

CANADA / JUDGMENT

MB9-09856

COURT

Refugee Appeal Division

DECIDED

13 February 2020

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RAD File / Dossier de la SAR : MB9-09856

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Private Proceeding / Huis clos

Reasons and decision ? Motifs et décision

Persons who are the subject of the appeal

XXXX XXXX XXXX

XXXX XXXX XXXX

XXXX XXXX XXXX

Personnes en cause

Appeal considered / heard at

Toronto, ON

Appel instruit / entendu à

Date of decision

February 13, 2020

Date de la décision

Panel

Devika Ratnayake

Tribunal

Counsel for the persons who are the subject of the appeal

Emily Rebecca Gerhard

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

INTRODUCTION

- [1] XXXX XXXX XXXX (the Principal Appellant/Mrs. XXXX), XXXX XXXX XXXX (the Associate Appellant/Mr. XXXX) and XXXX XXXX XXXX (the Minor Appellant), citizens of Nigeria, appealed a decision of the Refugee Protection Division (RPD), dated March 29, 2019, rejecting their claims for refugee protection. Mrs. XXXX was appointed as a designated representative for the minor child. They are asking the Refugee Appeal Division (RAD) to substitute the RPD's decision with a positive one recognizing them as Convention refugees or, in the alternative, to send the matter back to the RPD for redetermination.
- [2] The Appellants fear persecution from Mr. XXXX father and his family who want Mrs. XXXX to be circumcised. The RPD found internal flight alternative (IFA) as the determinative issue and identified Ibadan and Port Harcourt as viable IFA locations.
- [3] The Appellants argue that the RPD erred in finding that the agents of persecution will not be able to locate them in the proposed IFAs; that it failed to consider the Appellants' testimony; and that it failed to assess the entirety of the evidence. Also, in reliance of new evidence they submitted, they argue that Nigeria is not an appropriate country for Mrs. XXXX to seek medical treatment which makes the IFAs unreasonable.
- [4] After the perfection of the Appellants' appeal, their legal Counsel, XXXX XXXX, XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX. On October 25, 2019, the RAD notified the Appellants of same. On January 28, 2020, the Appellants notified the RAD of the appointment of a new legal Counsel, Emily Gerhard.

DETERMINATION

- [5] The appeal of XXXX XXXX XXXX is allowed. Pursuant to paragraph 111(1)(b) of the Immigration and Refugee Protection Act (IRPA), the RAD sets aside the determination of the RPD and substitutes that decision with its own determination that she is a Convention refugee.

- [6] The RAD dismisses the appeals of XXXX XXXX XXXX and XXXX XXXX XXXX and confirms the decision of the RPD that they are neither Convention refugees nor persons in need of protection, pursuant to paragraph 111(1)(a) of the IRPA.

OVERVIEW OF THE APPEAL

- [7] Mrs. XXXX fears returning to Nigeria because she believes her in-laws and their clan will kill her and her husband whom they consider to be an accomplice. Further, she fears the in-laws will ostracize her and the Minor Appellant because she refused to be circumcised.
- [8] The Appellants testified that the in-laws forced Mr. XXXX elder sister to undergo circumcision and that she died on XXXX XXXX, 2017 from complications arising from the procedure. A letter from Mr. XXXX brother-in-law was provided as corroboration. Also, the Appellants testified of being aware of another female family member who had been circumcised and one female in the community who was killed because she refused to be circumcised.
- [9] Mrs. XXXX provided detailed and emotional testimony about her experience of being kidnapped on XXXX XXXX, 2016 by people whom she believes were connected to her in-laws. She stated that, during her three days of captivity, she was beaten and subjected to torture with a hot coil and raped. Further, she provided details of her hospitalization and an ensuing miscarriage.
- [10] Mrs. XXXX indicated she was in possession of a US visa and left Nigeria approximately four months after the kidnapping. She stated that she did not leave immediately because the injury on her XXXX was such that she would have been unable to care for the Minor Appellant who was two years old at that time. She testified that she left Nigeria on XXXX XXXX prior to her scheduled circumcision on XXXX XXXX, 2016.
- [11] Mrs. XXXX stated that they did not claim asylum in the US because they were hopeful that Mr. XXXX, who remained in Nigeria for a year after Mrs. XXXX and the Minor Appellant left, would be able to convince his family to respect their wishes against performing the circumcision. She stated that, when they realized that his family could not be persuaded, she had already overstayed her visa and thus did not claim asylum in the US fearing they would be deported.

ROLE OF RAD

- [12] I applied the standard of correctness when independently determining the alleged RPD errors. I am allowed to defer to the RPD's credibility assessment of oral testimony if I find that the RPD had a meaningful advantage in the circumstances. The RPD did not enjoy such an advantage in this case.

NEW EVIDENCE IS INADMISSIBLE

- [13] The Appellants filed ten online articles as new evidence in support of their appeal. New evidence will only be admitted where that evidence: 1) arose after the rejection of the claim by the RPD; 2) was not reasonably available; or 3) the appellant could not reasonably have been expected in the circumstances to have presented the evidence, at the time of the rejection. The RAD has no discretion to admit new evidence unless it falls under one of these three statutory categories. If the new evidence meets the above statutory requirements, I must then assess whether the new evidence is credible, relevant and new.
- [14] Eight of the articles filed and the incidents described therein predate the RPD's rejection of the Appellants' claims. The Appellants have not advanced any argument as to why the articles could not have been reasonably provided to the RPD. As such, I find those articles are inadmissible and do not fall within the meaning of "new evidence" for the purposes of subsection 110(4) of the IRPA.
- [15] Two articles post-date the RPD's rejection of their claims. The first article "Government of Canada"¹ pertains to the Government of Canada's travel advisory for Nigeria. The document indicates it was updated in March 2019. A review of the website indicates the most recent "update" made on December 18, 2019 contains the exact information as the advisory dated March 2019 which the Appellants submitted as being "new".
- [16] The Appellants have not explained what, if any, material changes may have been made to the advisory since the time of the RPD's rejection such that it would constitute new evidence. Also, they have not explained why the information could not have been reasonably provided to the RPD. Consequently, I find this article to be inadmissible.
- [17] Even if the article passed the statutory requirements to be new evidence, which I find it does not, the information is of limited relevance, as the travel advisory is mainly for non-nationals of Nigeria travelling to Nigeria who are unfamiliar with the country, such as tourists.
- [18] The fifth document, "Crime in Port Harcourt, Nigeria"² provides statistics of various crimes. It was last updated on September 29, 2019. Similar to the first article, the Appellants did not provide any information regarding what, if any, material changes may have been made in this update since the time of the RPD's rejection such that it would constitute new evidence. Also, they have not indicated why it was not available to be provided to the RPD. As such, the second document does not meet the 110(4) threshold to be admissible.
- [19] Even if the document passed the statutory requirements to be new evidence, which I find it does not, the article is unreliable, as there is no information regarding the author or publisher. As well, I note that a change in the general crime rate in Port Harcourt does not, in and of itself, render the IFA unreasonable for the Appellants which also makes the article of little relevance.

ANALYSIS

Credibility

[20] The RPD did not identify any credibility concerns relating to the allegations contained in the Appellants' Basis of Claim (BOC) forms, their testimony or personal documentary evidence. The audio recording of the RPD's hearing indicates that the Appellants were questioned thoroughly regarding the allegations underlying their claim. Upon reviewing the Appellants' record, I am unable to identify any material contradictions, inconsistencies or omissions that go to the heart of Mrs. XXXX claim.

IFA

- [21] The RPD found IFA to be determinative and identified Ibadan and Port Harcourt as the IFAs. In its reasons, the RPD noted Mrs. XXXX testimony that she would not be safe in the identified IFAs because her in-laws who work in the government, army, navy and police are everywhere in the country and could track her down, as they are people with connections. However, the RPD found Mrs. XXXX was unable to submit evidence regarding her in-law's occupations. As well, her testimony regarding the measures Mr. XXXX family could take to locate them in the IFAs were speculative and unsupported by the evidence.
- [22] Consequently, the RPD found that the Appellants had failed to establish, on a balance of probabilities, any ability or interest on the part of the agents of persecution to conduct a search throughout Nigeria, which it noted is one of the most densely populated countries in Africa with a population of 184 million inhabitants, in order to locate them in the city of Ibadan or Port Harcourt.
- [23] The Appellants argue that the RPD erred by failing to consider the totality of the evidence when concluding that they had viable IFAs in Ibadan and Port Harcourt. With regard to the first prong of the IFA, they assert that the RPD failed to consider Mr. XXXX testimony that, after he received threats and while he was working in XXXX, he was being protected by security personnel. They reiterate that, due to the large family, including specific individuals whom the Appellants named as living in XXXX XXXX, XXXX and XXXX, their persecutors will be able to locate them in the IFAs.

First Prong of the IFA for Mrs. XXXX - there is a serious possibility of persecution

- [24] After reviewing the record, I find the RPD did not ignore the Appellants' testimony. Specifically, the RPD noted in its reasons the presence of Mr. XXXX family members in XXXX, XXXX XXXX and XXXX. Similarly, the RPD noted that the family members were employed by the government, including the military, police and navy. Further, the RPD noted in its reasons that Mr. XXXX had a security detail while working in XXXX as a result of threats he had received.

- [25] However, additionally, Mrs. XXXX testified that she was fearful that her location can be detected if she continued her business activities, and her persecutors could reach her pretending to be customers. She stated that, since the birth of the Minor Appellant, she has primarily conducted her XXXX XXXX XXXX business at home through social media. She indicated that she promotes her products on social media, and customers contact her to purchase it.
- [26] While the nature of Mrs. XXXX business alone may not make it possible for the agents of persecution to locate her, when combined with Mr. XXXX large family who are dispersed throughout Nigeria, including XXXX and XXXX XXXX which are approximately two hours' and six hours' drive from her father-in-law's hometown of XXXX, I find, on a balance of probabilities, that Mr. XXXX family could locate Mrs. XXXX in the IFAs. Consequently, I find that Mrs. XXXX faces more than a mere possibility of persecution in the IFAs.

First Prong of the IFA for Mr. XXXX and the Minor Appellant: There is no serious possibility of persecution

- [27] I acknowledge Mr. XXXX testimony that he received threats and that, during the year he spent in Nigeria after Mrs. XXXX departure, he had a security detail. Although he may have had a security detail as a precaution, there is no evidence that his father or the clan actually attempted to locate the Associate Appellant during the year that he remained alone in Nigeria. I also note that there is no evidence available in the country documents that male family members, in general, have been harmed in the context of their refusal to support female circumcision.
- [28] Further, although Mr. XXXX testified that elders threatened to kill him if he did not produce his wife for the ritual, when the RPD questioned him, he was unable to provide key details. He could not identify when and who made the death threat and why he omitted this significant detail in his BOC. This is in contrast to names that Mr. XXXX was able to provide regarding family members residing in different parts of Nigeria. Mr. XXXX inability to recall details of the death threat and the omission of this detail in his BOC indicates that he did not consider the threat seriously.
- [29] Further, while I accept that Mr. XXXX father and the clan may have been displeased with him and even made generic threats, I find there is insufficient persuasive evidence on the record that Mr. XXXX father or the clan have any current or real interest in locating and harming Mr. XXXX. Even if they had such an interest, unlike Mrs. XXXX whose business is conducted via social media thus increasing the probabilities for her agents of persecution to locate her, there is no evidence that Mr. XXXX business activities will result in creating a similar risk. As such and after my independent assessment, I find that there is no more than a mere possibility that Mr. XXXX will be persecuted in Ibadan and/or Port Harcourt.

- [30] Similarly, and while I acknowledge Mrs. XXXX testimony that Mr. XXXX family may ostracize the Minor Appellant, there is no evidence that Mr. XXXX family or the clan have any interest in harming him or ever threatened to harm the Minor Appellant. Any perceived harm the Appellants may fear with regard to the Minor Appellant is speculative. As such, I find there is no more than a mere possibility of persecution for the Minor Appellant in the IFAs.

Second Prong of the IFA for Mr. XXXX and the Minor Appellant: Ibadan and Port Harcourt are reasonable

- [31] Mr. XXXX is fluent in English. He also speaks Yoruba. At the hearing, Mr. XXXX testified in English. According to the documentary evidence, English is the official language of Nigeria, and a large part of the population speaks Hausa, Yoruba, Igbo (Ibo) and Gulani in the large cities, as well as more than 500 indigenous languages. Consequently, I find language will not be a factor that renders the IFAs unreasonable.
- [32] Mr. XXXX is educated, having studied XXXX and owning a XXXXcompany between 2008 and when he left Nigeria in 2017. I find that, despite the high unemployment rate in Nigeria, Mr. XXXX education and experience places him in a better position than the average Nigerian to be able to find work or business opportunities in Ibadan or Port Harcourt such that he could sustain a living for himself and the Minor Appellant. I also note that there is no objective evidence that as a single male parent, Mr. XXXX, will face any discrimination in securing housing which may exist for a single female parent.
- [33] Mr. XXXX is a Christian, which faith is practiced in both Ibadan and Port Harcourt. Based on the documentary evidence, I find that Mr. XXXX will have access to places of worship and individuals who share his religious values in the IFAs.
- [34] There is no evidence that Mr. XXXX or the Minor Appellant have any unique medical/health conditions or that they would be unable to access medical/healthcare services in Ibadan or Port Harcourt such as to make the IFAs unreasonable.
- [35] Last but not least, similar to Mr. XXXX, there is no evidence on the record to indicate that the Minor Appellant would be unable to access education, social, health or other essential services in Ibadan or Port Harcourt such as to render the IFAs unreasonable.

CONCLUSION

- [36] The appeal of XXXX XXXX XXXX is allowed. Pursuant to paragraph 111(1)(b) of the IRPA, the RAD sets aside the determination of the RPD and substitutes that decision with its own determination that she is a Convention refugee.
- [37] The RAD dismisses the appeals of XXXX XXXX XXXX and XXXX XXXX XXXX and confirms the decision of the RPD that they are neither Convention refugees nor persons in need of protection, pursuant to paragraph 111(1)(a) of the IRPA.

(signed)

"Devika Ratnayake"

Devika Ratnayake

February 13, 2020

Date

1 Exhibit P-2, Appellants' Record, at p. 11 (Exhibit A-1).

2 Exhibit P-2, Appellants' Record, at p. 54 (Exhibit A-5).

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RAD.25.02 (April 04, 2019)

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Immigration and Refugee

Board of Canada

Refugee Appeal Division

Commission de l'immigration

et du statut de réfugié du Canada

Section d'appel des réfugiés

RAD.25.02 (April 04, 2019)

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