

CANADA / JUDGMENT

VB9-09330

COURT

Refugee Appeal Division

DECIDED

6 August 2020

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RAD File / Dossier de la SAR : VB9-09330 VB9-09331 / VB9-09332 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 Personnes en cause Appeal considered /
heard at Ottawa, ON Appel instruit / entendu à Date of decision August 6, 2020 Date de la décision
Panel Alison Kennedy Tribunal Counsel for the persons who are the subject of the appeal
Claudette Menghile 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 adult Appellants XXXX XXXX XXXX (Principal Appellant/ PA) and XXXX XXXX XXXX (Associate Appellant/ AA), and their son XXXX XXXX XXXX, are citizens of Nigeria. They are appealing a decision of the Refugee Protection Division (RPD) which found that they are not Convention refugees or persons in need of protection.

BACKGROUND

- [2] The Appellants allege that the Ogboni cult is looking to locate and harm them after the PA refused to join the cult as a chief priest. The Appellants allege that the PA's brother was first chosen to replace his father in the cult, but that he was murdered after refusing to join. The cult then demanded that the PA join instead. The Appellants allege that they relocated internally in Nigeria but were located by the cult. They then fled to the U.S.A. and traveled into Canada.
- [3] The RPD found that the Appellants had a viable internal flight alternative (IFA) in Abuja or Port Harcourt. The Appellants dispute this finding, arguing that the Ogboni cult will find them wherever they are in Nigeria.

DETERMINATION

- [4] I agree with the RPD that the Appellants have a viable IFA in Abuja or Port Harcourt, so I dismiss this appeal.

ANALYSIS

Internal Flight Alternative Notice of IFA

- [5] The Appellants argue that the RPD never gave them sufficient advance notice that it would raise the issue of IFA and/or that the potential IFAs at issue would be Abuja and Port Harcourt.¹
- [6] I do not agree. The Appellants were made aware at the RPD hearing that IFA was an issue and that the potential IFAs were Abuja and Port Harcourt. I do not agree with the Appellants that they should have received notice of these potential IFAs prior to the hearing. The Federal Court had held that where the issue of an IFA is raised during a hearing and where the Appellant does not indicate at the hearing that they were taken by surprise or that they need more time to prepare, that failure to give notice does not constitute a reviewable error.² In this case, as in Ramachanthran, the issue of an IFA was raised during the hearing and the Appellants had the opportunity to respond and present evidence on the IFAs during the hearing. Furthermore, the Appellants failed to raise this concern at the hearing, nor did they ask for an adjournment or seek to submit additional documents concerning the potential IFAs post-hearing. Consequently, I do not find that the RPD failed to give the Appellants reasonable administrative notice of the IFA issue as alleged. IFA Test
- [7] The test to determine whether a viable IFA exists has two prongs: (i) there is no serious possibility of the claimants being persecuted or subjected, on a balance of probabilities, to a danger of torture or to a risk to their life or of cruel and unusual treatment or punishment in the proposed IFA; and (ii) conditions in the IFA area are such that it would not be unreasonable, in all the circumstances, including those particular to the claimants, for the claimants to seek refuge there.³ Once the issue of an IFA has been proposed to the Appellants, the burden is on them to demonstrate that the proposed IFA is either unsafe or unreasonable. Prong 1 - No serious possibility of persecution RPD findings
- [8] The RPD found it speculative that the Ogboni cult would locate and harm the Appellants in Abuja or Port Harcourt. The RPD found that the Ogboni did not have the means and ability to locate the Appellants, noting that the Ogboni cult has declined in influence since the 1990s and is only active in certain areas of Nigeria. Given the current power, influence, and limited presence of the Ogboni cult in Nigeria, the RPD found that the Appellants had not shown that the cult has the means or capacity to locate and harm them in Abuja or Port Harcourt.
- [9] The RPD also found that the Appellants had not demonstrated that the cult killed his brother in retribution for refusing to join, and that the PA's allegation that his brother was murdered on this basis was speculative.

- [10] Finally, the RPD noted that even if the Appellants were threatened by the cult, that the cult never acted on the threats. The RPD also noted that the threats ceased in 2017 when the Appellants left Nigeria, which it found was indicative of a lack of ongoing motivation to locate and harm the Appellants. Appellants' Arguments
- [11] The Appellants allege that the RPD selectively referred to documentary evidence which supported its conclusions on the decline of Ogboni influence, while failing to consider the evidence that did not.⁴ The Appellants argue that the Ogboni cult still has significant influence in Nigeria, and that the RPD underestimated the influence and power of the cult in determining its ability to locate the Appellants in the IFAs.⁵ The Appellants further argue that the members of the Ogboni have high ranking positions in Nigerian society, and consequently, have the means and power to find them. The Appellants also argue that IFA is an outdated concept, and that the AOP can use the internet to find them. RAD findings Prong 1 - No serious possibility of persecution or s. 97 risk proven
- [12] I do not find that the RPD selectively referred to documentary evidence to support its conclusions while ignoring evidence to the contrary. Rather, the RPD noted that the power and influence of the Ogboni has declined since the 1990s, and that the cult is only active in certain parts of Nigeria.⁶ Indeed, sources quoted by the IRB noted that the traditional Ogboni society's "present-day membership, presence, and activities are insignificant", and that the traditional Ogboni society today "has no power or influence" and is "almost defunct."⁷ While another source notes that the group's influence "has not completely disappeared," it nevertheless notes that it is "much less important than in the past."⁸
- [13] Based on my assessment of the documentary evidence, I find that the RPD was correct in finding that the Appellants have not proven that the cult has the means or ability to locate them in the potential IFAs as alleged. While the country documentation suggests that the Ogboni may still have some influence and power in parts of Nigeria, it nonetheless notes that such power has decreased greatly from the past. As such, I do not find that the documentation contained in the NDP supports the Appellants' contention that the Ogboni would have the power and ability to locate them in the potential IFAs as alleged.
- [14] I also find that the PA's allegation that his brother was murdered by the cult to be speculative. Indeed, I find that the Appellants have not proven, on a balance of probabilities, that the cult killed his brother in retribution for refusing to join as alleged, given the lack of corroborative evidence supporting this allegation. This is especially so given the inconsistency between the PA's testimony and his brother's death certificate about where his death occurred.

- [15] Furthermore, I find it significant that the threats to the Appellants ceased in 2017, and I find that this demonstrates a lack of ongoing motivation to locate and harm the Appellants in the potential IFAs. Moreover, while the Appellants argue that they could be tracked by the cult to the potential IFA locations by internet searching, I find that the Appellants can take steps to mitigate against this perceived risk, including making attempts to keep their location private when using social media and minimizing their online presence whenever possible.
- [16] For these reasons, I find that the Appellants have not proven, on a balance of probabilities that the Ogboni cult has the means and motivation to search for them throughout Nigeria, including in the IFAs. Consequently, I find that the Appellants have not demonstrated that they would face a serious possibility of persecution or, on a balance of probabilities, a s. 97 risk if they to relocate to Abuja or Port Harcourt. Prong 2 - Reasonableness of the IFAs Appellants' arguments
- [17] The Appellants submit that they will not be able to find jobs in Port Harcourt or Abuja because they are not natives of these cities and job opportunities are scarce. The Appellants also argue that indigeneship influences access to employment, and that many states discriminate by refusing to employ non-indigenes.⁹ The Appellants also argue that their lack of indigeneship status will also affect their ability to access social services. The Appellants also submit that they could not afford accommodation in Port Harcourt or Abuja, given the high cost of housing.¹⁰ With regard to language, the Appellants argue that even though English may be the official language in Nigeria, it does not mean that it is understood everywhere in Nigeria.¹¹
- [18] The Appellants also argue that there is a high level of criminality and terrorism in Port Harcourt and Abuja, and they are at risk of being killed in a Boko Haram attack in Abuja or in attacks by the Niger Delta militant groups in Port Harcourt.¹² The Appellants argue that existing terrorism and criminality must be considered in assessing whether it is safe to relocate to the potential IFAs.¹³
- [19] The Appellants further allege that the RPD erred by failing to consider the gender aspect of how the AA would be treated upon relocating to Port Harcourt or Abuja. Furthermore, the Appellants argue that by finding there is an IFA in Port Harcourt or Abuja, they would essentially be confined to these cities for the rest of their lives. RAD findings Language
- [20] I note that the Appellants speak English and Yoruba. English is spoken in all of the proposed IFAs, and is the official language in Nigeria. Furthermore, a large percentage of the population speaks Yoruba in the major centers as well. The Appellants argue that language would be a significant barrier for the Appellants, given that English is not spoken throughout the country. However, I do not find this to be a persuasive argument given that English is spoken in the Abuja and Port Harcourt which are the IFAs at issue. Furthermore, the documentary evidence suggests that there is no language barrier in cities such as Port Harcourt and Abuja unless a person is not English-speaking.¹⁴ Consequently, I find that language does not render Port Harcourt or Abuja to be objectively unreasonable IFAs for the

Appellants. Employment and accommodation

- [21] The country condition evidence indicates that, while it may be difficult for non-indigenes to find employment in government jobs, candidates for private sector jobs are generally assessed based on merit.¹⁵ The documentary evidence also suggests that indigeneship status is less important in big cities, including Port Harcourt, and non-indigenes generally can find work in most industries, where there is a demand for it.¹⁶ Furthermore, the documentary evidence suggests that the ability to find gainful employment is facilitated by a good level of education, experience or expertise.¹⁷
- [22] I note that the PA has 13 years of education and an extensive work history, including almost 10 years of working as a XXXX XXXX.¹⁸ He also testified that he owned and managed a small XXXX business since in 1990s. The AA also has a total of 12 years of education and worked in a XXXX for almost 10 years.¹⁹ The average Nigerian man has completed 9 years of education, while Nigeria women have completed about 8 years of education on average. Appellants who have a good level of education, experience, or expertise may be in a better position in terms of securing employment than the average Nigerian.²⁰ On this basis, I find that the Appellants in this case are well-equipped to find work in Nigeria given their significant education and work experience. Furthermore, even if the PA has difficulty finding work as a XXXX XXXX based on his lack of indigene status, I find that he could rely on his experience in managing a XXXX business to find employment in the IFAs.
- [23] Having determined that the Appellants would be likely to find work in the IFAs because of their significant education and work experience, I also find that the Appellants would be reasonably able to pay for and acquire accommodation, given that finding gainful employment is a key factor in finding housing.²¹ Indigeneship
- [24] I am alive to the Appellants' concerns with indigeneship status and how this would factor into their relocation to the potential IFAs. However, the documentary evidence suggests that non-indigenous people are demographically dominant in larger cities such as Abuja.²² Moreover, the documentary evidence suggests that improved means of communication and broken-down ethnic barriers have made the means of settlement in urban areas easier for non-natives.²³ I do note that the documentary evidence suggests that some there are occasional indigene-settler issues, and that discrimination against non-indigenes may still occur.²⁴ However, I do not find that this is sufficient to render the proposed IFAs unreasonable.
- [25] Indeed, the documentary evidence suggests that a relocation may involve some hardship, and that the Appellants may experience some difficulties relocating in the IFAs. However, this does not rise to the level of demonstrating that a potential IFA is unreasonable. Rather, I find that the Appellants have failed to establish that any discrimination they would face in Port Harcourt or Abuja on the basis of non-indigeneship would rise to the level that it would render the proposed IFAs to be unreasonable or unduly harsh. Social Services

- [26] The Appellants have also argued that it would be difficult for them to access social services in the potential IFAs. However, the documentary evidence holds that non-indigenes are entitled to access essential public services, including health care, primary and secondary education.²⁵ The documentary evidence also suggests that a person's ability to access health services is largely a function of the ability to pay.²⁶ I have already noted that the Appellants would be likely to find employment and accommodation as a result of their above-average level of education and employment history. As such, the Appellants would be in a better position than many to pay for social services as required.
- [27] Furthermore, the fact that some social services such as education and health care must be paid for privately does not automatically mean that such services would be unavailable or inaccessible to the Appellants. Rather, the onus is on the Appellants to explain why the burden they would face to access these services rises to such a level that it is unreasonable, that is, that it would jeopardize their lives and safety. They have failed to do so. As such, I do not find that this renders the proposed IFAs unreasonable. Criminality
- [28] The Appellants also argue that criminality and terrorism are a significant concern in Abuja and Port Harcourt.²⁷ However, I do not find that the Appellants have demonstrated how or why they specifically would be at risk of being subject to criminality and/or terrorism by Boko Haram or the Niger Delta Militants in the potential IFAs. Rather, I find that the risk to the Appellants on this basis is speculative. I do not find that the Appellants have proven that relocation to Port Harcourt or Abuja would be unreasonable based on the criminality or terrorism occurring in these cities. Gender
- [29] The Appellants have argued that the RPD failed to consider the gender aspect of how the AA would be treated upon relocating to Port Harcourt or Abuja. However, the Appellants have failed to provide any detailed submissions on this point. Further, the RPD noted that the AA did not raise any such concerns during the RPD hearing, although invited to do so by the RPD. Consequently, I do not find that the RPD erred in failing to consider the gender aspect of the AA's claim, given that the AA did not put forward any submissions or concerns related to her gender, despite being invited to do so by the RPD. Furthermore, I find that the Appellants have not demonstrated that relocation to the potential IFAs would be unreasonable or unduly harsh for the AA because of her gender. IFAs are reasonable
- [30] I acknowledge that there could well be some difficulties for the Appellants in relocating to Port Harcourt or Abuja. I am certainly alive to their concerns, including the high cost of life in these areas and the difficulties they may face because they are not native to these cities. However, a very high threshold exists for the unreasonableness portion of the IFA test. According to the Federal Court, it "requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant".²⁸ Furthermore, it requires "actual and concrete evidence of such conditions".²⁹

- [31] I do not find that the Appellants have provided actual and concrete evidence of any conditions that would, alone or in combination, jeopardize their lives and safety if they relocate to Port Harcourt or Abuja. Consequently, I find that the Appellants have not proven that a relocation to Port Harcourt or Abuja would be unreasonable in their circumstances.

CONCLUSION

- [32] I dismiss the appeals and confirm the decision of the RPD that the Appellants are neither Convention refugees nor persons in need of protection. (signed) Alison Kennedy Alison Kennedy August 6, 2020 Date 1 Exhibit P-2, Appellant's Record, Appellants' memorandum at p. 5. 2 Ramachanthran v. Canada, 2003 FCT 673 paras 52-53. 3 Rasaratnam v. Canada (Minister of Employment and Immigration), [1992] 1 F.C. 706 (C.A.), at 710. 4 Memorandum, supra note 1 at p. 6 5 Memorandum, ibid. at p. 8 6 Exhibit RAD-1, National Documentation Package, Nigeria, 31 July 2020, tab 13.13: ?Ogboni society, including structure, rituals, ceremonies, and current status; membership and the consequences of refusing to join or trying to leave; relationship with police and judicial authorities (2017-April 2019). Immigration and Refugee Board of Canada. 20 June 2019. NGA106269.E. 7 Tab 13.13, ibid. 8 Tab 13.13. ibid. 9 Exhibit P-3, Appellants' additional submissions at p. 6. 10 Appellants' additional submissions, ibid. at pp. 4-6. 11 Appellants' memorandum, supra note 1 at p. 13. 12 Memorandum, ibid. at pp. 9-10. 13 Memorandum, ibid. 14 National Documentation Package, Nigeria, 31 July 2020, tab 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 ... Immigration and Refugee Board of Canada. 30 October 2019. NGA106361.E. 15 National Documentation Package, Nigeria, 31 July 2020, tab 12.6: ?Treatment of Christians who relocate from northern parts of Nigeria by people in Port Harcourt [Rivers State]; whether they face linguistic, economic and social difficulties (2012-November 2013). Immigration and Refugee Board of Canada. NGA104679.E. at p. 4 16 Tab 13.1, supra note 14 17 Ibid. at pp. 13-14. 18 Exhibit RPD-1, RPD Record, Schedule A Background / Declaration 1 at p. 95 19 Exhibit RPD-1, RPD Record, Schedule A Background / Declaration 2 at p. 82. 20 Tab 13.1, supra note 14 21 Tab 13.1, ibid. 22 Tab 13.1, ibid. 23 Tab 13.1, ibid. 24 Tab 13.1, ibid. 25 Tab 13.1, ibid. 26 Tab 13.1, ibid. 27 Appellants' additional submissions, supra note 9 at p. 8. 28 Ranganathan v. Canada (MEI), [2001] 2 FC 164, 266 N.R. 380 (F.C.A.). 29 Ranganathan, ibid.

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