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OVERVIEW

- [1] The Appellants, XXXX XXXX XXXX (Principal Appellant), his wife, XXXX XXXX XXXX (Associate Appellant), their minor children, XXXX XXXX XXXX and XXXX XXXX XXXX, and their adult child, XXXX XXXX XXXX, are citizens of Nigeria. They allege that the Principal Appellant's refusal to accept the XXXX XXXX position of XXXX XXXX XXXX, because it is incompatible with his religious beliefs as a Muslim, places him at risk of death or serious bodily harm from the elders and XXXX of his family and also places his family members at risk. The Appellants left Nigeria on XXXX XXXX, 2018 and came to Canada, making refugee claims on December 18, 2018.
- [2] The Refugee Protection Division (RPD) heard the claims on October 2, 2019 and December 16, 2019. The RPD rejected the claims on December 16, 2019, finding that the Appellants had a viable internal flight alternative (IFA) in Port Harcourt.¹ The Principal Appellant was appointed as designated representative for his three children who were all minors at the time of the RPD proceedings. The eldest child, XXXX XXXX XXXX, has since become an adult so he no longer requires a designated representative. DECISION
- [3] The appeal is allowed. Pursuant to paragraph 111(1)(b) of the Immigration and Refugee Protection Act (IRPA),² the Refugee Appeal Division (RAD) sets aside the determination of the RPD and substitutes its own determination that the Appellants are Convention refugees.

Basis of the claims

- [4] The Principal Appellant alleges that he is a member of XXXX XXXX XXXX XXXX of Lagos and a XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX position. He alleges that, after the death of the XXXX XXXX, in XXXX 2017, he was nominated by the family's elders and XXXX and chosen for the position. The Principal Appellant alleges that he told the elders that he would not accept the position because it is not compatible with his religious beliefs as a Muslim, but they told him he could not refuse. He alleges that he moved to Abuja, hoping this would solve the problem but was located by the family and was threatened with a gun. He alleges that he received official notification of his appointment with instructions to attend on XXXX XXXX, 2018 for the XXXX XXXX. The Principal Appellant alleges that he contacted the secretary of the family to reiterate his refusal and was told that, if he continued to refuse, they would locate him and he would face grave consequences. The Appellants allege that, in Nigeria, the Principal Appellant risks being killed or harmed if he refuses to become XXXX XXXX XXXX, and that accepting the position would violate his religious beliefs, he would be forced into XXXX, and his children would be forced to undergo XXXX, including female genital mutilation (FGM) of his daughter, and incisions on the bodies of his sons.³ Decision of the RPD
- [5] The RPD applied Jurisprudential Guide TB7-198514 in determining that the Appellants had a viable IFA in Port Harcourt, as persons fleeing non-state actors. In concluding that the agents of persecution lacked the means and motivation to locate the Appellants, the RPD stated that the Appellants did not provide evidence to support the allegation that the Principal Appellant would have to be killed or die before someone else could assume the XXXX position. The RPD stated that the Principal Appellant's evidence of family connections that would enable them to locate him was vague and lacking in detail. The RPD found that it would not be unreasonable for the Appellants to relocate to Port Harcourt, having regard to their personal circumstances.⁵ NEW EVIDENCE AND ORAL HEARING
- [6] The Appellants submit new evidence with this appeal. The new evidence consists of the Affidavits of XXXX XXXX XXXX,⁶ XXXX XXXX XXXX,⁷ and XXXX XXXX XXXX,⁸ all dated February 10, 2020. As I am able to make a determination based on the evidence in the record, I will not admit or consider the new evidence.
- [7] The Appellants request that a hearing be held under subsection 110(6) of the IRPA. As I am able to make a determination without an oral hearing, I will not hold one. The request for an oral hearing is denied. ROLE OF THE REFUGEE APPEAL DIVISION
- [8] The role of the Refugee Appeal Division (RAD) is to look at all the evidence and decide whether the RPD made the correct decision.⁹ I find that the RPD had no meaningful advantage in assessing the credibility of oral evidence. Therefore, the standard of review is correctness.

ANALYSIS

- [9] The determinative issues in this appeal are as follows:

- a. The RPD erred in its assessment of the first prong of the IFA test.
- b. The RPD failed to consider the totality of the evidence.
- c. The RPD did not clearly articulate reasons for rejecting the Appellants' evidence and, on a review of the record, I accept the allegations, on a balance of probabilities.
- d. The Appellants have established their claims to be Convention refugees. The RPD erred in its assessment of the first prong of the IFA test

[10] The test for assessing an IFA has two prongs.¹⁰ First, it must be determined that there is no serious possibility of persecution or, on a balance of probabilities, no risk to life, risk of cruel and unusual treatment or punishment, or danger of torture in the IFA. Secondly, it must not be unreasonable, in all the circumstances, including those personal to the claimant, to relocate there. Both prongs must be satisfied for a finding that a claimant has an IFA. I find, for the reasons that follow, that the RPD erred in its assessment of the first prong. The RPD erred in finding that, on a balance of probabilities, the agents of persecution would not be able to locate the Appellants in Nigeria

[11] The RPD found that the Appellants were fleeing non-state actors and applied Jurisprudential Guide TB7-19851.¹¹ The RPD characterized the Principal Appellant's testimony that family members would be able to locate him as "vague and lacking in details"¹² but did not identify any inconsistencies or contradictions in the Appellants' evidence. The RPD stated that the Principal Appellant did not provide any details or names of individual family members with connections to the state.¹³ The RPD referred to the Principal Appellant's failure to list his uncle in his Basis of Claim form and found it speculative to suggest that his uncle would report his whereabouts to other family members.¹⁴ The RPD stated that no specific names, methods, or examples were given of how the family elders would locate him.

[12] The Appellants argue that the RPD erred in relying on the Jurisprudential Guide, given the connections between the Principal Appellant's family and the state. The Appellants argue that the RPD ignored evidence. While I agree with the RPD that the Appellants are fleeing non-state actors, I find that the RPD erred in finding that the agents of persecution did not have the necessary connections to the state that would enable them to locate the Appellants. I find that the connection to state actors makes the Appellants' situation significantly different from the circumstances envisaged by the Jurisprudential Guide. I accept the Appellants' argument that the RPD ignored evidence. I find that there was sufficient evidence, including the evidence to which I refer in the following paragraph, to establish, on a balance of probabilities, that the Appellants would be located in Port Harcourt or elsewhere in Nigeria by the elders and XXXX of the XXXX family.

[13] The Appellants presented evidence to show that the Principal Appellant's father and other members of his family were XXXX XXXX XXXX for many years with the XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX in a dispute over XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX. This evidence included the XXXX XXXX XXXX XXXX

XXXX XXXX XXXX XXXX on XXXX XXXX, XXXX¹⁵ and the XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX on XXXX XXXX, XXXX.¹⁶ The Principal Appellant's evidence was that the XXXX XXXX XXXX has XXXX XXXX XXXX over XXXX and XXXX XXXX in the area.¹⁷ It is a position of significance to the XXXX and to the Principal Appellant's family, because of its XXXX importance.¹⁸ Representatives of the XXXX and representatives of the Principal Appellant's family jointly litigated the issue of who may ascend to the position for many years. While the elders and XXXX may be non-state actors, many years of pursuing a common cause pertaining to the position of XXXX XXXX XXXX illustrates connections with government officials and the XXXX's interest in who holds this position.

- [14] I find that the evidence establishes, on a balance of probabilities, that the elders and XXXX whom the Principal Appellant fears would be able to locate him and his family in Nigeria because of these connections with government officials and representatives of the state. The RPD erred in finding that, on a balance of probabilities, the agents of persecution would not be motivated to locate the Appellants in Nigeria
- [15] The RPD stated that there was "vague detail" as to whether family members would be motivated to harm or kill the Principal Appellant, and that there was no evidence, "documentary or testimonial", to support the allegation that he would have to die or be killed before someone else would be recruited for the XXXX position.¹⁹ The Appellants argue that the RPD disregarded the testimony of the Principal Appellant and the Associate Appellant and the documentary evidence, including five affidavits filed by the Appellants. I agree with the Appellants' argument.
- [16] In finding that the agents of persecution would not be motivated to locate and harm the Principal Appellant and his family, the RPD relied on evidence in the National Documentation Package (NDP) for Nigeria,²⁰ citing information indicating that it would be unusual that refusing a XXXX would pose a problem and that, generally, there will be others willing and qualified to take on the position.²¹ The RPD did not address conflicting evidence in the NDP or the evidence that the Appellants presented.
- [17] The Principal Appellant testified that the XXXX position was important to his family, because of the XXXX XXXX involved.²² He testified that he would have to die or be killed before anyone else could be selected for the XXXX position. He testified that he had learned this from his father who had acted as XXXX XXXX to the XXXX XXXX XXXX XXXX XXXX XXXX. He testified that he was told in XXXX 2018 by one of the elders of the family that he could not refuse.²³ He testified that after he received the official notification letter, he spoke to the secretary of the XXXX who told him that he cannot refuse and that he should know this because they tracked him down in Abuja.²⁴ Affidavits from the Principal Appellant's brother²⁵ and mother²⁶ corroborate his testimony about his father's role in the XXXX XXXX and his understanding that refusing the position is not an option. An affidavit from his mother-in-law states that members of his family have threatened her and continue to insist on his ascension to the position.²⁷ An affidavit from a colleague corroborates the Principal Appellant's testimony that he tried to buy his way out of the position of XXXX and that he

requested a work transfer to Abuja to escape the problem.²⁸ There is independent evidence in the NDP that supports the Appellants' allegations.²⁹ When there is conflicting evidence in the NDP, it is open to the decision-maker to decide which evidence to prefer in a given instance. I find no reason on the record to doubt the truth of the sworn evidence provided by the Appellants. The RPD did not identify any material inconsistencies or contradictions in the evidence and, having reviewed the record, I find none. I find that there is evidence in the NDP to corroborate the Appellants' evidence. Moreover, the Principal Appellant's evidence that he was threatened while on the roadway near Abuja provides further evidence that the family wishes to harm him, given the presence of a family member in the car. He provided corroborative evidence of the incident in the form of a police report,³⁰ a medical report,³¹ and photographs of his injury.³²

- [18] I find that the evidence establishes, on a balance of probabilities, that the elders and XXXX whom the Principal Appellant fears would be motivated to locate him and his family in Nigeria. The evidence establishes a risk for the Appellants in Nigeria
- [19] I find that, on a balance of probabilities, the Appellants have established that they would be located in Nigeria by the elders and XXXX of the Principal Appellant's family who seek to harm them. Accordingly, I find that the Appellants do not have a viable internal flight alternative. The Appellants meet the test for Convention refugees
- [20] Having found that the RPD erred in determining that the Appellants have a viable internal flight alternative, I have reviewed the record and considered whether the Appellants qualify as Convention refugees. In finding that the Appellants did not establish that the agents of persecution were motivated to locate them, the RPD failed to consider the totality of the Appellants' evidence. On an independent assessment, I have reached a different conclusion regarding IFA. After reviewing the testimony and other evidence on the record, I find no material credibility problems. The RPD did not identify any material inconsistencies or contradictions, nor do I. On an independent assessment, having regard to the presumption of truthfulness,³³ I accept the Appellants' allegations, on a balance of probabilities, and find that they are credible.
- [21] I find that the Principal Appellant's claim has a nexus to the Refugee Convention because it is based on religious belief, as he is opposed to participating in the rituals and practices attendant on becoming XXXX because they conflict with his Muslim faith. I find that the harm he fears, including being killed, amounts to persecution. The other Appellants fear persecution, including FGM and ritual practices, as family members of a person who refuses a XXXX position. The evidence in the NDP supports an objective basis for the Appellants' fears in that the practices they fear do take place in Nigeria.³⁴ I find that they have established a serious possibility that they will be persecuted.
- [22] I find that, on a balance of probabilities, the Appellants would not have access to state protection. The evidence to which I have already referred, which points to the family's means and motivation to locate the Appellants in Nigeria, indicates the family's connections

with the XXXX and the XXXX's interest in the position of XXXX. Additional evidence that state protection would not be forthcoming includes the police report stating that the Principal Appellant was told that, because the threatening road incident he reported involved a family matter, custom, and tradition, he should try to resolve the issue with his family.³⁵ There is evidence in the NDP for Nigeria that corroborates the reluctance of police to intervene in such matters.³⁶ For the reasons given above, I have already found that the Appellants do not have a viable IFA.

- [23] Consequently, I find that the Appellants have established that they face a serious possibility of persecution on the basis of religion or membership in a particular social group and do not have access to adequate state protection or a viable IFA.

CONCLUSION

- [24] The appeal is allowed. Pursuant to paragraph 111(1)(b) of the IRPA, I set aside the determination of the RPD and substitute my own determination that the Appellants are Convention refugees. (signed) C. Lindberg C. Lindberg November 24, 2020 Date 1 Exhibit RPD-1, RPD Record, RPD Reasons, at pp. 3-8. 2 Immigration and Refugee Protection Act, S.C. 2001, c. 27, as amended. 3 Exhibit RPD-1, RPD Record, Exhibit 2.1, at pp. 11-18. 4 Jurisprudential Guide - Decision TB7-19851, Guide identified by the Chairperson pursuant to paragraph 159(1)(h) of the Immigration and Refugee Protection Act, Effective date July 6, 2018, Revoked April 6, 2020. 5 Exhibit RPD-1, RPD Record, RPD Reasons, at pp. 3-8. 6 Exhibit P-2, Appellants' Record, at pp. 9-11. 7 Exhibit P-2, Appellants' Record, at pp. 13-16. 8 Exhibit P-2, Appellants' Record, at pp. 18-20. 9 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93; Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145. 10 Rasaratnam v. Canada (Minister of Employment and Immigration), [1992] 1 F.C. 706 (C.A.); Thirunavukkarasu v. Canada (Minister of Employment and Immigration), 1993 CanLII 3011 (FCA), [1994] 1 FC 589. 11 Jurisprudential Guide - Decision TB7-19851, Guide identified by the Chairperson pursuant to paragraph 159(1)(h) of the Immigration and Refugee Protection Act, Effective date July 6, 2018, Revoked April 6, 2020. 12 Exhibit RPD-1, RPD Record, RPD Reasons, at p. 6, line 9. 13 Exhibit RPD-1, RPD Record, RPD Reasons, at p. 6, lines 11-12. 14 Exhibit RPD-1, RPD Record, RPD Reasons, at p. 6, lines 19-21. 15 Exhibit RPD-1, RPD Record, Exhibit 5, at pp. 537-583. 16 Exhibit RPD-1, RPD Record, Exhibit 5, at pp. 490-536. 17 Exhibit RPD-1, RPD Record, Exhibit 2.1, at p. 11, para 4. 18 Transcript of October 2, 2019 RPD Hearing, at p. 19, line 37 to p. 20, line 9; Transcript of December 16, 2019 RPD Hearing, at p. 43, lines 23-25. 19 Exhibit RPD-1, RPD Record, RPD Reasons, at p. 5, lines 18-21, 39-41. 20 Exhibit RPD-1, RPD Record, Exhibit 3, National Documentation Package (NDP) for Nigeria (August 20, 2019), item 1.4, at section 7.5.1. 21 Exhibit RPD-1, RPD Record, RPD Reasons, at p. 5, lines 27-37. 22 Transcript of December 16, 2019 RPD Hearing, at p. 7, line 48 to p. 8, line 17; p. 12, line 21 to p. 13, line 16. 23 Transcript of October 2, 2019 RPD Hearing, at p. 31, lines 9-22. 24 Transcript of October 2, 2019 RPD Hearing, at p. 33, line 7 to p. 35, line 17. 25 Exhibit RPD-1, RPD Record, Exhibit 4, at pp. 394-395. 26 Exhibit RPD-1, RPD Record, Exhibit 4, at pp. 398-400. 27 Exhibit RPD-1, RPD Record, Exhibit 4, at pp. 396-397. 28 Exhibit RPD-1, RPD

Record, Exhibit 4, at pp. 403-404. 29 NDP for Nigeria (July 31, 2020), item 13.7, at section 2. 30 Exhibit RPD-1, RPD Record, Exhibit 4, at p. 382. 31 Exhibit RPD-1, RPD Record, Exhibit 4, at p. 377. 32 Exhibit RPD-1, RPD Record, Exhibit 4, at pp. 379-381. 33 Maldonado v. Canada (Minister of Employment and Immigration), [1980] 2 F.C. 302 (C.A.); 31 N.R. 34 (F.C.A.). 34 NDP for Nigeria (July 31, 2020), item 13.7, at section 2; item 5.2; item 10.8; item 13.4. 35 Exhibit RPD-1, RPD Record, Exhibit 4, at p. 382. 36 NDP for Nigeria (July 31, 2020), item 13.7, at section 3; item 10.8.

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