

CANADA / JUDGMENT

TB9-09621

COURT
Refugee Appeal DivisionDECIDED
28 August 2020

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RAD File / Dossier de la SAR : TB9-09621 TB9-09622 Private Proceeding / Huis clos Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXX XXXXXXXX XXXX XXXX XXXX Personnes en cause Appeal considered / heard at Toronto, ON Appel instruit / entendu à Date of decision August 28, 2020 Date de la décision Panel Ron Stratigopoulos Tribunal Counsel for the persons who are the subject of the appeal Orr Kolesnik 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) and XXXX XXXX XXXX XXXX (Minor Appellant) are citizens of Nigeria. They are appealing a decision of the Refugee Protection Division (RPD) rejecting their claims for refugee protection. DECISION
- [2] I dismiss the appeal and confirm the decision of the RPD that the Appellants are neither Convention refugees nor persons in need of protection. The determinative issue in this appeal is the availability of an internal flight alternative (IFA).

BACKGROUND

- [3] The Appellants allege a fear of persecution at the hands of XXXX XXXX XXXX and his family. He is the husband of the Principal Appellant and the father of the Minor Appellant. The Principal Appellant married her husband in XXXX 2014. Once they began to reside together, the Principal Appellant alleges that her husband started a pattern of physical, emotional, and sexual abuse. After the birth of the Minor Appellant, the Principal Appellant alleges that her husband and his family, particularly his mother, intended to have her daughter undergo Female Genital Mutilation (FGM) in Nigeria. The Principal Appellant alleges that the abuse led her to leave the marital home and return to live with her parents in XXXX 2016. She went to reside with a friend from XXXX 2016 to XXXX 2017, to avoid her husband and his family. She alleges to have approached the police, who advised her that since it was a domestic matter, it should be resolved amongst the parties. The Principal Appellant alleges that she returned to her husband's home, but the abuse continued, and the family still planned on FGM for the Minor Appellant. The Principal Appellant alleges that she then applied for United States of America (USA) visitor visas and travelled to the USA on XXXX XXXX XXXX

2017. One week later the Appellants travelled to Canada and made a refugee claim. NEW EVIDENCE The evidence presented by the Appellants is accepted

- [4] According to the law,¹ 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 you could not reasonably have been expected in the circumstances to bring to the RPD before the decision.
- [5] 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.²
- [6] The Appellants have presented an affidavit, sworn by the Principal Appellant's mother, XXXX XXXX, signed on XXXX XXXX XXXX 2019. The affidavit refers to a phone call that took place on XXXX XXXX XXXX 2019. Clearly this is evidence that arose after the RPD decision. The affidavit is new and relevant, it goes to the Principal Appellant's allegation that she is being pursued by her husband. There are no credibility concerns on the face of the document. I have determined that the evidence meets the Singh/Raza factors and is admitted. The Appellants did not seek an oral hearing, pursuant to subsection 110(6) of the Immigration and Refugee Protection Act (IRPA).

ANALYSIS

- [7] My role is to look at all the evidence and decide if the RPD made the correct decision.³
- [8] In its decision the RPD determined that credibility was a determinative issue. I accept without deciding, for the purposes of this appeal, that the Appellant's allegations are credible. The RPD also determined that the Appellants have an IFA in Nigeria and that it would not be unreasonable for them to relocate there. The Principal Appellant argues that the RPD erred in its finding that an IFA was available for the Appellants. More specifically, she argues that the RPD did not assess the first prong of the IFA. The RPD considered Abuja, Port Harcourt, and Benin City as potential IFA locations. I will focus my assessment on Abuja. Although the RPD could have undertaken a more fulsome analysis of the IFA, after conducting an independent analysis, I agree with the RPD that there exists an IFA for the Appellants in Abuja.
- [9] The Federal Court of Appeal (FCA), in *Rasaratnam*⁴, provides that the test to be applied in determining whether there is an IFA has two prongs:
- i. The Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists ii. And, the conditions in the part of the country considered to be an IFA must be such that it would not be unreasonable in all the circumstances, including those particular to the claim, for him to seek refuge there.

- [10] For the Appellants to have an IFA, both prongs of the test must be satisfied. The onus shifts to the Appellants to prove that they do not have an IFA once the issue has been raised and potential IFA locations have been proposed.
- [11] The FCA went on to provide guidance with respect to the "unreasonableness test" in the second prong of the test in *Thirunavukkarasu*.⁵ It spelled out a very high threshold regarding what makes an IFA unreasonable in all the circumstances. Hardship that is associated with dislocation and relocation is not one that would render an IFA unreasonable. The Appellants are required to provide proof of adverse conditions which would jeopardize their life and safety in travelling to and in living in the IFA location.
- [12] According to the World Factbook⁶ Nigeria is Africa's most populous country, with a population of over 200 million as of July 2018. The country has a total landmass of over 900,000 square kilometers. The capital city of Abuja is centrally located and has a population of over 3 million people. Is there a serious possibility of persecution in Abuja?
- [13] The RPD determined that the Appellants did not provide sufficient credible evidence to demonstrate that the Principal Appellant's husband and his family can find her and her daughter throughout Nigeria. The Appellants argue that the RPD did not make an assessment in this regard. Once an IFA is identified, the onus shifts to the Appellants to establish that a serious possibility of persecution or risk of any of the harms set out in section 97 of the IRPA exists if they were to relocate there. I find that the Appellants' agent of persecution would not locate them if they were to travel to Abuja.
- [14] The Principal Appellant testified that she could not live in Abuja because her church (Apostolic Faith Church) had a big branch there, and that she had previously worshipped there and her father had cause to XXXX there.⁷ The Principal Appellant reiterated the same in reference to relocation to Port Harcourt, she feared being noticed by a member of the of the Apostolic Faith Church there. I note that Abuja is almost 700 km from Ogun state where the Principal Appellant's father currently resides. The documentary evidence indicates that the Apostolic Faith Church has over 600 congregations in Nigeria.⁸ Although the Principal Appellant's father was at one time the Lagos XXXX XXXX, he has since retired from the church. Although I note that his church had approximately 1,000 parishioners⁹, as stated above Nigeria has a population of over 200 million. I find that this does not establish that the Principal Appellant's father had a public profile, high enough that even he would be recognized nationally, let alone his daughter.
- [15] Further, I note that the Principal Appellant's father-in-law, who was also a XXXX in the Apostolic Faith Church, died in XXXX 2018. The evidence does not support the Principal Appellant's assertion that she is of such a high profile in the church that she would be found in any part of Nigeria.
- [16] The Principal Appellant also testified that due to her work in the XXXX XXXX that when she attended XXXX she would certainly come across someone who knew her.¹⁰ As disconcerting as this may be to the Principal Appellant, a chance encounter with someone

she knows does not amount to a serious possibility of persecution. I find, given that she is not a person of high profile, it is mere speculation that, in a city of over 3 million inhabitants, she would certainly come across someone that knew her and would also then report her whereabouts to her husband. Further, the Principal Appellant has been employed in numerous positions within the XXXX profession, she need not work only as a XXXX.

- [17] The Principal Appellant's new evidence refers to a phone call made to her brother on XXXX XXXX XXXX 2019. The evidence states that someone asked her brother about the appellant's whereabouts after she had been sighted in the USA and Canada.¹¹ The evidence does not state who was asking about the Principal Appellant. The evidence does not connect the phone call to the Principal Appellant's husband or his family. Similarly, general comments made by the Principal Appellant's mother that the news in the church community is that the Appellants are in Canada, are in no way linked to the Principal Appellant's husband or his family. I find that the evidence does not establish that the agents of persecution could locate the Appellants in Abuja.
- [18] I also note that the Principal Appellant resided with her friend, XXXX XXXX, for a period of about one year before returning to her husband's home. During this time the Principal Appellant was residing in the same city as that of her husband and his mother. The Principal Appellant was asked to leave her friend's home because news "filtered"¹² out that she was there. The record does not show that the husband or his family were able to locate the Principal Appellant at her friend's home or ever attended there. There is also nothing to suggest that they have the means or reach to do so in Abuja. The Principal Appellant is merely speculating that she would be noticed by a church goer because her father and her father-in-law were well-known figures in the church community. The Appellants did not establish, on a balance of probabilities, that the agents of persecution had the means or resources to locate them in Abuja. I find that the Appellants do not face a serious possibility of persecution in Abuja. Is it unreasonable, under all the circumstances, for the appellant to relocate in Abuja?
- [19] As mentioned above the threshold for unreasonableness is set very high. The RPD determined that the Appellants did not provide evidence of the existence of conditions that would jeopardize their lives and safety if they relocated to Abuja. The Appellants did not specifically contest this determination, arguing only generally that the RPD did not make its own independent assessment regarding either prong.
- [20] A review of the reasons indicates that the RPD considered the country conditions evidence which is contained in the National Documentation Package (NDP). The RPD also states that it considered and applied Chairperson's Guideline 4 - Women refugee claimants fearing gender-related persecution.¹³ The guideline states that the RPD should consider factors including religious, economic, and cultural factors when determining that an IFA is viable. After conducting an independent assessment, I find that the Appellants have not established, on a balance of probabilities, that they would face undue hardship in relocating to Abuja.

- [21] The Principal Appellant is highly educated, she has 18 years of education, has a XXXX XXXX in XXXX and is a trained XXXX. She has significant employment history dating back to 2011; she has worked as a XXXX XXXX, a XXXX XXXX, a XXXX XXXX and as a XXXX. The documentary evidence suggests that women can face challenges in Abuja in terms of getting employment. The same evidence, however, also indicates that women with a higher education enjoyed a higher employment rate, that in the 15-49 age demographic the employment rate of women has increased by 10 percent over the last decade, and that educated women have access to government employment and an expanding private sector. Although the Principal Appellant testified that it would not be easy to find a job that was not a XXXX job, she also testified that she had previously lived in Abuja and had also worked there in the past during her XXXX internship.¹⁴ I find that, on a balance of probabilities, the Principal Appellant will be able to support herself in Abuja.
- [22] I find that the Principal Appellant will have a social network available to her in Abuja. The Principal Appellant testified that she has a family friend that still works in the Ministry of XXXX in Abuja,¹⁵ another person who was like an uncle to her and has settled with his family in Abuja, as well as approximately 30 friends and acquaintances living in Abuja. Furthermore, the Principal Appellant has her father, mother, and three brothers in Nigeria that would still be available to her for support. Further, given that the Principal Appellant is fluent in English, which is the official language of Nigeria, I find that language would not be a barrier to her relocating in Abuja.
- [23] Abuja is serviced by an International Airport and the Appellants could travel there directly. The Principal Appellant has previously relocated in Nigeria, she testified that she previously lived in Abuja and briefly in Port Harcourt. I also note that the Principal Appellant has demonstrated an ability to relocate internationally, first in the United States and then Canada. As a result, I find that she could reasonably relocate to Abuja.
- [24] With respect to religion, I find that the Principal Appellant would not face undue hardship in relocating in Abuja. The NDP states that anywhere from 40 to 50 percent of Nigeria is Christian.¹⁶ Further, in the central state, Christians and Muslims reside in equal numbers. The Principal Appellant testified that she could attend a different church in Abuja and that she did not need to attend at the Apostolic Faith Church.¹⁷ I note that the Principal Appellant attended church in Canada that was not the Apostolic Faith Church. The Principal Appellant is a Christian; the objective evidence indicates that she would be able to practice her religion freely in Abuja.
- [25] Based upon all the evidence, I find that a viable IFA exists for the Appellants. I also find that they can relocate to Abuja. I find that there is not a serious possibility that the Appellants would be persecuted if they returned to Nigeria, pursuant to section 96 of the IRPA. I also find, on a balance of probabilities, that the Appellants would not be personally subjected to a danger of torture or face a risk to life or risk of cruel and unusual treatment or punishment in Nigeria, pursuant to section 97 of the IRPA.

CONCLUSION

[26] 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.¹⁸ (signed) Ron Stratigopoulos Ron Stratigopoulos August 28, 2020 Date 1 Immigration and Refugee Protection Act (S.C. 2001, c. 27), as amended, at ss. 110(4). 2 Raza v. Canada (Citizenship and Immigration), 2007 FCA 385, as endorsed in Canada (Citizenship and Immigration) v. Singh, 2016 FCA 96 (CanLII), [2016] 4 FCR 230. 3 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93 (CanLII), [2016] 4 FCR 157; see also Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145 (CanLII), [2019] 2 FCR 597. 4 Rasaratnam v. Canada (Minister of Employment and Immigration), [1992] 1 F.C. 706 (C.A.). 5 Thirunavukkarasu v. Canada (Minister of Employment and Immigration), [1994] 1 F.C. 589 (C.A.). 6 Exhibit RPD-1, RPD Record, Exhibit 4, National Documentation Package (NDP) for Nigeria (10 July 2018), item 1.6, Nigeria. The World Factbook. 7 Transcript of November 1, 2018, RPD Hearing, at p. 25, lines 35-37. 8 Exhibit RPD-1, RPD Record, Exhibit 5, at p. 155. 9 Transcript of November 1, 2018, RPD Hearing, at p. 24, lines 51-53, p. 25, lines 5-15. 10 Transcript of November 1, 2018, RPD Hearing, at p. 26, lines 9-11. 11 Exhibit P-2, Appellants' Record, at p. 20, para. 17. 12 Exhibit RPD-1, RPD Record, Exhibit 7, at p. 203. 13 Chairperson 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. 14 Transcript of November 1, 2018, RPD Hearing, at p. 33, lines 17-18. 15 Ibid., at p. 33, lines 39-43. 16 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Nigeria, (10 July 2018), item 12.5, Response to Information Request NGA105320.E. 17 Transcript of November 1, 2018, RPD Hearing, at p. 26. 18 Immigration and Refugee Protection Act (S.C. 2001, c. 27), as amended, at para. 111(1)(a).

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