

CANADA / JUDGMENT

VB9-06106

COURT

Refugee Appeal Division

DECIDED

21 February 2020

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RAD File / Dossier de la SAR : VB9-06106 VB9-06107 / VB9-06108 Private Proceeding / Huis clos
Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXXXXXXXXa.k.aXXXX XXXX XXXX XXXX XXXX XXXXXXXXXX XXXX XXXXXXXXXa.k.a. XXXX XXXX
XXXX XXXX XXXXXXXXXX XXXX XXXXXXXXXa.k.aXXXX XXXX XXXX XXXX XXXX Personnes en
cause Appeal considered / heard at Vancouver, BC Appel instruit / entendu à Date of decision
February 21, 2020 Date de la décision Panel Ron Liberman Tribunal Counsel for the persons who
are the subject of the appeal Shabana Imran Barrister and Solicitor Conseil des personnes en
cause Designated representative XXXX XXXX XXXXXXXXXa.k.a. XXXX XXXX XXXX
XXXXforXXXXXXXXX XXXX XXXXXXXXXa.k.a. XXXX XXXX XXXX XXXX Représentant(e) désigné(e)
Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION OVERVIEW

[1] XXXX XXXX (Principal Appellant), and XXXX XXXX (Associate Appellant), and XXXX XXXX
(Minor Appellant), (collectively the Appellants), appeal a decision of the Refugee Protection
Division (RPD), dated July 19, 2019, rejecting their claims for refugee protection on the
grounds of an Internal Flight Alternative (IFA) in Abuja, Ibadan or Port Harcourt. The
Principal Appellant was the Designated Representative for the Minor Appellant in this
proceeding. I have conducted an independent analysis of all the evidence concerned, and
have determined the Appellants are not Convention¹ Refugees or persons in need of
protection.

BACKGROUND

[2] The Principal Appellant and the Associate Appellant both completed XXXX school in
Ukraine, and the Associate Appellant has worked as a XXXX in Nigeria. The Principal
Appellant also studied XXXX in Dubai and the Associate Appellant lived for some time in
South Korea. The Associate Appellant's father was a very wealthy man who comes from a
large, polygamous family in Nigeria. He died suddenly, leaving investments in South Korea,
the United States (US), and Nigeria and several properties and businesses in Nigeria, but no
will. The Associate Appellant has a half-brother, XXXX, who has a different mother, and who
is aggrieved because of his alleged inferior treatment by the family and also believes that, as
he is the oldest son, he is entitled to control his late father's estate. Additionally, the
extended family of the Associate Appellant disliked her mother because she is not from their
tribe and is originally from Ghana. The Associate Appellant has been harassed, assaulted

and threatened. In XXXX 2015, the Appellants moved from Benin City to Abuja and stayed with the Principal Appellant's parents in an attempt to escape the Associate Appellant's extended family. The Principal Appellant and the Associate Appellant went to the US in XXXX 2015 for advanced XXXX training. In 2016, the Associate Appellant's mother obtained a letter of administration to handle her late husband's assets which led to an escalated level of threats for both the Associated Appellant and her mother. The mother reported the threats to the police. The Associated Appellant's extended family allegedly threatened her by phone, text and social media while she was in the US, demanding that she hand over the father's assets, which they believe she controls. The stress led to premature labour on the part of the Associate Appellant, which unfortunately caused her to give birth to a XXXX XXXX. In XXXX 2016, the extended family forced the Associate Appellant's mother out of her house, took some documents, and are demanding a large sum of money for her house to be returned. Litigation over the estate is still ongoing. The Minor Appellant was born in the US in XXXX XXXX. The Appellants entered Canada in XXXX XXXX 2018. ROLE OF THE RAD

- [3] After conducting an independent assessment of the evidence before me, I have applied the correctness standard to review the decision of the RPD.²

ANALYSIS

New evidence

- [4] The Appellants provided several items of new evidence after the RPD hearing and they requested that the Refugee Appeal Division (RAD) hold an oral hearing. New evidence supplied with Counsel's Memorandum
- [5] The Appellants submitted additional evidence with the Memorandum of their Counsel. The new evidence consists of the Affidavit of XXXX XXXX XXXX (the Associated Appellant's mother) affirmed XXXX XXXX XXXX 2019, a Government of Canada Travel Advisory for Nigeria - updated XXXX XXXX, 2019, and articles (that include internet links) about Health Issues in Nigeria, Medical Field Opportunities and Employment in Nigeria and about Doctors being kidnapped.
- [6] Counsel has requested these documents be admitted as new evidence. To decide whether to do so, I must first consider section 110(4) of the Immigration and Refugee Protection Act (IRPA)³ to determine whether this is evidence that arose after rejection of the claim, or was not reasonably available when the claim was rejected, or is evidence which the Appellants could not reasonably have been expected to present prior to the RPD decision. If I find that the evidence meets the test in section 110(4), I must also determine that the evidence meets the modified factors of credibility, relevance and newness as explained in a case known as Raza,⁴ in order to admit it.
- [7] In Tiodunmo⁵ the Federal Court determined that Counsel needs to make submissions as to how the new evidence meets the requirements of section 110(4) of IRPA. Counsel states that the Memorandum explains on page 78 how this document meets the requirements of

section 110(4) of IRPA, but, all page 78 states in this regard is "A copy of the associate claimant mother's affidavit is attached for your attention".⁶ Only parts of the Affidavit that has been supplied are clear, but it is evident that it bears a handwritten date indicating the Affidavit was affirmed on XXXX XXXX XXXX 2019. I find that Counsel has not explained how this Affidavit meets the requirements of section 110(4) and why it could not have been presented prior to the RPD's decision on July 19, 2019. Accordingly, I decline to admit this document, which is in any event of limited evidentiary value because only parts of it are clear.

- [8] Counsel has supplied a letter⁷ from Edmonton XXXX XXXX dated XXXX XXXX, 2019 which records an assessment of the Principal Appellant and the Associated Appellant. I find this letter relates to an assessment that was completed on XXXX XXXX XXXX 2019 and which post-dates the RPD's decision. Accordingly, I find that it meets the requirements articulated in the text of section 110(4). I find that this document also meets the modified factors of credibility, relevance and newness because it is from a Canadian medical practitioner, adds new evidence, and it is relevant because the future XXXX state of Appellants may in some circumstances be relevant under section 97(1) of IRPA. Accordingly, I admit this document.
- [9] Counsel also supplied a copy of a Government of Canada Travel Advisory for Nigeria,⁸ updated on September 3, 2019. I find this document post-dates the RPD decision and therefore meets the requirements of section 110(4). However, Counsel has not explained how it meets the modified Raza factors. I find this document is from credible sources, namely from the Government of Canada. While it contains some new information that post-dates the RPD decision, Counsel subsequently submitted a newer version of the Government of Canada Travel Advisory which I have decided to admit. I therefore find the earlier Travel Advisory does not meet the Raza factors of newness or relevance, because it does not add significantly to the information in the Record. I therefore do not admit it into evidence.
- [10] Counsel has supplied a series of pages, relating to Health Issues in Nigeria,⁹ Medical Field Opportunities and Employment in Nigeria. Counsel has not explained how these documents meet the requirements of section 110(4) of IRPA. The pages contain links to items on the internet, but none of the page are dated. Consequently, I am unable to determine whether these pages were produced prior to the RPD hearing, or whether, at the time when Counsel provided them, they contained information which pre-dates the decision of the RPD; therefore, I am unable to determine whether the requirements of section 110(4) are met. Accordingly, I decline to admit any of these pages into evidence.
- [11] Counsel has also submitted with his Memorandum a page entitled "Doctors Kidnapping Event",¹⁰ which contains a report dated August 27, 2019 regarding the kidnapping of the Chief Medical Director of a hospital in Edo State in Nigeria. Counsel has not explained how this document meets the requirements of section 110(4) of IRPA. Even though the article is dated after the RPD decision, I am unable to determine whether it relates to an event that occurred prior to, or after, the RPD decision. The article would appear to be relevant to the overall safety of doctors, but only in Edo State, and I am unable to assess the credibility of

this document, because it does not specify where it was published, or who the author is. In the absence of submissions from Counsel as to how this document meets the requirements of section 110(4) of IRPA modified Raza factors, I do not admit it. New Evidence supplied with Counsel's further submissions

- [12] The Appellants were notified that Ghanaian citizenship pertaining to the Associate Appellant and state protection were new issues. They were asked for further submissions concerning the National Documentation Package (NDP) for Ghana,¹¹ specifically the contention that the Associate Appellant is a citizen of Ghana by virtue of the citizenship legislation in that country. Counsel provided submissions and additional documents. With regard to the issue of Ghanaian citizenship, Counsel was invited by the RAD to make submissions limited to the following matters:
- (a) Whether the Associate Appellant XXXX XXXX XXXX is a citizen of Ghana, having due regard to the provisions of section 6 and 16 of the Ghanaian Citizenship Act of 2000 (Item 3.4 of the Ghana NDP); and,
 - (b) Whether the family is at risk of persecution, or faces a risk, as specified under section 97(1) of the IRPA, following return to Ghana.
- [13] In response to this request, Counsel has provided submissions, including submissions on the citizenship issue, and also a page with links to information on the internet. Counsel has also provided printouts of Government of Canada Travel Advisories on Nigeria and Ghana. Documents Counsel submitted that pertain to Nigeria
- [14] With regard to the first link Counsel provided,¹² I find it postdates the RPD decision, both in regards to when it was created and its content, and therefore meets the requirements of section 110(4). it is from a credible source, being a link to the latest Travel Advisories from the Government of Canada. The provision of general information directed to citizens of Canada regarding the risk of travelling to Nigeria would not generally be relevant to the determination of an individual refugee claim. However, since the latest Travel Advisory may contain relevant information about the security situation in some of the IFAs proposed by the RPD, and that could be relevant in determining whether the IFA is reasonable, I will admit this information. The second link provided is to an article entitled "10 Conflicts to watch in 2020"¹³ and I find it is not relevant to this matter, as it does not mention a conflict in Nigeria: instead it refers to 10 other countries or regions. It is possible this article has been updated on the internet since Counsel provided me a list of links, however even if this is so, I find the information with which I have been provided does not meet the Raza factor of relevance, and therefore I do not admit it. The third link provided for Nigeria is to a web-site from the Austrian Red Cross¹⁴ with information on Nigeria. While this web-site may contain new and credible information on Nigeria, Counsel has not directed me to any specific written document or information which is being submitted in support of the Appellants' claims. Although I find this is a credible source, I am unable to determine whether specific information in this web-site predates the RPD decision, or whether

information was placed on the web-site following the decision. I cannot admit this web-site as new evidence because I cannot determine whether it meets the requirements of section 110(4) of IRPA. Counsel has also provided a printout of the Canadian government's Travel Advisory for Nigeria dated December 18, 2019,¹⁵ but I find that document fails to meet the Raza criterion of newness or relevance, since I have admitted a later version of this Travel Advisory; accordingly, I do not admit this earlier version into evidence. Documents Counsel submitted that pertain to Ghana

- [15] With respect to Ghana, Counsel has supplied a link to the latest Government of Canada Travel advisory about Ghana.¹⁶ Although, again, this information is for Canadian citizens, and would generally not be pertinent to an individual refugee claim, the information is from credible sources, and is the latest information available. I find it meets the Raza factors of newness and relevance, since I find it to be relevant and to add new information to the Record, and therefore I will admit it. I do not admit into evidence the older version of this Travel Advisory which Counsel has supplied.
- [16] The second link supplied for Ghana does not work, and therefore I am unable to determine whether it is relevant or credible. Therefore, I will not admit this article into evidence. The third link for Ghana is to the web-site of Human Rights Watch.¹⁷ Again, since a web-site is dynamic and can change at any time, I am unable to determine which, if any parts of it, were created prior to the RPD decision. However, since it appears from the submissions that were made that Counsel was not expecting to be asked to provide information about Ghana, I take the information presently on this web-site into consideration, together with the information in the current NDP.
- [17] I am unable to hold an oral hearing since, while I have admitted new evidence, I find none of the evidence is central to the decision regarding this claim; accordingly, the requirements specified in section 110(6) of IRPA to hold an oral hearing are not met. Citizenship of Associate Appellant
- [18] Counsel has stated in submissions that the Appellants cannot understand why the question of whether the Associate Appellant is a citizen of Ghana has been raised, since the Associate Appellant has no intention of becoming a citizen of that country. However, Counsel concedes that the Associate Appellant's mother and grandmother were born in Ghana, and based on the reasons that follow, I find that the Associate Appellant is a Ghanaian citizen. This follows from a section 6(b) and 16 of that country's Citizenship Act, read in conformity with the ordinary meaning of its words. I reproduce the relevant sections below. Citizenship Act of 2000¹⁸ Persons born on or after 24/9/79 - Constitution 1979
- [19] 6. A person born on or after 24th September 1979 and before 7th January 1993 is a citizen of Ghana by birth if- (a) he was born in Ghana and at the date of his birth either of his parents or one grandparent was a citizen of Ghana; or (b) he was born outside Ghana and at the date of his birth either of his parents was a citizen of Ghana. Dual citizenship

- [20] 16. (1) A citizen of Ghana may hold the citizenship of any other country in addition to his citizenship of Ghana.
- [21] Since the documentation shows the Associate Appellant was born on XXXX XXXX XXXX XXXX, I find that even if the intention of the Associate Appellant was not to become a citizen of Ghana, her intention is not relevant as the legislation automatically renders her a citizen of Ghana by descent. Lack of a Nexus to Convention grounds
- [22] Counsel, in paragraph 29 of the Memorandum, submits the RPD ignored the testimony of the Associate Appellant that the family members of her late father disliked the Associate Appellant's mother because she was from Ghana, and that this gives rise to a claim under section 96 of IRPA. There is no mention of this aspect of the Appellants' claim elsewhere in the testimony or in their Basis of Claim (BOC) forms. I note the BOC states the family members made false accusations "out of greed and jealousy"¹⁹ and does not mention the nationality of the Associate Appellant's mother. I find the assertion that the Associate Appellant's mother was disliked because of her nationality is insufficient evidence, on its own, to establish that the Appellants were themselves targeted and persecuted for that reason. I concur with the RPD that the Appellants do not have a Nexus to Convention grounds with respect to the claim of persecution in Nigeria by the Associate Appellant's extended family, and that the claims that have been asserted against Nigeria amount to allegations that they are victims of crime and a personal vendetta. I accordingly analyze in what follows whether the Appellants have demonstrated that they face a risk under section 97(1) of IRPA which renders them persons in need of protection. I note in passing that the analysis that follows would in any event exclude a claim under section 96 of IRPA, because I find the Appellants have failed to adduce sufficient credible evidence that the Associate Appellant or the Principal Appellant face a risk from the Associate Appellant's extended family. Claim of the Associate Appellant
- [23] With regard to the risk in Ghana under section 97(1), Counsel has submitted that it is "quite possible" that the Associate Appellant's family members will trace them out in Ghana and hire someone to harm or kill them".²⁰ No explanation or evidence has been offered by the Appellants as to how the Associate Appellant's family members will be able to locate her in Ghana, or even that the Associate Appellant's family have any connections in Ghana. Counsel has also submitted "it is possible" that the family will utilize the local authority "through corruption"²¹ to harm or kill the Associate Appellant. I find that when the Appellants submit it is "quite possible" that they will be found in Ghana or that it is "possible" she will be harmed or killed by a corrupt local authority, that this amounts to speculation for which there is no evidentiary basis. For that reason, I find the Associate Appellant has not adduced sufficient credible evidence to establish, on a balance of probabilities, that she faces a risk from her extended family in Ghana or that she faces a risk to her life, or a risk of cruel and unusual treatment or punishment in Ghana from her family members.

- [24] I have considered the letter from Edmonton XXXX XXXX that was submitted by Counsel, and I accept the diagnosis of XXXX XXXXandXXXX XXXX XXXX for the Associate Appellant in that document. However, I find that medical treatment is available in Ghana for these conditions, including services provided under the auspices of the XXXX Health Authority.²²
- [25] I find that the other risks identified by the Appellants in their submissions, including the overall security situation in Ghana, general poverty, economic problems, starting their lives over, hardship and lack of social services are all generalized risks that would be faced in that country by other persons, as is apparent from the NDP for Nigeria.²³ Therefore, these risks do not amount to a risk to their life or to a risk of cruel and unusual treatment or punishment under section 97(1) of IRPA.
- [26] No allegations of torture by the authorities have been advanced. I therefore find that, on a balance of probabilities, the Associate Appellant does not face a danger of torture within the meaning of Article 1 of the Convention against Torture. In summary, given the above, I find that the Associate Appellant does not face any section 96 or section 97(1) risks in Ghana and that she, being a national of Ghana, enjoys the protection of that country. Accordingly, her claim fails. Claim of the Principal Appellant
- [27] I find the Principal Appellant is a citizen of Nigeria solely, based on the copies of his passport and US visas in the Record. I have studied the BOC form filed by the Principal Appellant, which refers to his wife's narrative. I find that no allegations that the Principal Appellant faces a specific risk in Nigeria have been made in that narrative. I note the Principal Appellant expanded on the BOC in his oral testimony when he stated that he might be harmed because of his wife's family and their connections. I find that his claim does not have a Nexus to Convention grounds because, as with his wife, the threat alleged arise from a personal vendetta against the Associate Appellant, and accordingly he does not have a claim as a Convention Refugee under section 96 of IRPA.
- [28] I note all the threats alleged in the BOC are threats against his spouse, and there is no allegation that he has been personally targeted, beyond the bald assertion in his testimony that he might be harmed. I find there is insufficient credible evidence that the Principal Appellant faces a risk of harm from the Associate Appellant's extended family.
- [29] I have considered the letter from Edmonton XXXX XXXX that was submitted by Counsel, and I accept the diagnosis of XXXX XXXXandXXXX XXXX XXXX for the Principal Appellant in that document. However, I find, as is the case for the Associate Appellant, that medical treatment is available in Ghana for these conditions.
- [30] As is the case with the Associate Appellant, I find, having considered Counsel's submissions in detail, that any other section 97(1) risks the Principal Appellant might face in Nigeria arise as a result of the overall social and economic situation in that country, or the overall security situation faced by persons in that country, and are a generalized risk. The Principal Appellant has not argued otherwise, and he has not alleged he faces a risk of torture by the authorities in Nigeria. I therefore find, on a balance of probabilities, that the Principal

Appellant does not face a risk of torture within the meaning of Article 1 of the Convention against torture, a risk to his life, or a risk of cruel and unusual treatment or punishment. Accordingly, I find the Principal Appellant is not a person in need of protection under section 97(1) of IRPA. His claim therefore fails. Claim of the Minor Appellant

- [31] I find that the Minor Appellant is a citizen of the US, based on the copy of his birth certificate in the Record. He has not asserted a claim against that country. Although Counsel has requested the best interests of a child be considered, that has no relevance to a claim under section 96 or section 97(1) of IRPA. I find that the Minor Appellant enjoys the protection of the US, and is not a Convention Refugee or a person in need of protection.

CONCLUSION

- [32] 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) "Ron Liberman" Ron Liberman February 21, 2020 Date 1 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. 2 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93. 3 Immigration and Refugee Protection Act, S.C. 2001, c. 27. 4 Raza v. Canada (Minister of Citizenship and Immigration), 2007 FCA 385. 5 Tiodunmo v. Canada (Citizenship and Immigration), 2019 FC 1489. 6 Exhibit P-2, Appellants' Record at p. 78. 7 Exhibit P-2, Appellants' Record at p. 39. 8 Exhibit P-2, Appellants' Record at p. 41 to p. 52. 9 Exhibit P-2, Appellants' Record at p. 60 to p. 63. 10 Exhibit P-2, Appellants' Record at p. 69. 11 National Documentation Package (NDP) for Ghana (30 September 2019), Item 3.4. 12 Exhibit RAD-1, Written Submissions at p. 9. 13 Exhibit RAD-1, Written Submissions at p. 9. 14 Exhibit RAD-1, Written Submissions at p. 10 to p. 22. 15 Exhibit RAD-1, Written Submissions at p. 9. 16 Exhibit RAD-1, Written Submissions at p. 9. 17 Exhibit RAD-1, Written Submissions at p. 9. 18 NDP for Ghana (30 September 2019), Item 3.4. 19 Exhibit RPD-1, RPD Record at p. 54. 20 Exhibit RAD-1, Written Submissions at p. 5. 21 Exhibit RAD-1, Written Submissions at p. 5. 22 NDP for Ghana (30 September, 2019), Item 2.7, paragraph 12.3.1. 23 Exhibit RPD-1, RPD Record, RPD Exhibit 3, NDP for Nigeria (30 April 2019).

RAD File / Dossier de la SAR : VB9-06106 VB9-06107 / VB9-06108 RAD.25.02 (January, 2020)
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Commission de l'immigration et du statut de réfugié du Canada Section d'appel des réfugiés
RAD.25.02 (January, 2020) Disponible en français

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