

CANADA / JUDGMENT

TB9-03505

COURT

Refugee Appeal Division

DECIDED

26 September 2020

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RAD File / Dossier de la SAR : TB9-03505 TB9-03506 Private Proceeding / Huis clos Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXX XXXXXXXX XXXX XXXX Personnes en cause Appeal considered / heard at Toronto, ON Appel instruit / entendu à Date of decision September 26, 2020 Date de la décision Panel R. Seyan Tribunal Counsel for the persons who are the subject of the appeal H. J. Yehuda Levinson Conseil des personnes en cause Designated representative N/A Représentant(e) désigné(e) Counsel for the Minister Conseil du ministre REASONS FOR DECISION OVERVIEW

- [1] XXXX XXXX XXXX (the principal appellant) and her adult daughter XXXX XXXX XXXX (the associate appellant) are appealing the decision of the Refugee Protection Division (RPD), which denied their claim for refugee protection.
- [2] They are citizens of Nigeria and allege they cannot return. The principal appellant alleges abuse at the hands of her ex-husband, XXXX XXXX XXXX, who wishes to reconcile. The associate appellant fears the same man, her father, who has promised her in marriage to a powerful politician named XXXX XXXX XXXX XXXX
- [3] The RPD determined that the appellants had an Internal Flight Alternative (IFA) in Port Harcourt. The appellants argue that the RPD erred in its decision and wants the Refugee Appeal Division (RAD) to accept their claim or refer the matter back to the RPD for redetermination. They have filed new evidence in support of her claim and are requesting an oral hearing.

Determination

- [4] I confirm the determination of the RPD that the appellants are neither Convention refugees nor persons in need of protection.
- [5] I find that the appellants have a viable IFA in Port Harcourt. Here, they are safe from the agents of persecution. Relocation to the IFA does not jeopardize the life and safety of the appellants. I also find that the IFA is reasonable. Allegations

- [6] The principal appellant alleges that she divorced her husband in 2008. In XXXX 2017, he came to see her and said he wanted to reconcile. He believes in a traditional Nigerian religion and told the principal appellant that their reconciliation would appease the gods. The principal appellant refused. Her ex-husband started to follow and threaten her. In XXXX 2017, the principal appellant fled to Canada, where her daughter was studying.
- [7] The associate appellant came to Canada in 2015 to study. She alleges she cannot return to Nigeria, because her father has promised her in marriage to XXXX XXXX XXXX. In exchange, XXXX XXXX XXXX will forgive her father a debt. XXXX XXXX XXXX is a politician and XXXX. He is Muslim. The associate appellant alleges that she will have to undergo female genital mutilation (FGM) in preparation for this marriage. She identifies her father and XXXX XXXX XXXX as agents of persecution. My role as a member of the RAD
- [8] I have applied the standard of correctness while reviewing the RPD decision and have conducted an independent assessment of the evidence before me.¹
- [9] I find that IFA is determinative. Some of the new evidence is admitted
- [10] New evidence must meet subsection 110(4). Subsection 110(4) requires that the evidence arose after of the decision of the RPD, was not reasonably available, or that the appellant could not reasonably have been expected in the circumstances to have presented at the time of rejection. Then I must consider the Singh/Raza factors (credibility, relevance, and newness).
- [11] For reference, the hearing took place on November 29, 2018, and the decision was rendered January 7, 2019. The affidavit from the son's friend Mr. XXXX dated XXXX XXXX, 2020 is not admitted
- [12] This affidavit was created after the rejection by the RPD. It describes how on XXXX XXXX XXXX 2019, Mr. XXXX arrived at the friend's house, looking for his son. His son fled.
- [13] I find that the evidence was not reasonably available. With the time difference between Canada and Nigeria, and the time and effort taken to create the affidavit, it is unlikely that it would have been available to the RPD by January 7, 2019.
- [14] While the evidence meets 110(4), it does not meet the credibility factor of the Raza/Singh analysis. On the second page, below the signature, it reads "depoodent" (instead of deponent) and "notoary public" (instead of notary public). ²
- [15] The errors are on the face of the document and render the document not credible. Hence, it is rejected. The affidavit from the brother of the principal appellant is rejected
- [16] Herein, the deponent attests that Mr. XXXX came to his house to ask about the whereabouts of his son on XXXX XXXX, 2018. ³

- [17] This event took place after the hearing, but before rejection (January 7, 2019). It does not meet the requirements of s.110(4) as it is not evidence that arose after rejection by the RPD. The appellants made no application to submit this evidence as post hearing disclosure. The affidavit by the brother is rejected.
- [18] The appellants state that they were aware of this event on XXXX XXXX XXXX 2018, but that they were unaware that they could submit documents once the hearing was concluded. This is not a reasonable explanation. The appellants were represented by counsel. The affidavit from the sister of the principal appellant is rejected
- [19] The sister of the principal appellant attests that on XXXX XXXX, 2018, Mr. XXXX came to her house in Ibadan to search for his son. 4
- [20] This event took place after the hearing, but before rejection (January 7, 2019). It does not meet the requirements of s.110(4) as it is not evidence that arose after rejection by the RPD. The appellant made no application to submit this evidence as a post hearing disclosure. The affidavit by the brother is rejected.
- [21] Again, the appellants were aware of this incident on the day that it happened but were not aware that further documents could be submitted. I do not accept their explanation. This event predates rejection and could be an important piece of evidence with respect to allegations of persecution. The affidavit from the son is admitted in part
- [22] The son has written an affidavit dated XXXX XXXX, 2019, wherein he describes two events: (i) the alleged attack by his father's goons in XXXX 2018; and (ii) and the incident where Mr. XXXX (his father) came looking for him on XXXX XXXX, 2019.⁵ The latter is also described in the son's friend's affidavit, which I rejected above for credibility reasons.
- [23] The son's affidavit is rejected in part. The XXXX 2018 attack is an event that occurred before the hearing, so this evidence was reasonably available. The evidence regarding the XXXX 2018 attack is not admitted.
- [24] I find that the evidence regarding the XXXX XXXX XXXX 2019 visit was not reasonably available. Though the appellants were aware of this incident on XXXX XXXX, 2019, they made no efforts to inform the RPD. With the time difference between Canada and Nigeria, and the time and effort taken to create the affidavit, it is unlikely that it would have been available to the RPD by January 7, 2019, in particular as the son had to flee his friend's house for another friend's house.
- [25] The evidence also meets the Singh/Raza factors. It is new, relevant, and credible. The evidence regarding the XXXX XXXX XXXX 2019 search for the son is admitted. The affidavit from the son's friend Mr. XXXX dated XXXX XXXX, 2019 is admitted
- [26] In his affidavit, Mr. XXXX attests that the principal appellant's son came to stay with him after his encounter with his father on XXXX XXXX, 2019.⁶

- [27] This evidence was not reasonably available at the time of rejection by the RPD. The evidence also meets the Singh/Raza factors. It is new, relevant, and credible. The affidavit is admitted. The affidavit from legal practitioner XXXX XXXX dated XXXX XXXX, 2019 is not admitted⁷
- [28] In his affidavit, Mr. XXXX attests that he knows the principal appellant and Mr. XXXX, and that their marriage broke down. He attests to Mr. XXXX political aspirations and that Mr. XXXX has enrolled into "the cult followership" of XXXX XXXX XXXX XXXX. He also attests that Mr. XXXX has attempted several times to kill his wife.
- [29] This evidence is not admitted. It does not meet the requirements of s.110(4). It is not evidence that arose after rejection by the RPD. The appellants have not explained why this evidence was not available prior to rejection by the RPD. No oral hearing
- [30] The appellants are requesting an oral hearing.
- [31] The new evidence states that the appellants are still being pursued by the agents of persecution.
- [32] The test for an oral hearing is not met. The evidence does not raise a serious issue with respect to the credibility of the appellants as the determinative issue is IFA. The fact that the agent of persecution continues to search for the appellants is not central to the decision and does not justify allowing or rejecting the refugee protection claim.
- [33] I will not hold an oral hearing. The RPD was correct: the appellants are safe from the agents of persecution in either IFA
- [34] The first prong of the IFA test is that there is no serious possibility of persecution or a danger of torture or risk to life or cruel and unusual treatment or punishment.⁸ In other words, the IFA is safe. Once an IFA has been identified, the burden shifts to the appellant to show that the IFA is neither safe nor reasonable.
- [35] The RPD found that the appellants failed to establish her ex-husband and XXXX XXXX XXXX would be able to locate them in either IFA. The RPD also found that the appellants were not credible in their testimony with respect to the power and influence of the agents of persecution.
- [36] The appellants argue that the connections between Mr. XXXX and XXXX XXXX XXXX were in the record before the RPD, and the RPD was incorrect in its finding with respect to the first prong of the IFA test.
- [37] I disagree with the appellant. I find the RPD arrived at the correct conclusion when it found that the appellants are safe in the IFA. After an independent review of the evidence, I arrive at the same conclusion as the RPD for the same reasons.
- [38] I agree with the RPD that the appellants were not credible in their evidence regarding the agents of persecution.

- [39] Mr. XXXX is the ex-husband of the principal appellant and the father of the associate appellant. The principal appellant testified that she did not know what sort of work he did now, but that he had worked as a XXXX XXXX for the XXXX XXXX until 2017. She testified that in XXXX 2017, he informed her that he had political aspirations with XXXX XXXX XXXX.
- [40] The RPD asked why the appellants had not put his political aspirations in their Basis of Claim narrative. The principal appellant replied that if she did, her Basis of Claim would be like an "exercise book". The RPD also asked why the appellants had not provided any information on XXXX XXXX XXXX. The principal appellant replied that she googled XXXX XXXX XXXX in 2017 but did not provide any evidence in time for the RPD hearing.
- [41] The appellants then submitted articles about XXXX XXXX XXXX, post-hearing.⁹ He is XXXX XXXX XXXX XXXX XXXX.
- [42] There is no evidence that XXXX XXXX XXXX has expressed an interest in the associate appellant other than through Mr. XXXX XXXX. There is no evidence that he is a corrupt individual or has associations with criminals. There is no evidence (testimony or documentary) that XXXX XXXX XXXX is looking for the associate appellant.
- [43] The evidence that links Mr. XXXX and XXXX XXXX XXXX is vague.
- [44] The appellants state that their oral testimony and the affidavits before the RPD establish the power and influence of Mr. XXXX.
- [45] I disagree.
- [46] In Mr. XXXX affidavit (the brother of the principal appellant), he states that Mr. XXXX wishes the associate appellant to marry an "old man". XXXX XXXX XXXX is not mentioned by name in the affidavit. Mr. XXXX further states that Mr. XXXX is looking for the principal appellant "everywhere" and spreading lies about her. The police have come to his house (the brother's house) and the house of other family members looking for the appellants.
- [47] Ms. XXXX in her affidavit states that Mr. XXXX came looking for the principal appellant at her house on two occasions, both times with police. The principal appellant testified that she did not know if Mr. XXXX had searched for her at her sister's house in Ibadan.
- [48] These examples are not evidence of Mr. XXXX influence, although he did arrive with police. He went looking for his ex-wife at the houses of her friends and family members, which are reasonable locations to start to look for his ex-wife. Similarly, he has located his son (as per the accepted new evidence) at his friend's houses.
- [49] The fact that he is sometimes accompanied by police officers is not an indication of his power. There is no further information on the rank or influence of these officers. I do not know the nature of Mr. XXXX relationship with XXXX XXXX XXXX. Are they close? I do not know Mr. XXXX political position if any. Nor do I have any evidence that Mr. XXXX and/or XXXX XXXX XXXX have located individuals throughout Nigeria.

- [50] Assuming without deciding that the appellants are credible about their allegations related to the agents of persecution as contained within her Basis of Claim (BOC) and oral evidence at the hearing, I find that their evidence is not sufficient to establish that the agents of persecution have the means to pursue her.
- [51] For these reasons, I conclude that Port Harcourt is safe for the appellants. The RPD was correct to find that the IFA was reasonable
- [52] The second prong of the IFA test is as follows: conditions in the proposed IFA are such that it is not unreasonable, after consideration of all the circumstances and the personal circumstances of the appellant, for the appellants to seek refuge there.¹⁰
- [53] The onus is on the appellants to show that the IFA is unreasonable, and it is a high one¹¹. Furthermore, the appellants must establish on objective evidence that the IFA is unreasonable.¹² An IFA must be realistic and attainable. The appellant must not face great physical danger or undue hardship either en route to or in the IFA.
- [54] The appellants have not raised any issues with the RPD's decision that the IFA is a reasonable one. The RPD considered language, indigeneship, employment and accommodation. It also considered the Gender Guidelines in its decision. The appellants are not challenging these findings.
- [55] I have conducted an independent assessment and arrived at the same conclusion as the RPD. The IFAs are reasonable. Summary
- [56] After careful consideration of the evidence, both oral and documentary, I find that the RPD made correct findings with respect to both prongs of the IFA test. It considered the appellants' personal circumstances in its assessment. I have arrived at the same conclusions, namely that the IFA proposed is both safe and reasonable. I have considered the Gender Guidelines and acknowledge that relocation is made more difficult for the appellants because of their gender, but it neither jeopardizes their life nor their safety¹³.
Conclusion
- [57] I dismiss the appeal and confirm the decision of the RPD that the appellants are neither Convention refugees nor persons in need of protection¹⁴ as they have viable IFA in Port Harcourt. (signed) R. Seyan R. Seyan 26 September 2020 Date 1 M.C.I. v. Huruglica, Bujar (F.C.A., no. A-470-14), Gauthier, Webb, Near, March 29, 2016, 2016 FCA 93. 2 Exhibit P-2, Apellant's Record, at p. 160. 3 Exhibit P-2, Apellant's Record, at p. 161. 4 Exhibit P-2, Apellant's Record, at p. 162. 5 Exhibit P-2, Apellant's Record, at p. 163 - 164. 6 Exhibit P-2, Apellant's Record, at p. 165. 7 Exhibit P-2, Apellant's Record, at p. 166- 167. 8 Rasaratnam, Sivaganthan v. M.E.I. (F.C.A., no. A-232-91), Mahoney, Stone, Linden, December 5, 1991. Reported: Rasaratnam v. Canada (Minister of Employment and Immigration), [1992] 1 F.C. 706 (C.A.) 9 Exhibit RPD-1, RPD Record, Exhibit 12, at pp. 357-369. 10 Amadi v. Canada (Citizenship and Immigration), 2019 FC 1166, paragraph 43. 11 Ranganathan v Canada (Minister of Citizenship and Immigration), 2000 CanLII 16789 (FCA), [2001] 2 FC 164, [2000]

FCJ No 2118 (FCA) at para 15. 12 Argote et al v Canada (Minister of Citizenship and Immigration), 2009 FC 128 at para 12, [2009] FCJ No 153 (QL). 13 Ranganathan v. Canada (Minister of Citizenship and Immigration), 2000 CanLII 16789 (FCA), [2001] 2 FC 164 at para. 15. 14 Immigration and Refugee Protection Act, S.C. 2001, c. 27, last amended on December 12, 2017.

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