a death certificate from the NPC. Therefore, the objective evidence suggests that the NPC would not be in a position to issue a death certificate one day after a death.

- [27] I also find, on a balance of probabilities, that the medical report is fraudulent. The objective evidence states that two copies of the medical certificate of cause of death are produced, one issued to the patient's family and the other retained by the hospital.²¹ This indicates that the Principal Appellant and her family would have received a medical certificate at the time of the daughter's death; also, when the Principal Appellant's mother requested a medical report in 2018, the hospital should have been able to provide a copy of the medical certificate it retained. Furthermore, the information in the 2018 medical report was inconsistent with the Principal Appellant's testimony. While the medical report produced by the Appellants stated that she died a few minutes after being admitted in the emergency unit, the Principal Appellant testified that her daughter was in the hospital for a day before she died. When confronted with this inconsistency, the Principal Appellant testified that it took time before her daughter was transferred to an intensive care unit after being registered in emergency.²² I find that the Principal Appellant's explanation does not address the discrepancy adequately because her evidence that the daughter was transferred to intensive care after being registered in emergency remains inconsistent with the information in the medical report.
- [28] In addition to the objective country condition evidence that deals specifically with death certificates and medical certificates of death, I further note the evidence concerning the overall availability of false documents in Nigeria.²³
- [29] I find that the RPD did not err in giving little weight to the death certificate and medical report for the Principal Appellant's firstborn daughter. I give significant weight to the country condition evidence, which indicates that the death certificate and medical report are more likely fraudulent than not, and so I give these documents little weight. The RPD did not err in giving little weight to the affidavit evidence in support of the claim
- [30] The RPD gives little weight to the affidavits provided in support of the Appellants' claim, finding that they repeat the facts alleged by the Principal Appellant that the RPD found not to be credible. The Appellants submit that it was unreasonable for the RPD to reject the evidence of XXXX XXXX XXXX, contending that his sworn testimony was probative concerning the Principal Appellant being held down by two men while her daughter was with an elderly woman. The Appellants further submit that the RPD used unreasonable credibility findings as an excuse to give little weight to the affidavits, and should have made its determination on all the evidence.

- [31] For the most part, the affidavits provided by the Appellants repeat facts that they have been told by the Principal Appellant. The evidence in the affidavits is not probative to the extent that they merely repeat this information. However, the XXXX affidavit does purport to provide evidence of an eyewitness account of an alleged attack on the Principal Appellant and her daughter.
- [32] Having assessed the affidavit evidence in light of the other significant credibility problems with the Principal Appellant's evidence,²⁴ I find that the RPD did not err in giving little weight to the affidavit evidence in support of the claim. I also have given these affidavits little weight in reaching my conclusion.

CONCLUSION

- [33] I find the Appellants' evidence not to be credible regarding material elements of the Principal Appellant's testimony, including the existence of her firstborn daughter, which is central to the Appellants' allegations. A determination that a claimant lacks credibility is sufficient to dispose of the claim unless there is independent and credible documentary evidence capable of supporting a positive disposition of the claim, and the claimant bears the onus of demonstrating there was such evidence.²⁵ I find that no such evidence has been provided.
- [34] Therefore, I find that the Appellants have not demonstrated, on a balance of probabilities, that they would be exposed to a serious risk of persecution, a risk to their lives, or a risk of cruel and unusual treatment or punishment or a danger of torture if they return to Nigeria.
- [35] The RAD dismisses the appeal and confirms the decision of the RPD that the Appellants are neither Convention refugees nor persons in need of protection, pursuant to section 111(1)(a) of IRPA. (signed) "Maureen Carter-Whitney" Maureen Carter-Whitney January 2, 2020 Date 1 Exhibit RPD-1, RPD Record, Exhibit 2.1, Basis of Claim, pp. 28-43. 2 Subsection 110(6), IRPA, S.C.2001, c.27. 3 Subsections 110-111, IRPA; M.C.I. v. Huruglica, Bujar (F.C.A., no. A-470-14), Gauthier, Webb, Near, March 29, 2016, 2016 FCA 93. 4 Maldonado v. Canada (MEI), [1980] 2 FC 302 (CA) at 305. 5 RPD audio recording of the hearing, May 14, 2019, at 1:09:20 and 1:10:25. 6 RPD audio recording of the hearing, May 14, 2019, at 29:55. 7 RPD audio recording of the hearing, May 14, 2019, at 1:14:38. 8 RPD audio recording of the hearing, May 14, 2019, at 1:15:10. 9 RPD audio recording of the hearing, May 14, 2019, at 1:41:00. 10 RPD audio recording of the hearing, May 14, 2019, at 1:11:45 and 1:13:42. 11 RPD audio recording of the hearing, May 14, 2019, at 1:16:04. 12 RPD audio recording of the hearing, May 14, 2019, at 1:16:04. 13 Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution: Update, Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act, IRB, Ottawa, November 25, 1996, as continued in effect by the Chairperson on June 28, 2002, under the authority found in section 159(1)(h) of the IRPA. 14 Sheikh v. Canada (MCI), 2000 CanLII 15200 (FC), para. 28. 15 Exhibit RPD-2, Supplementary RPD Record, US Visa Application Notes. 16 RPD audio recording of the hearing, May 14, 2019, at 1:35:44. 17 RPD audio recording of the hearing, May 14, 2019, at 38:55. 18 Exhibit RPD-1,

RPD Record, Exhibit 3, National Documentation Package for Nigeria (30 April 2019), item 3.8, pgs. 1-2. 19 RPD audio recording of the hearing, May 14, 2019, at 47:00. 20 Exhibit RPD-1, RPD Record, Exhibit 3, National Documentation Package for Nigeria (30 April 2019), item 3.7, pgs. 1-2. 21 Exhibit RPD-1, RPD Record, Exhibit 3, National Documentation Package for Nigeria (30 April 2019), item 3.7, pg. 2. 22 RPD audio recording of the hearing, May 14, 2019, at 31:30 and 40:20. 23 Exhibit RPD-1, RPD Record, Exhibit 3, National Documentation Package for Nigeria (30 April 2019), item 3.23. 24 *Sheikh v. Canada* (Ministry of Employment and Immigration), 1990 CanLII 8017 (FCA), [1990] 3 F.C. 238 at para. 8 (F.C.A.); *Nijjer v. Canada* (Ministry of Citizenship and Immigration), 2009 FC 1259 (CanLII), [2009] F.C.J. No. 1696 at para. 26; *Asashi v. Canada* (Minister of Citizenship and Immigration), 2005 FC 102 (CanLII), [2005] F.C.J. No. 129 at para. 8. 25 *Canada (Citizenship and Immigration) v. Sellan*, 2008 FCA 381 (CanLII) at para. 3.

RAD File / Dossier de la SAR : MB9-20824 MB9-20825 / MB9-20826 RAD.25.02 (April 04, 2019)
Disponible en français 2 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) Disponible en français

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

CASE PAGE <https://chat.esheria.ai/case-law/canada/Credibilityassessment-refugee-appeal-division-2020--6a40c3af4cf2c72690fb11c4>

A source URL was not supplied in the case record. Consult the court's original record before reliance.

Prepared on 27 October 2026 · Esheria