

CANADA / JUDGMENT

MB9-26381

COURT

Refugee Appeal Division

DECIDED

23 January 2020

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RAD File / Dossier de la SAR : MB9-26381

MB9-26382 / MB9-26383

Private Proceeding / Huis clos

Reasons and decision ? Motifs et décision

Persons who are the subject of the appeal

XXXX XXXX XXXX XXXXXXXXXX XXXX XXXX XXXXXXXXXX XXXX XXXX XXXX

Personnes en cause

Appeal considered / heard at

Toronto, ON

Appel instruit / entendu à

Date of decision

January 23, 2020

Date de la décision

Panel

Neil Kaufman

Tribunal

Counsel for the persons who are the subject of the appeal

Paul D. Ocheje

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, the Principal Appellant (PA), his wife, XXXX XXXX XXXX (JLO), and their minor son, XXXX XXXX XXXX XXXX (XXXX) (JLO and XXXX are sometimes together referred to as the Associate Appellants), appealed a decision of the Refugee Protection Division (RPD), dated October 21, 2019, rejecting their claims for refugee protection. They ask the Refugee Appeal Division (RAD) to find them to be Convention refugees or persons in need of protection. In the alternative, they ask that the matter be referred back to a different member of the RPD for redetermination. The PA and JLO are citizens of Nigeria, while their minor son, XXXX, is a citizen of the United States (U.S.). The PA was appointed the designated representative for XXXX.
- [2] The RPD heard the claims on September 23, 2019, but rejected them on October 21, 2019 on the basis of the RPD's findings that a viable internal flight alternative (IFA) exists for the adult Appellants in Lagos, Nigeria, and that the minor Appellant, JLO, had no risk of persecution or risk to life in the U.S.
- [3] Having reviewed and independently assessed the totality of the evidence, including the audio recording of the hearing, and the arguments of the Appellants, I find that the RPD was correct to reject these claims. The Appellants are neither Convention refugees nor persons in need of protection. The appeal is dismissed and the decision of the RPD is confirmed.

ROLE OF THE RAD

- [4] The RAD is required to undertake an independent assessment of the evidence and reach its own determination on a standard of correctness. Deference may be owed to the RPD only where the RPD held a meaningful advantage in assessing evidence. In the present case, I find that the RPD did not have any such meaningful advantage and there is no reason to show deference to any of the RPD's findings. I have applied a correctness standard and arrived at my own independent findings based on the evidence and arguments before me.

CONSIDERATION OF UPDATED NDP FOR NIGERIA

- [5] After the appeal was perfected, the RAD gave notice to the Appellants that the most updated version of the National Documentation Package (NDP) for Nigeria dated November 29, 2019 would be considered on the appeal. The Appellants were invited to make submissions regarding new or updated NDP items, and their attention was directed to items 1.6, 5.9, 7.28,

7.32, and 13.1 of the updated NDP.¹ The notice was sent to counsel on December 16, 2019 and the deadline for submissions was December 27, 2019. I delayed the completion of these Reasons for an extended period after the deadline, but no submissions were received.

BACKGROUND

- [6] The Appellants are Pentecostal Christians. The adult Appellants were both born in Nigeria and are Nigerian citizens. In 2006, the PA left Nigeria to study XXXX in XXXX and ultimately received his XXXX degree there. In 2009 JLO left Nigeria to study at a college in the U.S.
- [7] In 2009, while JLO was in the U.S., her family's XXXX XXXX in Kaduna, Nigeria, was burned down during a religious riot. In 2010, the PA returned to Nigeria for a XXXX week visit to attend his brother's wedding. During that visit, he was told by his family that his brother had been told by a friend that Boko Haram had made threats against the PA because of the PA's "western style education". Following this visit, the PA returned to his XXXX school in XXXX.
- [8] In XXXX 2012, having completed XXXX school in XXXX, the PA travelled to the U.S on a student visa. He planned to obtain a residency position, which would enable him to stay in the U.S.
- [9] In 2013, Boko Haram sent a death threat to the housing estate where JLO's family lived. The threat was directed not specifically to JLO's family, but generally to Christian neighbourhoods in the area.
- [10] In XXXX 2014, there was a bomb threat against the church in Abuja where the PA's father is the XXXX XXXX XXXX. No attack against that church occurred.
- [11] In 2014, the PA met JLO in Texas, U.S.
- [12] In XXXX 2015, the church that JLO's family attended in Kaduna was burned down by Boko Haram.
- [13] The PA and JLO were married in XXXX, 2016 in the U.S.
- [14] The PA was unable to obtain admission to a XXXX XXXX XXXX in the U.S. In XXXX 2018, JLO's status in the U.S. expired. XXXX was born in Texas on XXXX XXXX, 2018. In XXXX 2018, the PA's status in the U.S. expired. Both the PA and JLO were told by a lawyer in the U.S that they were not able to apply for refugee status in the U.S because they had been in the country for too long.
- [15] On November 1, 2018, the Appellants irregularly crossed the border into Canada and applied for refugee status.
- [16] The Appellants, in their memorandum, accept as correct the RPD's summary of the facts in this matter, which is essentially the summary of facts set out above.²

- [17] The RPD stated that it had no reason to doubt the veracity of the Appellants' main allegations.³

ADMISSIBILITY OF NEW EVIDENCE PRESENTED ON APPEAL

- [18] Section 110(4) of the Immigration and Refugee Protection Act (IRPA)⁴ provides that, in an appeal to the RAD, an appellant may present new evidence only if it arose after the rejection of their claim, it was not reasonably available, or if the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection. In *Singh*⁵ the Federal Court of Appeal applies a narrow interpretation of section 110(4); the conditions set out therein must be met, and there is no room for discretion on the part of the RAD. If the section 110(4) threshold is met, then the new evidence must also meet the jurisprudential requirements of credibility, relevance and newness.⁶
- [19] The Appellants apply to submit the following documents as new evidence on the appeal:
- Overseas Security Advisory Council (OSAC), Bureau of Diplomatic Security, United States Department of State, Nigeria 2019 Crime & Safety Report: Lagos, dated August 16, 2019;
 - An online newspaper article apparently from the Daily Post (Nigeria), entitled "Ohaneze speaks on 'fight' between Igbos, Yorubas in Lagos", apparently dated February 27, 2019;
 - An online report said to be from SilverbirdTV.com, entitled "Market Closes As Yoruba, Hausa Traders Clash In Lagos", apparently dated August 8, 2019;
 - An online article said to be from Aljazeera.com, entitled "In Lagos, finding a home to rent is an impossible mission", apparently dated June 2, 2019.
- [20] The RAD Rules provide that the Appellants' must provide a written statement indicating whether they are relying on any new evidence and that their memorandum must include full and detailed submissions regarding how any new evidence meets the requirements of section 110(4) and how that evidence relates to the Appellants.⁷ The Appellants' memorandum contains no such submissions, although the Appellants' written statement states that the proposed new evidence was "not available to us, even though they existed at the time of the rejection of our refugee claim" and that it is supportive evidence regarding the Appellants' assertion that Lagos is not a viable IFA.⁸
- [21] All of the documents submitted as new evidence are dated before the date of the rejection of the Appellants' claims (October 21, 2019). The Appellants did not comply with the RAD Rules⁹ because they do not explain how this evidence meets the criteria in section 110(4). There is no explanation as to why the reports comprising the proposed new evidence were not reasonably available at the time of the rejection of the Appellants' claims or why the Appellants could not reasonably have been expected to have presented that evidence by the time of the rejection of their claims. None of the documents tendered meets the requirements of the RAD Rules or of section 110(4), and I do not accept them as new evidence. However, even though the Appellants have not established that document "a"

referred to above (the OSAC report) meets the requirements for admission as new evidence, that document has been considered as part of my IFA analysis because it is part of the newly updated National Documentation Package (NDP) for Nigeria.¹⁰

ANALYSIS

- [22] The RPD identified IFA as the determinative issue and found that the Appellants have a viable IFA in Lagos.
- [23] The Appellants submit that the RPD erred in its assessment of the risk from Boko Haram and Fulani herdsmen when it found that the Appellants had an internal flight alternative in Lagos. The Appellants also argue that Lagos is not a reasonable IFA and there was a breach of natural justice and procedural fairness because the Appellants were not given proper notice that IFA was an issue.
- [24] Following my own review of all of the evidence, including the audio recording of the hearing, and considering the arguments of the Appellants, and applying the framework of assessment outlined in the IFA Jurisprudential Guide¹¹ (JG) to the particular circumstances of the Appellants, I find, for the reasons outlined below, that the RPD did not err in its finding that Lagos is a viable IFA for the Appellants.

NOTICE THAT IFA IN LAGOS WAS AN ISSUE WAS GIVEN

- [25] The Appellants argue that there was a breach of natural justice because the RPD "sprung the possibility of an internal flight alternative on the claimants" who had no opportunity to rebut the factors stated to be in support of the proposed IFA. They argue that no prior notice was given that IFA would be an issue until the RPD stated well into the hearing that the availability of an IFA in Lagos would be a determinative issue, and that they could not have been expected on the spot to adequately advance convincing reasons why Lagos is not a viable IFA. They argue that they were "ambushed and blindsided" by the RPD. For the following reasons, I do not agree.
- [26] The concept of IFA is an inherent part of the Convention refugee definition,¹² and just one of many issues that can be identified at a hearing. The Board has identified a Jurisprudential Guide which is available on the Board's website which indicates that, where a person's fear is of persecution or serious harm at the hands of non-state agents, relocation to one or more of the large multiethnic, multilingual cities in south and central Nigeria such as Lagos is likely to be widely viable, depending on the nature of the threat from non-state agents and individual circumstances of the person.¹³ As such, it is incumbent upon claimants and their counsel to be prepared to address that issue with evidence if the issue is raised by the RPD. Notice must be given to the claimant that IFA will be an issue in deciding the claim. The jurisprudence confirms that such notice can be given at the hearing so long as it is clear and the claimant has an opportunity to respond.¹⁴ Questioning during the hearing on the issue of IFA can be sufficient notice.¹⁵

- [27] In this case, the Appellants were represented before and at the RPD hearing by experienced counsel, whose submissions made it clear that he was aware that "IFA is a necessary part of every hearing" and that "whether that safety can not be found is something that needs to be proved".¹⁶ This awareness of the issue and the burden of proof upon claimants is also confirmed in the Appellants' memorandum.¹⁷
- [28] There was considerable questioning at the hearing, both by the RPD and by Appellants' counsel, about the suitability of Lagos as an IFA and considerable testimony about that issue by the adult Appellants.¹⁸ Counsel for the Appellants made extensive submissions at the hearing regarding the viability of Lagos as an IFA.¹⁹ It is clear from the hearing recording and the Appellants' memorandum that the Appellants knew that the RPD was considering at the hearing the existence of a viable IFA, in particular in Lagos. This constitutes clear and sufficient notice to the Appellants that an IFA in Lagos was at issue.²⁰
- [29] Further, 27 days elapsed between the hearing date and the date of the RPD's decision. The Appellants could have submitted further evidence regarding the viability of Lagos as an IFA after the hearing and before the RPD rendered its decision but did not do so even though the issue had clearly been raised at the hearing. This also supports a finding that the Appellants had a full opportunity to submit evidence regarding the IFA issue.²¹
- [30] I find that there was no breach of natural justice or any procedural unfairness, and that the Appellants had clear and sufficient notice that the existence of a viable IFA in Lagos was at issue.

IFA ANALYSIS

- [31] In conducting my independent analysis, I am guided by the IFA JG22 which outlines considerations for internal flight alternatives for Nigerians fleeing non-state actors. While the JG is not binding and is only a guide, I find that the framework of analysis in the JG is appropriate because, like this case, it involves the consideration of IFAs in Nigeria for persons fleeing non-state actors. While I agree that it is appropriate to apply the JG, I do so through the lens of the evidence presented by these particular Appellants and the objective evidence before me.
- [32] The RPD correctly found that the determinative issue in this case is the availability of a viable IFA in the city of Lagos in Lagos State, Nigeria. A risk of persecution or harm under sections 96 or 97 of the Immigration and Refugee Protection Act (IRPA) must exist in the entire country and not just in some parts of the country. Thus, the existence of a viable IFA is fatal to any refugee claim.

Proper application of the JG to the IFA analysis

- [33] The Appellants argue that the RPD "adopted its own one-size-fits-all analytical recommendation in the...[RAD's JG]...in its IFA analysis...without giving adequate consideration to the particular circumstances of the...[Appellants]", and that the RPD "mechanically adopted" a "boilerplate formula" set out in the JG. I do not agree.
- [34] As mentioned previously, pursuant to section 159(1) (h) of the IRPA, the Chairperson of the Immigration and Refugee Board has identified the JG as a jurisprudential guide which addresses internal flight alternatives in major cities in south and central Nigeria for claimants fleeing non-state actors. This JG sets out a framework for the assessment of IFA in Nigeria, generally, and specifically in south and central Nigeria where Lagos is located. As is reflected in the JG, where a person's fear is of persecution or serious harm at the hands of non-state agents, relocation to one or more of the large multiethnic, multilingual cities in south and central Nigeria such as Lagos is likely to be widely viable, depending on the nature of the threat from non-state agents and individual circumstances of the person.²³ The Federal Court has recently found that this JG does not unlawfully fetter Board members' discretion or improperly encroach upon their adjudicative independence because it repeatedly refers to the need for each case to be adjudicated on the basis of its particular facts.²⁴ The IFA JG is only a guide and is not binding.
- [35] The RPD found that it was appropriate to consider and be guided by the JG, but it clearly recognized - as does the JG - that the application of the JG to the IFA analysis must consider all the circumstances, including those particular to the Appellants. The RPD went on to consider the circumstances of the Appellants in considering whether Lagos is a viable IFA.
- [36] My review of the RPD's Reasons shows that the RPD, while applying the JG to its IFA analysis, conducted an analysis of the particular circumstances and allegations of the Appellants. I agree that the RPD's Reasons did not address every aspect of the evidence. For example, it did not specifically refer to the Appellants' submissions that they were more at risk in the proposed IFA because they had been out of the country for a lengthy period of time, because they had not accumulated enough money to be able to afford to live in Lagos, and because their son is an American citizen. The RPD is not required to refer to every piece of evidence that it received that is contrary to its finding and is presumed to have considered all of the evidence. However, I agree that these factors should be addressed because they are part of the profile of the Appellants that they allege contribute to an increased risk and the unreasonableness of the proposed IFA. In my independent assessment of the evidence and arguments in this case, I expressly consider the evidence mentioned above.

IFA test

- [37] The RPD correctly cited the two-part IFA test from the Federal Court of Appeal's reasons for judgment in *Rasaratnam*,²⁵ and correctly stated that the burden of proof was on the claimants to establish that they do not have a viable IFA.

First prong of IFA Analysis - Proposed IFA is safe

- [38] In considering the Appellants' risk of persecution or risk to life in the proposed IFA, the RPD found that the Appellants had not established that the alleged agents of persecution, Boko Haram and Fulani herdsmen, have either the means or motivation to track down the Appellants should they return to Nigeria and live in the southwestern zone of Nigeria in Lagos.
- [39] The Appellants argue that the RPD's finding that the Appellants have an IFA in Lagos is incompatible with its finding that it had no reason to doubt the veracity of the Appellants' main allegations, thereby making the RPD's conclusion "unsupportable, whimsical and capricious".
- [40] It is true that the RPD found the Appellants to be truthful regarding their main allegations, and that there is a presumption of that testimony being truthful. However, that credibility and that presumption apply to the Appellants' evidence. They do not apply to speculation, and they do not overcome the need for objective evidence that the proposed IFA is not viable.²⁶ The fact that the Appellants' believe that Boko Haram and Fulani herdsmen would find them in Lagos or that their family believes that there is a continuing danger from the agents of persecution in Lagos does not make it so and does not discharge the Appellants' burden to demonstrate with credible and trustworthy evidence that they would face more than a mere possibility of persecution or risk of harm from Boko Haram and/or Fulani herdsmen in Lagos.²⁷
- [41] With respect to Boko Haram and Fulani herdsmen, I agree with and adopt the analysis of the RPD at paragraphs 29 to 31 of the RPD's Reasons. I agree with the RPD that the objective evidence does not establish that Boko Haram and/or Fulani herdsmen have the reach, influence, presence or operational capability to find and harm the Appellants in Lagos. The Appellants did not point to any such evidence. The lack of objective evidence supporting the Appellants' speculation and the existence of objective evidence to the contrary, coupled with the size of Nigeria generally and of Lagos in particular and the absence of evidence that Boko Haram and the Fulani herdsmen are operationally active in Lagos lead me to find that the Appellants have not established that Boko Haram and/or the Fulani herdsmen have the ability to track the Appellants and locate them in Lagos.
- [42] The Appellants also allege that they are in danger if they were to live in Lagos because of the presence of significant crime and kidnapping. They testified that the PA's sister, who lives in Lagos, has been subject to several robberies and knows people who have been kidnapped for ransom, although no direct evidence from that sister relating to these allegations was provided. They allege further that their profiles increase their risk of harm from crime and kidnapping in Lagos. The Appellants point to the fact that they are likely to be targets for crime or kidnapping because (1) they have been away from Nigeria for so long that their speech and other habits and their western education make them easily identifiable as returnees from the diaspora, (2) the minor Appellant, XXXX, is an American citizen, and (3)

the PA's father and brother are members of the clergy, making them and their families particularly vulnerable to kidnapping in Nigeria.

- [43] News reports and articles submitted as evidence by the Appellants confirm the existence of violence, including by Boko Haram and Fulani herdsmen, but largely in northern, central, and south-eastern Nigeria.²⁸ Travel advisories and reports, including those issued by the U.S.²⁹ and Canada,³⁰ advise their nationals to reconsider travel to Nigeria or avoid non-essential travel to Nigeria because of the unpredictable security situation throughout the country and the risk of terrorism, crime, intercommunal clashes, armed attacks and kidnapping. Travellers to Lagos are urged to exercise a high degree of caution due to the incidence of crime, the most common of which is armed robbery or kidnapping for ransom. The U.S. OSAC report confirms that kidnapping for ransom is prevalent throughout Nigeria and is a lucrative industry.³¹ It further notes that victims often come from the Nigerian diaspora when they return home from abroad for either a holiday or a specific reason such as death in the family or a wedding because of their perceived affluence. It further notes that kidnappers take multiple expatriates every year, including in southern Nigeria. The main targets of kidnapping are political figures, the wealthy and foreigners, although the targeting of middle class or average Nigerians has also increased, with targets having included expatriates, doctors and religious leaders.
- [44] These travel advisories and reports are intended for use by nationals of the issuing countries so that those people are aware of conditions that might affect their decisions to travel to specific destinations. These reports provide objective evidence that crime, robberies, kidnapping and other criminal activities are serious problems in Nigeria generally, including in Lagos. Indeed, it is probable that these problems are prevalent in many large cities throughout the world. It also appears that these problems are risks faced by all the more than 200 million inhabitants of Nigeria and the more than 13 million inhabitants of Lagos. An IFA may still exist despite risks in that location where the risks are faced by all inhabitants.³²
- [45] The adult Appellants, upon return to Nigeria, would not be expatriates; they are Nigerian nationals who have lived in Nigeria for most of their lives, who are both fluent in English (the national language in Nigeria) and in the Idoma (JLO) and Ishan (the PA) languages, and who have been living abroad for temporary purposes. They are not from the Nigerian diaspora returning home for a specific temporary purpose, such as a wedding. There is no explanation as to how anyone would know that the minor Appellant, XXXX, who is approximately XXXX months old, is an American citizen or how he would be perceived as a foreign national. Further, the Appellants allege that they have not accumulated substantial assets and would face economic difficulties upon returning to Nigeria, so it is difficult to understand why they would be perceived as wealthy. It is also unclear how anyone in Lagos would know that the PA's father is a XXXX XXXX XXXX XXXX of a church in Abuja. The suggestion that the Appellants would be at greater risk because their patterns of speech or ways of doing things have altered during their absence from Nigeria is speculative. In order

to be a Convention refugee under section 96 of the IRPA, there must be a serious possibility of persecution on a Convention ground. Even if the factors of having lived abroad, being perceived as wealthy, being related to a church XXXX, or having an infant son who is a U.S. citizen could be considered to be persecution based on a Convention ground, I am not satisfied that the evidence shows that there is more than a mere possibility of persecution in Lagos on these grounds.

- [46] In order to be a person in need of protection under section 97 of the IRPA the Appellants must establish, on a balance of probabilities, that they would be personally subject to a risk to life or risk of cruel and unusual treatment or punishment or danger of torture in the IFA that is not faced generally by other individuals in the country. The evidence shows that crime and kidnapping are prevalent throughout the country as well as in Lagos and other large cities. The evidence supports the existence of factors that heighten their risk of harm to some extent, but I am not satisfied that these factors rise to the level of establishing, on a balance of probabilities, the existence of a personal risk that is not faced by all the residents of Lagos. I am not satisfied that these factors would be known to others or would materially alter the risk faced by the Appellants.
- [47] In relation to the claim of XXXX, I am not satisfied that being an American citizen would result in him being personally subject to a risk of harm in Lagos that is not faced generally by other individuals in Nigeria or in Lagos. As stated previously, at his young age, there is no explanation as to how anyone would know that he is an American citizen or that he would be perceived as a foreign national, and I am not satisfied that this factor is sufficient to establish a personal risk on a balance of probabilities.
- [48] Having adopted paragraphs 13 through 30 of the JG, and having independently reviewed the evidence, I find that the Appellants' assertion that they would face a serious possibility of persecution or the risk to life in the prospective IFA location is not supported by the evidence that was before the RPD. I find that the Appellants have not established that they would face a serious possibility of persecution or, on a balance of probabilities, a risk to life in the proposed IFA location of Lagos.

Second prong of IFA Analysis - Proposed IFA is reasonable

- [49] The issue is whether it is reasonable, in the Appellants' circumstances, for them to relocate to Lagos. The Appellants argue that it is unreasonable for them to relocate to Lagos and that the RPD did not consider their particular circumstances. The RPD found that Lagos was a reasonable IFA, given the Appellants' particular profiles. In particular, the RPD noted that the adult Appellants' had the resources to travel, study and live abroad in both the U.S and in XXXX. Their competency in the English language, their religion, their university educations, and their work experience favoured the viability of the proposed IFA and increased the likelihood of their ability to find employment and accommodation there. As was the case in the application of the JG to the Appellants' circumstances, the RPD did not specifically comment on some of the circumstances that the Appellants say make the IFA unreasonable

in their case. While my review of the RPD's Reasons indicates that the RPD did consider the Appellants' particular circumstances in analyzing the reasonableness of the proposed IFA, in conducting my own independent analysis as set out below, I specifically refer to and consider those circumstances referred to by the Appellants.

- [50] In paragraphs 25, 44 and 45 of its Reasons, the RPD correctly stated that the burden of proof is on the Appellants to show by actual and concrete evidence that it is objectively unreasonable for them to live in the proposed IFA. The RPD also correctly stated that the Federal Court of Appeal has established, "a very high threshold for the unreasonableness test. It requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area"; it is not met by employment, education, or residential preferences.³³ Hardship or reduced economic circumstances, alone, do not render an IFA unreasonable or "unduly harsh."³⁴ The Court has reiterated the importance of not lowering that threshold.³⁵ I have independently reviewed the RPD's analysis and its application of the second prong of the IFA test, and I find that the RPD did not err in finding that it would not be unreasonable or unduly harsh to expect the Appellants to be able to relocate to the proposed IFA location.
- [51] As is stated in the JG, there is a range of issues that inform the analysis of the reasonableness of a proposed IFA with respect to any particular appellant, the most common and prominent of which in Nigeria include: transportation and travel, language, education and employment, accommodation, religion, indigeneship status, and the availability of medical and mental health care.
- [52] Transportation and travel: Although they testified that the roads in Nigeria are unsafe, the Appellants did not dispute that Lagos has an international airport and that the Appellants would be free to travel there and can go there.³⁶ The Appellants would not face undue hardship in travelling to Lagos when returning to Nigeria.
- [53] Language: The Appellants are both fluent in the English language, which is the official language of Nigeria. The PA also speaks Ishan³⁷ and the female Appellant speaks the Idoma language.³⁸ The Appellants presented no evidence at the hearing about how this factor would contribute to the proposed IFA being unreasonable. Country documentation indicates that there is no language barrier in cities such as Lagos, Abuja and Port Harcourt unless the person is not English-speaking.³⁹ I find that language will not be a significant barrier to relocation for the Appellants that would render the proposed IFA unreasonable or unduly harsh.
- [54] Education and employment: The Appellants did not testify as to any difficulty they would have in finding employment. As the RPD noted, there is a high degree of unemployment in Nigeria generally, including in Lagos, and obtaining employment can be difficult. The PA is a young, well-educated professional with a degree in XXXX. His wife, JLO, has a university Bachelor of XXXX degree in XXXX and approximately three years of employment experience as a XXXX XXXX XXXX. They both have substantially more education than the average

Nigerian, which is nine years for men and eight years for women.⁴⁰ The country documentation indicates that the ability to find employment is facilitated by a good level of education, experience or expertise.⁴¹ Having post-secondary education, and with JLO having meaningful work experience, I adopt the reasoning in paragraph 25 of the JG and find that their employment prospects are at least as good and likely better than those of the average citizen. I find that the Appellants have not established on a balance of probabilities that this factor is a significant barrier to relocation for the Appellants that would render the proposed IFA unreasonable or unduly harsh.

- [55] Accommodation: The Appellants testified that it is expensive to live in the proposed IFA. There is a shortage of adequate housing in Nigeria, including in Lagos.⁴² As is stated in the JG, rent can be expensive in many of the Nigerian cities that may be considered as potential IFAs, including Lagos, and the cost of living is high.⁴³ The Appellants testified that there can be a requirement to pay up to two years' rent in advance and they have not accumulated the resources or savings to do so and find a nice place to live.⁴⁴ Country documentation indicates that the ability to find gainful employment, which is facilitated by a good level of education, experience or expertise, is a key factor in finding housing.⁴⁵ The PA has a sister who lives with her family in Lagos. His parents and other brothers live in Abuja. As the RPD noted, relocation can be inherently difficult, but given the high threshold to meet the test as set out in the case law, I am not satisfied that any difficulty the Appellants might experience in securing accommodation would render the proposed IFA unreasonable or unduly harsh.
- [56] Crime and kidnapping: The Appellants argue that the level of crime and kidnapping in Lagos renders it unreasonable as an IFA for essentially the same reasons set out above in the analysis of the first prong if the IFA test concerning the safety of Lagos. As stated previously, an IFA may still exist despite risks in that location where the risks are faced by all inhabitants.⁴⁶ In *Megag v. Canada (Minister of Employment and Immigration)*,⁴⁷ Mr. Justice Rothstein, as he then was, dealt with northern Somalia. He said: "In respect of instability in the north, I do not think that this alone is the test of reasonableness. The test pertains to the applicant as an individual." For the same reasons set out above leading to my finding that the evidence of those conditions did not establish a serious risk of harm to the Appellants, I find that they do not meet the threshold for establishing that the proposed IFA would be unreasonable or unduly harsh.
- [57] Religion: The Appellants did not testify that religion was a factor that would render Lagos unsuitable as an IFA. Paragraph 27 of the JG refers to evidence that approximately 50% of the population in southwestern Nigeria, where Lagos is located, are Christian and approximately 50% are Muslim.⁴⁸ It also suggests that, when an appellant holds a meaningful affiliation to one of these religions, access to places of worship and other people who share their religious values may weigh in favour of an IFA in that it provides an avenue to establish or develop a social structure tied to the Appellant's religious beliefs. The Appellants clearly have a meaningful affiliation to their Christian religion. Documentary evidence also indicates that the situation for Christians in Lagos State is normal, that they

live peacefully with people of other religions, and that the Lagos State authorities and Nigerian police have "strengthened the security situation" to ensure that people can practice their religion in Lagos.⁴⁹ I find this to be a factor supporting the ability of the Appellants to integrate in Lagos, which militates against a finding that relocation to Lagos would be unreasonable or unduly harsh.

- [58] Medical issues/medical care: JLO testified that the Appellants do not have immunity to local diseases in Nigeria and that they would have to pay for healthcare costs which are not publicly funded, and that this would be difficult for them. There is no evidence to support the assertion that the Appellants are at increased medical risk upon returning to Nigeria because of their immune systems. As is stated in paragraph 29 of the JG, the NDP for Nigeria confirms that citizens of Nigeria must pay for services such as health care, which can make access to such services difficult for all. However, as is also noted in the JG, these difficulties appear to affect all Nigerians, and again, the burden is on the Appellants to show that such considerations in their case would rise to a level that would render the proposed IFA objectively unreasonable or unduly harsh in their particular circumstances. I agree with the finding of the RPD that, given the education and work experience of the adult Appellants, having to pay for health care is not an unreasonable barrier to treatment that makes it not available or accessible. The Appellants have not established that this factor renders the proposed IFA unreasonable or unduly harsh in light of the high threshold set out in the jurisprudence.
- [59] I have considered the record, the findings of the RPD, and the arguments of the Appellants and have undertaken an independent assessment consistent with the framework set out in the IFA JG, and conclude that it would not be unduly harsh or objectively unreasonable for the Appellants to relocate to Lagos.

American minor Appellant's claim is not-well-founded

- [60] No claim was advanced on behalf of the American minor Appellant, XXXX, against the U.S. in the Basis of Claim (BOC) or in testimony. His designated representative, the PA, agreed in his testimony that he had no fear for his son in the U.S.⁵⁰ The Appellants did not challenge the RPD's finding that XXXX was neither a Convention refugee nor a person in need of protection in relation to the U.S. I find that XXXX claim fails under both sections 96 and 97(1) of the IRPA.

SUMMARY

- [61] Having reviewed the totality of the evidence, including listening to the entire recording of the hearing, and having considered the arguments of the Appellants, I find that the RPD's findings regarding the availability of a viable IFA were correct. I agree with the RPD that the Appellants have a viable IFA in Lagos.

CONCLUSION

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

(signed)

"Neil Kaufman"

Neil Kaufman

January 23, 2020

Date

1 Exhibit RAD-1, Member's Direction, December 16, 2019; Exhibit RAD-2, Index to National Documentation Package (NDP) for Nigeria, 29 November 2019.

2 Appellants' Memorandum, para 2, Exhibit P-2, Appellants' Record at p. 102.

3 Exhibit P-2, RPD Reasons, Appellants' Record, p. 5, at para 22.

4 S.C. 2001, c. 27, as amended

5 Minister of Citizenship and Immigration v. Parminder Singh, 2016 FCA 96.

6 Ibid., and Raza v. Canada (Minister of Citizenship and Immigration), 2007 FCA 385.

7 Refugee Appeal Division Rules, SOR/2012-257 (RAD Rules), rules 3(3)(e) and 3(3)(g)(iii).

8 Exhibit P-2, Written Statement, Appellants' Record, at p. 81

9 Supra note 7, RAD Rule 3(3)(g)(iii).

10 NDP for Nigeria, 29 November 2019, item 7.28

11 X (Re), 2018 CanLII 52123 (JG).

12 Rasaratnam v. Canada (Minister of Employment and Immigration), [1992] 1 F.C. 706 (CA) (Rasaratnam)

13 JG, supra at endnote 11, at paras. 17 and 19

14 Figueroa v. Canada (Citizenship and Immigration) (Figueroa), 2016 FC 521 at para. 56 and cases cited there.

15 Hasnain, Khalid v. M.C.I. (F.C.T.D., no. A-962-92), McKeown, December 14, 1995. In Scott, Dailon Ronald v. M.C.I. (F.C., no. IMM-2691-12), Gagné, September 10, 2012; 2012 FC 1066, the questioning by counsel and the oral and written arguments were held to be adequate notice that IFA was an issue in the case.

- 16 RPD hearing recording (Hearing Recording) at time stamp 01:36:27 to 01:37:20
- 17 Exhibit P-2, Appellants' Memorandum, Appellants' Record, at p. 102.
- 18 See references to evidence contained in Appellants' Memorandum, at pp. 106-106; Hearing Recording, at time stamp 1:01:25 to 1:06:01; 01:22:40 to 01:23:55.
- 19 Hearing Recording at time stamp 01:36:27 to 01:58:05
- 20 Figueroa, *supra*, at endnote 14, paras. 34 to 36 and 38.
- 21 Figueroa, *supra*, at endnote 14, paras. 34, 35, 37 and 38.
- 22 JG, *supra*, at endnote 11.
- 23 JG *supra*, at endnote 11, at paras. 17 and 19; also, NDP for Nigeria, (November 29, 2019) item 1.17: Country Policy and Information Note. Nigeria: Internal relocation. Version 1.0. United Kingdom. Home Office. March 2019 at p. 6, para. 2.2.5.
- 24 Canadian Association of Refugee Lawyers v. Canada (Citizenship and Immigration), 2019 FC 1126 (CanLII), para. 7.
- 25 Rasaratnam, *supra* at endnote 12
- 26 Figueroa, *supra*, at endnote 14 at paras. 52 to 54
- 27 JG, *supra*, at endnote 11, at, para 35
- 28 Exhibit P-2, Appellants' Record, at pp. 52 to 80
- 29 NDP for Nigeria, 29 November 2019, item 7.28; Nigeria. 2019 Crime and Safety Report: Lagos; United States. Overseas Security Advisory Council (OSAC). August 16, 2019
- 30 Exhibit RPD-1, RPD Record, Exhibit 4, Government of Canada; September 3, 2019; pp. 78-82
- 31 See also NDP, Nigeria, 29 November 2019, item 7.3: Kidnapping for ransom, including frequency, profile of victims and kidnappers; response by authorities (2013-July 2014). Immigration and Refugee Board of Canada (IRB). 31 July 2014. NGA104917.E.
- 32 In Muhammed, Falululla Peer v. M.C.I. (F.C., no. IMM-5122-11), Harrington , February 17, 2012; 2012 FC 226, the risks in the proposed IFA area included unexploded landmines and infrastructural issues affecting millions of Sri Lankans of all backgrounds.
- 33 Ranganathan v. Canada (Minister of Citizenship and Immigration), [2001] 2 FC 164 (CA) (Ranganathan) at paras. 15-17.
- 34 Thirunavukkarasu v. Canada (Minister of Employment and Immigration), [1994] 1 F.C. 589 (C.A.)
- 35 Ranganathan, *supra*, at para 15. See also Singh v. Canada (Minister of Citizenship and Immigration), 2013 FC 988

36 Hearing Recording, time stamps 01:40:25 and 01:44:30

37 Exhibit RPD-1, RPD Record, Exhibit 1, Generic Application Form for Canada, p. 51

38 Exhibit RPD-1, RPD Record, Exhibit 2.5, Basis Of Claim form (BOC), p. 35

39 NDP for Nigeria, 29 November 2019, item 13.1: Role of indigeneship in obtaining employment, housing and social services; how indigeneship is established and identified; obstacles faced by non-indigenes when relocating to Abuja, Lagos or Port Harcourt; assistance available to those who ... [IRB]. 30 October 2019. NGA106361.E, at p. 14.

40 NDP for Nigeria, 29 November 2019, item 1.6: Nigeria. The World Factbook. United States. Central Intelligence Agency. 13 November 2019 at pp. 6-7

41 NDP for Nigeria, 29 November 2019, item 13.1, supra, at pp. 13-14.

42 NDP for Nigeria, 29 November 2019, item 1.17: Country Policy and Information Note. Nigeria: Internal relocation. Version 1.0. United Kingdom. Home Office. March 2019.

43 JG, supra, at endnote 11, at para 26

44 Hearing Recording at time stamp 1:01:25 to 1:06:15

45 NDP for Nigeria, 29 November 2019, item 13.1, supra, at pp. 13-14.

46 Muhammed, Falululla Peer v. M.C.I., supra, at endnote 33.

47 71 FTR 64, [1993] FCJ No 1459 (QL) at para 8.

48 NDP for Nigeria, 29 November 2019, item 12.1: Nigeria. International Religious Freedom Report for 2018. United States. Department of State. 21 June 2019 at pp. 2-3

49 NDP for Nigeria, 29 November 2019, item 12.5: Situation of Christians, including those living in northern cities, Lagos and Abuja; state protection (2011-October 2015). [IRB]. 17 November 2015. NGA105320.E. at p. 9

50 Hearing Recording, Time stamp 1:06:20

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Board of Canada

Refugee Appeal Division

Commission de l'immigration

et du statut de réfugié du Canada

Section d'appel des réfugiés

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