

CANADA / JUDGMENT

TB9-01404

COURT

Refugee Appeal Division

DECIDED

27 July 2020

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RAD File / Dossier de la SAR : TB9-01404 TB9-01405 Private Proceeding / Huis clos Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXXXXXXXX XXXX XXXX XXXX Personnes en cause Appeal considered / heard at Toronto, ON Appel instruit / entendu à Date of decision July 27, 2020 Date de la décision Panel E. Bobkin Tribunal Counsel for the persons who are the subject of the appeal Pius L. Okoronkwo 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] These are my reasons for dismissing the appeal brought by XXXX XXXX (Principal Appellant) and XXXX XXXX XXXX XXXX (Associate Appellant).
- [2] The Appellants are citizens of Nigeria. They also resided in Togo for many years and initially stated they are permanent residents of XXXX. They allege that they are at risk in Nigeria and XXXX from the XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX because, according to XXXX, the Associate Appellant's brother was a member of the group, and they are looking for him. The Associate Appellant's brother had lived with the Appellants in XXXX XXXX but they allege they had no idea as to his whereabouts when XXXX began contacting them. The Appellants allege that XXXX threatened them over the phone, vandalized and destroyed their XXXX XXXX XXXX and kidnapped and killed two of their children.
- [3] The RPD found that the Appellants are excluded from protection based upon article 1E of the Convention and their status in XXXX. The RPD also found that the Appellants did not have a risk in XXXX (and by extension in Nigeria) because it found the Appellants were not credible. The RPD came to this conclusion based upon a finding that the Appellants submitted fraudulent documents and based on inconsistencies in the evidence. Finally, the RPD found the Appellants' claim had no nexus to the Convention.

- [4] The Appellants allege that the RPD erred. They submit that they are not excluded under article 1E of the Convention, as their status is premised on operating a business, and as they do not have the same rights as nationals of XXXX. Additionally, they allege that they have a risk in XXXX. The Appellants also submit that the RPD erred in concluding that they have no nexus to the Convention and that the RPD's credibility findings are incorrect. Finally, they allege that the RPD erred by failing to conduct a section 97 analysis.
- [5] The Appellants did not submit new evidence. They filed transcripts of the hearing and requested they be admitted as new evidence, but transcripts are dealt with under rule 3(3)(b) of the RAD Rules and are not part of the new evidence scheme. Accordingly, I have considered the transcripts. Further, on June 15, 2020, the Board provided Counsel with a notice related to the COVID-19 pandemic. This notice advised Counsel that they have 30 days from the date that they receive this notice to submit any document or written submission in support of the appeal. Counsel has not submitted any document or written submissions in response to this notice.
- [6] I find that the determinative issue is credibility. The RPD correctly concluded that the Appellants had not credibly established their allegations. DECISION
- [7] I dismiss the appeal. The RPD was correct in finding that the Appellants are neither Convention refugees nor persons in need of protection. ROLE OF THE REFUGEE PROTECTION DIVISION
- [8] My role is to look at all of the evidence and decide if the RPD made the correct decision.¹ There is an exception to this, where the RAD defers to the RPD if the RPD had a meaningful advantage in assessing the credibility of oral evidence. I do not find this case falls into the exception. Therefore, I will be looking at whether the RPD's decision was correct.

ANALYSIS

- [9] The RPD concluded that the Appellants were excluded from protection, based upon article 1E of the refugee Convention but also conducted an inclusion analysis. On the issue of inclusion, the RPD made two findings. The RPD concluded that the Appellants' claim did not have a nexus to the Convention and that the Appellants' allegations lacked credibility.
- [10] After reviewing the record, I find that credibility is determinative. For the reasons that follow, I find that the Appellants have not credibly established their allegations, on a balance of probabilities. Therefore, I will only address the Appellants' allegations as they relate to this issue. Credibility The RPD correctly concluded that the Appellants submitted significant fraudulent documents

- [11] The RPD concluded that the Appellants submitted fraudulent birth certificates, death certificates and police reports, six documents in total. Based upon this, the RPD determined that the Appellants had not established that they had two children who were kidnapped and killed by XXXX XXXX XXXX XXXX. The RPD also determined that the submission of fraudulent documents undermined the Appellants' credibility. I find this conclusion to be correct. I reviewed the original documents, and I concur with the RPD.
- [12] The Appellants argue that the RPD erred. With regard to the birth certificates, the Appellants argue that they are genuine and that there are no good reasons to doubt their validity and that government documents are presumed to be authentic.² I disagree. I had the opportunity to review the original documents and agree with the RPD that there are significant problems with the documents, and the conclusion that they are fraudulent is correct.³ To summarize the problems, the RPD noted are:
- (a) The word Republique is misspelled as "Republique" in the wet seal;
 - (b) The wet seal is not a wet seal but rather a printed image of a stamp; and
 - (c) There are spelling errors, including Naissance being spelled as Naissabce, the word "Sexe" spelled as "Sexs", and the word "Féminin" spelled as "Femmin".⁴
- [13] Reviewing the original documents,⁵ I find all of these concerns to be correct, and I agree that they are significant. This is particularly so when I compare the birth certificates for XXXX XXXX XXXX XXXX XXXX XXXX XXXX.⁶ This birth certificate is also from XXXX, and I note that it has a genuine wet seal, the word Republique is correctly spelled and the words "Sexe" and "Femmin" are also correctly spelled. The document is also on different paper. I note that XXXX birth certificate does have the incorrect spelling of "naissance" (naissabce). However, when I consider all of the errors in the first two birth certificates, particularly the lack of a genuine wet seal and the misspelling of Republique, I find that the RPD was correct to conclude that the birth certificates of XXXX XXXX XXXX were not genuine.
- [14] With regard to the death certificates, the Appellants make the same arguments as above, and they further argue that the RPD improperly concluded that the Appellants said they obtained the documents from the hospital (which would be contrary to objective evidence about how death certificates are obtained).⁷ Again, I disagree.
- [15] Again, I have had the opportunity to review the original documents,⁸ and, again, I agree that there are problems.⁹ I do not necessarily agree that the thickness of the paper is indicative of fraud, but I concur with the RPD that there are other issues including:
- (a) The motto in the coat of arms is largely illegible and misaligned;
 - (b) The name "national births and Deaths Registration Programme" at the top of the document is different from the name at the bottom which is "National Death Registration Program"; and

- (c) The wet seal is underneath the name and signature line, which indicates that it was put on the document prior to printing.
- [16] Additionally, the RPD also found a lack of genuineness due to the fact that the Appellants testified that they received these documents from the hospital which is inconsistent with objective evidence about how death certificates are obtained. As stated above, the Appellants allege this is incorrect and provided a transcript stating that this is not what they said.¹⁰ The Appellants' transcript was not provided by an official transcription service.¹¹ I listened to the audio recording of the hearing, and I find that the Appellants transcription is inaccurate. I find that the Appellants testified that they obtained the death certificates from a hospital, which, as the RPD held, is inconsistent with objective documentation.¹² For these reasons, the RPD correctly concluded that the death certificates were fraudulent, on a balance of probabilities.
- [17] Finally, the RPD also concluded that police documents from Nigeria were fraudulent. The RPD noted that there were anomalies on the face of the documents as well as inconsistencies between the reports and the testimony. The Appellants argue that this is incorrect. They argue that the RPD was microscopic in its assessment of the inconsistencies and that the anomalies on the documents do not demonstrate they are fraudulent, as the RPD did not contrast the documents with examples from the objective documents.¹³ I do not find these arguments persuasive.
- [18] First, I have reviewed the original documents. I concur with the RPD's assessment. The police reports purport to be from the same station and the same police officer; yet, they have different paper types, different stamps, different coats of arms, and, significantly, state different phone numbers for the same station.¹⁴ Moreover, the stamp on the report from January 10, 2017 is, in fact, not a stamp but printed underneath the signature.¹⁵ Beyond this, the signatures do not match. All of these issues undermine the genuineness of the documents. The RPD also noted several inconsistencies between the reports and the testimony. These include the following:
- (a) The 2016 report indicates that the Appellants reported a kidnapping on November 30 when the children were released, but the Basis of Claim (BOC) stated that they reported on November 28, when the kidnapping occurred. The explanation that the Appellants went twice was found to be unreasonable, given that there is no police report for this visit; and
- (b) The 2017 report indicates that the children were kidnapped at 0700 hours on a 24-hour clock, but the Appellants testified that the kidnapping occurred in the evening.
- [19] I agree with the Appellants that the timing of 0700 hours versus 7:00 pm may be microscopic. However, I find that the discrepancy as to when and how many times the Appellants visited the police station in November 28 is significant. Moreover, I find that, even if the 0700 hours discrepancy is microscopic, there are still significant concerns with regard to the police reports such that the RPD was correct to conclude that they are not genuine. The Appellants have not meaningfully challenged the anomalies on the face of the

police reports, and these are significant in and of themselves. Accordingly, I concur with the RPD's conclusion that the police reports are fraudulent, on a balance of probabilities.

- [20] The Appellants argue that the RPD erred in finding the documents fraudulent as the mere fact that fraudulent documents are prevalent in Nigeria is insufficient to conclude that documents are fraudulent.¹⁶ This submission misstates the decision. The RPD did not find the documents fraudulent simply because they were from Nigeria. Rather, the RPD carefully analysed the documents and found that they had serious deficiencies, which led to a conclusion that they were not genuine, on a balance of probabilities. Based on the submission of the fraudulent documents, the RPD found that the Appellants had not established that they had two children who were kidnapped and killed by XXXX and that the Appellants lacked credibility. I find this conclusion to be correct. The import of the fraudulent documents
- [21] The Appellants argue that the RPD erred by failing to observe the Maldonado¹⁷ principle, giving improper weight to the remaining documentary evidence and failing to consider the totality of the evidence.¹⁸ These arguments are not persuasive.
- [22] First, I acknowledge that Maldonado instructs that sworn testimony is presumed to be truthful. However, the entire maxim from Maldonado states that the testimony is presumed true unless there are serious reasons to doubt its truthfulness. In this instance, I find that the submission of six fraudulent documents is a serious reason to doubt the truthfulness of the testimony.
- [23] I similarly find that this is reason to doubt the credibility of the remainder of the documents submitted by the Appellants. However, I note that the RPD did not discount the remaining documents merely because the Appellants had submitted fraudulent documents. The RPD also found inconsistencies in two affidavits and discounted the news articles due to the practice of "brown envelope journalism" whereby individuals can pay for stories to be published in the newspaper.¹⁹
- [24] The Appellants argue this was an error. They argue that the inconsistencies in the affidavits are minor. I disagree. The discrepancies relate to the alleged length of a kidnapping which is central to the story. This is not a peripheral issue. Additionally, the affidavits themselves have concerns. Reviewing the originals, I note that the photographs attached are not stamped, and the photos do not say the affiants' names but rather "mothers side" and "fathers side", and neither is accompanied by identity documents.²⁰ Therefore, I find the RPD was correct to give these documents no weight.
- [25] As for the news reports, the RPD did not simply find they were brown envelope journalism because the Appellants were Nigerian, but rather because the RPD had concluded that the allegations were not credible and because of the use of "brown envelope journalism" is common in Nigeria.²¹ Given that I find the RPD's other conclusions are correct, I also find this conclusion to be correct.

- [26] The RPD also considered the other documents but found them to be insufficient to overcome the credibility concerns. Accordingly, this is not a situation like that of Cepeda-Guiterrez,²² where there is indication that the RPD ignored material documents.
- [27] The Federal Court had held that there are instances where the submission of fraudulent documents can taint the remainder of evidence in a case.²³ Although the RPD gave other reasons to discount the Appellants' documents, I also find this is a case in which the submission of fraudulent documents is sufficient to taint the remaining evidence. The fraudulent documents are central to the core allegations, and they are significant in volume.
- [28] For these reasons, I find the RPD correctly concluded that the Appellants had not credibly established their allegations, on a balance of probabilities. This is determinative, as it establishes that the Appellants have not met their burden of proof that they would face a risk in either Nigeria XXXX XXXX. The non-determinative issues: exclusion, nexus and section 97
- [29] I will not address the Appellants' arguments that the RPD erred in finding they had an excludable status and that they cannot be excluded due to a risk in XXXX. Even if I were to find that the Appellants were not excluded or had a risk in XXXX, the appeal would still fail based on credibility. Therefore, these arguments are not determinative.
- [30] Similarly, I will not address the Appellants' arguments that the RPD erred by finding that their claim had no nexus to the Convention. Even if the Appellants' claim had a nexus, it is not credible, and therefore the appeal would fail. Accordingly, this argument is not determinative
- [31] Finally, I will not address the Appellants' argument that the RPD erred by failing to conduct a section 97 analysis.²⁴ The Appellants argue that the RPD failed to consider section 97 and that the test is "whether there is objective verifiable evidence that demonstrate that the appellants lives will be in danger or risk of harm if sent back to Nigeria XXXX XXXX."²⁵ Given that I agree with the RPD that the Appellants are not credible, there is no such "objective verifiable" evidence. The Appellants argue that credibility is not relevant to the analysis of section 97.
- [32] The cases upon which the Appellants base this argument are distinguishable. It may be, as in the cases raised by the Appellants, that there are cases in which an individual lacks a credible subjective fear, and they may still face a section 97 risk. However, in those cases, there must be some objective profile or credible evidence on which to base the assessment. For example, in the Shah case, the applicant was found to be Pakistani and Ahmadi, but the RPD found he had acted in a way which was not consistent with a fear of persecution, and therefore he was not a Convention refugee.²⁶ In the Ghasemian case, the RPD accepted that the applicant, an Iranian, had been baptized but found that this was not a genuine conversion, and her actions were not consistent with a well-founded fear of persecution.²⁷ In both of those cases, there were accepted facts upon which a section 97 assessment could have been conducted and was not.

- [33] The circumstances here are different. The RPD found, and I also find, that none of the allegations are credible. Therefore, there are no credible allegations upon which to found a section 97 analysis. In the other cases, the Board failed to consider whether an accepted Ahamdi would be at risk in Pakistan, despite acting in a manner that demonstrated a lack of subjective fear, or whether a non-genuine convert could be at risk of punishment for apostasy in Iran.²⁸ The facts are widely divergent from the case at bar.
- [34] In the third case cited by the Appellants, the Federal Court found that the Board had correctly held that there could be no section 97 risk, where no elements of the claim were credible, but there could be instances where a lack of credible subjective fear vitiated a section 96 claim but not a section 97 claim based upon a claimant's particular circumstances.²⁹ The case does not stand for the principle that, where no allegations are accepted, country conditions could make someone a person in need of protection despite a total lack of credibility.
- [35] In this instance, the Appellants lack credibility such that none of their allegations have been established, on a balance of probabilities, and they have no objective profile upon which to examine a section 96 or 97 risk. Similarly, they have not credibly established particular circumstances which need to be evaluated against the test for section 97. They simply lack credibility.

CONCLUSION

- [36] I dismiss the appeal and confirm the decision of the RPD that the Appellants are neither Convention refugees nor persons in need of protection. (signed) Erin Bobkin E. Bobkin July 27, 2020 Date 1 M.C.I. v. Huruglica, Bujar (F.C.A., no. A-470-14), Gauthier, Webb, Near, March 29, 2016, 2016 FCA 93; Rozas Del Solar, Paola v. M.C.I. (F.C., no. IMM-2645-17), Diner, November 14, 2018, 2018 FC 1145. 2 Exhibit P-2, Appellants' Record, at pp. 155-156. 3 Exhibit RPD-1, RPD Record, at pp. 249-250. 4 Exhibit RPD-1, RPD Record, at p. 10, RPD's Reasons and Decision, at para. 24. 5 Exhibit P-4, Response to Member's Direction requesting original documents, March 11, 2020 (received by the Board on March 12, 2020). 6 Exhibit RPD-1, RPD Record, at p. 251. 7 Exhibit P-2, Appellants' Record, at pp. 155-157. 8 Exhibit P-4, Response to Member's Direction requesting original documents, March 11, 2020 (received by the Board on March 12, 2020). 9 Exhibit RPD-1, RPD Record, at pp. 253-254. 10 Exhibit P-2, Appellants' Record, at p. 21. 11 Exhibit P-2, Appellants' Record, at p. 39. 12 Audio recording of the September 24, 2018 RPD Hearing, from 00:25:35 to 00:27:00. 13 Exhibit P-2, Appellants' Record, at pp. 157-158. 14 Exhibit RPD-1, RPD Record, at pp. 257-258. 15 Exhibit RPD-1, RPD Record, at p. 257. 16 Exhibit P-2, Appellants' Record, at p. 158. 17 Maldonado v. M.E.I. (F.C.A., no. A-450-79), Heald, Ryan, MacKay, November 19, 1979; [1980] 2 F.C. 302 (C.A.). 18 Exhibit P-2, Appellants' Record, at pp. 155-162. 19 Exhibit RPD-1, RPD Record, at p. 15, RPD's Reasons and Decision, at para. 40. 20 Exhibit P-2, Appellants' Record, at pp. 261-265. 21 Exhibit RPD-1, RPD Record, at p. 15, RPD's Reasons and Decision, at para. 40. 22 Cepeda-Gutierrez, Carlos Arturo v. M.C.I. (F.C.T.D., no. IMM-596-98), Evans, October 6, 1998; (1999) 1

F.C. 53. 23 Waraich, Fakhera Tanveer v. M.C.I. (F.C., no. IMM-171-10), Shore, December 9, 2010, 2010 FC 1257, at para. 35. 24 Exhibit P-2, Appellants' Record, at p. 162. 25 Exhibit P-2, Appellants' Record, at p. 162. 26 Shah, Mahmood Ali v. M.C.I. (F.C., no. IMM-4425-02), Blanchard, September 30, 2003, 2003 FC 1121. 27 Ghasemian, Marjan v. M.C.I. (F.C., no. IMM-5462-02), Gauthier, October 30, 2003, 2003 FC 1266. 28 Shah, 2003 FC 1121; and *ibid.*, Ghasemian, 2003 FC 1266. 29 Ahmad, Hasib v. M.C.I. (F.C., no. IMM-9188-03), Rouleau, June 4, 2004, 2004 FC 808.

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