

CANADA / JUDGMENT

TC0-00682

COURT

Refugee Appeal Division

DECIDED

19 November 2020

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RAD File / Dossier de la SAR : TC0-00682 TC0-00683 / TC0-00684 Private Proceeding / Huis clos
Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXXXXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX Personnes en cause Appeal considered / heard
at Toronto, ON Appel instruit / entendu à Date of decision November 19, 2020 Date de la décision
Panel K. Qureshi Tribunal Counsel for the persons who are the subject of the appeal Solomon
Orjiwuru Conseil des personnes en cause Designated representative XXXX XXXX Représentant(e)
désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION

OVERVIEW

- [1] XXXX XXXX (Principal Appellant or PA) and his minor sons, XXXX XXXX XXXX and XXXX
XXXX XXXX (Associate Appellants or AA's) are citizens of Nigeria. The Appellants allegations
are as follows.
- [2] The PA alleges that his father, who passed away in 1967, was the XXXX of the XXXX cultic
group and XXXX XXXX. Upon his birth, the PA was chosen by an Oracle to be initiated into
XXXX cult and XXXX XXXX. The PA states that although cult members put pressure on him
to be initiated into the cult over the years, he was able to avoid initiation because first his
mother and then another Chief assumed the leadership of the cult. However, in XXXX 2017
the Chief passed away at the age of XXXX. As a result, in XXXX 2017, XXXX emissaries of the
cult came to the PA's residence to inform him that his initiation rites had been arranged for
XXXX 2018, and threatened his life and properties otherwise. The PA left for Canada on
XXXX XXXX, 2017 on an existing visa and sent his wife and children into hiding at his father-
in-law's home while he arranged for Canadian visas for the AA's. After the initiation date in
XXXX 2018 passed, the PA's family returned to their residence. However, on XXXX XXXX,
2018, the younger AA was kidnapped by XXXX cult members. The AA was found on XXXX
XXXX and taken to a hospital, being discharged on XXXX XXXX XXXX The PA's wife and the
AA's left Nigeria and arrived in Canada on XXXX XXXX, 2018. The wife returned to Nigeria
on XXXX XXXX, 2018. The PA states that the cult is still looking for him and that he and the
AA's are at risk of persecution in Nigeria.
- [3] The claims were heard on XXXX XXXX and XXXX 2019 and rejected on December 16, 2019
on the basis of credibility. The Appellants appeal to the Refugee Appeal Division (RAD). NEW
EVIDENCE

- [4] The Appellants do not present new evidence, but have requested an oral hearing.¹ On the basis that I do not have jurisdiction to allow an oral hearing in the absence of accepted new evidence, the request for an oral hearing is rejected. DECISION
- [5] I dismiss the appeal. The Refugee Protection Division (RPD) was correct in finding that the Appellants are neither Convention refugees nor persons in need of protection.

ANALYSIS

- [6] I have reviewed the RPD decision on a standard of correctness and conducted an independent assessment of all of the evidence.² In the course of my analysis, I acknowledge that when a claimant swears that certain facts are true, this creates a presumption that they are true unless there is a valid reason to doubt their veracity.
- [7] The Appellant submits that the RPD erred as follows:
- a. Erred in its credibility finding by focusing on minor inconsistencies and disregarding points of corroboration between the PA's testimony and supporting documents;³
 - b. Erred by failing to consider the totality of the PA's explanation for the delay, misapprehended or mischaracterized his evidence, and by not finding that the Appellant's actions demonstrate subjective fear;⁴
 - c. Erred by failing to reference aspects of the PA's evidence relating to the kidnapping of the younger AA;⁵
 - d. Erred by disregarding supporting documents because it found some aspects of the claim were not credible.⁶ RPD did not err by drawing negative credibility inference from omission of threat against PA but did err with respect to omission of threat against eldest AA
- [8] The RPD decision states the PA testified he was visited at his home by XXXX emissaries from the XXXX cult in XXXX 2017 who told him his initiation rites had been set for XXXX 2018.⁷ The Appellant further testified that he refused and gave them money. The RPD decision notes the PA did not testify, however, that the emissaries also threatened his life and properties, as was indicated in the PA's Basis of Claim (BOC). The RPD drew a negative credibility inference from the omission. The Appellants submit that the RPD was overly focused on one minor inconsistency and disregarded numerous points of corroboration between the PA's testimony and supporting documents.⁸ Based on my independent assessment I do not find that the RPD erred by drawing a negative inference from this omission, for the following reasons.
- [9] A transcript of the hearing indicates the RPD asked the Appellant in an open-ended manner to describe the events of XXXX 2017.⁹ The PA proceeded to testify with regards to the timing of the visit, how many people there were, who he recognized, who was home with him, the advice his mother had given them, the ritual itself etc. The RPD then specifically asked the PA "what did they say" and the PA provided some more testimony but did not mention any

threats. The RPD asked again "did they say anything else," and the PA continued to testify but again did not mention any threats. The RPD asked a third time "did they say anything else" and the PA responded "nothing." The RPD still prompted further and the PA continued with some more details, but still did not mention any threats. The RPD asked once more "did they say anything else to you" and the PA responded there was nothing. The RPD then raised to the PA that his BOC stated that the emissaries had threatened his life and property if he did not join the cult. When asked for an explanation for the omission, the PA responded that it skipped his mind.

- [10] Based on my independent assessment, I find the PA's failure to state, despite numerous prompts and opportunities, that his life and property had been threatened is a material omission. The Appellants explain in this appeal that the PA was nervous. While I accept that a refugee hearing is stressful, I also find that the alleged threats against his life and property for refusing to join the cult is at the heart of the Appellants claim that they are at risk of persecution in Nigeria. Therefore, I do not find that the threats are a minor detail that would be so easily forgettable. The Appellants also explain in this appeal that the PA did testify he tried to be diplomatic during the emissaries' visit, which implies that the emissaries were being belligerent towards him. I find, however, that the PA being non-confrontational with the emissaries cannot objectively be construed as meaning that the emissaries threatened him. Overall, I do not find that the RPD erred by drawing a negative inference from this omission.
- [11] The RPD decision also notes that the PA testified the emissaries told him the older AA must also be initiated, and that this information was not in the Appellants narrative.¹⁰ The Appellants submit that the totality of their claim indicates the threats to the PA also extended to the AA's.¹¹ Based on my review of the transcript, I first note that the RPD did not put this inconsistency to the PA at the hearing. Secondly, based on my review of the narrative, although the threat against the eldest AA is not mentioned in the paragraph pertaining to the visit from the emissaries in XXXX 2017, another section of the narrative does state "since...XXXX 9, 2003, I started receiving emissaries and calls from these Cultic group to come and perform rituals into these groups and I was told these initiations must be done along with my first son."¹² Therefore, the threat against the eldest AA is not completely absent from the narrative and the RPD erred by drawing a negative credibility inference in this regard. RPD did not err by drawing negative inference from delay in leaving Nigeria and in claiming protection
- [12] The RPD decision notes that all the Appellants had existing US visas since at least XXXX 1, 2017 but did not flee to the US despite the threats to them.¹³ The RPD did not accept the PA's explanation that he preferred Canada. The RPD also noted that although the AA's received their Canadian visas in XXXX 2018, they still did not travel to Canada until XXXX 2018. Finally, the RPD noted that the Appellants' refugee claim process was only started in XXXX 2018 even though the PA had been in Canada since XXXX 2017. The RPD drew a negative credibility inference from the delay in leaving Nigeria and the delay in claiming protection.

The Appellants submit the PA took a number of steps to protect the AA's which demonstrate subjective fear.¹⁴ Specifically, the Appellants submit they did not go to the US because of what the PA "experienced when he visited the USA in 2016," but that he did withdraw the AA's from school and sent them to stay at his father-in-law's, that he fired his XXXX XXXX in order to protect confidentiality and that he expedited the AA's travel to Canada after the kidnapping.¹⁵ The Appellants also submit that the PA adequately explained the delay in claiming protection.¹⁶ Based on my independent assessment, I do not find the RPD erred by drawing a negative credibility inference from the delay in leaving Nigeria, for the following reasons.

- [13] Regarding the failure to flee to the United States, the PA vaguely testified "because when I was there, what I was seeing was not what I want for my children."¹⁷ However, the PA also testified that the emissaries told him in XXXX 2017 that the eldest AA had to be initiated.¹⁸ Due to this risk, the PA went to the extent of withdrawing the AA's from school and sending them into hiding at their grandfather's. This indicates, therefore, that the PA believed the risks to the AA's, and particularly the eldest AA, were serious. Yet, despite the risks, the Appellants decided to wait for a Canadian visa before fleeing the country because of a lack of affinity for the US. Then, even when the Canadian visas did arrive in XXXX 2018, the AA's still did not leave Nigeria even though, in all likelihood, the risk would have been heightened by the fact that the Appellants were not planning to show up for the initiation which was set for that same month, XXXX 2018. The AA's ultimately did not leave Nigeria until XXXX 2018. Based on my independent assessment, even if there are shortcomings to the US, it was nevertheless a safer place than Nigeria and, in particular, the Appellants' own residence to which the AA's returned in XXXX 2018. I find the delay in leaving Nigeria undermines the Appellants' subjective fear and the credibility of their allegations.
- [14] Regarding the withdrawal of the AA's from school, the Appellants provided two corroborative letters from their school, XXXX Academy, that indicate that the AA's had been withdrawn.¹⁹ However, the letters do not say whether the AA's were withdrawn in XXXX 2017 as they allege, or whether they were withdrawn later, such as for example, shortly before travelling to Canada, which would suggest that the withdrawal was not related to the persecution. Due to the absence of this material information, I do not find that the letters are very probative. Notably, the letter pertaining to the younger AA refers to him as a "her/she," although I do not draw a negative inference from this.
- [15] Regarding the firing of the XXXX XXXX, I do not find this logically would have protected the AA's. That is, while there is a chance that an unscrupulous XXXX XXXX could have failed to protect the AA's, the absence of any XXXX XXXX at all certainly would have failed to protect the AA's, particularly given that the cultists knew the Appellants' home address. I acknowledge the Appellants submission in this appeal that there was a lady who maintained the compound, however I do not find that this would have provided much XXXX for the AA's. Rather, the PA's testimony suggests that the lady's role was to XXXX and XXXX XXXX after their XXXX as opposed to providing care or XXXX for the AA's.²⁰

- [16] Finally, the Appellants submit that the AAs' travel to Canada was expedited after the kidnapping of the youngest AA. Based on my review of the transcript however, when the PA was asked about the delay in his family's travel to Canada, he stated that they were waiting for the visas (which had already arrived in January) but also that his wife had to arrange her leave from work which was granted for March XXXX to XXXX.²¹ On XXXX XXXX, the wife travelled with the AA's first to XXXX for a few days,²² where her brother resides, before proceeding to Toronto and then returning to Nigeria on XXXX XXXX. I therefore find, on a balance of probabilities, that the AA's travel to Canada on XXXX XXXX was in accordance with an arranged leave of absence from the wife's work as opposed to an expedited plan to leave immediately after the alleged kidnapping.
- [17] Overall, notwithstanding that it was open to the AA's to leave for the US since at least XXXX 2017 and to Canada by XXXX 2018, I find the AA's delay in leaving Nigeria until XXXX undermines the credibility of their allegations and shows a lack of subjective fear.
- [18] Regarding the delay in claiming protection, the PA submits they did not claim protection earlier for fear that it would compromise the chances of the AA's Canadian visa being issued or entering Canada.²³ That is, the Appellants suggest that the PA did not claim protection earlier because he was waiting until the AA's travelled to Canada. On the basis that the delay in claiming is dependent on the delay in leaving, and I have found the Appellants have not adequately explained the delay in leaving, then the credibility findings arising from the delay in leaving extend to the delay in claiming protection. Appellants have not established kidnapping took place
- [19] The RPD decision did not accept that the kidnapping of the younger AA took place.²⁴ Specifically, the RPD found it was not credible that the PA would allow the AA's to return to their residence from their grandfather's home because they did not like living there, yet also continue to keep them out of school and essentially leave the AA's alone and unprotected all day and allow them to leave the house unaccompanied. The Appellants submit the RPD erred by failing to reference particular aspects of the PA's evidence relating to the kidnapping.²⁵ Specifically, that staying with their grandfather was not conducive to the AAs' health and because there was a caretaker lady at their own compound.
- [20] Regarding the caretaker, as discussed earlier, I do not find the fact that a caretaker continued to attend at the compound in order to care for the XXXX indicates that she was also taking care of the AA's themselves or that she provided the AA's with any XXXX or XXXX.
- [21] Regarding the grandfather, a review of the transcript indicates the PA testified he allowed the children to return home because the children complained about the lack of proper washroom facilities and that it was causing infections.²⁶ I first note that the Appellants provided an affidavit from the grandfather²⁷ however there is no mention at all with respect to the AA's staying there, even though the grandfather has firsthand knowledge of this. Secondly, although I acknowledge that staying with the grandfather may not have been ideal

for the AA's, there was a greater risk to the AA's wellbeing by living in their home, unprotected and largely alone and in a location that the cultists knew of, than by remaining with their grandfather. I therefore do not find that the RPD erred by concluding that these aspects of the Appellants evidence undermine the credibility of the allegations of the kidnapping. Appellants' corroborative documents do not establish their claims

- [22] The Appellants submit that the RPD disregarded supporting documents because it found some aspects of the claim not credible.²⁸ Accordingly, I have independently considered the Appellants corroborative documents and find as follows.
- [23] The Appellants provided a police report filed by the PA's wife.²⁹ While the police report references the alleged kidnapping, the information in the document is all based on the wife's self-report to the police. That is, there is no independent information, evidence or corroboration from the police themselves, such as, for example, that they investigated into the matter or had any independent findings etc. As a result, I give this document little weight.
- [24] The Appellants also provided two letters³⁰ and an affidavit³¹ from the PA's lawyer. However, I find that there are irregularities in the affidavit which undermine the authenticity of the communications from the lawyer. For example, whereas the lawyer's letter indicates his last name is XXXX, in his affidavit his last named is spelled as XXXX, which is missing a "g". I do not find that a lawyer would err in the spelling of their own name in a sworn affidavit. As well, while the lawyer's affidavit references the "XXXX" police station, his letters are addressed to "XXXX" police station. That is, the lawyer's documents are inconsistent with respect to the name or spelling of the police station. The Federal Court has stated "it may very well be reasonably open to the RAD or another decision maker to question the authenticity of a document based on very small or even microscopic differences between the document and an authentic counterpart. It is in the small or microscopic details where a forgery may well be exposed."³² Also, the RAD is permitted to make independent findings on a matter already in issue³³ and a claimant is presumed to know what is in their documents.³⁴ Finally, none of the information in the communications from the lawyer are based on their firsthand knowledge, but rather are based on the reports of the Appellants or the PA's wife to him. Therefore, on the basis of the foregoing, I give the documents from the lawyer no weight.
- [25] Regarding the affidavit from the grandfather, as noted earlier, although he would have firsthand knowledge of some of the recent events surrounding the allegations of persecution, he provides no information with respect to, for example, the AA's hiding at his home. I therefore find this document to be of little probative value.

- [26] There are also letters from the Appellants community,³⁵ church,³⁶ an uncle³⁷ and a hospital with respect to injuries sustained by the wife in XXXX 2018. However, to the extent that these letters comment on the allegations of persecution, it is not based on firsthand knowledge but rather on the basis of information originating from the PA, whose credibility is in question, or the PA's wife who has an interest in the outcome of the claim. Accordingly, I give these documents little weight.
- [27] The Appellants also provided a letter from a hospital regarding the AA³⁸ as well as from a passerby³⁹ who allegedly found the kidnapped AA. I do not find these documents are probative with respect to the allegations that the AA was kidnapped by XXXX or XXXX cultists. First, the identity of the alleged kidnappers is not in the knowledge of the writers. Secondly, the documents do not relay what the AA may have told the writers in regard to the identity of the kidnappers. Finally, the objective documentation indicates that Nigeria has one of the highest rates of kidnapping in the world and particularly in the south-west, such as in Lagos.⁴⁰
- [28] I therefore do not find, on a balance of probabilities, that the evidence as a whole establishes that the Appellants are at risk of being forced to undergo initiation from cultists or face harm in Nigeria on account of cultists.
- [29] Finally, the RPD decision found that the Appellants' claims strained credulity and noted that, according to the documentary evidence, Christians have been refusing to take on inherited offices in shrines since the beginning of the Christian missionization in Nigeria. ⁴¹ The RPD drew a negative credibility inference as a result. Based on my own independent assessment of the documentary evidence, I also do not find that it supports the credibility of the Appellants allegations of being at risk of persecution from XXXX or XXXX cultists.
- [30] For example, the RPD raised at the hearing a Response to Information Request (RIR) from XXXX 2019 pertaining to the XXXX.⁴² As this document is recent and specifically deals with the XXXX, I find that it is highly relevant with respect to the Appellants allegations. The RIR states that while locally-held beliefs are strong and fearful of the XXXX and there is a belief among non-members that XXXX engage in supernatural practises that can be brutal and violent, when it comes to the experts, they generally do not find that there is much substance to these locally held beliefs.⁴³ For example, a Professor of Yoruba studies said she had not heard of cases where a person was forced to take up an inherited position in the XXXX society after a parent died. The Professor also stated that a person must agree to join and generally cannot be forced to do so, although "supernatural powers may be used to try to compel" them. One Sociologist does state "those who are expected to retain membership as a family heritage may be coerced or forced," but the Sociologist does not convey that coercion or force includes risk of physical harm or death. A Canadian official from the High Commission of Abuja states that if an unborn child is committed to the group, the child will be "compelled" to join when he is of age and "it is assumed" by the sources that the mission consulted that the child of a member who refused to join the XXXX could encounter harassment by the society, "even to the point of death." However, I find language such as

"compelled" and "assumed" are uncertain and doubtful. In fact, the Canadian official also goes on to state it has no actual knowledge of reports that it deemed credible of ongoing or recent cases of targeting or killing of Nigerians by the XXXX, or those fleeing from the XXXX among mission contacts, local contacts and media sources it consulted. The Sociologist also indicated that in his own research, he had not come across direct mention of traditional XXXX society being involved in violent attacks, for instance, against individuals who refused to join or who left the group. Finally, the National Human Rights Commission representative also stated that they had not received any reports of cases of people being targeted by the XXXX society using violence because a person refused to join or left the group. Therefore, I do not find that recent and relevant documentary evidence in the National Documentation Package (NDP) lends much credence to the Appellants' allegations. Summary

- [31] Overall, I do not find, on a balance of probabilities, that the Appellants have established with sufficient credible evidence that they are at risk of persecution in Nigeria by XXXX cultists or the XXXX society. I agree with the RPD that the Appellants do not face a serious possibility of persecution in Nigeria or that, on a balance of probabilities, a danger of torture or a risk to life or cruel and unusual treatment or punishment.

CONCLUSION

- [32] 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) K. Qureshi K. Qureshi November 19, 2020 Date 1 Exhibit P-2, Appellant's Record, Written Statement, at p. 101. 2 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93, [2016] 4 FCR 157; Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145, [2019] 2 FCR 597. 3 Exhibit P-2, Appellant's Record, Appellant's Memorandum at paras. 15-19. 4 Exhibit P-2, Appellant's Record, Appellant's Memorandum at paras. 20-30. 5 Exhibit P-2, Appellant's Record, Appellant's Memorandum at paras. 31-34. 6 Exhibit P-2, Appellant's Record, Appellant's Memorandum at paras. 35-40. 7 Exhibit RPD-1, RPD Record, RPD Reasons, at para. 9. 8 Exhibit P-2, Appellant's Record, Appellant's Memorandum at paras. 15-19. 9 Transcript of August 22, 2019 RPD Hearing, at p. 71. 10 Transcript of August 22, 2019 RPD Hearing, at p. 71. 11 Exhibit P-2, Appellant's Record, Appellant's Memorandum at para. 19. 12 Exhibit RPD-1, RPD Record, Exhibit 2, BOC narrative, at line 39-40. 13 Exhibit RPD-1, RPD Record, RPD Reasons, at paras. 12-14. 14 Exhibit P-2, Appellant's Record, Appellant's Memorandum at paras. 21-22. 15 Exhibit P-2, Appellant's Record, Appellant's Memorandum at para. 21. 16 Exhibit P-2, Appellant's Record, Appellant's Memorandum at para. 28. 17 Transcript of August 22, 2019 RPD Hearing, at p. 75, line 36. 18 Transcript of August 22, 2019 RPD Hearing, at p. 74, lines 5-11. 19 Exhibit RPD-1, RPD Record, Exhibit 11, at p. 416-417. 20 Transcript of September 17, 2019 RPD Hearing, at p. 6. 21 Transcript of August 22, 2019 RPD Hearing, at p. 43. 22 Exhibit RPD-1, RPD Record, Exhibit 2, BOC narrative, at line 100. 23 Exhibit P-2, Appellant's Record, Appellant's Memorandum at para. 28. 24 Exhibit RPD-1, RPD Record, RPD Reasons, at paras. 15-16. 25 Exhibit P-2, Appellant's Record, Appellant's Memorandum at paras. 31-34. 26 Transcript of September 17, 2019 RPD Hearing, at p. 4. 27 Exhibit RPD-1,

RPD Record, Exhibit 8, at p. 327. 28 Exhibit P-2, Appellant's Record, Appellant's Memorandum at paras. 35-40. 29 Exhibit RPD-1, RPD Record, Exhibit 8, at p. 329. 30 Exhibit RPD-1, RPD Record, Exhibit 8, at pp. 330-331. 31 Exhibit RPD-1, RPD Record, Exhibit 8, at p. 335. 32 Jiang v. Canada (Citizenship and Immigration), 2018 FC 1064 at para. 31. 33 Jiang v. Canada (Citizenship and Immigration), 2018 FC 1064 and Adeoye v. Canada (Citizenship and Immigration), 2018 FC 246. 34 Konare v. Canada (Citizenship and Immigration), 2016 FC 985 at para. 16. 35 Exhibit RPD-1, RPD Record, Exhibit 8, at p. 332. 36 Exhibit RPD-1, RPD Record, Exhibit 8, at p. 333. 37 Exhibit RPD-1, RPD Record, Exhibit 8, at p. 359. 38 Exhibit RPD-1, RPD Record, Exhibit 8, at p. 328. 39 Exhibit RPD-1, RPD Record, Exhibit 11, at p. 419. 40 Exhibit RPD-1, RPD Record, Exhibit 5, National Documentation Package (NDP) for Nigeria, (20 August 2019), item 7.3, RIR, NGA104917.E. 41 Exhibit RPD-1, RPD Record, RPD Reasons, at para. 10. 42 Transcript of September 17, 2019 RPD Hearing, at p. 2. 43 Exhibit RPD-1, RPD Record, Exhibit 5, NDP for Nigeria, (20 August 2019), item 13.13, RIR NGA106269.E.

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