

CANADA / JUDGMENT

VB9-05728

COURT

Refugee Appeal Division

DECIDED

4 February 2020

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RAD File / Dossier de la SAR : VB9-05728 VB9-05729 / VB9-05730 Private Proceeding / Huis clos
Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXX XXXXXXXXXa.k.a.XXXX XXXX XXXX XXXX XXXXXXXXXX XXXX XXXX XXXXXXXXXX XXXX
XXXX Personnes en cause Appeal considered / heard at Vancouver, BC Appel instruit / entendu à
Date of decision February 4, 2020 Date de la décision Panel Ron Liberman Tribunal Counsel for
the persons who are the subject of the appeal Claudette Menghile Barrister and Solicitor Conseil
des personnes en cause Designated representative XXXX XXXX XXXX XXXX XXXXXXXXXX XXXX
XXXX Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS
FOR DECISION OVERVIEW

- [1] The Principal Appellant XXXX XXXX XXXX, a.k.a. XXXX XXXX, his spouse XXXX XXXX
XXXX (the Co-Appellant), and their dependent son XXXX XXXX XXXX (Dependent Minor
Son), (collectively the Appellants), appeal a finding of the Refugee Protection Division (RPD)
rejecting their claim on the grounds they do not have a well-founded fear of persecution and
are not persons in need of protection, based on the RPD's credibility findings The Appellants
argue that the RPD erred in its assessment of credibility, failed to consider evidence, and did
not take proper account of the Chairperson's Guideline 9: Proceedings before the
Immigration and Refugee Board of Canada (IRB) Involving Sexual Orientation and Gender
Identity and Expression (SOGIE Guidelines).1
- [2] No new evidence was submitted on appeal, and the Appellants did not request that an oral
hearing be held before the Refugee Appeal Division (RAD).
- [3] In reaching my decision, I have considered and applied the SOGIE Guidelines and the
Chairperson's Guideline 4: Women Refugee Claimant's Fearing Gender-Related Persecution
(Gender Guidelines).2
- [4] After an independent assessment of the evidence before me, I find that the Principal
Appellant and the Co-Appellant, who are both citizens of Nigeria, are Convention3 refugees,
but that the Dependent Minor Son, who is a citizen of the United State of America (USA), is
not a Convention refugee or a person in need of protection.

BACKGROUND

- [5] The Principal Appellant alleges he faces persecution in Nigeria because he is bi-sexual. He alleges that, prior to his marriage to the Co-Appellant, on XXXX XXXX, 2014, he and his male partner were attacked and beaten by a mob, who tied them to poles in a nearby house that was still under construction. His male partner was bleeding profusely from cuts and was therefore taken to the hospital. Following this, the Principal Appellant escaped with the help of some remaining members of the mob, and was returned to his residence which was three houses away. The next day, he moved to his brother's house. The Principal Appellant and the female Co-Appellant were married on XXXX XXXX XXXX 2015. In XXXX 2016, on returning home, he was informed by his wife that a mob and two policemen had come looking for him and wanted him to attend the police station. His wife heard one of the individuals in the mob saying to one of the policemen "he is the one, he is a homosexual, this is where he lives". Fearing for their safety, the Principal Appellant and the Co-Appellant travelled to the USA on XXXX XXXX XXXX 2017. Their Dependent Minor Son was born in the USA on XXXX XXXX XXXX XXXX. On XXXX XXXX XXXX 2017, the family crossed into Canada at Lacolle, Quebec, and made the claim which is the subject of this appeal. RPD decision
- [6] The RPD rejected the Appellants' claims under section 96 and section 97(1) of the Immigration and Refugee Protection Act (IRPA).⁴
- [7] The RPD findings were: * The Principal Appellant is not credible; * The Appellants' delay in departure, reavilment in Nigeria and their failure to claim in the USA are inconsistent with genuine refugees facing a credible threat; * The Principal Appellant was unable to establish that he is bisexual; and, * Overall there was insufficient credible evidence to accept these claims. Appellants' arguments
- [8] Counsel for the Appellants argued: * The RPD's analysis of the Appellants' credibility is flawed; * The RPD engages in a microscopic analysis of the Appellants' testimony; * Credibility is not to be judged on the perceived behaviour of the Appellants at the hearing; * The Principal Appellant provided reasonable explanations for the RPD's credibility concerns; * The Appellants provided reasonable explanations for their delay in leaving Nigeria and failure to claim in the USA, which are not determinative of subjective fear; * The Principal Appellant gave credible testimony regarding his sexual orientation. The presence of his spouse at the hearing inhibited his testimony; * The RPD failed to adequately consider the SOGIE Guidelines; and, * The evidence presented is authentic and corroborates the Principal Appellant's allegations. The RPD ignored the brother's letter. ROLE OF THE RAD
- [9] The RAD reviews decisions of the RPD on a standard of correctness after conducting an independent assessment of the evidence before it.⁵

- [10] The exception to this rule is where the RPD enjoys a meaningful advantage in the assessment and weighing of oral testimony heard, which, in particular cases, may attract deference. Unless specifically stated below, I have applied a correctness standard. ASSESSMENT Identity
- [11] I am satisfied as to the identity of the Appellants, based on the Nigerian passports and USA visas of the Principal Appellant and the Co-Appellant, and the USA birth certificate of the Dependent Minor Son, and by their testimony. Credibility
- [12] I find that the Principal Appellant and the Co-Appellant are credible for the reasons I have set out below, and I accept the Appellants' allegations as true. I find, on a balance of probabilities, that the Principal Appellant is bisexual. Medical Report
- [13] Although this issue was not canvassed by Counsel in submissions at the RPD and has not been raised on appeal, I find that the RPD made a significant error in not referring to or considering the Medical Report which is contained in the RPD Record.⁶ This report is by a Canadian medical practitioner, and states that the Principal Appellant has six burn marks on his back, and two wounds from a cutlass or cutlasses. These wounds are consistent with the account given by the Principal Appellant of having been bound to a pole in a building under construction and attacked with a hot iron and cutlasses. The Medical Report is from an independent medical expert and there is no indication that it is not genuine. I give this document significant weight.
- [14] On the next few pages of the Record, there are photographs, apparently showing the Principal Appellant. I am unable to see these photographs with any clarity; in any case, they would have no relevance to this matter, except as interpreted by a medical expert, which it appears has been done in the Medical Report. Credibility issues identified by the RPD
- [15] The RPD found the Principal Appellant was not credible, and identified eight separate credibility issues in support of this credibility finding. I have studied the Appellants' submissions in their Memorandum that argue the RPD erred in respect to these credibility findings. I have examined each of the eight credibility issues identified by the RPD and I find the RPD erred in finding the Principal Appellant was not credible. Instead, I find that a satisfactory explanation has been offered by the Appellants for each of the eight credibility issues for the reasons explained below. I find the Principal Appellant is credible.
- [16] The RPD stated that the Principal Appellant's testimony appeared to be inauthentic and rehearsed because he spoke quickly when recounting facts given in his Basis of Claim (BOC) form using many of the same words without adding natural details, whereas when answering questions not in the BOC he paused and stammered. I have listened to the audio recording and disagree with the RPD's overall assessment of the Principal Appellant's comportment. I agree that the testimony of the Principal Appellant closely followed that in his BOC, but in that respect his testimony was consistent with the events outlined in his BOC. I also agree with the RPD that he used words which also appear in his BOC such as "jungle justice" and "Samaritans",⁷ however the fact that he used the same words does not

conclusively demonstrate that the testimony was rehearsed; an equally plausible possibility is that these pejorative and laudatory terms reflect that the Principal Appellant has strong feelings about what happened. It is reasonable to conclude that as a result of his strong feelings, he has become accustomed to use these terms to express what he regards as good and evil behaviour on the part of persons present at the scene. I have also observed that when responding to events which are not explained in his BOC, the Principal Appellant often appeared not to understand the question and resorted to using the interpreter. This could be because he was being evasive and was seeking more time to think what to say, but equally it could be because he was unsure as to what he was being asked, and I find it would be unfair to penalize the Principal Appellant for utilizing the services of the interpreter. As I listened to the audio recording, I noticed also that when the RPD questioned him about how long his relationship with his partner lasted, the Principal Appellant was quickly able to answer "8 months" without having to pause to calculate the difference between dates, which I find to be behaviour that argues in favour of his credibility. I also disagree with the RPD's statement that the Principal Appellant did not add natural details: for instance, when I listened to the audio, I noticed he mentioned that his assailants exclaimed "burn them, burn them alive, cut them" and on another occasion "yes, we cut you, we have always had eyes on you". These phrases do not appear in his BOC.

- [17] With regard to the RPD's observation that the Principal Appellant stammered in response to questions: I agree stammering is evident on occasion in the testimony; however, I find this behaviour appears in response to the RPD questioning directly about perceived inconsistencies in the testimony, and therefore it could be explained by the RPD causing the Principal Appellant to feel nervous. Since I am unable, as explained below, to sustain the RPD's credibility findings, I also do not find that the Principal Appellant's testimony is inauthentic based solely on the way that he vocalized his answers. Despite the findings of the RPD, my overall assessment is that the testimony was consistent with the BOC and that there are insufficient objective indicators, based on the demeanour of the Principal Appellant, for me to be able, on a balance of probabilities, to reject his testimony as not credible.
- [18] The RPD found it not credible that the Principle Appellant had been tortured with a hot iron, because there would be no electricity in a vacant unfinished building. I find that this is an implausibility, finding that it is unlikely that buildings under construction in Nigeria would not have electricity. An adverse credibility finding based on the implausibility of the Claimant's account should only be made in the clearest of cases, i.e. if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the Claimant.⁸ The Federal Court has often cautioned that such determinations are best limited to situations where events are clearly unlikely to have occurred in the manner asserted, based on common sense or the evidentiary record.⁹ Adverse credibility determinations based on implausibility should not be made simply on the basis that it is unlikely that things happened as the Claimant contends. Individual experiences need not

always follow the norm. Unlikely events can still happen. Something more is required before a Claimant may be found not to be credible on the basis of implausibility alone.¹⁰ I find that this implausibility finding of the RPD was not made in the clearest of cases because for this unfinished building to have electricity is not outside the realm of what could reasonably be expected. Furthermore, I find documentary record before me, and specifically the Medical Report that indicates the Principal Appellant's back has burn marks from an iron, is consistent with the Principal Appellant's allegations of the harm that he described occurred in that building. Therefore, I find the RPD erred in drawing this adverse credibility finding and I believe the Principal Appellant's allegations regarding the incident of harm he suffered on XXXX XXXX XXXX 2014.

- [19] The RPD finds that the Principal Appellant's BOC was discredited because his BOC presents as a fact that his partner was taken to hospital and afterwards to the police, and the BOC does not indicate that this was something he overheard the mob discuss. Moreover, the RPD finds that the Principal Appellant cannot know that the mob took his partner to the hospital and/or to the police. I find the RPD erred in making this adverse credibility finding because this is a minor discrepancy and that the question as to whether or not the partner was taken to hospital and/or to the police is peripheral, and not central, to the claim.
- [20] Furthermore, the RPD makes an adverse credibility finding on the basis that it is unlikely that an angry mob would not only take his partner to hospital, but would also turn to the police, who might institute charges against them. I have considered Counsel's submissions on appeal, that perpetrators of crimes against Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) do so with impunity in Nigeria and go unpunished, which I find is supported by the country condition documents. I find that the RPD erred in making this implausibility finding where it is not in the clearest of cases, because I find that attackers taking their LGBTQ victim to the hospital and/or to the police in Nigeria is not outside the realm of what could be reasonably be expected.
- [21] The RPD found the Principal Appellant's evidence on how he returned home after the attack to be unreliable. The RPD pointed to inconsistent testimony about whether a taxi or a motorist took the Principal Appellant home, and questioned why a taxi would be required, given that the distance between the attack and where the Principal Appellant was living was only three blocks. I note there was testimony that the "good samaritans"¹¹ who assisted the Principal Appellant were familiar with the driver of the vehicle concerned. When the RPD disbelieved the Principal Appellant's account of a "taxi" because he also described it as a "motorist"¹² that took him back to where he had been staying, the RPD likely associated the term "taxi" with a vehicle licensed by the local authorities as such. The RPD in its Reasons did not consider the possibility that the word "taxi" might also be used in Nigeria in connection with an unlicensed "gypsy cab", mentioned in the National Documentation Package (NDP)¹³ as a means of conveying passengers to and from locations for a fee. On appeal, Counsel has argued that that the Principal Appellant did provide an explanation at the hearing for why he required transport for such a short distance: because he was injured

and could not walk. I accept this explanation as reasonable and believe the Principal Appellant's testimony regarding how he got home after the attack. Additionally, as there is no evidence that the motorist who took the Principal Appellant home was not driving a "taxi" at the time, I do not consider this to impugn the credibility of the Principal Appellant.

- [22] The RPD made an adverse credibility finding on the basis that the RPD found it to be improbable that the Principal Appellant would forgo medical treatment if his injuries suffered in the attack were as serious as he alleged. The SOGIE Guidelines (para 7.2.2) provide that it is not always reasonable to expect an individual to have sought medical treatment following an assault where they have been forced to conceal their SOGIE. Since the passing of the Same Sex Marriage (Prohibition) Act in Nigeria, members of the public have a duty to report any person they know or suspect to be a homosexual, and failure to do so is also a crime in Nigeria.¹⁴ This prohibition would clearly apply also to doctors and nurses in a hospital. Counsel pointed out that people at the hospital could quickly have become aware of a nearby attack on two homosexuals. I find that the RPD erred in making this implausibility finding where it is not in the clearest of cases, because I find that not seeking medical attention for injuries suffered from an anti-LGBTQ attack in Nigeria is not outside the realm of what could be reasonably be expected. Furthermore, I find documentary record before me, and specifically the Medical Report that indicates the Principal Appellant's back has burn marks from an iron, is consistent with the Appellant's allegations of the harm that he described having occurred in that building
- [23] The RPD Member made an adverse credibility finding on the basis it was suspect and inconsistent with his version of events that the Principal Appellant decided to return home after the attack for one night when the attackers knew where he lived and where he could have instead gone to his brother's house. I find that the RPD erred in making this implausibility finding where it is not in the clearest of cases, because I find that in considering the serious nature of the injuries detailed in the Medical Report in the Record, it is not outside the realm of what could be reasonably expected in the circumstances for someone not to be able to immediately move to another location after suffering such serious injuries and a traumatic attack.
- [24] The RPD found it not credible that the Principal Appellant made no effort to find his partner after the attack. However, I disagree with the RPD's credibility finding and I accept the Principal Appellant's explanation provided in his testimony as reasonable, which was that he had no friends in common with his partner (the one friend he called in an attempt to locate his partner had last seen his partner when they were all at school together), that he was afraid to go to his partner's house/store, and that the attackers had stolen their cell phones, so there was no means by which he could contact his partner. Other issues raised by the RPD

- [25] In addition to the above credibility issues, the RPD has found it unlikely that the Principal Appellant could not provide an explanation for what caused the police to come to his brother's home. I find that the RPD erred in making this implausibility finding where it is not in the clearest of cases because I find the Principal Appellant cannot know what is in the mind of the police or who might have informed the police of his whereabouts and/or his prior experiences with a same-sex partner.
- [26] The RPD found there was a lack of consistency between the testimony and the Principal Appellant's Schedule A form, and that his not being prepared to alter the BOC so it was accurate demonstrates a lack of integrity on the part of the Appellant. The Principal Appellant stated at the hearing that he did not disclose the address where he stayed in Lagos prior to leaving Nigeria (which was his mother-in-law's home) in his BOC. He stated he did not disclose this information in his Schedule A form because he was advised by volunteers who helped him complete that form that it was not necessary to do so, and therefore when the time came to complete his BOC he did not consider it necessary to include the fact that he moved to his mother-in-law's in his BOC. I note the Appellants were represented by Counsel at the hearing, and that the Appellants signed their forms and confirmed at the outset of the hearing that they were accurate. The Principal Appellant's omission of the move to his mother-in-law's home after the visit of the police therefore raises concerns as to whether the police visit occurred as alleged. However, the Co-Appellant testified independently and without prompting that the police visited their home. I find the RPD failed to deal with the testimony of the Co-Appellant in its Reasons, and as explained below, I consider her testimony to be independent corroboration of the police visit, which the RPD was duty-bound to consider. It is not reasonable to suppose that the Appellants would remain at the same address after the police visited their home with a mob, who made allegations that the Principal Appellant was homosexual. Therefore, on a balance of probabilities, I accept the explanation offered by the Principal Appellant for the omissions in his BOC and Schedule A forms. Delay in leaving
- [27] The RPD found the Principal Appellant's delay in leaving Nigeria compromised his credibility. However, I find the RPD erred in drawing an adverse credibility inference from the delay in leaving because the Principal Appellant provided a reasonable explanation for this delay when he stated that he felt that he was safe staying in his brother's home until the police came to visit in XXXX 2016 and that the Appellants left for the USA three months later. The RPD finds it unreasonable that the Principal Appellant stayed at an address he has been associated with prior to the XXXX 2014 attack (his brother's address where he had been living previously). However, I accept the Principal Appellant's explanations to the effect that he put his same-sex relationship with his former partner behind him, married, and that the fear of him being persecuted as a homosexual had decreased. In my view, this also adequately explains his short trips to Kenya and the Ivory Coast and why he did not remain in those countries. I also accept the Appellants' explanation that they needed to save money for the costs of their travel. I do not draw any adverse credibility inference from the delay in leaving Nigeria. Moreover, I am mindful that delay in leaving is not determinative of a

Claim. Failure to claim in the USA

- [28] The RPD found it to be not reliable that the Appellants failed to make efforts to seek advice and research their options for making a claim in the USA or come to Canada sooner during the period that the Appellants resided in the USA. I disagree with this finding of the RPD. The Principal Appellant waited in the USA for more than a year before coming to Canada. Counsel submits that the Principal Appellant crossed the border into Canada shortly after his own one-year window for making a refugee claim in the USA had passed, and that the other Appellants still had a short amount of time available to them to pursue a claim in that country. Other evidence
- [29] The RPD examined the brother's letter which was supported by a copy of his passport.¹⁵ The letter confirms the Principal Appellant was attacked by hoodlums in XXXX 2014 and were tortured with "wooden objects, cutlasses and a hot pressing iron".¹⁶ It also confirms a visit, in XXXX 2016, of the police accompanied by hoodlums. The RPD appears to give some weight to this letter, although it finds the brother's evidence is outweighed by the various credibility issues the RPD found in this case. I disagree with the RPD's assessment of the credibility issues in this case. Although this is a letter and not a sworn Affidavit, I find the letter corroborates important events that are central to the Principal Appellant's allegations. Evidence of the Co-Appellant
- [30] The Co-Appellant testified that she was afraid of the mobs and the police as a result of the consequences of aiding and abetting her husband, who would be viewed in Nigeria as a criminal. She also testified that the mob who accompanied the police to their residence suggested to the police they could take the Co-Appellant as "bait". The RPD does not address this testimony in its Reasons, other than to state that "the associated claimant relies on her husband's BOC".¹⁷ As per Maldonado,¹⁸ when a Claimant swears that certain facts are true, this creates a presumption that they are true unless there is valid reason to doubt their truthfulness. I find that omission of the Co-Appellant's fears from her husband's BOC, which the Co-Appellant explained was because she considered that it was her husband's claim, is insufficient to allow the RPD to simply discard her testimony. Given that the testimony that was actually given is uncontradicted, and that the objective evidence in the NDP confirms that the Nigerian Same Sex Marriages (Prohibition) Act would, as was implied by the Co-Appellant, subject her to the possibility of criminal charges for aiding and abetting a homosexual and for not reporting him to the police, I find the fears of the Co-Appellant to be objectively justified. I accept her testimony.
- [31] The RPD stated that the Principal Appellant gave a "two dimensional" description of his same-sex partner and found his ability to describe their relationship to be deficient, but I agree with Counsel that in the presence of his wife, the Principal Appellant would be inhibited in how he described his prior involvement with a male partner. The Principal Appellant described his relationship as having lasted for 8 months, and, in response to questioning by the RPD, indicated that he had engaged in no additional relationships (other than the current relationship with his wife). When asked if he planned to have other

relationships, the Principal Appellant responded that his wife would not like that. I find on the basis of the testimony, that this homosexual relationship was an isolated occurrence. There was also no evidence that this was a long-term commitment on the part of the Principal Appellant, and I find the RPD has disregarded the possibility that this was a "fling" the Principal Appellant had with his first sexual partner, rather than a long-term committed relationship in which a strong emotional attachment and a deep understanding of each other's histories and lives would be expected to develop. Since there is evidence to corroborate the account of the Principal Appellant, in the form of a Medical Report showing severe bodily harm was inflicted on him, as well as the uncontroverted testimony of the Co-Appellant which supports that others perceived the Principal Appellant as homosexual, together with her brother's letter which also supports the same conclusion, I find, on balance of probabilities, that the Principal Appellant had an homosexual experience, and that he is perceived by others in Nigeria as a homosexual or a bisexual person. The objective evidence in the NDP indicates the Nigerian public tends not to differentiate bisexuals from homosexuals.¹⁹ Overall conclusion on credibility

- [32] Having considered all of the evidence, I find that the Principal Appellant's allegation of having been attacked by a mob because of his sexual orientation has been established. The Medical Report in the Record corroborates that he sustained severe injuries consistent with what has been alleged, and there is no evidence before me contradicting this finding.
- [33] As explained earlier, I accept the Co-Appellant's testimony, and there is no countervailing evidence, and therefore I find, on a balance of probabilities, the Co-Appellant is also credible. Nexus to Convention grounds
- [34] I find the Principal Appellant has a Nexus to a Convention ground, as a member of a particular social group (Bi-Sexual or Homosexual males in Nigeria).
- [35] I find the Co-Appellant has a Nexus to a Convention ground, by reason of being a family member of someone subject to persecution on a Convention ground. Are the Appellants' fears well-founded?
- [36] Even if I assume that the Principal Appellant will have no sexual relationships with a same-sex partner in the future, I find he would nevertheless still be perceived by his former attackers in Nigeria and by the police as being homosexual, and as a result of that, he would be liable to severe legal penalties. The country documentation contains a report that same-sex activity is illegal in Nigeria: the maximum sentence for homosexuality in Nigeria in the Southern States is 14 years, and in the Northern States that have adopted Sharia law the maximum penalty is life imprisonment or death by stoning.²⁰ Given that the Principal Appellant's sexual experience with his former same-sex partner has been publicly revealed, the country documentation indicates he faces a serious possibility of arrest, assault and/or torture, blackmail, and detention without due process. He would be prohibited from expressing his views on SOGIE because of the risks of what might happen to him. I find, considering the totality of the expected discrimination against him, this amounts to his

facing a serious possibility of persecution.

- [37] Based on the objective country evidence, the Co-Appellant also has a well-founded fear of persecution by the police in terms of the Nigerian Same-Sex Marriages (Prohibition) Act. She too, as per the country documentation, faces a serious possibility of arrest, assault (including in her case, sexual assault) and/or torture, blackmail, and detention without due process. In other words, she would face similar risks to those of her husband by reason of being married to him, and the country documentation indicates she might face ostracism by the community because of her husband's sexual orientation. She would also be prevented from expressing her opinion regarding her husband's sexual preferences because of the severe consequences that would likely result. Consequently, I find that she too faces a serious possibility of persecution in Nigeria. State Protection and Internal Flight Alternative (IFA)
- [38] The NDP for Nigeria confirms that bisexuality is criminalized and that Nigeria has a culture of homophobia in which members of the LGBTQ community such as the Principal Appellant and the Co-Appellant are persecuted. As explained above, I find the Principal Appellant and the Co-Appellant face a serious possibility of persecution throughout Nigeria from state and non-state actors. Given that state actors are among the agents of persecution, and that in the case of the Nigerian police their reach extends throughout Nigeria, I find there can be no State Protection or viable IFA in this case. Dependent Minor Son
- [39] The Appellants do not contest the RPD's finding that the Dependent Minor Son is a citizen of the USA who did not assert a claim against the USA and is not a Convention refugee or a protected person under section 97(1) of the IRPA. In my independent analysis of the evidence I agree with the RPD's finding in this regard and I adopt the RPD's reasons in support of these findings.

DETERMINATION

- [40] Pursuant to section 111(1)(b) of the Immigration and Refugee Protection Act (IRPA) the RAD substitutes the decision of the RPD with a determination that the Principal Appellant XXXX XXXX XXXXa.k.a. XXXX XXXX, and the Co-Appellant XXXX XXXX XXXX are Convention refugees under section 96 of the IRPA.
- [41] Pursuant to section 111(1)(a) of the IRPA the RAD confirms the decision of the RPD that the Dependent Minor Son XXXX XXXX XXXX is not a Convention refugee under section 96 of the IRPA or a person in need of protection under section 97(1) of the IRPA. (signed) "Ron Liberman" Ron Liberman February 4, 2020 Date 1 Chairperson's Guideline 9: Proceedings Before the IRB Involving Sexual Orientation and Gender Identity and Expression, Guidelines issued by the Chairperson pursuant to paragraph 159(1)(h) of the Immigration and Refugee Protection Act, May 1, 2017. 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

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. 4 Immigration and Refugee Protection Act, S.C. 2001, c. 27. 5 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93. 6 Exhibit RPD-1, RPD Record at p. 98. 7 Exhibit RPD-1, RPD Record at p. 19. 8 Valtchev v. Canada (Citizenship v. Immigration), 2001 FCT 776 at para 7. 9 Aguilar Zacarius v. Canada (Citizenship v. Immigration), 2012 FC 1155 at para 10. 10 Zaiter v. Canada (Citizenship and Immigration), 2019 FC 908 at para 9. 11 Exhibit RPD-1, RPD Record at p. 19. 12 Exhibit RPD-1, RPD Record, Reasons at para 12, p. 8. . 13 Exhibit RPD-1, RPD Record, RPD Exhibit 3, National Documentation Package (NDP) for Nigeria (30 April 2019), Item 7.12, p. 3 14 Exhibit RPD-1, RPD Record, RPD Exhibit 3, NDP for Nigeria (30 April, 2019), Item 1.13, p. 121. 15 Exhibit RPD-1, RPD Record, p 101 and p. 102. 16 Exhibit RPD-1, RPD Record at p. 103. 17 Exhibit RPD-1, RPD Record, Reasons at para 21, p. 11. 18 Maldonado v. Canada (Minister of Employment and Immigration), [1980] 2 F.C. 302 (C.A.). 19 Exhibit P-1, NDP for Nigeria (30 April, 2019), Item 6.7, NGA105219.E. 20 Exhibit P-1, NDP for Nigeria (30 April 2019), Item 6.1, NGA 105321.

RAD File / Dossier de la SAR : VB9-05728 VB9-05729 / VB9-05730 RAD.25.02 (April 04, 2019)
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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

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