

CANADA / JUDGMENT

TC1-16930

COURT

Refugee Appeal Division

DECIDED

21 February 2022

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RAD File / Dossier de la SAR : TC1-16930 TC1-16931 / TC1-16932 Private Proceeding / Huis clos
Reasons and Decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXX XXXXXXXXXX XXXX XXXX XXXX XXXXXXXXXX XXXX XXXX Personnes en cause Date of
decision February 21, 2022 Date de la décision Panel Andrea Poole Tribunal Counsel for the
persons who are the subject of the appeal Johnson Babalola 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] The Principal Appellant, XXXX XXXX XXXX (PA), his spouse the Associate Appellant, XXXX XXXX XXXX XXXX (AA) and their son the Minor Appellant, XXXX XXXX XXXX (MA) are citizens of Nigeria. They appeal the decision of the Refugee Protection Division (RPD) dated October 6, 2021, which refused their claim.
- [2] The AA alleges that she converted to Christianity in 1998, married the PA in 2006, and, in 2008, the MA was born. The AA testified that her father and the Appellants' agent of persecution, his right-hand man-his cousin, M.B.1-both Muslims, voiced their opposition to the AA marrying the PA, a Christian, but took no steps. The Appellants testified that for four years following the AA's father's death in 2006, there was no indication of any active opposition on the part of M.B. to the AA's continuing to practice her faith or continue in her marriage. The Appellants allege that in 2010, M.B. suddenly appeared at their home in Lagos and assaulted the PA whom they allege he blamed for the AA's forsaking Islam and her conversion to Christianity. The PA claims that he made a report to the police regarding this attack but that the police were unable to locate M.B. in his hometown of Abuja. The Appellants further allege that they heard nothing from M.B. for eight years until telephone threats suddenly began to arrive on the mobile telephone of the PA in XXXX 2017. The PA ignored these threats until M.B. began to threaten the AA and the MA. The Appellants claim that in XXXX 2018, M.B. visited their home in Lagos for a second time (while they were away) and made clear his threats to their neighbour, N.C. The Appellants allege they reported this to the police but did not file a report. They further allege that they believe M.B. had joined the Islamic Jihad (IJ) and fearing him on that account, they fled that night to the home of a friend, where they stayed for a week until the end of XXXX 2018, when they left Nigeria for the United States of America (USA). The Appellants remained in the USA for only a few days before crossing into Canada on XXXX XXXX, 2018.

- [3] A hearing was held on in two sittings, March 4, and March 17, 2021. The question of whether a viable Internal Flight Alternative (IFA) existed in Enugu State was canvassed. The RPD refused their claim on the following grounds:
- a) The Appellants' use of Twitter (allegedly violating a Nigerian ban on Twitter use) did not give rise to a sur place claim;
 - b) A viable IFA was present in Enugu State, Nigeria, for the Appellants as both prongs of the test were satisfied; and
 - c) Insufficient evidence was disclosed to support the allegations that M.B. was affiliated with IJ.
- [4] On appeal, the Appellants argue:
- a) The RPD erred in its analysis of the sur place claim;
 - b) The RPD breached natural justice by not giving the Appellants notice that it was relying on items in an updated National Documentation Package (NDP);
 - c) The RPD was selective in its analysis of the evidence disclosed;
 - d) The RPD erred in its analysis of the viability of the IFA;
 - e) The RPD failed to incorporate the PA's mental health into its IFA analysis; and
 - f) The RPD failed to consider the gender-based claim raised in submissions. DECISION
- [5] I dismiss the appeal. The RPD was correct in finding that the Appellants are neither Convention refugees nor persons in need of protection.² DETERMINATIVE ISSUE
- [6] The Determinative issue in this appeal is the presence of a viable IFA in Nigeria. NEW EVIDENCE
- [7] The Appellants have disclosed eight items of new evidence, all of which are news articles. Five of the articles postdate of the RPD decision (October 6, 2021), two predate the RPD decision, and one article is without a visible date.
- [8] According to the law,³ I can only accept evidence that:
- (i) arose after the RPD decision; or (ii) was not reasonably available at the time of the decision; or (iii) that the appellant could not reasonably have been expected in the circumstances to bring to the RPD before the decision.
- [9] If the evidence meets one or more of these requirements, I must decide if the evidence is new, credible and relevant before I can accept it.⁴ Five of the articles presented by the Appellants are accepted
- [10] I admit the article, "Soldiers Invade Enugu community, burn houses, kill undisclosed number of youths" dated November 1, 2021, from punchng.com.⁵ The article arose after the RPD decision and, as Punch is a credible Nigerian publication, I find this article is new, credible and relevant to the security situation in Enugu State. I admit the two articles "Inside

IPOB's Sit-at-home Order in Nigeria's Southeast" dated November 2, 2021, from the website International Policy Digest⁶ and "Residents Observe Sit-at-Home Order In Enugu, Activities Dull In Imo Despite IPOB's Cancellation Of Order" dated November 5, 2021, from saharareporters.com.⁷ The two articles arose after the RPD decision, are credible media outlets and, as they pertain to a particular security situation in Enugu, they are relevant. I therefore admit these two articles.

- [11] Regarding the two articles concerning violence against women (November 17, 2021 and November 23, 2021),⁸ I admit these two documents as they arose after the RPD reached its decision on October 6, 2021, and therefore could not have been disclosed previously. I also find both articles to be new, credible and relevant. Three of the articles presented by the Appellants are rejected
- [12] Regarding the article from the Vanguard, "Bloodbath in S'East as gory killings spread to Enugu" dated August 5, 2021⁹ and two articles "IPOB kill 13 Hausa traders in Enugu and Imo states" from Sky Daily and "IPOB kills 13 northern traders in Enugu, Imo in one week" from Daily Trust, both dated April 5, 2021, I do not admit these three articles as they arose after the second, March 17, 2021 sitting of the hearing (when the issue of Enugu as a potential IFA was raised) and thus could have been disclosed by the Appellants before the RPD decision of October 6, 2021. ORAL HEARING
- [13] The Appellants have requested that the Refugee Appeal Division (RAD) convene an oral hearing. Under subsection 110(6) of the Immigration and Refugee Protection Act (IRPA) the RAD may convene a hearing if, in its opinion, there is documentary evidence:
- a) that raises a serious issue with respect to the credibility of the person who is the subject of the appeal;
 - b) that is central to the decision with respect to the refugee protection claim; and
 - c) that, if accepted, would justify allowing or rejecting the refugee protection claim.
- [14] Each of these requirements must be met, and in this case, I find that the evidence does not meet the requirements of this section. The application for an oral hearing is therefore denied. ROLE OF THE RAD
- [15] The RAD reviews decisions of the RPD on a standard of correctness after conducting an independent assessment of the evidence before it. The exception to this rule is where the RPD enjoys a meaningful advantage in assessing and weighing oral testimony. Unless specifically stated below, I have applied a correctness standard.¹⁰

ANALYSIS

Updated NDP

- [16] I find that the RPD did not err in not providing the Appellants with notice that the panel was relying on the most recent version of the NDP. The RPD in its reasons, incorporated reference to a number of items from the NDP of June 30, 2021, pertaining to safety, employment and the status of non-indigenes in Enugu. The Appellants argue that the RPD breached procedural fairness by assessing their claim in light of the June 30, 2021 NDP which had been updated after the date of the March 17, 2021 hearing and before the date of the RPD decision on October 6, 2021, without giving the Appellants notice that the RPD intended to rely on the updated NDP. I have independently reviewed the record before me and I find this argument to be without merit. The RPD is required to assess the reasonableness of a potential IFA in light of the best and most current information available at the time.¹¹ The Appellants are represented by counsel who is aware of the fact that the NDP is regularly updated. Had the Appellants wished to review and amend their submissions in light of the updating of certain items pertaining to Enugu in the NDP, it was entirely within their power to make additional submissions following the updating of the NDP in June 2021. I therefore find that the RPD did not err, there was no breach of procedural fairness and that the Appellants were not disadvantaged.
- [17] I find that the RPD did not err by not providing a translation to the Appellants of an item in the NDP which appears in French. In its reasons, the RPD relied on item 1.15, dated April 11, 2021, which appears in the NDP in French. The Appellants argue that the RPD relied on an NDP item not translated from French without giving a translation or notice to the Appellants of its intention to do so. I have independently reviewed the record before me and I find, that since the item, when opened online, automatically offers all readers an opportunity to read a version translated into English, the Appellants were not disadvantaged and therefore the RPD did not err. Sur place claim
- [18] The Appellants allege that the RPD did not give sufficient weight to their sur place claim, which, they maintain, was established when they used Twitter, contrary to the law of Nigeria. The RPD found that the ban on using Twitter was a ban of general application that applied to all Nigerians who used Twitter and that, therefore, the Appellants would not be singled out for persecution. The Appellants argue that it is not a generalized ban, but only a prohibition applicable to Nigerians who use Twitter and that the Appellants would be persecuted as part of a social group: Nigerians who tweet. Having independently reviewed the record before me I find that the Appellants have not established either that they would continue to tweet once they return to Nigeria or that they would be retroactively punished for having tweeted when outside of the country. I therefore find that the sur place claim has not been established. IFA
- [19] The Federal Court in *Rasaratnam*, established a two-prong test for assessing the viability of an IFA: (a) the RAD must be satisfied that there is no serious possibility that the appellant would be persecuted and that the appellant would not be subject to a risk to life or a risk of cruel and unusual treatment or punishment; and (b) it must not be unreasonable for the appellant to settle in the proposed place of refuge.¹² Both prongs must be satisfied. Once the

issue of a potential IFA has been raised and the potential IFA identified, the burden shifts to the Appellants to show that they do not have a viable IFA. The Associate Appellant's safety

- [20] I find that the AA would not face gender-related persecution were she to relocate to Enugu. The PA testified that relocation to Enugu would be a death sentence for the AA as a Hausa woman. The RPD found that, with respect to the safety of the AA, she would not face a serious possibility of gender-related persecution in Enugu as the NDP for Nigeria indicated that Enugu was generally safer than many-if not most-other Nigerian states.¹³ The Appellants argue that the AA would face gender-related persecution in any part of Nigeria.
- [21] I have independently reviewed and considered the evidence disclosed by the Appellants regarding the safety of the AA in light of the Chairperson's Gender Guideline 4 pertaining to gender-related persecution.¹⁴ I find that although the NDP for Nigeria does indicate widespread discrimination against women across Nigeria, Enugu State has taken a number of steps to combat gender bias. In addition to the various legislative and security measures taken by the state government in Enugu to ameliorate risk to women in Enugu State, enumerated by the RPD in its reasons, Enugu has also enacted the Violence Against Persons (Prohibition) Act to respond more effectively to violence against women.¹⁵ Both Muslim and Christian clerics have spoken out in Enugu against Female Genital Mutilation.¹⁶ Enugu hosts several domestic violence shelters, run by non-governmental organizations and a Women and Girls Advancements and Resources Centre as well as a Centre for Healthcare and Economic Empowerment for Women and Youth.¹⁷ I find therefore, that the AA does not face a serious possibility of gender-related persecution were she to relocate to Enugu. The Appellants have not established that M.B. has the means or the motivation to locate them
- Motivation
- [22] I find that the Appellants have not established that M.B. has the motivation to pursue them to Enugu. The Appellants allege that four years elapsed between M.B.'s first learning of the AA's conversion and his alleged attack on the PA. For the next seven years, their alleged agent of persecution was silent before sending (in XXXX 2017), the first of a series of text messages. The PA did not disclose any allegations or evidence as to how M.B. had been able to acquire knowledge of the PA's mobile telephone number. The last text message was dated XXXX 2018 and since then, the Appellants have heard nothing from M.B., nor have either of the AA's brothers or any member of the PA's family. The Appellants have not disclosed any evidence or given any testimony that establish that their agent of persecution has taken any steps towards locating the Appellants, contacted any relatives or family members, or in any way attempted to trace the Appellants in the almost four years since their departure from Nigeria. In the absence of any evidence otherwise, I find that the Appellants have not established that M.B. has to motivation to pursue them, to Enugu or elsewhere. Means
- [23] I find that the Appellants have not established that the alleged agent of persecution has the means to pursue them to Enugu. The Appellants have disclosed very little regarding their agent of persecution other than he is the cousin of AA's late father and was, at one point, his assistant. The Appellants have disclosed no evidence of M.B.'s age, state of health,

disabilities or abilities, whether he is currently employed, married or even where he is currently living. The Appellants have alleged that M.B., as a member of IJ, would be able to deploy a nation-wide network of membership and information and locate the Appellants in the proposed IFA location. The Appellants have, however, not disclosed any evidence to support this allegation. The PA alleged in his Basis of Claim that he relies on the suggestions of his friends K.I. and P.L. that such a zealot as M.B. must surely be a member of IJ and further points to his allegation that this, too, was the suggestion made by the police in 2010 when the PA reported the attack made on him by M.B. that year. I have independently reviewed the record before me and I find that the affidavits of K.I. and P.L. do not state that M.B. is a member of IJ; the affidavits do not mention IJ at all. Therefore, the Appellants cannot rely on these two affidavits as evidence that M.B. is a member of IJ. There is no evidence whatever from the police to indicate that the agent of persecution is a member of IJ. The PA was asked at the hearing whether he had been able to secure the police report that he alleged he had filed in 2010 after M.B.'s attack on him. The Appellant responded that although he had deputized his brother to acquire such document and had made best efforts to also acquire the police report from the original police officer, that he had been unable to secure and disclose it. Moreover, the Appellants testified at the hearing that in 2010 the police disclosed to the PA only their speculative assumption regarding M.B.'s affiliation with IJ - but provided no evidence to support such a conclusion. Presiding Member: ...How did you know that he had joined the Jihadists? Principal Claimant: The police said that is how they operate. All the information came from the police, that that is how they operate, that he has joined the Islamic Extremists.¹⁸

- [24] The PA testified that he did not file a report with the police following the alleged 2018 appearance of M.B. at the Appellants Lagos residence. Therefore, there is no evidence regarding whether the police still assume M.B. continues to be affiliated with IJ. I am unable-without any evidence-to reach a finding that M.B. is presently affiliated with IJ. I find that the Appellants have not established that their agent of persecution is currently affiliated with IJ or that he can deploy a nation-wide network to identify them.
- [25] The Appellants have failed to establish that M.B. has either the means or the motivation to pursue the Appellants to the proposed IFA of Enugu. Safety of the PA in the proposed IFA location
- [26] The Appellants further argue that, irrespective of any connection or affiliation with IJ, that M.B. would also be able to locate the PA through the posters, social media and publicity necessarily entailed in his publicizing his shows and performances as a disc jockey at weddings and corporate events. I do not accept this argument from the Appellants. They have disclosed no reason why the PA would not be able to find an alternative line of employment. According to the Federal Court of Appeal in Sanchez,¹⁹ the possibility of giving up one's profession, is not a breach of a fundamental right. Nor has the PA given any indication of why-if he chooses to pursue disc jockeying notwithstanding-he would not, as do most disc jockeys, perform under a stage name. I have, moreover, already found that

M.B. has neither the means nor the motivation to pursue the Appellants to Enugu. I therefore find that the alleged agent of persecution would not be able to identify and locate the PA in Enugu through publicity and social media. The PA's psychological state

- [27] The Appellants argue that the RPD did not separately consider the PA's psychological state as part of its IFA analysis of the reasonableness of Enugu as an IFA. I have independently reviewed the record before me and I find that the RPD did not make a separate assessment of the availability of mental healthcare that would be available to the PA were he to relocate to Enugu. However, as part of my independent assessment, I am able to do that here, and have done so, below. The psychotherapist's assessment of the PA took place on January 8, 2020, according to the letter of the psychologist, disclosed.²⁰ According to the psychotherapist's report, the PA suffers from post-traumatic stress disorder (PTSD) brought on in 2010 by the attack by M.B. The psychotherapist recommends a series of mindfulness stress-reduction sessions would be needed in order to assess whether any further treatment is needed. No evidence was disclosed to indicate either that the PA returned for any mindfulness stress-reduction sessions or that it was determined that any further treatment was necessary. In the absence of any indication that treatment had-or had not-been undertaken, or that any further treatment was necessary, I find that the IFA is reasonable given the circumstances relating to the PA's psychological state. The Appellants have not established that Enugu is unreasonable as an IFA
- [28] I find that the Appellants have not established that Enugu is unreasonable or unduly harsh as an IFA. The RPD found, on the second prong of the test, that Enugu was a reasonable IFA based on an assessment of the Appellants' linguistic abilities, the opportunities for education, housing and employment and on whether the Appellants were likely to experience discrimination on the grounds of their indigeneship. The Appellants argue that Enugu is not a viable IFA as the RPD engaged in speculation that the Appellants' education and work experience would necessarily translate to employment in Enugu and the AA's language skills do not extend to Igbo.
- [29] I have independently reviewed the record before me and I find that the Appellants have not established that they would be placed at such a disadvantage were they to relocate to Enugu that it would render Enugu unreasonable or unduly harsh as an IFA. The Appellants have testified that they all speak English, which is the national language of Nigeria. In addition, the PA speaks Igbo, which is widely spoken in Enugu. The adult Appellants are both well-educated and completed their university degrees. They have travelled extensively as can be seen from their passports. They both have diverse employment histories. The AA was employed for over nineteen years in management at Ecobank, a business that has branches in Enugu. In addition, she has work experience as a debt counsellor and mortgage specialist in Canada. The PA was an entrepreneur in the entertainment business, with his own company in video and music. Enugu has a significant presence in the Nigerian film and entertainment industry. I find that the Appellants' diverse and transferrable skills would not place them at a significant disadvantage were they to relocate to Enugu. Regarding

indigeneship, the RPD found that as the PA is Igbo, the dominant ethnicity of Enugu, that the Appellants would, on a balance of probabilities, not face discrimination were they to relocate to Enugu. The Appellants argue that the RPD ignored information on non-indigeneity discrimination contained in the RPD Record Exhibit 5, and the NDP for Nigeria items 13.1 and 2.1. Having reviewed the record before me I find that the Exhibit 5 of the RPD Record states that it is based almost entirely on information gathered in Kaduna, Kano, Plateau and Delta States and does not refer to Enugu at all when discussing indigeneity.²¹ Item 2.1 of the current NDP does not specify states, but makes broad generalizations regarding indigeneity throughout Nigeria that may or may not pertain to Enugu State.²² Item 13.1 indicates that indigeneity is usually determined by the indigeneity of the person's father.²³ The PA's family are Igbo from Imo State, next door to Enugu State and the PA was born in XXXX, located only XXXX XXXX from Enugu. As he is of the same indigeneity-Igbo-as the dominant tribe in Enugu, there would, on a balance of probabilities, not be a present barrier to housing for the Appellants or education for the MA. Item 13.1 also indicates that in the larger cities, the mix of ethnicities as people of different ethnicities have settled, has broken down remaining discrimination on grounds of indigeneity. The City of Enugu, the capital of Enugu State has a population of approximately 750,000 with the two top ethnicities-after the Igbo-being the Yoruba and the Hausa -the AA's ethnicity. I find that these demographic factors, on a balance of probabilities, indicate that the Appellants are more likely than not to experience few barriers on the basis of their not having been born in Enugu State. Therefore, the Appellants have failed to show that difficulties regarding indigeneity would be a barrier regarding housing for the Appellants, employment or education for the MA. Moreover, item 13.1 also shows that discrimination against a person on the grounds of indigeneity on the part of the government is prohibited.²⁴ I find the Appellants have not shown that they would be at such a disadvantage were they to relocate to Enugu that it would render an unreasonable IFA.

CONCLUSION

[30] In light of the above, I dismiss the appeal and confirm the decision of the RPD that the Appellants are neither Convention refugees nor persons in need of protection, pursuant to paragraph 111(1)(a) of the IRPA. (signed) Andrea Poole Andrea Poole February 21, 2022 Date 1 Personal identifiers have been removed, except where necessary to explain the reasoning of the decision. 2 Immigration and Refugee Protection Act (IRPA), S.C. 2001, c. 27, as amended, at para. 111(1)(a). 3 IRPA, S.C. 2001, c. 27, as amended, subs. 110(4). 4 Raza v. Canada (Citizenship and Immigration), 2007 FCA 385 (CanLII), as endorsed in Canada (Citizenship and Immigration) v. Singh, 2016 FCA 96 (CanLII), [2016] 4 FCR 230. 5 Exhibit P-2, Appellants' Record, pp. 105-113. 6 Ibid., pp. 114-119. 7 Ibid., pp. 120-122. 8 Ibid., pp. 144-151. 9 Ibid., pp. 134-142. 10 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93 (CanLII), [2016] 4 FCR 157, at para. 103; see also Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145 (CanLII), [2019] 2 FCR 597. 11 Policy on National Documentation Packages in Refugee Determination Proceedings, IRB, Ottawa,

Effective date: June 5, 2019, at para. 5. 12 *Rasaratnam v. Canada* (Minister of Employment and Immigration), [1992] 1 F.C. 706 (C.A.) 13 Exhibit RPD-1, RPD Record, RPD Reasons, p. 13, para. 36, citing National Documentation Package (NDP) for Nigeria, (30 June 2021), item 1.34. 14 Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution: Update, Guidelines issued by the Chairperson pursuant to Section 65(3) of the Immigration Act, IRB, Ottawa, Effective date: November 13, 1996. 15 Exhibit RAD-1, NDP for Iran (30 November 2021), item 1.34, p. 77. 16 Ibid p. 84. 17 Ibid., item 5.22; See also www.wagarc.org. 18 Exhibit P-2, Appellants' Record, , p. 70. 19 *Sanchez v. Canada* (Citizenship and Immigration), 2007 FCA 99 (CanLII). 20 Exhibit RPD-1, RPD Record, Exhibit 6,, pp. 309-316. 21 Ibid., Exhibit 5 p. 188. 22 Exhibit RAD-1, NDP for Iran (30 November 2021), item 2.1. 23 Ibid., 13.1, Response to Information Request NGA106361.E. 24 Ibid., s. 2.2.

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