

CANADA / JUDGMENT

MB9-15591

COURT

Refugee Appeal Division

DECIDED

28 February 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 : MB9-15591 MB9-15592 / MB9-15593 / MB9-15594 MB9-15595 Private Proceeding / Huis clos Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX (a.k.a. XXXX XXXX) Personnes en cause Appeal considered / heard at Toronto, ON Appel instruit / entendu à Date of decision February 28, 2020 Date de la décision Panel Maureen Carter-Whitney Tribunal Counsel for the persons who are the subject of the appeal Francine Vania Marion Conseil des personnes en cause Designated representative XXXX XXXX XXXX Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION OVERVIEW

[1] XXXX XXXX XXXX (Principal Appellant), XXXX XXXX XXXX (Associate Appellant), and XXXX XXXX XXXX and XXXX XXXX XXXX (Minor Nigerian Citizen Appellants), all citizens of Nigeria, and XXXX XXXX, a citizen of the United States (Minor US Citizen Appellant), appealed a decision of the Refugee Protection Division (RPD), dated June 14, 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. The Appellants also have a young baby who was born in Canada.

DETERMINATION

- [2] Regarding the Principal Appellant, Associate Appellant and Minor Nigerian Citizen Appellants, the RAD dismisses the appeal and confirms the decision of the RPD that they are neither Convention refugees nor persons in need of protection, pursuant to section 111(1)(a) of the Immigration and Refugee Protection Act (IRPA).
- [3] Regarding the Minor US Citizen Appellant, the RAD dismisses the appeal and confirms the decision of the RPD that he is neither a Convention refugee nor a person in need of protection, pursuant to section 111(1)(a) of the IRPA. BACKGROUND AND PROCEDURAL MATTERS
- [4] The Appellants allege that they fear persecution: * by the Principal Appellant's extended family and members of the Ibo (also known as Igbo) community because of the Associate Appellant's outcast status; * by Boko Haram, Muslim youth and others in the Muslim

community because of their Christian religion; * by police and security forces because they are part of the Ibo ethnic group, some of whom advocate for Biafran independence; and * by Nigerian bandits who may kidnap the children born in North America for ransom because they assume that the Appellants are wealthy.¹

- [5] Although the Principal Appellant and Associate Appellant divorced in 2016, they subsequently reunited and currently live together as common-law spouses with their children.
- [6] The RPD found that ss. 96 and 97 of the IRPA were not met due to credibility issues and because the Appellants have a viable Internal Flight Alternative (IFA) in Lagos or Benin City. In particular, the RPD found that: the Minor US Citizen Appellant has not established a claim against the US; Lagos and Benin City are safe and reasonable as IFAs; the Appellants' testimony was evolving and embellished with omissions between the Basis of Claim (BOC) and testimony; and explanations regarding their failure to claim asylum in the US are not credible and undermine their allegation of subjective fear.
- [7] On appeal, the Appellants argue that the RPD: erred in its assessment of credibility; misapprehended, ignored or disregarded evidence; improperly disregarded objective country condition documents, and overly scrutinized and was microscopic in analysis of other documents; and erred in speculating and applying personal standards to its determination. The Appellants dispute the RPD's credibility assessment with respect to an IFA, submitting that the Principal Appellant has cousins living in Lagos who want to kill them to cleanse the land and appease the gods.
- [8] On January 22, 2020, the RAD notified the Appellants of an updated National Documentation Package (NDP), dated January 22, 2020, directing them to item 13.1 of the NDP.² The RAD received submissions from the Appellants in response on February 6, 2020.³
- DETERMINATIVE ISSUE
- [9] While I acknowledge that the Appellants challenge the RPD's credibility findings, I find the determinative issue in this appeal to be the viability of Lagos or Benin City as an IFA. However, I have made credibility findings which are relevant to the IFA analysis. ROLE OF THE RAD
- [10] 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.⁴ In doing so, I have carried out my own independent analysis of the evidence before the RPD to determine whether, as the Appellant submits, 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. NEW EVIDENCE AND ORAL HEARING Evidence provided with the perfection of the appeal

- [11] The Appellants tendered the following new evidence: an affidavit of XXXX XXXX, dated XXXX XXXX XXXX 2019;⁵ a copy of a notice of the funeral arrangements for XXXX XXXX XXXX XXXX;⁶ copies of documents relating to the divorce of the Principal Appellant and Associate Appellant;⁷ and an affidavit of XXXX XXXX, dated XXXX XXXX, 2019.⁸
- [12] For the following reasons, I admit the affidavit of XXXX XXXX, the copy of the notice of funeral arrangements, and the affidavit of XXXX XXXX. I do not admit the divorce documents.
- [13] Under s. 110(4) of the IRPA, the Appellants may present only evidence that arose after the rejection of their claims or that was not reasonably available at the time of the rejection, or that they could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.⁹ Where evidence meets one of these requirements, the RAD must consider whether it passes the tests of credibility, relevance and newness affirmed by the Federal Court of Appeal in Singh.¹⁰
- [14] The affidavit of XXXX XXXX, the Principal Appellant's brother, was sworn on XXXX XXXX, 2019, after the rejection of the Appellants' claims. The affidavit describes the following events: the death of the Principal Appellant's cousin, XXXX XXXX XXXX XXXX XXXX, on XXXX XXXX XXXX 2019; a conversation about the whereabouts of the Appellants, which occurred on XXXX XXXX, 2019; and information provided to XXXX XXXX on XXXX XXXX XXXX 2019 that he could no longer attend family meetings because he refused to cooperate to find the Appellants. The Appellants also seek to admit the related notice about the XXXX XXXX, 2019 funeral. All of these events predate the rejection of the Appellants' claims on June 14, 2019. However, the Appellants submit that they were they were only made aware of these events on XXXX XXXX XXXX 2019. On this basis, I find that this evidence meets the s. 110(4) test in that it was not reasonably available at the time of the rejection. Regarding the test in Singh, I find these documents to be: credible, in that they are in the form of a sworn affidavit and related document that are credible on their face; relevant, as they provide information that could potentially be capable of proving whether the Appellants are still at risk in their community, which relates to their allegations; and new, in that they add information that was unknown to the Appellants at the time of the RPD hearing. Therefore, I admit this new evidence.
- [15] The Appellants acknowledge that the divorce documents could have been available as evidence for the RPD hearing but submit that they only became aware, after receiving the RPD decision, that the RPD questioned their credibility concerning how they could obtain a divorce for \$200. I find that they could not reasonably have been expected in the circumstances to have presented the divorce documents at the time of the rejection because the Appellants could not have anticipated that the RPD would ask them questions about the cost of obtaining their divorce, and so this evidence meets the test in s. 110(4). However, I find that the divorce documents do not meet the newness factor in the Singh test because they are not new in the sense that they are capable of: proving the current state of affairs in the country of removal or an event that occurred or a circumstance that arose after the

hearing in the RPD; proving a fact that was unknown to the refugee claimant at the time of the RPD hearing; or contradicting a finding of fact made by the RPD (including a credibility finding). The RPD, in its decision, did not make a credibility finding as to whether or not they were able to obtain a divorce for \$200; rather, the RPD found that the Appellants had not made reasonable efforts to find out about their legal rights as potential refugee applicants in the US since they testified that they contacted an immigration lawyer for the first time XXXX months after their arrival in the US, but had hired a divorce lawyer XXXX months after their arrival in the US.¹¹ Therefore, I do not admit this evidence.

- [16] The affidavit of XXXX XXXX, the Associate Appellant's sister, was sworn on XXXX XXXX, 2019, after the rejection of the Appellants' claims. In her affidavit, Ms. XXXX states that because she received a permanent residence visa from the US through a green card lottery, she knew nothing about the US refugee system or who could qualify as a refugee, so this was not discussed with the Appellants. The RPD listed several reasons why it determined that the Appellants were not credible in claiming that they did not know about their legal right to file a refugee application in the US, and one of these reasons was the fact that the Associate Appellant's sister lived in the US. The Appellants submit that, while they could have presented Ms. XXXX evidence at the hearing, they did not foresee that it would be relevant to confirm that she did not raise the possibility of a refugee claim. I find that this affidavit evidence meets s. 110(4) because the Appellants could not reasonably have been expected, in the circumstances, to have presented this evidence at the time of the rejection. I further find that this evidence meets the tests in Singh regarding: credibility, because the Associate Appellant's sister provided a notarized statement that appears credible on its face; relevance, given that it could be capable of proving why the Associate Appellant's sister did not provide them with information about the US refugee system, which relates to the reasons why they did not file a refugee claim in the US; and newness, in that it provides new information capable of contradicting the RPD's finding that the Appellants had not made reasonable efforts to find out about their legal rights as potential refugee applicants in the US. Therefore, I admit Ms. XXXX affidavit. New evidence submitted in response to request for submissions on IFA
- [17] On February 6, 2020, the Appellants tendered the following new evidence in support of their submissions responding to the RAD's direction: a February 27, 2019 on-line news article concerning attacks on Igbo voters in Lagos;¹² and an article published by the European Strategic Intelligence and Security Center on escalating violence in the Niger Delta and Biafra regions, dated February 24, 2016.¹³
- [18] For the following reasons, I do not admit this evidence.
- [19] I find, under s. 110(4) of the IRPA, that these articles: did not arise after the rejection of the Appellants' claims; were reasonably available at the time of the rejection; and could reasonably have been expected, in the circumstances, to have been presented at the time of the rejection. Both articles were published and available prior to the RPD hearing, held on May 17, 2019, and they contain information that was relevant to the issues that were heard

by the RPD, including IFA. While the RAD requested additional submissions concerning an updated NDP addressing indigeneship, evidence regarding IFA and submissions on IFA were canvassed at the RPD hearing and this evidence could have been provided at that time. Therefore, I do not admit this evidence. New evidence submitted in Rule 29 application

- [20] On January 15, 2020, the Appellants tendered the following new evidence in a Rule 29 application: a letter from a psychiatrist, Dr. XXXX XXXX XXXX, dated XXXX XXXX XXXX 2020;¹⁴ a declaration by the Principal Appellant, dated January 15, 2020;¹⁵ and three articles regarding mental health and Nigeria.¹⁶ These articles are: *Traitement des maladies psychiques*, Organisation Suisse D'Aide aux Réfugiés, November 10, 2017; *Le déni des maladies mentales en Afrique*, FranceInfo - Afrique, November 19, 2019; and *Mental illness invisible but devastating*, Africa Renewal, December 2016-March 2017.
- [21] For the following reasons, I admit this new evidence.
- [22] In deciding whether to allow this application to admit new evidence, Rule 29(4) requires me to consider any relevant factors, including: the document's relevance and probative value; any new evidence the document brings to appeal; and whether the Appellants, with reasonable effort, could have provided the document with their appeal record.¹⁷ If the evidence addresses the factors in Rule 29(4) to my satisfaction, I then determine whether it meets s. 110(4) of the IRPA and the Singh tests.
- [23] The letter states that Dr. XXXX evaluated the Principal Appellant on XXXX XXXX, 2019 and concluded that he suffers from XXXX XXXX XXXX. Dr. XXXX attributed this condition to several factors relating to the alleged persecution in Nigeria and the uncertain status of his refugee claim, and stated that returning to Nigeria would reduce the Principal Appellant's capacity to parent his children and that the Principal Appellant would have poor access to health care for his mental illness. In his declaration, the Principal Appellant states that he is having an emotional and psychological crisis, including personal isolation and suicidal thoughts. He says that he now understands that he began to experience depression while in the United States. The three articles tendered by the Appellants address the difficulty of accessing mental health care services in Nigeria.
- [24] The Appellants seek to submit this new evidence on the basis that the Principal Appellant's mental health issue was not detected when the RPD heard the case or when their appeal was filed. They argue that this new evidence is important and relevant to the present appeal because it supports the fact that the Principal Appellant and his family members need the protection of Canada.
- [25] I am satisfied that this new evidence is relevant but note that, while I accept Dr. XXXX professional opinion and medical diagnosis, I do not find that it is relevant because it supports the fact that the Appellants need protection in Canada, as submitted by the Appellants. Instead, I find that it is relevant to the determinative issue of IFA. Therefore, I find that the new evidence is admissible under Rule 29 because the documents are relevant and probative with respect to determining IFA, and bring new evidence to the appeal.

Because the Principal Appellant did not come to terms with how he was feeling until after the RPD hearing, and was not seen by Dr. XXXX until XXXX 2019, I find that the Appellants could not have provided these documents before their appeal was perfected.

- [26] I find that the new evidence meets s. 110(4) because it arose after the rejection of their claim. Regarding the tests in Singh, I find that this evidence is: credible, in that the psychiatrist's letter and the Principal Appellant's declaration appear credible on their face, and the three articles come from a non-governmental organization and two media sources that can also be considered credible; relevant, because it is potentially capable of proving that the Principal Appellant has mental health concerns that could be relevant to determining IFA; and new, in that it provides information relating to an issue that the Appellants were not aware of at the time of the RPD hearing. Therefore, I find that this new evidence should be admitted. Oral hearing
- [27] The Appellants requested an oral hearing before the RAD. They submit that there should be an oral hearing because the new evidence they are presenting directly contradicts some of the credibility findings of the RPD.
- [28] In order for the RAD to hold an oral hearing, all of the conditions set out in s. 110(6) must be met, meaning that the new evidence: must raise a serious issue with respect to the credibility of the Appellants; must be central to the decision with respect to the refugee protection claim; and, if accepted, would justify allowing or rejecting the claim.¹⁸
- [29] The documents that have been admitted are: the affidavits of XXXX XXXX and XXXX XXXX; a copy of a funeral notice; a psychiatrist's letter; articles on mental health and Nigeria; and a declaration by the Principal Appellant regarding his own mental health. For the purposes of this appeal, I am accepting the evidence as credible. Having assessed all of these documents, I find that nothing in this evidence raises a serious issue with respect to the Appellants' credibility, nor would anything in the evidence, if accepted, justify allowing or rejecting the claim, based on my analysis of the determinative issue of IFA. Therefore, the conditions of s. 110(6) of the IRPA are not met and it is not necessary to hold an oral hearing in this matter.

ANALYSIS

- [30] For the reasons that follow, I find that, while the RPD erred in not admitting documentary evidence concerning the Osu, the RPD was correct in its findings on IFA.
- [31] I note that the Appellants did not dispute the RPD's finding that the Minor US Citizen Appellant has failed to establish a serious possibility of persecution on one of the Convention grounds or that, on a balance of probabilities, he would be personally subjected to a danger of torture, a risk to his life or a risk of cruel and unusual treatment or punishment upon his return to the US. The RPD made this determination based on the US being a safe country with state protection widely available and because the Principal Appellant and Associate Appellant testified that the Minor US Citizen Appellant does not fear

anything in the US. I see no reason to disturb this correct finding. The RPD erred in not admitting documentary evidence on the Osu and the Ibo

- [32] The RPD found that a large number of the documents submitted by the Appellants duplicated information already found in the NDP, and that the Appellants' counsel could not explain how this information was different from the information already found in the NDP. As a result, the RPD did not accept most of these documents into evidence at the RPD hearing. The RPD set out which exhibits it did consider, which included two Responses to Information Requests (RIRs) that are also included in the NDP.¹⁹
- [33] The Appellants argue that the RPD disregarded documentary evidence pertaining to the Ibo and the Osu outcast system, and further argue that this documentation was relevant to their case and did not duplicate the information in the NDP. They attach a number of these documents to their submissions.²⁰ The Appellants submit that, in particular, the RPD did not consider important information in their documentation about discrimination against the Osu by Ibos in Nigeria.²¹
- [34] I have reviewed the NDP and agree with the Appellants that the NDP does not include information about the Osu outcast system. I find that the RPD erred in not considering this documentary evidence, and I have considered and given weight to these documents to the extent that they inform my IFA analysis. I have also reviewed and considered the other documentary information that the Appellants provided to the RPD, although I note that a substantial amount of this information is addressed in the NDP. The RPD was correct in its findings on IFA
- [35] The test to be applied in determining whether there is a viable IFA is two-pronged, and both prongs must be satisfied for a finding that the Appellants have a viable IFA. First, I must find that there is no serious possibility of the Appellants being persecuted under s. 96, nor a risk to life, danger of torture or risk of cruel and unusual treatment or punishment under s. 97, on a balance of probabilities, in the suggested IFA. The Appellants bear the burden of proof to show that they face a s. 96 or 97 risk in the suggested potential IFA. Secondly, I must find that conditions in the suggested IFA are not such that it would be objectively unreasonable in all of the circumstances, including those particular to the Appellants, to relocate and reside there.²²
- [36] While I have also considered the Jurisprudential Guide released by the Chairperson of the Immigration and Refugee Board regarding IFA locations in major cities in south and central Nigeria for claimants fleeing non-state actors,²³ I have not relied on it because I have considered the updated country condition evidence included in the November 29, 2019 NDP.²⁴

- [37] As discussed below, I find that both prongs of the test are met in the proposed IFA locations of Lagos and Benin City because the Appellants have not established that they face a s. 96 or 97 risk in Lagos or Benin City, or that it would be unreasonable for them to relocate there. The Appellants have not established that they face a s. 96 or 97 risk in Lagos or Benin City
- [38] Having assessed the Appellants' evidence concerning the risk they face in Lagos and Benin City, I find that they have not met the onus to establish, on a balance of probabilities, that there is a serious possibility that they will be persecuted under s. 96, or of a risk to life, danger of torture or risk of cruel and unusual treatment or punishment under s. 97. Below, I specifically address the risks alleged by the Appellants. Fear of persecution by the Principal Appellant's extended family and members of the Ibo community
- [39] The RPD made a negative credibility finding concerning the Principal Appellant's testimony that he had a lot of family members living in Lagos and, because Ibos in Lagos go to specific markets, his family would easily find the Appellants. The RPD found that the Principal Appellant had adjusted his evidence, after being confronted with his earlier testimony that Kano was the only place in Nigeria that he had family outside of his native village other than his brother in Kano State, when he testified that he had XXXX to XXXX cousins living in Lagos who wanted to kill the Appellants because they had decided to start their own lineage of outcasts. The RPD did not believe this evidence.
- [40] The Appellants submit that the RPD misapprehended the Principal Appellant's testimony, arguing that while he testified that Kano State was the only place outside his village where a "blood relative" (his brother) resided, he never said that he had no other relatives living outside the village. Regarding an IFA in Lagos, the Appellants submit that, because they have extended family members living in Lagos, they will live in fear and hiding, hoping not to run in to those family members or Ibos who may recognize them. They further submit that Ibos, as non-indigenes in Lagos State, organize themselves together for protection by settling together and accessing the same schools, churches or markets. The Appellants contend that they would be vulnerable to attacks if they were cut off from these areas of settlement, and would be isolated and vulnerable in Lagos without the protection of the Ibo ethnic community. Regarding an IFA in Benin City, the Appellants submit that it is only a two-hour drive to Imo State, where the Principal Appellant is from, and they would feel insecure there due to the close proximity to those who want to kill them.
- [41] I find that the RPD erred in its finding that the Principal Appellant adjusted his testimony. I reviewed the audio recording of the hearing, in which the Principal Appellant testified that the Appellants decided to move to Kano State because it was the only place they had immediate family.²⁵ I accept that Principal Appellant was referring to his brother, when referencing his immediate family, and was not speaking about the presence of cousins outside of the village. I find that the RPD misconstrued the Principal Appellant's testimony on this point.

- [42] However, even if the Principal Appellant has XXXX to XXXX cousins living in Lagos, I find that this alone does not establish a serious possibility that the Appellants will be persecuted in Lagos. The Principal Appellant testified that it would be easy for his cousins to know that the Appellants were in Lagos through social media, or because they would run into them since Ibos shop for their food in specific markets, or because they would attend the same church.²⁶ I note, though, that Lagos is a very large city with a population of approximately 13.463 million.²⁷ In a city of that size, the Appellants would have many different options for shopping or attending church, allowing them to avoid markets or churches frequented by members of their extended family. Benin City is also a large city of 1.628 million.²⁸ Although population size is not necessarily indicative of an IFA, the Appellants have not provided sufficient evidence to show how the Principal Appellant's extended family could locate them in a city the size of Lagos or Benin City.
- [43] Regarding the Principal Appellant's statement that his cousins will know the Appellants are in Lagos due to social media, I find that the use of social media is a personal choice, and limiting one's access to social media does not rise to the threshold of persecution, and the Principal Appellant has the choice to keep his home address and phone number private on social media.²⁹
- [44] The Appellants bear the burden of providing evidence to establish that their persecutors have the means to locate them in the IFA locations.³⁰ I find that the Appellants have not demonstrated "by actual and concrete evidence that it is more than likely that they will be discovered" if they relocate to Lagos or Benin City.³¹ Fear of persecution due to the Appellants' Christian religion
- [45] The RPD found that there is no serious possibility of the Appellants being persecuted as Christians in Lagos or Benin City because: the south of Nigeria is predominantly Christian; conflicts between Christian and Muslim communities mainly occur in northern cities; and the Appellants have never suffered threats related to being Christian in the south. The RPD also found that Boko Haram is almost entirely inactive in Lagos. The Appellants did not dispute these findings by the RPD in their submissions, notwithstanding their allegations that they fear persecution by Boko Haram, the Muslim youth and those in the Muslim community who persecute Christians.
- [46] I find that the objective country condition evidence consistently indicates that the Appellants will not face persecution due to their Christian religion in Lagos or Benin City. While Christians are a minority in northern states in Nigeria, Christianity is dominant in the south of Nigeria, with Christians constituting approximately half the population in the southwestern states and a majority in the southeastern states.³² In Lagos State, in particular, the country condition evidence describes the situation as normal, stating that Christians live peacefully with people of other religions. This evidence further states that there are relatively few incidents of violence based on religion in Lagos, and very little Boko Haram activity.³³ The Appellants have not provided actual and concrete evidence to establish that they would be persecuted as Christians in the IFAs. I find, based on the country condition

evidence, that there is no serious possibility of the Appellants being persecuted due to their Christianity in Lagos or Benin City. Fear of persecution as Ibos based on imputed political opinions for advocating for Biafran independence

- [47] The RPD found that there is no serious possibility of the Appellants being persecuted based on imputed political opinions of advocating Biafran independence because they testified that they were not members of the Movement for the Actualization of the Sovereign State of Biafra (MASSOB) or the Indigenous People of Biafra (IPOB), and had never marched or rallied on behalf of Biafran independence.
- [48] The Appellants submit that there are frequent outbreaks of violence against Ibos in Lagos State, that the Ibo secessionist sentiment persists, and that the issue of ethnic nationalism is a root cause of discrimination in Lagos. The Appellants also submit that there are frequent clashes in Imo State between militants and those agitating for the creation of Biafra, which would put them at risk as Ibos in Benin City.
- [49] The objective country condition evidence indicates that: individuals associated with MASSOB live free from violence and discrimination on a day-to-day basis but those participating in protests face a low risk of being arrested or injured by security forces and leaders may face a higher risk of arrest when engaged in MASSOB events; and individuals associated with IPOB do not face official violence on a day-to-day basis, although individuals participating in Biafran protests, particularly on Biafran Remembrance Day, face a high risk of violence by security forces during protest activity.³⁴ The Principal Appellant testified that he had never marched or participated in secession activities,³⁵ and there was no evidence before the RPD that the Associate Appellant had done so. As a result, it is unlikely that the Appellants would be associated with either of these groups and, even if they were, they would not face a risk of arrest or violence if they are not involved in protest activities or events.
- [50] Although the Appellants cite item 13.1 of the updated NDP as a basis for arguing that ethnic nationalism is a root cause of discrimination in Lagos, item 13.1 refers to ethnic nationalism in the context of non-indigenes sometimes being attacked in cities where they are seen as people benefiting from opportunities meant for indigenes,³⁶ rather than the context of Biafran independence. Furthermore, item 13.1 goes on to indicate that Lagos has a "long history of accommodating non-indigenes, mostly the Igbo."³⁷
- [51] I find that the Appellants have not provided actual and concrete evidence that they would be persecuted based on imputed political opinions for advocating for Biafran independence. Based on the country condition evidence, I find that there is no serious possibility of the Appellants being persecuted on the basis of their imputed political opinions on Biafran independence in Lagos or Benin City. Fear of persecution by bandits who may kidnap or kill the Appellants, or kidnap the Appellants' children born in North America

- [52] The RPD found that there were no specific reasons to believe that the Appellants would be personally affected by such threats, and that the State is presumed able to protect its citizens and the Appellants had not demonstrated otherwise. The RPD found that the Appellants could safely establish themselves in Lagos or Benin City, which are both large, multilingual, multiethnic cities. The RPD further found that the Appellants had never received actual kidnap threats on the basis of being returnees or having children born abroad, noting that there is no indication that failed asylum seekers who return to Nigeria are targeted by bandits in this way.
- [53] The Appellants submit that they fear the ethnic and religious conflicts, kidnappings and killings that take place in Nigeria, and also fear for the lives of their two children born in North America because Nigerian bandits may assume that the Appellants are rich and kidnap these children for ransom. In particular, they submit that there is rampant kidnapping, armed robbery and lawlessness in Benin City because it is an oil producing area. The Appellants also put into evidence travel advisories issued by Canada and the United Kingdom. The Canadian travel advisory generally recommends that non-essential travel to Nigeria be avoided due to a number of risks, including kidnappings, and specifically recommend that travellers exercise a high degree of caution in Lagos. The travel advice from the United Kingdom warns about terrorist kidnappings.
- [54] These travel advisories are intended to provide information to nationals of the issuing countries so that they are aware of conditions that might affect their decisions to travel to specific destinations. While Nigeria does have a high rate of random kidnappings for ransom compared to other countries, including in Lagos and Edo states,³⁸ the mere possibility that the Appellants might be kidnapped for ransom does not, on its own, render Lagos or Benin City unsafe options for an IFA. The country condition evidence indicates that the main targets for kidnapping are political figures, the wealthy and foreigners, although middle class and relatively unknown citizens have increasingly been targeted as well.³⁹ However, an IFA may still exist even where there are risks in that location where those risks are faced by all inhabitants of that location.⁴⁰ The Appellants submit that they are at an increased risk of being targeted because of a perception of wealth due to two of their children being born abroad but I find this submission to be speculative, and note that they have provided no actual or concrete evidence to demonstrate that their circumstances would increase their risk of being kidnapped or killed. Therefore, I find that the Appellants have not provided evidence to establish that they would be at a higher risk of being kidnapped or killed relative to other citizens of Lagos or Benin City. Finding on prong 1
- [55] I find that the Appellants have not established, on a balance of probabilities, that they face a serious possibility of persecution, or a personal risk to life, risk of torture or risk of cruel and unusual punishment or treatment in the IFA locations. The Appellants have not established that it would be unreasonable for them to relocate to Lagos or Benin City

- [56] I now turn to an assessment of Lagos and Benin City as IFAs for the Appellants, noting that there is a very high threshold for the unreasonableness test, requiring actual and concrete evidence of the existence of conditions that would jeopardize the life and safety of the Appellants.⁴¹ I am satisfied that it is reasonable for the Appellants to seek refuge in Lagos or Benin City, based on their specific circumstances.
- [57] There are a range of issues that can inform the analysis of whether a proposed IFA is reasonable, including: transportation and travel; language; employment; accommodation; religion; indigeneship status; and availability of health care. Transportation and Travel
- [58] Lagos has an international airport and there is a main domestic airport at Benin City,⁴² which I find to be factors to be weighed in favour of the IFAs. There is no evidence to demonstrate that there would be any impediments to the Appellants travelling to Lagos or Benin City. Language
- [59] The RPD found that both Lagos and Benin City are multilingual cities. The Appellants argue that it would be difficult for them to relocate to Benin City due to language barriers, submitting that most natives there do not speak English and instead speak Bini/Edo and other Ediod languages, and it would be impossible for the Principal Appellant to find employment because he does not speak or understand Bini/Edo and could not communicate with peers or clients.
- [60] I find that the Appellants have not provided sufficient evidence to meet the threshold of unreasonableness regarding language. The objective country condition evidence states that English is the official language of Nigeria,⁴³ and that there is no language barrier in cities unless a person is not English-speaking.⁴⁴ Employment
- [61] The Appellants submit that the fact that the Principal Appellant is a non-indigene will have a negative impact on his ability in the public sector and, without assurance that he can access jobs in the private sector, life will be precarious for the Appellants due to the high cost of living and the prohibitive cost of food.⁴⁵ They add that he will not have support from family or ethnic associations to help find employment. The Appellants further submit that the Principal Appellant will be the only bread-winner because, without family or social supports in Lagos, the Associate Appellant will have to take care of their children. The Appellants argue that, although the Associate Appellant was raised in Benin City, she left at 17 and never worked there. They further argue that she has no family members in Benin City and they would not benefit from any family or social supports there.
- [62] The Appellants note that the objective country condition evidence states that the level of competition for jobs in Lagos is high, and information about employment opportunities is exaggerated.⁴⁶ They submit that it will be difficult to access employment in Benin City due to language barriers, the high unemployment rate, and the sentiment that indigenes should be favoured for jobs in the oil industry.

- [63] However, the country condition evidence indicates that indigeneship status is less important in big cities, and that non-indigenes generally can find work in most industries, where there is a demand for it.⁴⁷ The country condition evidence states that the ability to find gainful employment is facilitated by a good level of education, experience or expertise.⁴⁸ In addition to general information about large cities in Nigeria, the country condition evidence specifically addresses Lagos, indicating that it has a long history of accommodating non-indigenes, mostly the Igbo, and that jobs are not reserved for Lagos indigenes in Lagos State.⁴⁹ While the country condition evidence indicates that indigeneship influences access to employment within the civil or public service,⁵⁰ it also states that Lagos, in particular, does not implement the practices of requiring individuals to establish their state of origin or indigeneity before they can access civil service jobs.⁵¹
- [64] The Principal Appellant has past work experience in the private sector, as an XXXX XXXX XXXX and in his own XXXX XXXX XXXX, as well as in XXXX.⁵² He has 19 years of education, including a Bachelor's degree in XXXX XXXX and a XXXX XXXX XXXX XXXX,⁵³ significantly more than the Nigerian average of 8-9 years of school.⁵⁴ The Principal Appellant has showed himself to be resourceful in starting his own business when the Appellants relocated to Kano.⁵⁵ I find that it is more likely than not that he will find employment in Lagos or Benin City. While the Associate Appellant has minimal work experience, she is well educated, with 17 years of education and a Bachelor's degree in XXXX.⁵⁶ Even without the support of family in Lagos or Benin City, she would have the option of working if her children attend school or daycare.
- [65] I am satisfied, based on the evidence, that the Appellants would be able to earn a livelihood and have a stable source of income in Lagos or Benin City. The Appellants have not met the high threshold required to demonstrate that relocating to one of the IFA locations would be unreasonable for the Appellants, having regard to all their circumstances. Accommodation
- [66] The RPD found that the difficulty of finding housing in Lagos or Benin City would be greatly mitigated by the presence and support of the Principal Appellant in the family unit. The Appellants submit that they will not have support from family or ethnic associations to help find housing in Lagos or Benin City, which is important for non-indigenes.
- [67] The objective country condition evidence indicates that, while access to land in Nigeria can depend on a person's indigenous status, non-indigeneity does not necessarily influence access to housing. It further indicates that the ability to find employment is a key factor.⁵⁷ I find that the Appellants have not demonstrated that relocating to Lagos or Benin City is unreasonable with regard to accommodation. Religion
- [68] As noted in my analysis above, the country condition evidence indicates that Christians in Lagos State live peacefully with people of other religions,⁵⁸ and Christianity is dominant in the south of Nigeria.⁵⁹ I find that religion will not be an adverse factor for the Appellants in relocating to Lagos or Benin City. Indigeneship

- [69] The RPD found that both Lagos and Benin City are multiethnic cities and that the Appellants' testimony that they might be discriminated against for being non-indigenous did not make the suggested IFAs unreasonable.
- [70] The Appellants submit that the indigeneship issue is complex and overlaps with other conflicts in Nigeria over language, religion and political opinions. They further submit that the fact that there is a diverse settler population in Lagos does not eliminate obstacles and discrimination against non-indigenes, and that they, as non-indigenes, would not benefit from government assistance.⁶⁰ The Appellants submit that indigenes in Benin City are hostile to non-indigenes because they see them as coming to take their jobs in the oil sector. They also submit that it would be very difficult for the Principal Appellant to access employment in the public sector in Benin City due to the high rate of unemployment and the preference given to natives.
- [71] According to the country condition evidence: indigeneship status is less important in big cities;⁶¹ internal migration within Nigeria is the norm; all large cities have quite large migrant communities; and issues of indigeneity are nonexistent in most cosmopolitan and urban Nigerian cities.⁶² The burden is on the Appellants to show that any discrimination they may face in Lagos or Benin City based on ethnicity or non-indigeneship would rise to the level that it would render those IFAs unreasonable. I find that the Appellants have not provided evidence to demonstrate this, on a balance of probabilities. Health care
- [72] The Appellants submit that the Principal Appellant's mental health condition would be adversely affected if he was not able to find employment and housing in Lagos or Benin City, and would have a negative impact on his ability to resettle and on the well-being of his children. The Appellants also submit that the mental health condition of the Principal Appellant would be adversely affected if he was not able to find housing.
- [73] I accept the psychological report for the Principal Appellant, indicating that he suffers from XXXX XXXX XXXX, but I find that this does not render relocation unreasonable.
- [74] The new evidence admitted in relation to the Principal Appellant's mental health condition indicates that: there is a minimal number of psychiatrists in Nigeria is minimal; the stigma related to mental illness makes access to mental health services difficult;⁶³ and fewer than 10% of mentally ill Nigerians have access to a psychiatrist or health worker.⁶⁴ This information is consistent with some of the country condition evidence in the NDP, which indicates that there are fewer than 300 psychiatrists in Nigeria,⁶⁵ treatment facilities are mainly located in urban areas,⁶⁶ and there is a large gap in mental health services in north-east Nigeria.⁶⁷
- [75] However, the proposed IFAs are not located in north-east Nigeria and they are both urban areas. Furthermore, the following evidence in the NDP indicates that mental health care is available in Nigeria: there are eight neuropsychiatry hospitals and six state-owned mental hospitals in Nigeria;⁶⁸ mental illness can be treated in public hospitals;⁶⁹ and there are no forms of mental illness for which treatment is not available in Nigeria.⁷⁰ Based on the

preponderance of the objective country condition evidence before me, I find that, while it may be difficult to access mental health care in Nigeria due to deficient human resources, such care is available.

- [76] The country condition evidence submitted by the Appellants states that costs for treatment of mental illness are not covered by public health insurance.⁷¹ However, information in the NDP indicates that non-indigeneity does not influence access to health services because the ability to access health services is largely a function of the ability to pay for all Nigerians,⁷² so the Appellants would not be in a different position than other Nigerian citizens regarding access to health care, including mental health care. As a result, I find that this factor does not indicate that it would be unreasonable for the Appellants to relocate to Lagos or Benin City.
- [77] Therefore, I find that, on a balance of probabilities, the Principal Appellant can access mental health care in Lagos or Benin City. Although the Principal Appellant's mental health may make relocation more difficult, I find that the Appellants have not established that this factor would render relocation unreasonable. Finding on prong 2
- [78] I find that the Appellants have not established that it would be unreasonable for them to relocate to Lagos or Benin City.

CONCLUSION

- [79] Regarding the Principal Appellant, Associate Appellant and Minor Nigerian Citizen Appellants, the RAD dismisses the appeal and confirms the decision of the RPD that they are neither Convention refugees nor persons in need of protection, pursuant to section 111(1)(a) of the IRPA.
- [80] Regarding the Minor US Citizen Appellant, the RAD dismisses the appeal and confirms the decision of the RPD that he is neither a Convention refugee nor a person in need of protection, pursuant to section 111(1)(a) of the IRPA. (signed) "Maureen Carter-Whitney" Maureen Carter-Whitney February 28, 2020 Date 1 Exhibit RPD-1, RPD Record, Exhibit 2.1, Basis of Claim narratives, pp. 19-37. 2 Exhibit RAD-1, Member's Direction, January 22, 2020. 3 Exhibit P-4, Response to Member's Direction, February 6, 2020. 4 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. 5 Exhibit P-2, Appellants' Record, pgs. 7-8, Exhibit A. 6 Exhibit P-2, Appellants' Record, pg. 10, Exhibit B. 7 Exhibit P-2, Appellants' Record, pgs. 11-14, Exhibit C. 8 Exhibit P-2, Appellants' Record, pg. 15, Exhibit D. 9 IRPA, at ss. 110(4). 10 Canada (Citizenship and Immigration) v. Singh, [2016] 4 FCR 230, 2016 FCA 96. 11 Exhibit RPD-1, RPD Record, RPD Reasons, pgs. 3-18, at pg. 9, para. 46. 12 Exhibit P-4, Response to Member's Direction, pgs. 13-15. 13 Exhibit P-4, Response to Member's Direction, pgs. 16-19. 14 Exhibit P-3, Rule 29 Application, pg. 4. 15 Exhibit P-3, Rule 29 Application, pgs. 5-7. 16 Exhibit P-3, Rule 29 Application, pgs. 8-25. 17 RAD Rule 29(4), Refugee Appeal Division Rules (SOR/2012-257). 18 IRPA, at ss. 110(6)(a). 19 Exhibit RPD-1, RPD Record, Exhibit 3, National Documentation

Package (NDP) for Nigeria (30 April 2019), items 12.5 (RIR NGA105320.E) and 13.1 (RIR NGA104216.E). 20 Exhibit P-2, Appellants' Record, pgs. 57-129. 21 Exhibit RPD-1, RPD Record, Exhibit 2, pgs. 333-357, Documents 17-24. 22 *Rasaratnam v. Canada* (MEI), [1992] 1 FC 706, at pp. 709-710. 23 *X(Re)*, 2018 CanLII 52123 (CA IRB), Identified by the Chairperson as a Jurisprudential Guide on July 6, 2018. 24 Exhibit RAD-1, National Documentation Package for Nigeria (29 November 2019), item 13.1. 25 RPD audio recording of the hearing, May 17, 2019, at 1:11:30. 26 RPD audio recording of the hearing, May 17, 2019, at 1:52:25. 27 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Nigeria (30 April 2019), item 1.6, pg. 4. 28 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Nigeria (30 April 2019), item 1.6, pg. 4. 29 *Rizwan v. Canada* (Citizenship and Immigration), 2017 FC 456 (CanLII), at para. 14. 30 *Gonzalez Martinez v. Canada* (MCI), 2012 FC 5, at para. 11. 31 *Momodu v. Canada* (Minister of Citizenship and Immigration), 2015 FC 1365, at para. 14. 32 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Nigeria (30 April 2019), item 1.4, pg. 16, and item 12.5, pgs. 1-2. 33 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Nigeria (30 April 2019), item 12.5, pgs. 9-10. 34 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Nigeria (30 April 2019), item 1.8, pg. 18. 35 RPD audio recording of the hearing, May 17, 2019, at 1:51:50. 36 Exhibit RAD-1, National Documentation Package for Nigeria (29 November 2019), item 13.1, at pg. 14. 37 Exhibit RAD-1, National Documentation Package for Nigeria (29 November 2019), item 13.1, at pg. 15. 38 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Nigeria (30 April 2019), item 7.3, at pgs. 1-2. 39 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Nigeria (30 April 2019), item 7.3, at pgs. 3-4. 40 *Muhammed v. M.C.I.*, 2012 FC 226, at para. 16. 41 *Ranganathan v. Canada* (Minister of Citizenship and Immigration), 2000 CanLII 16789 (FCA), [2001] 2 F.C. 164, 266 N.R. 380 (F.C.A.) at para. 15. 42 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Nigeria (30 April 2019), item 1.7, at pg. 9. 43 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Nigeria (30 April 2019), item 1.6, at pg. 3, and item 16.4 at pg. 9. 44 Exhibit RAD-1, NDP for Nigeria (29 November 2019), item 13.1, at pg. 14. 45 Exhibit RAD-1, NDPP for Nigeria (29 November 2019), item 13.1, at pg. 16. 46 Exhibit RAD-1, NDP for Nigeria (29 November 2019), item 13.1, at pg. 15. 47 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Nigeria (30 April 2019), item 13.1 [now item 16.14 in the NDP for Nigeria (29 November 2019)], at pg. 9. 48 Exhibit RAD-1, NDP for Nigeria (29 November 2019), item 13.1, at pgs. 13-14. 49 Exhibit RAD-1, NDP for Nigeria (29 November 2019), item 13.1, at pgs. 15-16. 50 Exhibit RAD-1, NDP for Nigeria (29 November 2019), item 13.1, at pg. 7. 51 Exhibit RAD-1, NDP for Nigeria (29 November 2019), item 13.1, at pg. 16. 52 Exhibit RPD-1, RPD Record, Exhibit 1, Schedule A Background/Declaration, pg. 211. 53 Exhibit RPD-1, RPD Record, Exhibit 1, Schedule A Background/Declaration, pg. 211. 54 Exhibit RPD-1, RPD Record, Exhibit 3, National Documentation Package for Nigeria (30 April 2019), item 1.6, at pg. 6. 55 RPD audio recording of the hearing, May 17, 2019, at 1:11:30. 56 Exhibit RPD-1, RPD Record, Exhibit 1, Schedule A Background/Declaration, pgs. 206-207. 57 Exhibit RAD-1, NDP for Nigeria (29 November 2019), item 13.1, at pgs. 8, 9, 13 and 14. 58 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Nigeria (30 April 2019), item 12.5, pgs. 9-10. 59 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Nigeria (30 April 2019), item 1.4, pg. 16, and item 12.5, pgs. 1-2. 60 Exhibit RAD-1, NDP for Nigeria (29 November 2019), item 13.1, at pgs. 7, 16. 61 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for

Nigeria (30 April 2019), item 13.1 [now item 16.14 in the National Documentation Package for Nigeria (29 November 2019)], at pg. 9. 62 Exhibit RAD-1, NDP for Nigeria (29 November 2019), item 13.1, at pgs. 12-13. 63 Exhibit P-3, Rule 29 Application, pgs. 8-20. 64 Exhibit P-3, Rule 29 Application, pgs. 23-25. 65 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Nigeria (30 April 2019), item 1.9, at pg. 15, para. 9.1.2. 66 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Nigeria (30 April 2019), item 1.9, at pg. 16, para 9.1.4. 67 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Nigeria (30 April 2019); item 1.23, at pg. 52. 68 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Nigeria (30 April 2019), item 1.9, at pg. 16, para. 9.1.1. 69 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Nigeria (30 April 2019), item 1.9, at pg. 15, para. 9.1.2. 70 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Nigeria (30 April 2019), item 1.9, at pg. 15, para. 9.1.2. 71 Exhibit P-3, Rule 29 Application, pgs. 8-20. 72 Exhibit RAD-1, NDP for Nigeria (29 November 2019), item 13.1, at pg. 10.

RAD File / Dossier de la SAR : MB9-15591 MB9-15592 / MB9-15593 / MB9-15594 MB9-15595
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/InternalFlightAlternative-refugee-appeal-division-2020--6a40c3ae4cf2c72690fb0de0>

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

Prepared on 24 October 2026 · Esheria