

CANADA / JUDGMENT

MB9-28544

COURT

Refugee Appeal Division

DECIDED

17 June 2020

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RAD File / Dossier de la SAR : MB9-28544 MB9-28545 MB9-28546 MB9-28547 Private Proceeding / Huis clos Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXX (a.k.a. XXXX XXXX XXXX) XXXX XXXX XXXX (a.k.a. XXXX XXXX XXXX) XXXX XXXX XXXX (a.k.a. XXXX XXXX XXXX XXXX XXXX XXXX XXXX (a.k.a. XXXX XXXX XXXX) Personnes en cause Appeal considered / heard at Toronto, ON Appel instruit / entendu à Date of decision June 17, 2020 Date de la décision Panel Joseph W. Richards II Tribunal Counsel for the persons who are the subject of the appeal Idorenyin E. Amana 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] I allow these appeals.
- [2] XXXX XXXX XXXX (the Principal Appellant or PA), XXXX XXXX XXXX (the Associate Appellant or AA), XXXX XXXX XXXX (the Minor Female Appellant or MFA) and XXXX XXXX XXXX (the Minor Male Appellant or MMA) are citizens of Nigeria.
- [3] The Appellants fear Ijaw militants of the Niger Delta. The Appellants originate from Ese-odo in Ondo State and are ethnically part of the Ijaw tribe. For years, the Ijaw people have felt neglected by their local governments and deprived of the profits of the oil-rich Niger Delta region. Conflicts with the authorities have resulted. Despite military troops being deployed, Ijaw militants have continued disruptive activities such as oil syphoning, busting pipelines, robbing banks and kidnapping. On September 17, 2014, nine Nigerian secret service officers were killed, causing the government to enhance its intelligence-gathering in the area. The Appellants wanted the violence to end. The AA, who was raised in the same community as the principal militants, agreed to act as an informant for the Lagos State security service director. As a result of this cooperation, the Ijaw militant leader, Ossy Obori, was killed by military forces on May 1, 2017.
- [4] The militants quickly reconstituted themselves. On XXXX XXXX, militants kidnapped the AA's mother and threatened to harm the AA and her family. The threats continued at the PA's workplace, where the PA was accosted, threatened and accused of betraying the militant cause. The Appellants sought help from the Lagos State security service director, who advised the Appellants to flee because militants had begun to infiltrate the government apparatus; no further assistance to the Appellants could be provided. On XXXX XXXX, 2017,

the Appellants formally reported the threats to the police. The PA fled Nigeria for the United States on XXXX XXXX XXXX 2017, with the remaining Appellants joining him in late XXXX 2017. Together, the Appellants arrived in Canada, irregularly, on XXXX XXXX, 2018.¹

- [5] The RPD rejected the Appellants' claims, finding that a viable internal flight alternative (IFA) exists in Abuja. Though accepting that the Appellants' allegations were generally credible, the Panel found insufficient evidence to demonstrate that the alleged agents of harm had both the means and motivation to locate the Appellants in Abuja.
- [6] On appeal, the Appellants contend that the RPD erred by unduly relying on the Nigerian Jurisprudential Guide,² by failing to consider the specific circumstances of the Appellants, and by ignoring documentary evidence showing that Abuja is unsafe. They also claim that the RPD's reasons are excessively vague.³ The Appellants have submitted new evidence and are requesting an oral hearing.
- [7] The determinative issue is whether Abuja is a viable IFA. After a fulsome review of the record, I find that Abuja is not viable, as it is not safe for the Appellants. With insufficient reasons to rebut the presumption of truthfulness, I find the Appellants face a personalized risk to their lives and are persons in need of protection under section 97 of the Immigration and Refugee Protection Act (IRPA). DECISION
- [8] The appeals are allowed. I substitute my own decision that the Appellants are persons in need of protection. NEW EVIDENCE The evidence presented by the Appellants is rejected
- [9] According to the law,⁴ I can only accept evidence that:
- (a) arose after the RPD's decision; or
 - (b) was not reasonably available at the time of the decision; or
 - (c) that you could not reasonably have been expected in the circumstances to bring to the RPD before the decision.
- [10] 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.⁵ The newness criterion is somewhat redundant, as it does not add to the explicit requirements of subsection 110(4).⁶
- [11] In this case, the Appellants have submitted medical test results, in an effort to explain the PA's "incompatible behaviours (sic), omission, and the contradiction which led to the negative decision."⁷ The reports indicate that the PA suffers from mild to moderate XXXX XXXX XXXX, XXXX XXXX XXXX XXXX, XXXX XXXX XXXX, and XXXX XXXX XXXX XXXX.⁸
- [12] Dated XXXX XXXX and XXXX, 2019, the reports arose after October 8, 2019, the date of the RPD hearing. The RPD's decision was issued on November 12, 2019. Due to this close timing, I agree with the Appellants that the test results were not reasonably available at the time of the decision. Nevertheless, I find that the reports lack relevance and are thus inadmissible. The evidence is not capable of proving or disproving a fact that is relevant to the asylum

claim. Test results, on their own, do not explain how the noted medical conditions affected the PA's testimony. To establish causation, for instance, the PA could have submitted a medical opinion to that effect.

- [13] I am mindful of the overriding duty to accommodate persons with disabilities who come before the Board. In that context, I did consider the PA's health challenges - described by Counsel at paragraph 21 of the Appellants' Memorandum - as I listened to the hearing recording. An oral hearing cannot be held
- [14] The Appellants have requested an oral hearing and provided submissions to explain why one is needed.⁹ Pursuant to subsection 110(6) of the IRPA, a prerequisite for an oral hearing is admissible new evidence. As there is no such evidence in this appeal, an oral hearing cannot be held. The Appellants' request is therefore denied.

ANALYSIS

The role of the Refugee Appeal Division (RAD)

- [15] Because the Appellants' memorandum suggests that I am bound to the standard of reasonableness in deciding this appeal, I will explain the role of the RAD in detail.¹⁰
- [16] The RAD reviews RPD decisions by conducting an independent assessment of the refugee claim. If the RAD's assessment differs from that of the RPD, the RAD may substitute its own decision.¹¹ If the RPD has a meaningful advantage in assessing the credibility of oral testimony, then the RPD's finding may be accorded deference.¹² Otherwise, the standard of correctness applies.¹³
- [17] In this case, the RPD did not have a meaningful advantage. Accordingly, I have conducted an independent assessment of the oral and documentary evidence using the correctness standard. The RPD erred by finding that Abuja is safe
- [18] The RPD found that the PA's testimony was vague and speculative, in that "it does not demonstrate an organized effort by the political arm of the Ijaw people to harm or kill the claimants, nor does it describe a specific threat against the family by the Ijaw leadership."¹⁴ The Appellants argue that the RPD failed to exercise its discretion to deviate from the Jurisprudential Guide and ignored uncontested documentary evidence. I agree with the Appellants and find that the RPD erred.
- [19] The RPD properly articulated the two-pronged IFA test; the proposed IFA must be safe and relocation must be reasonable in all the circumstances.¹⁵ However, the Panel held the Appellants to an unnecessarily onerous standard in evaluating their safety in Abuja. The proper question is whether the Appellants face a well-founded fear of persecution or section 97 harm in the proposed IFA. Instead, the RPD sought specific evidence of an "organized effort" by the agents of harm.

- [20] The Appellants adduced sufficient evidence that is consistent with their narrative and testimony and is reliable on its face. When considered together, this evidence demonstrates that the Appellants likely face a personalized risk to their lives in Abuja:
- (a) Testimony of the AA (XXXX 2017): While in hiding at the PA's aunt's house, the AA and the Minor Appellants were almost discovered; militants attended the residence in search of the AA.¹⁶
- (b) Article from the XXXX XXXX (XXXX XXXX, 2017): The article is reliable as it specifically mentions the PA and substantially corresponds with the Appellants' Basis of Claim (BOC) narrative. Notably, the article states that the Appellants "XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX."17 The Appellants deny any involvement in the sourcing or publication of the article. They claim to have learned about it only after leaving Nigeria.¹⁸
- (c) Affidavit of XXXX XXXX, Mother of the AA: The statement confirms that on XXXX XXXX XXXX 2017, Ms. XXXX was kidnapped by a group of approximately 10 militants, who demanded to know the whereabouts of the AA.¹⁹
- (d) Statement of the AA (XXXX XXXX, 2017): The AA references her involvement in competitive swimming in Nigeria and details that the Ijaw militants meet in Abuja for their annual conferences.²⁰
- (e) Statement of XXXX XXXX, friend of the Appellants (XXXX XXXX, 2019): This letter confirms that the Appellants were a topic of conversation at a recent meeting of the Ijaw militants in Abuja, the proposed IFA.²¹
- (f) Police Reports of XXXX 2017 and XXXX XXXX, 2019: The reports confirm that the PA alerted the police, soon after receiving threats of violence at his workplace in XXXX 2017.²²
- [21] In light of this overwhelming evidence, the RPD's finding that Abuja is safe cannot stand. As a result, I need not consider the second prong of the IFA test, that is, whether it would be objectively reasonable to relocate in all of the circumstances. Abuja is thus not a viable IFA. The Appellants are persons in need of protection Nexus to Convention grounds.
- [22] The Appellants exclusively fear retribution by Ijaw militants. They claim refugee protection under sections 96 and 97 of the IRPA, though they have not expressly correlated their fear to a particular Convention ground.²³ Based on the circumstances of this case, I have decided to conduct my analysis under section 97 of the IRPA. A risk to life exists.
- [23] Following my independent review of the record, I have determined that the Appellants face a risk to their lives, on a balance of probabilities.
- [24] The PA testified in an honest and forthright manner. He explained the plight of the Ijaw people in detail, including their transition from peaceful "freedom fighters" to violent militants.²⁴ He meticulously described the events surrounding the threat at his workplace in XXXX 2017 and the trauma that it caused.²⁵ The AA candidly admitted that she felt

"destabilized" after learning that her mother had been kidnapped; it is for this reason that the AA did not report the incident to the police.²⁶ The presumption of truth has thus not been rebutted in this case.

- [25] The country documentation further highlights that in Southern Nigeria, confrontations between armed criminal groups and security forces do occur and are tied to the quest for control over oil resources in the Niger Delta.²⁷ Moreover, the Appellants submitted news articles, statements, and police reports, all of which corroborate the events described in the BOC narrative as well as the militants' continuing interest in avenging the death of Ossy Obori.²⁸ Under these circumstances, the lives and safety of the Appellants are in danger in Nigeria, on a balance of probabilities. No adequate state protection and no viable IFA
- [26] The Appellants sought help from the police and from the Lagos State security director. Neither route was effective. After the AA's mother went to the police on May 15, 2017, the police took no meaningful action and did not enhance her protection. The same is true after the PA's complaint, a month later.²⁹ When, as a last resort, the PA approached the director of security services, the latter advised that militants had infiltrated his agency and that he had been forced into retirement; he was unable to provide any assistance.³⁰
- [27] Under these circumstances, I find that the evidentiary record is sufficient to rebut the presumption of state protection and to determine that the Appellants would not be safe in Abuja or in any other location in Nigeria. The Appellants' identities are established
- [28] The Appellants have submitted their Nigerian passports, which I have reviewed.³¹ I agree with the RPD's determination that the Appellants' identities are established, on a balance of probabilities.

CONCLUSION

- [29] The appeals are allowed. I substitute my own decision that the Appellants are persons in need of protection. (signed) "Joseph W. Richards II" Joseph W. Richards II June 17, 2020 Date 1 Exhibit RPD-1, RPD Record, at pp. 165-166. 2 TB7-19851, identified by the Chairperson, pursuant to paragraph 159(1)(h) of the IRPA, effective date: July 6, 2018. 3 Exhibit P-2, Appellants' Record, Memorandum, at paras. 2-8. 4 IRPA, s. 110(4). 5 M.C.I. v. Singh, Parminder (F.C.A., no. A-512-14), Nadon, Gauthier, de Montigny, March 29, 2016, 2016 FCA 96; Raza, Syed Masood v. M.C.I. (F.C.A., no. A-11-07), Linden, Sharlow, Ryer, December 6, 2007, 2007 FCA 385. 6 Singh, *ibid.*, at para. 46. 7 Exhibit P-2, Appellants' Record, Memorandum, at p. 18 (para. 1). 8 Exhibit P-2, Appellants' Record, at pp. 14-16. 9 Exhibit P-2, Appellants' Record, at pp. 13, 22 (para. 21). 10 Exhibit P-2, Appellants' Record, Memorandum, at pp. 17-18 (para. 1). 11 Huruglica, Bujar v. M.C.I. (F.C., no. IMM-6362-13), Phelan, November 7, 2014, 2014 FC 799, at paras. 54-55. 12 Rozas Del Solar, Paola v. M.C.I. (F.C., no. IMM-2645-17), Diner, November 14, 2018, 2018 FC 1145, at para. 105. 13 M.C.I. v. Huruglica, Bujar (F.C.A., no. A-470-14), Gauthier, Webb, Near, March 29, 2016, 2016 FCA 93, at paras. 70, 103. 14 Exhibit RPD-1, RPD Record, RPD's Reasons and Decision, at para. 17. 15

Ibid., at paras. 12, 25. 16 Audio Recording of the RPD Hearing, at 01:20:00 - 01:22:25. 17 Exhibit RPD-1, RPD Record, at p. 277. 18 Audio Recording of the RPD Hearing, at 01:22:10, 01:51:00. 19 Exhibit RPD-1, RPD Record, at p. 281. 20 Ibid., at p. 244. Also consider the PA's testimony regarding the widespread gatherings of the Ijaw people throughout Nigeria: Audio Recording of the RPD Hearing, at 01:49:30. 21 Exhibit RPD-1, RPD Record, at p. 234. 22 Ibid., at pp. 308-309, 311. 23 See the written closing submissions provided to the RPD: *ibid.*, at pp. 223-227. 24 Audio Recording of the RPD Hearing, at 00:20:50 - 00:28:25. See also, 01:25:00 - 01:30:00. 25 Ibid., at 00:31:50 - 00:35:30. 26 Ibid., at 01:12:00 - 01:16:10. 27 NDP for Nigeria (November 29, 2019), item 1.8, Australia Department of Foreign Affairs and Trade, "DFAT Country Information Report: Nigeria", March 9, 2018, at p. 12 (2.3.6.). 28 Exhibit RPD-1, RPD Record, at pp. 249-264. 29 Audio Recording of the RPD Hearing, at 00:35:30, 01:43:45 - 01:46:00. 30 Exhibit RPD-1, RPD Record, at p. 14; Audio Recording of the RPD Hearing, at 00:37:30. 31 Exhibit RPD-1, RPD Record, at pp. 178, 194, 204, 213.

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Prepared on 25 October 2026 · Esheria