

CANADA / JUDGMENT

TB9-07196

COURT

Refugee Appeal Division

DECIDED

23 January 2020

Research copy typeset by Esheria. Not court-issued or certified. A source URL was not supplied in the case record.

RAD File / Dossier de la SAR : TB9-07196 TB9-07197 / TB9-07198 Private Proceeding / Huis clos
Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXX XXXXXXXXXX XXXX XXXX XXXXXXXXXX XXXX XXXX Personnes en cause Date(s) of Hearing
January 17, 2020 Date(s) de l'audience Appeal considered / heard at Toronto, ON Appel instruit /
entendu à Date of decision January 23, 2020 Date de la décision Panel T. Card Tribunal Counsel
for the persons who are the subject of the appeal Osasenaga Obazee 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"), XXXX XXXX XXXX (the "Female Minor Appellant"), and XXXX XXXX XXXX (the "Male Minor Appellant") are citizens of Nigeria and are appealing a decision of the Refugee Protection Division (RPD) denying their claims for refugee protection.
- [2] The Principal Appellant is the mother and the Designated Representative (DR) of the Minor Appellants.

DETERMINATION

- [3] The Appeals are allowed. BACKGROUND AND ALLEGATIONS
- [4] The Appellants are citizens of Nigeria. The Principal Appellant married her husband ("the Husband") in 2004. The Husband's family demanded that Female Genital Mutilation (FGM) be performed on the Female Minor Appellant by the time she turned 10 years old in 2017.
- [5] The Husband was opposed to FGM being performed. However, the Husband was also abusive at times during the marriage.
- [6] In July 2017, with more pressure being applied by the Husband's family for FGM to be performed on the Female Minor Appellant. The Husband raised money for the Appellants to leave Nigeria. However, the Husband did not go himself as he apparently did not raise enough money.

- [7] The Appellants initially travelled to the United States (US) but did not make a refugee claim due to high lawyer's fees and lack of funds.
- [8] In January 2018, one of the Husband's family elders phoned the Husband about FGM. The Husband told the elder he would bring the Female Minor Appellant to them to undergo FGM.
- [9] The Appellants went into Canada in XXXX 2018 and made their refugee claims. The RPD refused the claims on the basis that the Principal Appellant was found not to be credible.
- [10] After the Appellants received their RPD decision, the Principal Appellant contacted the Husband about the result. The Husband became furious and threatened the Principal Appellant. More about these events are discussed below in the main analysis as this takes place after the RPD Hearing.
- [11] The Appellants appealed their RPD decisions to the Refugee Appeal Division (RAD).
ADMISSIBILITY OF EVIDENCE SUBMITTED ON APPEAL
- [12] In support of this appeal, the Appellants proposed the admission of the following documents as new evidence:
- a. Affidavit by the Principal Appellant dated 5 April 2019;¹
 - b. Pictures of the Principal Appellant's injuries sustained in Nigeria;² and,
 - c. Affidavit by the Principal Appellant's sister ("the Sister").³
- [13] Other documents in the same section of the Appellants' Record were also found, that at first glance appear to be part of the proposed "new evidence". However, a further check indicates that in fact these items should have been separated out, as they were all found present in the RPD Record, and are not in fact new evidence.
- [14] S.110(4) of the Immigration and Refugee Protection Act (IRPA)⁴ provides that the Appellants may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that they could not reasonably have been expected⁵ in the circumstances to have presented, at the time of the rejection. It is for the Appellants to make full and detailed submissions in their Memorandum about how any proposed new evidence meets the requirements of s.110(4) and how that evidence relates to the Appellants.⁶
- [15] In addition, if the new evidence meets one of the explicit legislative factors in s.110(4), then the second step of the analysis is for the RAD to apply the adapted Raza factors endorsed in Singh.⁷ In Singh, the Federal Court of Appeal held that the RAD should assess the admissibility of the new evidence for its credibility, relevance and newness. Documents accepted

- [16] The documents provided all contain information related to the alleged abuse by the Husband, and in particular, about the renewed abuse by the Husband that took place when he had the conversation with the Principal Appellant about the rejected RPD claim. As this relates to events that arose after the RPD rejection, I find the documents meet the requirements of s.110(4) of the IRPA.
- [17] The documents appear credible on their face and are relevant in that they are capable of overturning the RPD's finding that the Appellants are not refugees. The documents are also new in that they relate to circumstances arising after the RPD decision.
- [18] I therefore accept these documents as new evidence. ORAL HEARING
- [19] The RAD may hold a hearing if, in its opinion, there is documentary evidence referred to in s.110(3) of the IRPA that raises a serious issue with respect to the credibility of the person who is the subject of the appeal, is central to the decision with respect to the refugee protection claim, and, if accepted, would justify allowing or rejecting the refugee protection claim.⁸
- [20] The new evidence in this case relates to the Principal Appellant's relationship with the Husband, and whether or not the Husband should now be considered an agent of persecution, with the issues of domestic violence, and ongoing issue of FGM threat to the Female Minor Appellant still live.
- [21] The content of the new evidence was not detailed enough for me to make a decision on the strength of the documents alone. Further testimony to get more detail was needed, and if I am to find that the Husband is now an agent of persecution, this is capable of overturning the RPD's decision.
- [22] For these reasons, a hearing was held at the RAD on 17 January 2020. Further discussion of this is contained in the analysis below. RULE 29 APPLICATION
- [23] Ahead of the hearing, the Appellants were also notified that I would be raising a new issue of Internal Flight Alternative (IFA) to Abuja.
- [24] The Appellants did submit a package of new evidence⁹ to be considered under Rule 29 of the Refugee Appeal Division Rules¹⁰ in relation to this new issue.
- [25] Rule 29 allows the Appellant to make an application to provide a document not previously provided. Such an application must include an explanation of how the document meets the requirements of s.110(4) of the IRPA and how that evidence relates to the Appellant.¹¹ In determining the application, the RAD must consider any relevant factors, including: the relevance and probative value of the document, any new evidence the document brings to the appeal, and whether the Appellant could have, with reasonable effort, provided the document with the Appellant's Record.

[26] As the documents submitted are in response to the notification of this new issue, they were not available at the time of the RAD Appeal perfection. I also find they are relevant and probative to the issue I have raised. All of the documents are therefore accepted under Rule 29. ISSUES IN APPEAL

[27] The Appellants argued the following issues in their appeals:

- a. The RPD erred in finding the Appellants' failure to claim in the US undermined their credibility and showed a lack of subjective fear.
- b. The RPD erred in its assessment of the Appellants' total evidence including making microscopic findings, and concluding the Appellants are not credible.
- c. The Appellants now have a sur place refugee claim due to the events regarding the Husband being notified of the RPD refusal.

[28] I find that the determinative issues are:

- a. Is the Husband now an Agent of Persecution?
- b. If the Husband is found to be an Agent of Persecution, should the Appellants now be found to be refugees?

ANALYSIS

[29] I have conducted an independent analysis of the evidence concerned, including reviewing the RPD hearing, as well as considering the Appellants' Memorandum,¹² the RPD Decision,¹³ and the Principal Appellant's Basis of Claim (BOC) Form¹⁴ amongst other documents.

[30] I also bear in mind the Chairperson's Guidelines on Child Refugee Claimants¹⁵ (the Children's Guidelines) and the Chairperson's Guidelines on Gender Based Violence¹⁶ (the Gender Guidelines). Hearing evidence

[31] The main purpose of the RAD Hearing was to elicit more evidence from the Principal Appellant about what happened when she spoke with the Husband after receiving the RAD Decision and what the current state of their relationship is.

[32] The Principal Appellant testified that on 10 March 2019, she phoned the Husband and explained that the RPD had refused their claims. The Husband reacted angrily, saying that the Principal Appellant had wasted the money he'd raised in coming to Canada and making the refugee claim and that the Principal Appellant was a "waste of space". The Husband also stated that if the Principal Appellant came back to Nigeria he would kill her. Overall, the Husband was abusive.

[33] On 11 March 2019, the Principal Appellant spoke with her sister about what had happened. The Sister's affidavit reflects this conversation.

- [34] The Principal Appellant has testified that she has not spoken with the Husband since 10 March 2019. She also testified that she considers herself as separated from the Husband.
- [35] I asked the Principal Appellant what she feared would happen if she were to return to Nigeria. She said she feared for her life. I also asked if the Husband was actually in favour of FGM in respect of the Minor Female Appellant. She stated that the Husband was always secretive and now did not know what he wanted.
- [36] I also asked the Principal Appellant what she thought the Husband's plan was if they had been accepted as refugees at the RPD stage. She stated that he would be asking when he could come and see them, but that it was difficult to read his mind during the marriage.
- [37] The Principal Appellant was put on notice that if the Husband were to be found to be an Agent of Persecution, and that if the Appellants are found to be refugees, the Appellants would likely never see the Husband in Canada again, as a sponsorship of the Husband would likely be unsuccessful. The Principal Appellant said she considers the Husband to be a threat and that he should not come to Canada.
- [38] Overall, the Principal Appellant put forward credible and consistent evidence about her renewed fear of the Husband not just for herself, but also for her children. The evidence provided is also consistent with earlier instances of abuse.
- [39] The Principal Appellant did disclose incidents of abuse, but did not list the Husband as an agent of persecution given his role in helping them leave Nigeria. The Principal Appellant now fears the Husband given his aggressive negative reaction to the unsuccessful RPD claim.
- [40] When taking into account the Gender and Children's Guidelines, I find on a balance of probabilities that the Husband is now an Agent of Persecution against the Appellants. Based on the evidence provided, including the previous history of violence against the Principal Appellant, I find on a balance of probabilities that there is a serious possibility of abuse against the Principal Appellant. This risk of violence also spills over in relation to the Minor Appellants, particularly the Female Minor Appellant.
- [41] The NDP does show that resistance against FGM can be done, but this is in circumstances where both parents object to it being performed. With the unpredictable behaviour of the Husband, it cannot be said with certainty that that resistance continues to exist.
- [42] I therefore find that the RPD's decision finding the Appellants are not refugees cannot stand and is overturned. I substitute a finding on a balance of probabilities that the Appellants are refugees as Members of a Particular Social Group (PSG). The PSG for the Principal Appellant is as a woman, and the PSG for the Minor Appellants is as children of the Husband. No reasonable IFA

- [43] In assessing whether or not Abuja, or any other place in Nigeria can constitute a reasonable IFA for the Appellants, I am also mindful of the Jurisprudential Guide (JG) on the subject of availability of IFA for Nigerian claimants who claim persecution from non-state actors.¹⁷
- [44] In the JG, I note that in circumstances where there is even a single woman, and taking into account educational, career and linguistic backgrounds, it is often the case that major cities in Nigeria can constitute a safe and reasonable IFA.
- [45] However, I note that there are several factors in the Appellants' case which differ from those explored in the JG case. These include that:
- a. The Principal Appellant is a single mother, not just a single woman.
 - b. The Principal Appellant is a separated woman, not merely an unmarried woman.
 - c. The Principal Appellant is a victim of domestic violence.
- [46] I am mindful of the evidence provided by the Appellants that there is increased stigma against divorced women, and against rape victims in Nigeria. This would also include victims of domestic violence.
- [47] I am also mindful that the Principal Appellant is educated and does speak English, which does aid her ability to internally relocate.
- [48] I find that the differentiating factors identified above elevate the difficulties the Principal Appellant would face in being able to internally relocate anywhere in Nigeria, including Abuja. I am also mindful of the Appellants continuing need to avoid both the Husband and his family. I find that when taking these factors into account, the difficulties rise to a level where it now becomes unreasonable for the Principal Appellant to internally relocate to Abuja, or anywhere else in Nigeria.
- [49] I therefore find that there is no reasonable IFA available to the Appellants if they were to be returned to Nigeria. No state protection
- [50] In reviewing the NDP, I also note that while there is some assistance for women victims of domestic violence, it is inadequate, and therefore cannot be said that there is adequate state protection for the Appellants against the Husband. I therefore find on a balance of probabilities that there is inadequate state protection available to the Appellants if they were to go back to Nigeria.

CONCLUSION

- [51] Pursuant to s.111(1)(b) of the IRPA, the determination of the RPD is set aside. I substitute my determination that the Appellants are Convention refugees. The appeals are allowed.
(signed) "T. Card" T. Card January 23, 2020 Date 1 Exhibit P-2, Appellants' Record, Pages 26-29. 2 Ibid., Pages 31-33. 3 Ibid., Pages 34-35. 4 Immigration and Refugee Protection Act, S.C. 2001, c. 27, as amended. 5 In the French version of the IRPA, this phrase is instead the

equivalent of "normally have been expected;" see Singh, Parminder v. M.C.I. (F.C., no. IMM-6711-13), Gagné, October 28, 2014, 2014 FC 1022, Paragraph 51. 6 Rule, Immigration and Refugee Board, Refugee Appeal Division Rules, SOR/2012-257, rule 3(3)(g)(iii). 7 Raza v. Canada (Citizenship and Immigration), 2007 FCA 385, cited in Canada (Citizenship and Immigration) v. Singh, [2016] 4 FCR 230, 2016 FCA 96, Paragraph 64. 8 Immigration and Refugee Protection Act, S.C. 2001, c.27, s.110(6). 9 Exhibit P-3, Appellants' Rule 29 Application. 10 Rule, Immigration and Refugee Board, Refugee, Refugee Appeal Division Rules, SOR/2012-257. 11 Rule, Immigration and Refugee Board, Refugee, Refugee Appeal Division Rules, SOR/2012-257, Rule 29(3). 12 Exhibit P-2, Appellants' Record, Pages 64-89. 13 Exhibit RPD-1, RPD Record, RPD Reasons at , Pages 3-8 14 Ibid., Exhibit 2, Pages 9-27. 15 Immigration and Refugee Board of Canada, Chairperson's Guideline 3: Child Refugee Claimants: Procedural and Evidentiary Issues, Guidelines issued by the Chairperson pursuant to s.65(3) of the Immigration Act, Effective Date: 30 September 1996. 16 Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution, Guidelines issued by the Chairperson pursuant to s.65(3) of the Immigration Act, Immigration and Refugee Board of Canada, Ottawa, 9 March 1993, Update: 13 November 1996, as continued in effect by the Chairperson on 28 June 2002 under the authority found in s.159(1)(h) of the IRPA. 17 Jurisprudential Guide - Decision TB7-19851, Guide identified by the Chairperson pursuant to paragraph 159(1)(h) of the Immigration and Refugee Protection Act, Effective date July 6, 2018.

RAD File / Dossier de la SAR : TB9-07196 TB9-07197 / TB9-07198 RAD.25.02 (April 04, 2019)
Disponible en français 2 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) Disponible en français

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

CASE PAGE <https://chat.esheria.ai/case-law/canada/agentofpersecution-refugee-appeal-division-2020--6a40c3b24cf2c72690fb1d78>

A source URL was not supplied in the case record. Consult the court's original record before reliance.

Prepared on 26 October 2026 · Esheria