

CANADA / JUDGMENT

TB9-21859

COURT

Refugee Appeal Division

DECIDED

8 January 2020

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TB9-21860 / TB9-21861 / TB9-21862

TB9-22025

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 or

XXXX XXXX XXXX)

XXXX XXXX XXXX

XXXX XXXX XXXX

(a.k.a. XXXX XXXX XXXX XXXX XXXX)

XXXX XXXX XXXX

(a.k.a. XXXX XXXX XXXX)

XXXX XXXX XXXX

Personnes en cause

Appeal considered / heard at

Vancouver, BC

Appel instruit / entendu à

Date of decision

January 8, 2020

Date de la décision

Panel

Kim Polowek

Tribunal

Counsel for the persons who are the subject of the appeal

Christina M Gural

Barrister and Solicitor

Conseil des personnes en cause

Designated representative

XXXX XXXX XXXX

(a.k.a. XXXX XXXX XXXX XXXX or

XXXX XXXX XXXX) for

XXXX XXXX XXXX

(a.k.a. XXXX XXXX XXXX XXXX XXXX)

(a.k.a. XXXX XXXX XXXX)

XXXX XXXX XXXX

Représentant(e) désigné(e)

Counsel for the Minister

N/A

Conseil du ministre

REASONS FOR DECISION

OVERVIEW

- [1] XXXX XXXX XXXX, a.k.a. XXXX XXXX XXXX XXXX, or XXXX XXXX XXXX (Principal Appellant), XXXX XXXX XXXX (First Associate Appellant), XXXX `XXXX XXXX, a.k.a. XXXX XXXX XXXX XXXX (Second Associate Appellant), XXXX XXXX XXXX (Third Associate Appellant), and XXXX XXXX XXXX a.k.a. XXXX XXXX XXXX (Fourth Associate Appellant), (collectively the Appellants), citizens of Nigeria, appealed a decision of the Refugee Protection Division (RPD), dated July 29, 2019, rejecting their claims for refugee protection on the basis of credibility and that there was a viable Internal Flight Alternative (IFA) in Lagos city, Uyo in Akwa Ibom state, Port Harcourt and Benin City. The Principal Appellant was appointed as the Designated Representative for the Second and Third Associate

Appellants. The Appellants are asking the Refugee Appeal Division (RAD) to substitute the RPD determination for a positive one. The Appellants have submitted new evidence which has been rejected as has their request for an oral hearing has been denied. The RAD agrees with the Appellants that the RPD erred by failing to provide sufficient reasons to support its finding that the Appellants had a viable IFA and by failing to demonstrate that the RPD considered the Appellants' particular circumstances. However, the RAD has conducted its own independent assessment of all the evidence and finds that the Appellants do have a viable IFA in Lagos city, Uyo in Akwa Ibom state, Port Harcourt and Benin City for the reasons detailed below.

DETERMINATION OF THE APPEAL

[2] Pursuant to section 111(1)(a) of the Immigration and Refugee Protection Act (IRPA),¹ the appeals are dismissed and the decision of the RPD that the Appellants are neither Convention² refugees nor persons in need of protection is confirmed. Based on an independent review of the record, and applying the Chairperson Guideline 3: Child Refugee Claimants: Procedural and Evidentiary Issues (Child Refugee Guidelines)³ and Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution (Gender Guidelines),⁴ the RAD finds the Appellants have a viable IFA in Lagos City, Uyo in Akwa Ibom state, Port Harcourt and Benin City. The RAD dismisses the appeal and confirms the decision of the RPD that the Appellants are neither Convention refugees nor persons in need of protection, pursuant to section 111(1)(a) of IRPA.

ADMISSIBILITY OF NEW EVIDENCE PRESENTED ON APPEAL

[3] The Appellants initially submitted the following new evidence in support of their appeal:

- a) A letter which is stated to be a United States (US) visa refusal letter for the Principal Appellant's husband, XXXX XXXX XXXX and a letter which is stated to be a US visa appointment confirmation for XXXX XXXX XXXX dated Thursday, XXXX XXXX, 2018; and,
- b) A Church document dated XXXX XXXX, 2017.⁵

[4] Section 110(4) of the IRPA provides that an Appellant may present only evidence that arose after the rejection of his claim or that was not reasonably available, or that he could not reasonably have been expected in the circumstances to have presented, at the time of the rejection. In Singh⁶ the Federal Court of Appeal dictates a narrow interpretation of section 110(4):

...the conditions set out therein must be met and there is no room for discretion on the part of the RAD. If the section 110(4) threshold is met, then the new evidence must also meet jurisprudential requirements of credibility, relevance and newness.⁷

- [5] In terms of evidence that arose after the rejection of the claim, it is the content of the evidence and not the date of the document that is determinative. It is incumbent on the Appellant to provide a statement outlining clearly how the new evidence meets the requirements of section 110(4) of IRPA.
- [6] Regarding the new evidence, the Appellants' submission as to how this new evidence meets the requirements of section 110(4) is brief stating simply that this new evidence pertains to issues that the RPD found to be relevant to the claim, and due to the issues being peripheral, it was not reasonably foreseeable for the Principal Appellant to have previously obtained the documents as part of her record.⁸
- [7] Regarding the letter from a Baptist Church dated XXXX XXXX, 2017⁹ the Appellants have not provided an explanation as to why this evidence was not provided to the RPD, nor have they outlined the circumstances by which they came to be in possession of this letter. The contents of the letter are also suspicious given that the last name of "XXXX" and "XXXX" are noted on the letter and these were issues of concern to the RPD. Given the lack of explanation from the Appellants regarding why this evidence was not available to them at the time of rejection, the fact that the evidence does not involve events which arose after rejection, and credibility concerns with the timing of the letter and its contents, the RAD does not admit the letter from the Baptist Church as new evidence.
- [8] The Appellants have also submitted as new evidence a letter which is stated to be a US visa refusal letter for the Principal Appellant's husband, XXXX XXXX XXXX.¹⁰ There is no date on this letter and at no point in the letter is the name of the Principal Appellant's husband mentioned. The second document is reported to be a US visa appointment confirmation for XXXX XXXX XXXX dated Thursday, XXXX XXXX XXXX 2018. Again, with respect to both documents, the RAD observes that the Appellants have not provided an explanation as to why these documents could not have been provided to the RPD. Given the lack of explanation from the Appellants regarding why this evidence was not available to them at the time of rejection, and in view of the fact that the evidence does not involve events which arose after rejection nor is it relevant to the determinative issue of IFA, the RAD does not admit these letters as new evidence.

RULE 29 APPLICATION

- [9] The Appellants submitted new evidence to be considered under Rule 29 of the Refugee Appeal Division Rules¹¹ on December 12, 2019, namely a sworn Affidavit dated September 19, 2019 and identity documentation for the Affiant. The assigned RAD Member did not become aware of the application until December 20, 2019. The decision in this case had already been finalized and signed on December 19, 2019. For reasons of fairness, the Appellants' application was considered but the evidence rejected for the following reasons.

- [10] In assessing the proposed new evidence in the Rule 29 application, the RAD notes the cases of Semykina¹² and Arisekola¹³ which state that unlike section 110(4) applications, even if a proposed document would otherwise be rejected under the statutory requirements of section 110(4), the Singh and Raza factors must still be considered.
- [11] The RAD finds that this evidence is not sufficiently relevant or probative to the central issue of the Appellants' ability to safely relocate internally. The incident described in the Affidavit did not occur at any of the identified IFA locations and the Affiant did not witness who was responsible for it. While the Affiant may believe that the incident was committed by the Fulani Herdsmen, there is insufficient credible evidence to establish that this is the case. Having found that the documentation is not sufficiently relevant or probative, the documents are rejected.

ORAL HEARING AT THE RAD

- [12] The Appellants request that the RAD hold a hearing. Section 110(6) of the IRPA provides that the RAD may only hold a hearing if there is new evidence that (a) raises a serious issue with respect to the credibility of the Appellant, (b) is central to the RPD's decision, and (c) if accepted, would justify allowing or rejecting the refugee protection claim. As the RAD has not accepted the Appellants' new evidence, the request for an oral hearing is denied.

ROLE OF THE RAD

- [13] When reviewing the RPD decision, the RAD is required to independently assess all the evidence and determine whether the RPD erred in relation to each alleged error of law, fact or mixed fact and law. For this assessment, the standard of correctness as per the Federal Court of Appeal decision in Huruglica¹⁴ is applied. The RAD may defer to the RPD in the exceptional situation that the RPD had a meaningful advantage in the circumstances, and reasons will be provided in that situation. The RAD finds that the RPD was not in an advantageous position regarding the assessment of the Appellants' evidence, and the RAD was able to review and understand the Appellants' testimony through a review of the RPD hearing transcript provided in the Appellants' Record, as well as a review of the documentary evidence.

Grounds of appeal

- [14] In brief, the Appellants submit that the RPD erred in failing to assess the Principal Appellant's claim from the perspective of her membership in a particular group owing to her history of sexual violence, her risk of section 97 harm arising from this past sexual violence, and compelling reasons due to her sexual violence history. It is also argued that the RPD erred in its implausibility and credibility findings. Finally, it is submitted that the RPD erred by failing to engage in an IFA analysis and deferring to the Jurisprudential Guide (JG).¹⁵

ANALYSIS

- [15] Having conducted an independent assessment of the evidence, the RAD finds that the determinative issue is that of an IFA in Lagos city, Uyo in Akwa Ibom state, Port Harcourt and Benin City. In assessing the viability of an IFA for the Appellants, the RAD has also considered the Gender Guidelines¹⁶ and the Child Refugee Guidelines.¹⁷
- [16] The RAD agrees with the Appellants in that the RPD did not in its reasons¹⁸ provide a comprehensive analysis of IFA and did not specify how the Appellants' unique circumstances applied to the JG.¹⁹
- [17] However, a review of the RPD transcript indicates that the RPD appropriately raised the issue of IFA at the beginning of the hearing, initially noting the IFA locations of Lagos city, Uyo in Akwa Ibom state, Port Harcourt,²⁰ then adding Benin City.²¹ Further, the RPD canvassed the relevant IFA considerations with questions asked of the Principal Appellant which were relevant to both prongs of the IFA test. Further, the Appellants' Counsel spoke to the issue of IFA in final submissions at the hearing. The RAD finds that at the RPD hearing the Appellants were afforded a reasonable opportunity to offer evidence and make submissions regarding the viability of the proposed IFAs. As such the RAD has conducted an independent assessment of all of the evidence to determine whether Lagos City, Uyo in Akwa Ibom state, Port Harcourt and Benin City were viable IFAs and for the reasons detailed below the RAD has found Lagos City, Uyo in Akwa Ibom state, Port Harcourt and Benin City were viable IFAs for the Appellants.
- [18] The RPD and RAD did consider the Principal Appellant's allegations of having suffered sexual violence in XXXX 2017 and found those allegations to be credible. However, the RPD properly went on to assess the Principal Appellant's forward-looking risk of persecution. The RPD also, where the allegations included gender related persecution, which has a nexus to a Convention ground, properly assessed the viability of the IFA using the section 96 serious possibility of persecution threshold. On appeal the Principal Appellant argues that the RPD erred by not considering whether she met the requirements of person in need of protection. However, the RAD finds that the RPD properly found that where the Appellants had a viable IFA, that this was fatal to their section 97 claims.
- [19] On appeal the Appellant argues that the RPD should have considered the compelling reasons exception. However, the RAD finds that the RPD did not have an obligation to conduct an assessment of compelling reasons exception. In order to engage in a compelling reasons analysis, the RPD must first find that a Claimant qualified as a Convention refugee or person in need of protection at some point in time, but that the reasons for the claim have ceased to exist due to a change in circumstances. There must be a clear finding that the Claimant has at some point qualified as a refugee.²² These pre-conditions were not met and so there was no obligation on the RPD to conduct a compelling reasons analysis.

Internal flight alternative (IFA)

Test for IFA

[20] The test to apply in order to determine whether a viable IFA exists is two-pronged:

- a) there is no serious possibility of the Claimant 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 area, and;
- b) conditions in the IFA area must be such that it would not be unreasonable, in all the circumstances, including those particular to the Claimants, for the Claimant to seek refuge there.²³ The threshold is very high for the unreasonableness test.²⁴

[21] IFA in Nigeria is often considered by the RPD and RAD. The relevant country documentation and jurisprudence demonstrates that internal relocation in Nigeria is generally considered to be viable for refugee Claimants fearing non-state actors.

[22] The Federal Court has recently upheld determinative findings of viable IFAs in Nigeria in cases where, for example, the alleged fear is related to Female Genital Mutilation (FGM) (or the refusal to submit one's child to FGM),²⁵ forced participation in rituals²⁶ which is relevant in this case, and kidnappers.²⁷

[23] Being mindful of the application of the Gender Guidelines, the current National Documentation Package (NDP) for Nigeria provides information regarding the general viability of internal location. A 2016 document published by the United Kingdom (UK) Home office, which provides guidance to Home Office decision makers on handling particular types of persecution and human rights claims notes as follows:

2.4.8 In general, it will not be unduly harsh for a woman to internally relocate to escape localised threats from members of their family or other non-state actors, especially if single and without children to support, but the individual circumstances of each case will need to be taken into account.²⁸

The Appellants have not established a section 96 or 97 risk in the IFA locations

[24] The Appellants did not establish that that they face either a serious possibility of persecution or that they face, on a balance of probabilities, a section 97 risk of harm in the proposed IFAs.

[25] The RPD found that the Principal Appellant was not credible about a number of events that form the alleged basis of a forward-looking risk as well as the ongoing nature of the threats that she received.²⁹

[26] A review of the Principal Appellant's Basis of Claim (BOC), her testimony and arguments on Appeal indicate that the fear of persecution and harm arises from three sources:

- a) fear of the Fulani Herdsmen and a specific person believed to be part of the Herdsmen ("Utsman"),

- b) fear of persecution arising from a family member's political affiliation and opinion and fear that the Principal Appellant; and,
- c) female members of the family will experience sexual victimization in the future.

The RAD will address each of these in this decision.

Fear of Fulani Herdsman and Utsman not established

[27] While the agents of persecution may have had an interest in the Appellants in their home region, this analysis should focus on whether the agents of persecution have the means to locate and harm the Appellants to the IFA locations identified.

[28] The Appellants believe that they are in danger from the Fulani Herdsmen and a particular Herdsmen by the name of "XXXX". When the Principal Appellant was asked by the RPD whether they would be safe in Lagos city, the City of Uyo in Akwa Ibom, Port Harcourt and Benin City to which she stated "No" and explained:

because the Fulani herdsman are everywhere and they are connected. It's a large group of people but they are united and they are connected, they, it's like a big cult or something, I don't know, they, they know each other. They, XXXX is a very popular person, a very popular Fulani Herdsman and....

When asked by the RPD how she knew that, she stated, "Because his wife even testified to it then that he's, it's well known that there is no way that someone can be in, in the country that he can't fish them out".³⁰

[29] Notwithstanding the Appellants' fears, the RAD finds that the Appellants have not adduced sufficient evidence to demonstrate that the Fulani Herdsmen or that a particular Herdsmen called "XXXX" exists and has the sufficient means to locate and harm the Appellants in the proposed IFAs.

[30] The RPD found that there was insufficient credible evidence to establish that XXXX existed, that he had a vendetta against the Appellants or that he had agents throughout Nigeria who are waiting to attack the Appellants. The RAD agrees with the RPD's findings and adopts the reasoning outlined in its reasons at paragraph 28 through 33.³¹

[31] While the Principal Appellant believes that a person by the name of XXXX who is a member of the Fulani Herdsmen was involved in orchestrating the attack against the family farm, perpetrated the sexual violence against her and has continued to maintain an interest in her and her family, the RAD agrees with the RPD that there is insufficient evidence to establish that he exists and that he maintains a forward-looking interest in her. The Principal Appellant was unable to provide his full name at the hearing despite her testimony that he is a "very popular Herdsmen". When asked by the RPD if her husband had been able to locate XXXX or find any identity for XXXX, the Principal Appellant stated: "I don't think so". The RAD does not find this explanation reasonable given the significance of this agent of

persecution in the Principal Appellant's amended BOC and the Principal Appellant's testimony that he was a "very popular Herdsmen".

- [32] The new evidence provided by the Appellant, while not accepted by the RAD, namely a letter from a Baptist Church dated XXXX XXXX, 2017³² is not probative in establishing XXXX existence, his profile as a Herdsmen or corroborating that he maintains an interest in harming the Appellants in the future.
- [33] The Appellants believe that the Fulani Herdsmen possess the means and ability to find them in any location in Nigeria and submits that the RPD erred when it failed to consider the country condition evidence submitted by the Appellants which support that they will face a forward-facing risk if she is forced to return to Nigeria. The RAD has fully considered this documentation and determined that there is insufficient credible evidence to find that they are sufficiently organized, powerful or have the means to find and harm their enemies in the large urban IFA locations which are located far away from where the initial conflict on the farm took place.
- [34] The onus is on the Appellants to show that they do not have an IFA. The Principal Appellant provided no details about any specific mechanisms through which the agents of persecution would be able to search for them, beyond vague assertions at the hearing that the Herdsmen are "everywhere", "are connected", "they are united" and "know each other". The RAD finds that the Appellants have not adduced sufficient evidence to show that there is a serious possibility that they personally would be targeted for persecution and harm in the IFA locations identified.
- [35] The documentary evidence provided by the Appellants regarding the Fulani Herdsmen, all of which represent reports from newspapers or other online sources which report on activities and attacks carried out by Fulani Herdsmen on persons other than the Appellants³³ are of limited probative value in establishing that the Appellants face a future risk from the Fulani Herdsmen. The RAD could find no evidence in any of the documentary evidence submitted by the Appellants that Fulani Herdsmen possess any type of surveillance system that would allow them to trace any individual anywhere in Nigeria. Unlike other countries, there is no registration system that the government uses to monitor the movements of its citizens. Several of the IFA locations are densely populated with Lagos is one of the most densely populated urban cities in Nigeria, as is Port Harcourt. Presently, Lagos is one of the world's largest cities.³⁴ No evidence was provided to show how the Fulani Herdsmen would even have knowledge that the Appellants relocated to one of the IFAs in Nigeria.
- [36] Further, the RAD prefers the objective documentary evidence which indicates that the Fulani Herdsmen lack a presence and do not have an apparent desire to exert authority in the States in Nigeria where the IFA locations are. The Fulani Herdsmen are nomadic herdsmen who primarily reside in the Southern and Central part of Nigeria,³⁵ in what is referred to as the country's Middle Belt³⁶ and the Fulani Herdsmen are usually focussed on

accessing land for their cattle.³⁷ Such Herdsmen have become renowned for violent clashes with locals, clashes which are reportedly driven by "the real or perceived need to protect themselves or their livelihoods."³⁸

- [37] The reports of violence by this group are limited to the Middle Belt states in Nigeria and there is limited evidence of Fulani Herdsmen attacks in urban Lagos.³⁹ For example, the Amnesty International report on file *The Harvest of Death: Three Years of Bloody Clashes Between Farmers and Herders in Nigeria* includes a map of where these types of attacks have occurred; it indicates that there have been zero deaths in Lagos, one of the IFA locations in this case, attributed to such attacks over the period January 2016 - October 2018.⁴⁰ Furthermore, the same report indicates two incidents in Rivers State where Port Harcourt is located, nine attacks in Edo State, and no attacks in Akwa State. This is compared to more than 726 such attacks in Benue state. The objective documentary evidence indicates that the states the IFA locations are located in are comparatively the safest from Fulani Herdsmen attacks in Nigeria.
- [38] For the reasons above, the RAD finds that there is insufficient evidence to establish, on a balance of probabilities, that the Appellants face a serious possibility of persecution or that they would be subjected to a risk to life or a risk of cruel and unusual treatment or punishment or a danger of torture in the IFAs from the Fulani Herdsmen in any of the IFA locations of Lagos City, Uyo in Akwa Ibom state, Port Harcourt and Benin City.

Fear arising from husband's political opinion

- [39] The RPD found that the threat from political enemies was speculative as these people would have been in a position to cause a significant amount of mischief and threats for several months while the Claimants were in Nigeria but their actions were strictly limited to a single act of harassment.⁴¹ This finding of the RPD is not disputed on appeal.
- [40] The RAD observes that the Principal Appellant stated in her original BOC that her husband has been into politics since 2010.⁴² The Principal Appellant also stated in her original BOC that her husband had received threats saying that "they would kill all the members of his family if he didn't step down", but her husband did not step down. She further stated in her original BOC that "I believe the threats from his political opponents were targeted against us because he decided to run for a post (all these didn't happen all the other years he was just an on looker)". The Principal Appellant then described how politicians in Nigeria are killed, kidnapped or tortured to death.
- [41] The RPD asked the Principal Appellant if she would be safe from any of the political enemies that she was fearful of, to which she stated "No". When asked "Why not?" she explained "Because they have all the political groups in all the cities."⁴³

- [42] The first Affidavit of the Principal Appellant's husband, XXXX XXXX XXXX dated XXXX XXXX, 201944 contains limited information describing the forward-looking risk faced by the Principal Appellant and the Associate Appellants at paragraph 4 which states: "That I believe they can be protected from the political thugs of my opponents and the Fulani Herdsmen ravaging our community".
- [43] Other than the vague allegations outlined above, no further evidence was adduced at the RPD hearing forward-looking risk arising from her husband's political involvement.
- [44] The RAD finds that there is insufficient evidence to establish the Appellants face a serious possibility of persecution for reason of the political activities of the Principal Appellant's husband, XXXX XXXX in the IFAs. There is no evidence that the Principal Appellant's husband has suffered any serious harm over a period of his Nigerian political career which has now spanned nine years, nor is there any evidence that her husband has suffered serious harm since his career advanced to running for office in 2017. The Principal Appellant described one incident relating to her minor child where two men stopped her "daughter XXXX on her way to school and asked about her Dad's whereabouts".⁴⁵ At the RPD hearing, this incident was described by the Principal Appellant as an "attack on my girl. That was the political harassment".⁴⁶ The Principal Appellant was asked at her hearing if anything bad had happened to her husband, such as violence or problems, to which she responded "Problems. Violence, maybe in his political group. I don't know". The RPD then asked the Principal Appellant, "Has he been attacked?" to which she replied "he doesn't tell us that". In another follow up question from the RPD the Principal Appellant was asked "Has he been shot?" and she replied: "Not that I know of."⁴⁷ No further evidence was adduced by the Principal Appellant regarding threats, harassment or fears arising from her husband's political career at her hearing.
- [45] The RAD observes that Affidavits entered into evidence by the Appellants are of low probative value in corroborating the assertions of the Principal Appellant that they face forward-looking risk due to a family member's political involvement. None of the Affidavits make reference to the Appellants being in danger in the future for political reasons. The lengthy second Affidavit submitted by the Principal Appellant's husband, dated XXXX XXXX, 2019, makes no mention of his political career, any specific threats received by himself or his family due to his political involvement and does not attribute the threats or attacks described in his Affidavit to a political source.
- [46] Overall, the RAD agrees with the RPD that the fears of the Appellants that they will suffer harm due to the political opinion and affiliation of an immediate family member are speculative and there is insufficient credible evidence adduced to establish that they face a serious possibility of persecution for reasons of political opinion in the IFAs.

- [47] For the reasons above the RAD finds that there is insufficient credible evidence to find that there is a forward-looking risk to the Appellants arising from the political affiliation of a family member, namely the Principal Appellant's husband, in any of the IFA locations identified.

Risk for sexualized violence not established

- [48] With respect to the risk the Principal Appellant or the female Appellants may face in the proposed IFA for sexual violence in the proposed IFAs, the Appellants did not demonstrate or provide any specific evidence at their hearing or on appeal to indicate how or why the Appellants would personally be more likely to be victims of such violence in the future. The Principle Appellant's BOC refers to a fear of sexualized violence related to the Fulani Herdsmen for both herself and her female children, but the RAD has already found there to be insufficient evidence to find that such a risk exists to them from this source.
- [49] The documentary evidence also shows that there is generalized risk for criminal victimization in Nigeria, as there is in all countries. The NDP for Nigeria reveals the pervasive presence of criminality and country reports confirm that the nature and risk of crime feared by the Appellants occurs throughout Nigeria. The documentary evidence indicates that it is difficult to determine rates of gender related violence such as domestic violence in Nigeria due to lack of reliable data and under-reporting. Local and international sources estimate that 30-50 per cent of women have experienced domestic violence. In 2013, Nigeria passed the Violence Against Persons Act that criminalises sexual violence and provides support for domestic violence victims and protection through restraining orders. Rape, including marital rape, is an offence under Nigerian law and Nigerian courts have delivered some convictions for spousal rape. A number of Non-Governmental Organizations provide support to women in violent relationships, including through the provision of shelters. Shelters are predominantly located in southern Nigeria. The government provides a small number of state-run shelters across Nigeria; however, Department of Foreign Affairs and Trade understands the government shelters are poorly equipped and do not provide adequate protection. The documentary evidence indicates that police often turn away domestic violence victims if they report the offence, continuing to view the issue as a private matter that should remain within the boundaries of the marital home.⁴⁸ While there are clearly challenges in Nigeria to prevent and respond to violence against women, the RAD does not have any evidence before it that would establish, on a balance of probabilities, that this risk would be unique or elevated for the Appellants.
- [50] In its assessment, the RAD has considered the Gender Guidelines.⁴⁹ The Gender Guidelines are meant to encourage the decision maker to consider the Claimant's testimony from the perspective of a woman coming from a country which operates with a different set of cultural norms towards women thus placing them in vulnerable situations. The Gender Guidelines recognize that the definition of Convention refugee may properly be interpreted as providing protection for women who demonstrate a well-founded fear of gender related

persecution by reason of the enumerated grounds in section 96 of the IRPA. In this case, the RAD finds that there is insufficient credible evidence adduced to establish that the Appellants would be uniquely at elevated risk for sexualized violence in the future.

- [51] Based on the RAD's independent assessment of the evidence, the RAD finds that the Appellants have failed to demonstrate, that, in their particular case, the agents of persecution and harm would have an interest in finding them in the identified IFA locations and would possess the capacity to do so. The RAD also concludes that the Appellants have failed to establish a serious possibility of persecution on any other Convention ground under section 96 of the IRPA, or that, on a balance of probabilities, she would be subjected personally under section 97(1) of the IRPA to a danger of torture, a risk to their life or a risk of cruel and unusual treatment or punishment in the IFAs. The Appellants have not discharged their onus of showing that the prospective IFAs fail the first prong of the IFA test.

The IFA is not objectively unreasonable

- [52] A review of the RPD transcript reveals that the RPD canvassed the matter of reasonableness of the IFA at the hearing. The RPD asked the Principal Appellant: "Apart from the fear of, of these people, the politicals and the Fulani Herdsmen, would it otherwise be reasonable for you to relocate to any of these places with your children?". The Principal Appellant stated "No". When asked why, she explained as follows:

The cultures are different; the languages are different. the cost of living in most of those places are more expensive and getting a job for me or my adult kid. they don't. it's not easy because they believe in their indigenes, getting in school for my young adult too, it can impossible because they do what they call the quota system where they give their indigenes more preference, preference than any other person.⁵⁰

- [53] Also in her testimony relating to the reasonableness of the IFA locations, the Principal Appellant also described how living in any other city as single mother with kids would be difficult to get accommodation as most will not give to accommodation to single mothers and divorced women are treated like prostitutes.⁵¹ When asked by the RPD: "Are you single or divorced?", the Appellant replied "No" but stated:

No, but I'm, if I'm, if my, if I'm there with my kids, then I'm single. I will be pretty to middle prey to middle aged men, other men with my kids. We might be raped, we might be attacked living along there, it's not safe.⁵²

- [54] One of the Associate Appellants reiterated the difficulties for her mother to get employment at her age and that for her getting a job would be difficult as she had not finished National Youth Service Corps in Nigeria which is mandatory and a prerequisite to get a job.

- [55] The Appellants submit that the RPD erred in law by failing to consider the Principal Appellant's particular circumstances in finding an IFA and its failure to apply the Gender Guidelines in assessing whether the Principal Appellant and her children would be able to

relocate safely in Nigeria. It is submitted that had the RPD considered the Principal Appellant's particular circumstances, the RPD may have found that a woman living alone with children is uniquely vulnerable in Nigeria.⁵³ Other than this general assertion, the Appellants do not adduce any further evidence to support this general statement. The RAD observes that the Principal Appellant testified that she was still with her husband at her hearing and that their relationship was good. There was no evidence adduced that her husband, who lives in Nigeria and employed as a politician, would not support his family. For these reasons and others which will be addressed by the RAD below, the RAD has considered the Gender Guidelines and finds it is not objectively unreasonable for the Appellants to relocate to the IFAs.

- [56] The RAD finds that the Appellants did not adduce sufficient evidence to show that it is unreasonable for them to relocate to Lagos City, Uyo in Akwa Ibom state, Port Harcourt and Benin City. While the Principal Appellant testified that her husband would be unable to join her in the IFA as it would elevate the risk to the family due to risk arising from his political involvement, the RAD has already found that any risk associated with the husband's political activity is speculative.
- [57] Further, the Principal Appellant is well-educated. Her schedule A indicates that she has four years of university education and has acquired additional specialized educational skills in Canada which will assist her in finding employment. She was also employed in Nigeria in professional positions for a significant period of time.⁵⁴ There is insufficient evidence to find that there are language barriers or any barriers for employment, religious expression of her Christianity,⁵⁵ housing, indigeneship, or any other matters that pose a barrier to the Appellants relocation to the IFA locations.
- [58] Regarding transportation and travel, several of the identified IFA locations have international airports where the Appellants could fly directly there without having to travel within Nigeria. The Principal Appellant speaks Yoruba and English, as do all the other Appellants in this case. The official language of Nigeria is English and is widely spoken in the IFA locations; thus, the ability of the Principal Appellant to speak and understand English mitigates against a finding of unreasonableness of the IFAs identified. The Principal Appellant's fears that people in the IFA locations speak a different language have no objective basis and no evidence was adduced by the Appellants to support these assertions.
- [59] The objective evidence regarding education and employment is that there is generally a high rate of unemployment in Nigeria, and that obtaining employment can be difficult. The objective evidence also suggests that women who are educated are more likely to gain employment. As noted earlier, the Principal Appellant completed post-secondary education in Nigeria and is currently completing further specialized education in Canada. She therefore has considerably more education than the average of eight years for women. The Principal Appellant, while currently unemployed, did not testify to any disability which would bar her from seeking work and she is clearly advantaged in terms of her educational background. The JG refers to the documentary evidence which indicates that the level of

education is low in Nigeria and that someone who "has achieved post-secondary education or has meaningful work experience...may be in a better position in terms of securing employment, where such opportunities exist, than the average Nigerian."

- [60] Regarding accommodation, the objective evidence indicates that it is often very difficult for female-headed households without male support to obtain housing. In the case of the Principal Appellant, she continues to have the support of her husband in Nigeria who could help secure appropriate accommodation for the Appellants.
- [61] In its analysis of an IFA for the Appellant, the RAD has also considered the Principal Appellant's psychological issues. There is a report from registered psychotherapist XXXX XXXX dated XXXX XXXX, 2019⁵⁶ which is based on a one-time interview with the Principal Appellant described as between 60 to 90 minutes in length. There is a letter from the XXXX XXXX XXXX XXXX regarding the Principal Appellant's involvement in counselling related to past sexual violence victimization.⁵⁷ The RAD observes that both documents refer to self-reported mental health symptoms, and in the case of the assessment from the psychotherapist, based on a one-time interview with the Principal Appellant. The RAD finds that the RPD correctly assigned the psychological evidence low weight for the reasons which are well articulated by the RPD.⁵⁸ There is also evidence that there is mental health care available in Nigeria, though it is not up to Canadian standards.⁵⁹ The documentary evidence⁶⁰ is that Nigeria does have mental health facilities and that in general, medical and mental health facilities are concentrated in the large cities, such as Lagos and other cities where the IFA locations are.
- [62] As well, a distinction must be maintained between the reasonableness of an IFA and humanitarian and compassionate considerations. The fact that the Principal Appellant and her children might be better off in Canada emotionally than in a safe place in her own country is not a factor to consider in assessing the reasonableness of the IFA.⁶¹
- [63] In the RAD's assessment of the claims it has also considered the Child Refugee Guidelines and observes that there is access to healthcare and education in the IFAs, as well as the level of support they would continue to receive from their father who is employed, as well as support from the Principal Appellant who possesses skills above the average in Nigeria.
- [64] For these reasons the RAD finds that there is insufficient evidence to find that it is objectively unreasonable for the Appellants to relocate to one of the identified IFAs. In order for an IFA to be considered unreasonable, conditions in the proposed IFA would have to jeopardize the life or safety of the Appellants and this is not the finding of the RAD. As such, the Appellants have not discharged their onus of showing that the prospective IFAs fail the second prong of the IFA test.
- [65] In addition, the RAD observes that the consideration of an IFA is determinative under sections 96 and 97 of the IRPA. It applies to the question of whether the Appellants are Convention refugees and/or persons in need of protection.

CONCLUSION

- [66] The RAD has analyzed the Record, listened to the audio recording and considered the Appellants' arguments. This independent analysis of the evidence reveals that the RPD did not err on the availability of an IFA and its decision is correct.
- [67] The RAD concludes that the Appellants have failed to establish a serious possibility of persecution, or that they could be personally subjected to a risk to life or to a risk of cruel and unusual treatment or punishment, or to a danger of torture, if they relocated to Lagos City, Uyo in Akwa Ibom state, Port Harcourt and Benin City.
- [68] Moreover, the Appellants did not establish that it would be objectively unreasonable or unduly harsh for them to relocate to Lagos City, Uyo in Akwa Ibom state, Port Harcourt and Benin City. This finding is determinative of the appeal.
- [69] The RAD dismisses the appeal and confirms the decision of the RPD that the Appellants are neither Convention refugees nor persons in need of protection, pursuant to section 111(1)(a) of the Immigration and Refugee Protection Act.

(signed)

"Kim Polowek"

Kim Polowek

January 8, 2020

Date

1 Immigration and Refugee Protection Act, S.C. 2001, c. 27.

2 1951 Convention Relating to the Status of Refugees: Office of the United Nations High Commissioner for Refugees, "Handbook on Procedures and Criteria for Determining Refugee Status", under the 1951 Convention

3 Child Refugee Claimants: Procedural and Evidentiary Issues, Guidelines issued by the Chairperson pursuant to Section 65(3) of the Immigration Act, September 30, 1996.

4 Immigration and Refugee Board of Canada, Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act: Guideline 4 - Women Refugee Claimants Fearing Gender-Related Persecution, Effective date: 13 November 1996.

5 Exhibit P-2, Appellants' Record at p. 48 to 50.

6 Canada (Citizenship and Immigration) v. Singh, 2016 FCA 96.

7 Ibid., and Raza v. Canada (Minister of Citizenship and Immigration), 2007 FCA 385.

8 Exhibit P-2, Appellants' Record, Memorandum at p. 69 to p. 70.

- 9 Exhibit P-2, Appellants' Record at p.48.
- 10 Exhibit P-2, Appellants' Record at p.47.
- 11 Refugee Appeal Division Rules, SOR/2012-257.
- 12 Semykina v. Canada (Citizenship and Immigration), 2019 FC 249.
- 13 Arisekola v. Canada (Citizenship and Immigration), 2019 FC 275.
- 14 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93.
- 15 X (Re), 2018 CanLII 52123 (CA IRB), <<http://canlii.ca/t/hsg6b>>.
- 16 Immigration and Refugee Board of Canada (IRB) Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution, November 1996.
- 17 Child Refugee Claimants: Procedural and Evidentiary Issues, Guidelines issued by the Chairperson pursuant to Section 65(3) of the Immigration Act, September 30, 1996.
- 18 Exhibit RPD-1, RPD Records, Reasons at para 58, p. 13.
- 19 Exhibit P-2, Appellants' Record, Appellant's Memorandum at para. 49 to 57, p. 68 to p. 69.
- 20 Exhibit P-2, Appellants' Record, Transcript from RPD Hearing at p. 13 to p. 14.
- 21 Exhibit P-2, Appellants' Record, Transcript from RPD Hearing at p. 16.
- 22 Nyiramajyambere v. Canada (Citizenship and Immigration), 2015 FC 678.
- 23 Rasaratnam v. Canada (Minister of Employment and Immigration), [1992] 1 F.C. 706 (C.A.), at p. 710.
- 24 Ranganathan v. Canada (Minister of Citizenship and Immigration), [2001] 2 F.C. 164 (C.A.) at paras 15 to 16, citing Thirunavukkarasu.
- 25 Dakpokpo v. Canada (Citizenship and Immigration), 2017 FC 580; Egbesola v. Canada (Citizenship and Immigration), 2016 FC 204; X (Re), 2016 CanLII 105374 (CA IRB); X (Re), 2015 CanLII 111326 (CA IRB).
- 26 Melford-Jowoh v. Canada (Citizenship and Immigration), 2017 FC 455; X (Re), 2016 CanLII 106181 (CA IRB).
- 27 Dibia v. Canada (Immigration, Refugees and Citizenship), 2017 FC 1076.
- 28 National Documentation Package (NDP) for Nigeria (August 20, 2019) at Item 1.11.
- 29 Exhibit RPD-1, RPD Records, Reasons at para 14, p. 3.

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- 30 Exhibit P-2, Appellants' Record at p. 27.
- 31 Exhibit RPD-1, RPD Record at p. 6 to p. 7.
- 32 Exhibit P-2, Appellants Record at p. 48.
- 33 Exhibit RPD-1 RPD Record at p. 291 to p. 337.
- 34 NDP for Nigeria (August 20, 2019) at Item 1.4.
- 35 Exhibit RPD-1, NDP for Nigeria (April 30, 2019) at Item 1.3.
- 36 NDP for Nigeria (August 20, 2019) at Item 1.4.
- 37 NDP for Nigeria (August 20, 2019) at Item 7.31.
- 38 NDP for Nigeria (August 20, 2019) at Item 7.31.
- 39 NDP for Nigeria (August 20, 2019) at Item 7.31.
- 40 NDP for Nigeria (August 20, 2019) at Item 7.30.
- 41 Exhibit RPD-1, RPD Record, Reasons at para.38, p. 8.
- 42 Exhibit RPD-1, RPD Record, Principal Appellant's Basis of Claim (BOC) at pg. 26.
- 43 Exhibit P-2, Appellants' Record, Transcript from RPD Hearing at p. 31.
- 44 Exhibit RPD-1, RPD Record at p. 338.
- 45 Exhibit RPD-1, RPD Record, Principal Appellant's BOC at p. 26.
- 46 Exhibit P-2 Appellants' Record, RPD Transcript from RPD Hearing at p. 26.
- 47 Exhibit P-2 Appellants' Record, RPD Transcript from RPD Hearing at p. 17 and 18.
- 48 NDP for Nigeria (August 20, 2019) at Item 1.6.
- 49 Immigration and Refugee Board of Canada, Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act: Guideline 4 - Women Refugee Claimants Fearing Gender-Related Persecution, Effective date: 13 November 1996.
- 50 Exhibit P-2, Appellants' Record, Transcript from RPD Hearing at p. 31.
- 51 Exhibit P-2, Appellants' Record, Transcript from RPD Hearing at p. 31.
- 52 Exhibit P-2, Appellants' Record, Transcript from RPD Hearing at p. 31.
- 53 Exhibit P-2, Appellants' Record, Memorandum at para. 55, p. 68.
- 54 Exhibit RPD-1, RPD Record, Principal Appellant's Schedule A at p. 91.
- 55 NDP for Nigeria (August 20, 2019) at Item 12.6.
- 56 Exhibit RPD-1, RPD Record at p. 268.

57 Exhibit RPD-1, RPD Record at p. 289 to p. 290.

58 Exhibit RPD-1, RPD Record, Reasons at para 49 to 56, p. 10. to p. 12.

59 NDP for Nigeria (August 20, 2019) at Item 1.9.

60 NDP for Nigeria (August 20, 2019) at Item 1.9.

61 Ranganathan v. Canada (Minister of Citizenship and Immigration), [2001] 2 F.C. 164 (C.A.), para 16.

RAD File / Dossier de la SAR : TB9-21859

TB9-21860 / TB9-21861 / TB9-21862

TB9-22025

RAD.25.02 (April 04, 2019)

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21

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