

CANADA / JUDGMENT

TB9-10679

COURT

Refugee Appeal Division

DECIDED

16 March 2020

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RAD File / Dossier de la SAR : TB9-10679 TB9-10680 / TB9-10681 Private Proceeding / Huis clos
Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX
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XXXX) Personnes en cause Appeal considered / heard at Toronto, ON Appel instruit / entendu à
Date of decision March 16, 2020 Date de la décision Panel Karen McGovern Tribunal Counsel for
the persons who are the subject of the appeal Appiah Boateng Conseil des personnes en cause
Designated representative XXXX XXXX XXXX XXXX XXXX Représentant(e) désigné(e) Counsel for
the Minister N/A Conseil du ministre OVERVIEW

- [1] XXXX XXXX XXXX XXXX XXXX (Principal Appellant, PA), XXXX XXXX XXXX XXXX XXXX
(Associate Appellant, AA) and XXXX XXXX XXXX XXXX (Minor Appellant), citizens of
Nigeria, appealed a decision of the Refugee Protection Division (RPD), dated March 21, 2019,
rejecting their claims for refugee protection.

DETERMINATION

- [2] The appeal is allowed.

BACKGROUND

Allegations

- [3] The Appellants fear persecution in Nigeria at the hands of the AA's family. They allege the
AA's family will torture, harm or kill the AA and PA because they refuse the family's
demands for the PA and Minor Appellant to convert from Christianity to Islam. They fear the
Minor Appellant will be abducted and forced to convert. The PA and Minor Appellant came
to Canada in March 2018 and the AA arrived in Canada in XXXX 2018. RPD Decision

- [4] The RPD found the PA omitted material information in her Basis of Claim (BOC) that was not reasonably explained. On that basis, the RPD drew a negative inference as to her credibility and found the PA to have clearly embellished her testimony. The RPD found the psychotherapist report regarding the PA to be unreliable. The RPD determined that the Appellants had viable internal flight alternatives (IFAs) in Abuja, Port Harcourt or Benin City. Grounds of Appeal
- [5] The Appellants argue the RPD erred in not accepting the PA's explanation for an omission in her narrative and also by drawing a negative inference as to her credibility. They argue the RPD further erred by requiring corroborative documents and by rejecting the psychotherapist's report. Finally, they argue the RPD erred in assessing whether an IFA was reasonable. ROLE OF THE RAD
- [6] The RAD reviews decisions of the RPD on a standard of correctness after conducting an independent assessment of the evidence before it.¹ The exception to this rule is where the RPD enjoys a meaningful advantage in the assessment and weighing of oral testimony heard, which in particular cases, attracts a standard of review of reasonableness.² Unless specifically stated below, I have applied a correctness standard.

ANALYSIS

- [7] I have carefully considered the Appellants' arguments and have conducted an independent review and analysis of the RPD record and oral testimony provided at the hearing. Given the nature of the allegations, I have considered the Chairperson's Guidelines on gender.³ In regards to the Minor Appellant, I have considered the Chairperson's Guidelines on child refugee claimants.⁴
- [8] The RPD erred in finding that an omission was not reasonably explained and by drawing a negative inference to the PA's credibility on that basis. Given that the remainder of the Appellants' testimony was considered credible, there is a serious possibility that the Appellants could be located in the proposed IFAs. In addition, the RPD failed to consider the individual circumstances of the Appellants in its assessment of whether the IFAs were objectively reasonable.
- [9] The determinative issues are credibility and Internal Flight Alternative (IFA). Omission re grandfather and the notoriety of PA's family is reasonably explained
- [10] The RPD found that the PA's failure to include her grandfather's national notoriety in her narrative was a material omission, which was not reasonably explained. From this finding, the RPD drew a negative inference as to the PA's credibility and regarded the PA's testimony about the notoriety of her family name as an embellishment.

- [11] The Appellants argue that the RPD erred by concluding there was an omission as the PA mentioned her grandmother in her narrative and her national notoriety and provided a reasonable explanation as to not including her grandfather in her narrative. They also argue that the RPD erred by drawing a negative inference based on this one aspect of the narrative; particularly where the RPD found the Appellants were otherwise credible and consistent in their testimony.
- [12] I agree with the Appellants that the RPD erred.
- [13] In her narrative, the PA stated that her in-laws had been trying to convert she and her son from Christianity to the Islamic religion for a long time. She indicated that her husband was able to stall by telling his family he was working on converting them. She also noted that she was protected from the in-laws while her father and grandmother were alive, noting that they were well respected in Nigeria: Coupled with the fact that my late father was well respected by my in-laws and during his lifetime they would not like to do anything that would offend him or my late grandmother who was a respected elder-stateswoman in Nigeria, by name Mrs. XXXX XXXX XXXX XXXX XXXX XXXX.5
- [14] At the hearing, the PA testified that harassment from the in-laws had occurred for a long time, but she was protected by her father and grandmother while they were alive. She stated that her family name was well-known as her grandfather was a Nigerian war hero. When questioned why the notoriety of her family name and her grandfather were not mentioned in her narrative, the PA responded, "Just google it and it will come up".6 She explained that her grandfather was not alive when she was married, but that her grandmother was.
- [15] I find that the PA's explanation is reasonable. The PA's reference to her father and grandmother in her narrative is because they were alive and provided protection to her from the in-laws. The grandfather was not alive at the time and could not have been protective of her. I also note the family name XXXX is identified in the narrative in the PA's description of her grandmother. I accept that it is a generally known fact in Nigerian history that XXXX XXXX was a key figure in Nigeria's fight for independence and that he was married to XXXX XXXX XXXX XXXX XXXX XXXX, who was also a well-known national political figure. It is reasonable that the PA believed that mentioning her grandmother as a respected elder-stateswoman was sufficient to explain her family's notoriety in relation to the allegations.
- [16] I find that the RPD erred in finding the omission regarding the PA's grandfather was not reasonably explained. As such, the RPD also erred by drawing a negative inference as to the PA's credibility and also in finding the PA's testimony regarding her grandfather was an embellishment. It also follows that having made this error, the RPD's finding that the Appellants failed to submit corroborating documentation regarding her family's notoriety is also in error. While it may have been helpful for the Appellants to provide supporting documentation regarding the notoriety of the PA's family, the presumption of truth may only be rebutted where an inconsistency or omission is not reasonably explained.7

- [17] Having reviewed the RPD record and the audio recording, I agree with the RPD's conclusion that the remainder of the Appellants' testimony was generally consistent and credible. I find that the Appellants have established, on a balance of probabilities, that the AA's family has threatened to harm the PA and her son for their failure to convert to Islam. Internal Flight Alternative
- [18] The test for an IFA is well established in case law. In the first prong, the decision-maker must be satisfied, on a balance of probabilities, that there is no serious possibility of persecution in the proposed IFA. Second, the IFA must be objectively reasonable, considering all the circumstances of the claimants. Once a proposed IFA is identified, the onus is on the claimant to show there is a serious possibility of persecution in the IFA and that the IFA is objectively unreasonable⁸. The in-laws intend to pursue the Appellants to convert them to Islam
- [19] The RPD found that even though there was credible evidence that the in-laws intended to pursue the Appellants, there was insufficient evidence that the in-laws have the capacity to locate the Appellants in the proposed IFAs. The RPD concluded that the Appellants' friend's affidavit established that the in-laws were able to call and visit friends and family of the Appellants in their pursuit, but nothing more. The RPD found that the fact that mosques communicate with each other across Nigeria and could assist the in-laws in locating the Appellants was speculative. Finally, the RPD found it speculative that because many of the in-laws came to the Appellants' wedding from across Nigeria, they could recognize the PA in one of the IFAs. The Appellants argue the RPD erred by not accepting the credible testimony of the Appellants and the remainder of the evidence before the RPD.
- [20] Having reviewed the RPD and Appellant records, as well as the audio recording of the hearing, I find the RPD did err in concluding that there was only a mere possibility that the in-laws have the intent and capacity to pursue and locate the Appellants in the proposed IFAs. In particular, the RPD failed to note the Appellants' statements and testimony that the in-laws forcefully took their son and performed a circumcision without their consent. This is probative and credible evidence that the in-laws have acted violently in pursuing the conversion of the PA and her son in the past and that they are likely to use all resources available to them to pursue the Appellants. In addition, I find that the notoriety of the PA's family is relevant to the capacity of the in-laws to track and locate the Appellants in the IFAs. The PA is more likely to be identified given her family name and notoriety. I find this notoriety is also relevant to whether the in-laws would be successful in sharing information through Nigerian mosques.⁹ The common knowledge of the family name is likely to make identification and tracking of the Appellants through this method more likely and successful.

- [21] The country documentation notes that forced religious conversion is rare but does occur. The US International Religious Freedom Report indicates that there were unconfirmed reports of forced conversions of Christians to Islam and that "intermarriage is often the occasion and motivation for religious conversion."¹⁰
- [22] Given the consistent and credible testimony of the Appellants and the fact that the in-laws have previously carried out a religious act by circumcising their child without their consent, I find there is an objective basis for the Appellants' fear of religious conversion at the hands of the in-laws.
- [23] On the totality of the evidence, I find, on a balance of probabilities, that there is a serious possibility that the Appellants could be located and harmed by the in-laws in the proposed IFAs. State protection is not available
- [24] In their narratives, the PA and AA stated that the Appellants had not contacted police in relation to the in-law's threats because the police do not interfere in family matters. The country documentation indicates that government and police do not always respond to targeted attacks on certain victims due to their religion.¹¹ There is no other information directly related to forced religious conversion, however, there is relevant country documentation about police response to complaints regarding being forced to perform a traditional ritual: "If a woman seeks the protection from the police when faced with such a ritual, the police will "likely treat it as a domestic issue which is to be settled at home."¹² Further evidence provides: "The Professor of African religious traditions stated that a Nigerian woman "cannot trust the police in this matter. It is not a matter of the law or the police. The police would only complicate matters, and take the money [and] do nothing" (23 Feb. 2016). According to the CWSI representative, should a woman choose to report harassment resulting from the imposition of a ritual, the police "would tell [her] to go home, as this is considered a family matter." (18 Feb. 2016)"¹³
- [25] I find, on a balance of probabilities, that the Appellants have rebutted the presumption of state protection.
- [26] After reviewing all of the evidence, I find, that if the Appellants returned to Nigeria, they would face a serious possibility of persecution from the in-laws because the PA and her child will not convert to Islam and because the AA has not forced the conversion to occur. The Convention ground is religion.

CONCLUSION

- [27] The appeal is allowed. I substitute my own decision that the Appellants are Convention refugees pursuant to subsection 111(1)(b) of the IRPA. (signed) "Karen McGovern" Karen McGovern March 16, 2020 Date 1 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93 (CanLII), [2016] 4 FCR 157, at para. 103. 2 Ibid, at paras. 69-74; and X (Re), 2017 (CanLII) 33034 (CA IRB). 3 Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution: Update, Guideline Issued by the Chairperson Pursuant to Section 65(3) of the

Immigration Act, IRB, Ottawa, November 25, 1996, as continued in effect by the Chairperson on June 28, 2002, under the authority found in section 159(1)(h) of the Immigration and Refugee Protection Act. 4 Guideline 3: Child Refugee Claimants: Procedural and Evidentiary Issues, Guideline Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act, IRB, Ottawa, November 25, 1996, as continued in effect by the Chairperson on June 28, 2002, under the authority found in section 159(1)(h) of the Immigration and Refugee Protection Act. 5 RPD Record, Exhibit 2.1 6 RPD Hearing Audio Recording 7 Maldonado v Canada (Minister of Employment and Immigration), [1980] 2 FC 302 (FCA). 8 Rasaratnam v. Canada (Minister of Employment and Immigration [1992] 1 FC 706. 9 National Documentation Package (NDP) for Nigeria (29 November 2019), Response to Information Request (RIR) NGA104214, Item 12.7. 10 NDP for Nigeria (29 November 2019), RIR NGA104211, Item 12.8, at p.1. 11 NDP for Nigeria (29 November 2019), Item 1.4. 12 NDP for Nigeria (29 November 2019), RIR NGA105601, Item 5.24, at p. 1. 13 NDP for Nigeria (29 November 2019), RIR NGA105465, Item 5.27, at p. 10.

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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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Prepared on 27 October 2026 · Esheria