

CANADA / JUDGMENT

TB9-08028

COURT

Refugee Appeal Division

DECIDED

7 February 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 : TB9-08028

TB9-08029 / TB9-08030

Private Proceeding / Huis clos

Reasons and decision ? Motifs et décision

Persons who are the subject of the appeal

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

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

Personnes en cause

Appeal considered / heard at

Toronto, ON

Appel instruit / entendu à

Date of decision

February 07, 2020

Date de la décision

Panel

Linda Krajcovic

Tribunal

Counsel for the persons who are the subject of the appeal

Cari Gombinsky

Conseil des personnes en cause

Designated representative

N/A

Représentant(e) désigné(e)

Counsel for the Minister

N/A

Conseil du ministre

REASONS FOR DECISION

OVERVIEW

- [1] XXXX XXXX XXXX (Principal Appellant), XXXX XXXX XXXX (Elder Associate Appellant) and XXXX XXXX XXXX (Younger Associate Appellant) are citizens of Nigeria. They appeal a decision of the Refugee Protection Division (RPD) rejecting their claims for refugee protection. The Appellants request that the Refugee Appeal Division (RAD) allow the appeal and substitute a positive determination or, in the alternative, refer the matter back to the RPD for redetermination.

DETERMINATION

- [2] 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 paragraph 111(1) (a) of the Immigration and Refugee Protection Act (IRPA).

BACKGROUND

- [3] The Appellants' allegations are outlined in their Basis of Claim (BOC) narratives. The Appellants fear persecution by the Principal Appellant's brother-in-law because she refused to become his wife in XXXX 2014, following the death of her husband. The Principal Appellant also claims that her brother-in-law demanded that the Elder Associate Appellant, who had been in Canada on a study permit since 2011 and is bisexual, return to Nigeria so he could deal with him. In XXXX 2017, after the Principal Appellant returned to Nigeria from Canada, she was confined by her brother-in-law for a week, during which time she heard him making plans to harm the Younger Associate Appellant. The Principal Appellant escaped from confinement and left for Canada with the Younger Associate Appellant in XXXX 2017.
- [4] The RPD rejected the claims on the basis of credibility.

ROLE OF THE RAD

- [5] The RAD applies a standard of correctness for questions of fact, mixed fact and law, and law. I may defer to the RPD in assessing findings involving the credibility of oral testimony if I find that it had a meaningful advantage in the circumstances.¹ In this case, I find that the RPD did not have a meaningful advantage.

ISSUES ON APPEAL

- [6] The Appellants submit that the RPD erred in its assessment of the Appellants' credibility and failed to assess the documentary evidence and properly apply the Chairperson's Guidelines on Proceedings Involving Sexual Orientation and Gender Identity and Expression (SOGIE Guidelines).
- [7] The Appellants have not submitted new evidence and do not request an oral hearing.
- [8] The determinative issue in this appeal is whether the RPD erred in assessing the Appellants' credibility.

ANALYSIS

- [9] As this appeal involves allegations of domestic and gender-based violence, I have considered the Chairperson's Gender Guidelines.² As this appeal also involves allegations of persecution on the basis of sexual orientation, I considered this appeal in light of the SOGIE Guidelines.³ The SOGIE Guidelines establish guiding principles for decision-makers in adjudicating cases involving SOGIE by addressing the particular challenges individuals with diverse SOGIE may face in presenting their cases before the Immigration and Refugee Board.

The Principal Appellant's claim

The RAD finds the Principal Appellant lacking in credibility

The omission of the suicide attempt

- [10] The RPD drew a negative credibility inference as a result of the omission of the suicide attempt from the Principal Appellant's BOC narrative and testimony.
- [11] The Appellants submit that the RPD made an unreasonable negative credibility finding. The Appellants submit that that Principal Appellant did not include details regarding how she was treated while confined.
- [12] The Appellants submit that this is an omission of minor or elaborative details, that it is not a material omission that relates directly to a crucial element of the Appellants' refugee claim and that it is not sufficiently serious to impugn the Principal Appellant's credibility, especially in view of the consistency in her narrative, testimony and the documentary evidence.

- [13] The Appellants submit that the Principal Appellant provided a reasonable explanation for the omission. The Appellants submit that, given her traumatic experiences, it is understandable that the Principal Appellant only volunteered this information to the psychologist. The Appellants submit that the housekeeper's affidavit failing to refer to the suicide attempt does not mean that it did not happen.
- [14] While I accept some of the Appellants' arguments, I find that the RPD did not err in drawing an adverse inference as a result of inconsistencies in the Principal Appellant's evidence regarding the suicide attempt. While I accept that the failure to refer to the suicide attempt in her BOC narrative constitutes an omission, the omission results in an inconsistency in the Principal Appellant's evidence. The psychologist refers to the suicide attempt, however the Principal Appellant fails to refer to it in her BOC narrative and testimony.
- [15] While I also agree that the omission of minor or elaborative details does not permit the drawing of an adverse inference, I find that the suicide attempt is significant, rather than minor or elaborative. I agree with the finding of the RPD that this omission is "material, sufficiently serious, and related to the central part of the claim: that the Principal Appellant was subject to sustained physical, sexual and psychological abuse by her brother-in-law as a result of her refusal to become his third wife."⁴
- [16] I find that the Principal Appellant failed to provide a reasonable explanation for not referring to the suicide attempt in her BOC narrative. At the hearing, the RPD Member noted that the psychological report refers to the suicide attempt and asked the Principal Appellant why she did not refer to this in her BOC narrative, to which she responded that there had been so many things that had happened that she could not include and that the trauma was too much.
- [17] I agree with the RPD Member's rejection of the Principal Appellant's explanation for not including the suicide attempt in her BOC narrative as inconsistent and unreasonable as she had also testified over the course of two hearings without mentioning it. The RPD Member noted that the Principal Appellant had repeatedly and consistently described the incident when her brother-in-law threw a plate of food in her face throughout her testimony, BOC narrative and during the psychological assessment. The RPD Member found it not unreasonable to expect that she would also disclose something as grave as a suicide attempt.
- [18] While I accept that the BOC narrative does not include all of the details of what occurred during the Principal Appellant's confinement, I find that this fails to explain why the suicide attempt was not included. In addition, the hearing provides an opportunity for a claimant to provide further details and, as noted above, the Principal Appellant also failed to mention the suicide attempt in her testimony.
- [19] While I recognize that a suicide attempt is a traumatic experience which may be difficult to discuss, the BOC narrative is a claimant's opportunity to describe the harm that she experienced and the suicide attempt demonstrates the impact that this harm had on the Principal Appellant. I reject the argument that the trauma of such an event reasonably

explains not including this event in the BOC narrative. Rather, as discussed above, I agree with the RPD Member that due to the gravity of such an event, it should have been included in the narrative.

- [20] However, I find that the RPD Member erred in drawing a negative inference from the omission of the Principal Appellant's suicide attempt from the housekeeper's affidavit as the jurisprudence does not permit the drawing of negative credibility findings from omissions in documents other than the BOC form.⁵ Despite this finding, I find that the RPD Member was correct in drawing an adverse inference with respect to the Principal Appellant's credibility as a result of the omission of the suicide attempt from her BOC narrative and testimony.

Negative inference regarding subjective fear for delay in claiming

- [21] The RPD found that the Principal Appellant's repeated reavailment and delay in seeking refugee protection seriously undermined her credibility. The RPD rejected the Principal Appellant's explanation that she was not informed about the refugee process and believed that it only applied to people from war-torn countries on the basis that it was inconsistent with her profile as a sophisticated, well-travelled person who had extensive knowledge, through direct experience, of immigration and other travel and residency permit requirements.
- [22] The Appellants submit that the RPD erred in finding that the Principal Appellant's testimony that she was unfamiliar with the refugee process was inconsistent with her profile as a sophisticated, well-travelled person. The Appellants submit that the Principal Appellant's experience with temporary resident visas and student visas and the fact that she is well-travelled is not relevant to whether or not she had specific knowledge of the refugee protection process. The Appellants submit that the Principal Appellant's testimony that she believed that only individuals from war-torn countries could apply for refugee protection was not an unreasonable assumption for someone who had no previous experience with refugee claims. The Appellants submit that Canadian jurisprudence establishes that a claimant's lack of knowledge of his or her eligibility for refugee status can be a basis to refute that a lengthy delay reflects an absence of subjective fear.
- [23] The Appellants rely on the presumption that sworn testimony is to be believed in the absence of evidence to the contrary and that it was unreasonable for the RPD to reject the Principal Appellant's sworn testimony on this point based on her prior travel experience. The Appellants submit that, given the Principal Appellant's clear and consistent allegations, as described in the BOC narrative and at the hearing, as well as the supporting documentation, there is no evidence to rebut the presumption that her sworn testimony is truthful in this regard.
- [24] I reject the Appellants' arguments and find that the RPD did not err for the following reasons.

- [25] I agree with the RPD Member's finding that the Principal Appellant's belief that the refugee system only applies to people from war-torn countries is inconsistent with her profile. As noted by the RPD Member, the Principal Appellant made numerous applications for visas for and travelled to South Korea, the United States, the United Kingdom and Canada, in addition to applying for permanent residence in Canada. I agree that the Principal Appellant had extensive knowledge of immigration and other travel and residency permit requirements.
- [26] Further, I note that the Principal Appellant is not unsophisticated. She has 14 years of education⁶ and was employed as XXXX XXXX and XXXX XXXX XXXX XXXX XXXX XXXX from 2013 to 2016.⁷ Further, in addition to all of her travel, the Principal Appellant resided in South Korea for a period of fifteen months.⁸
- [27] Considering the above-noted circumstances, I find it not plausible that the Principal Appellant was unaware that she could make a refugee claim in Canada. Even if I were to accept that she was unaware, I find her failure to inquire into such programs indicates a lack of subjective fear. While I accept the Appellants' argument that a lack of knowledge of the refugee process can refute a finding of a lack of subjective fear, I find that it does not do so in this case.

Negative inference regarding subjective fear for reavailing

- [28] The RPD found that the Principal Appellant returned to Nigeria without seeking protection abroad on numerous occasions.
- [29] The Appellants submit that the Principal Appellant was not subjected to persecution until XXXX 2014, and that any return to Nigeria prior to this time does not constitute reavailing. The Appellants submit that the Principal Appellant only reavailed to Nigeria in XXXX 2017, however that she was unaware that she could make a refugee claim at that time and that it was very clear to her that the Younger Associate Appellant would be in danger if she did not return from abroad. The Appellants submit that case law establishes that the RPD must carefully assess the reasons an individual may engage in behaviour that could be viewed as incompatible with having a fear. The Appellants submit that bonds of family loyalty have been found to be justifiable reasons for delay in making a claim. The Appellants submit that the Principal Appellant's actions certainly do not represent "repeated reavailing" that can be characterized as "egregious."
- [30] While I accept the Appellants' argument that the RPD erred in finding that the Principal Appellant repeatedly reavailed, I find that the RPD was correct in drawing an adverse credibility inference.
- [31] I accept the Appellants' submission that the Principal Appellant returning to Nigeria prior to XXXX 2014 does not constitute reavailing. However, I find that she reavailed in XXXX 2017. According to the Principal Appellant's evidence, in XXXX 2014, her brother-in-law summoned her to marry him and her refusal to comply resulted in physical and sexual violence.⁹ The Principal Appellant states that she travelled to Canada on XXXX XXXX, 2016

to get away from all her "stresses and torture."¹⁰ She returned to Nigeria on XXXX XXXX, 2017.

- [32] I reject the Appellants' submission that it was clear to the Principal Appellant that the Younger Associate Appellant would be in danger if she did not return to Nigeria in XXXX 2017. The Principal Appellant travelled to Canada in XXXX 2016, leaving the Younger Associate Appellant at boarding school in Nigeria. The evidence does not indicate that there was a risk to the Younger Associate Appellant at the time that the Principal Appellant travelled to Canada in XXXX 2016 or when she returned in XXXX 2017. The Principal Appellant testified that her brother-in-law would not trouble the Appellants, provided she did not return to Nigeria.¹¹ The threat of vigilantes harming the Younger Associate Appellant arose after she returned from this trip. Therefore, while I accept that bonds of family loyalty can be justifiable reasons for delay in making a claim, I find that they do not justify the Principal Appellant's reavilment in XXXX 2017.
- [33] The Appellants refer to case law that they state applies to the Principal Appellant's return to Nigeria in XXXX 2017 and the timing of her fleeing to Canada with the Younger Associate Appellant in XXXX 2017. The cases refer to persecution based on several incidents which occur over time, the cumulative effect of which may amount to persecution. However, I find that the cases referred to by the Appellants do not assist in explaining the Principal Appellant's return to Nigeria in XXXX 2017. Although the alleged risk increased when she was confined in XXXX 2017, as discussed above, it is clear that the Principal Appellant was in fear of her brother-in-law when she travelled to Canada in XXXX 2016 and returned to Nigeria in XXXX 2017.
- [34] I find that the Principal Appellant's reavilment in XXXX 2017 justifies drawing an adverse credibility inference.

Negative inference regarding subjective fear for delay in leaving Nigeria

- [35] As noted by the RPD Member, the Principal Appellant was in possession of up to three valid visas during the time that she was allegedly experiencing abuse by her brother-in-law between 2014 and 2017. However, she remained in Nigeria following the XXXX 2014 incident and did not leave until XXXX 2016. The RPD Member asked the Principal Appellant why she did not go to Canada earlier seeing that she had a visa, to which she responded that she would have gone if she knew she could make a refugee claim.¹² I reject this explanation as, regardless of the Principal Appellant's ability to make a refugee claim, going to Canada would have distanced her from the agent of persecution. I agree with the RPD Member that the Principal Appellant's actions in not leaving Nigeria sooner, despite having visas for multiple countries, demonstrates her lack of subjective fear.

Timing of persecution by brother-in-law

[36] The RPD found that the Principal Appellant did not answer the question regarding why the pressure to marry her brother-in-law only came up three years after her husband died.

[37] The Appellants submit that the RPD erred in making a negative credibility inference on the basis that the Principal Appellant did not explain why her brother-in-law did not persecute her until 2014. The Appellants submit that the Principal Appellant did in fact answer the question to the best of her ability and that providing a more specific answer would have been speculation.

[38] I find that the RPD erred, but for different reasons than those argued by the Appellants.

[39] I have reviewed the record and audio recording of the hearing as part of my independent assessment. At the hearing, the Principal Appellant testified that her husband died on XXXX XXXX, 2011 and that her problems with her brother-in-law began in XXXX 2014. The next two questions are as follows:

RPD Member: So you were able to live in safety and peace for three years as a widow?

Principal Appellant: It wasn't that easy because of culture. It wasn't easy.

RPD Member: Explain to me what is your culture. What does it require of widows to do?

Principal Appellant: Our culture is if someone's husband passed, it will be required that the older or younger brother of the deceased should get married to the person. So when my husband passed, I knew the culture would come up, but I didn't know when specifically.¹³

[40] Contrary to its finding, the RPD Member did not ask the Principal Appellant why the pressure to marry her brother-in-law arose three years after her husband died. The Principal Appellant cannot be faulted for not answering a question that was not asked. Despite this error, I find that the RPD Member was correct in finding the Principal Appellant not credible on a balance of probabilities.

[41] I will now turn to the Elder Associate Appellant's claim, after which I will assess both claims in light of the corroborating documents.

The Elder Associate Appellant's claim

The RAD finds the Elder Associate Appellant lacking in credibility

Negative inference regarding subjective fear for delay in claiming

[42] The RPD drew an adverse inference as to the Elder Associate Appellant's overall credibility based on his five-year delay in making a claim for refugee protection.

[43] The Appellants submit that the RPD Member erred in calculating the length of the delay. The Appellants submit that the relevant time period to consider is between 2015 and June 2017, as the Elder Associate Appellant only realized in 2015 that he would be in grave danger if he returned to Nigeria and that he filed his refugee claim in June 2017. The Appellants submit that the Elder Associate Appellant provided plausible explanations as to why he did not file his claim until 2017 and that the RPD erred in drawing a negative inference.

[44] I reject the Appellants' arguments and find that the RPD did not err for the following reasons.

[45] I agree with the following statement of the RPD Member:

Delay in claiming in Canada or failure to claim in a third country where the claimant has stayed is not a decisive factor. In certain cases, however, where the delay or failure to claim is egregious, and is inadequately explained, it may be determinative of the claim. In the case at hand, the claimant travelled from Nigeria and entered the United States on XXXX XXXX, 2011, before commencing studies in Canada, allegedly sent here by his father to live in safety as a gay or bisexual man. The claimant only made a claim for refugee protection in June 2017, or more than five years after his initial entry into Canada.

The panel finds that the five-year delay in claiming on the part of the claimant is, in this particular case, egregious and draws an adverse inference as to the claimant's credibility as a witness overall.¹⁴

[46] I concur with the RPD finding that the Elder Associate Appellant delayed five years in making a refugee claim. I find the Elder Associate Appellant's explanation that he was unaware that he was at risk prior to 2015 not credible in the circumstances. The Elder Associate Appellant testified that he did not live in Nigeria long, so did not know the societal views of bisexuals at that time and that he only became afraid in the summer of 2015 when the Principal Appellant told him that he was not safe in Nigeria.¹⁵

[47] I find the Elder Associate Appellant's testimony inconsistent with the first two paragraphs of his BOC narrative. It reads:

I came to Canada on a study visa to escape harassment and persecution I faced in Nigeria for being bisexual.

There have been instances of assaults and bullying due to my sexual orientation but my father had also been my protection and at point where I was sexually assaulted with a knife led to my father's resolution to send me to Canada to complete my grade 12 education as it become evident that my life is endangered due to my sexual orientation.¹⁶

[48] At the hearing, Appellants' counsel noted that the narrative referred to the Elder Associate Appellant's father sending him to school in Canada partly because he knew or thought he was bisexual and asked him how his father would know. The Elder Associate Appellant responded that when he wrote the BOC narrative, he was saying what he thought his father

would be thinking and that his father knew he was getting bullied, but that they had not talked about him being bisexual.¹⁷ The Elder Associate Appellant testified that he did not tell his father that he was bisexual, but that his father may have known.¹⁸

- [49] However, this is not how the Elder Associate Appellant's BOC narrative reads. Rather, it reads as though both the Elder Associate Appellant and his father knew he was bisexual at the time that he left Nigeria in 2011 and that his bisexuality and life being in danger were the reasons he left. I find the Elder Associate Appellant's evidence on this point inconsistent and find his explanation that he was unaware that he was at risk in Nigeria until 2015 not credible.
- [50] At the hearing, the Elder Associate Appellant indicated that one of the reasons he did not seek protection in 2012 when he realized his sexuality and in 2015 when he realized he would be in danger if he returned to Nigeria was because he was unaware that he was eligible to seek protection.¹⁹
- [51] I find this explanation unreasonable in the circumstances. According to his testimony, the Elder Associate Appellant was 19 years old when he realized his sexuality. The Elder Associate Appellant is not unsophisticated and is well-travelled, having lived internationally in both South Korea and in Canada. He renewed his student visa multiple times while in Canada.
- [52] Considering the above-noted circumstances, I find it not plausible that the Elder Associate Appellant would be unaware that he could seek protection in Canada. Even if I were to accept that he was unaware, I find his failure to make inquiries into whether he could seek protection in Canada inconsistent with the actions of an individual with a subjective fear. This is particularly so in 2015, once he feared for his life, was out of status and could be removed from Canada.
- [53] As a result, while I accept the Appellants' argument that a lack of knowledge of the refugee process can refute a finding of a lack of subjective fear, I do not find that it does so in this case.
- [54] As a result of the foregoing, I find that the RPD was correct in assessing the Elder Associate Appellant's delay in claiming as a five-year delay and that, on a balance of probabilities, he did not have a subjective fear of persecution.

The RPD did not err in its assessment of the credibility of the Elder Associate Appellant by failing to properly apply the SOGIE Guidelines

- [55] The RPD found the Elder Associate Appellant vague and evasive in his testimony.

[56] The Appellants submit that the RPD failed to properly apply the SOGIE Guidelines and erred in its assessment of the credibility of the Elder Associate Appellant. The Appellants submit that the Elder Associate Appellant delivered his testimony under oath without hesitation and in a confident, straightforward manner. The Appellants submit that, in characterizing the Elder Associate Appellant's testimony as vague and evasive, the RPD failed to properly consider the following sections of the SOGIE Guidelines:

Sexual orientation: A person's physical, romantic and/or emotional attraction to, and/or intimate relations with, individuals of a different gender, the same gender, no gender, or more than one gender. A person's understanding of their sexual orientation may change.

An individual's self-awareness and self-acceptance of their SOGIE may present as a gradual or non-linear process. There is no standard set of criteria that can be relied upon to establish an individual's identification as an individual with diverse SOGIE.

An individual's testimony may be the only evidence of their SOGIE, where, in a given case, corroborative or additional evidence is not reasonably available.

[57] The Appellants further submit that the RPD Member failed to adequately consider the following inappropriate assumptions:

An individual knew they were an individual with diverse SOGIE at a young age or became sexually active at a young age.

Individuals with diverse SOGIE would actively participate in LGBTIQ+ culture in Canada.

[58] I reject the Appellants' arguments and find that the RPD did not err for the following reasons.

[59] The Appellants do not specify how the RPD Member failed to apply these particular sections of the SOGIE Guidelines. Rather, the Appellants list sections and state that, in finding the Elder Associate Appellant's testimony vague and his claim to be bisexual not established, the RPD failed to adequately consider the SOGIE Guidelines. Appellants are required to provide full and detailed submissions regarding the errors that are the grounds of the appeal and where the errors are located.²⁰ I find that the Appellants have failed to do so.

[60] I have reviewed the noted sections of the SOGIE Guidelines as part of my independent assessment and find that the RPD Member did not fail to apply them. The Appellants specifically refer to the sections that state a person's understanding of their sexual orientation may change and that an individual's self-acceptance of their SOGIE may present as a gradual or non-linear process. I do not see, nor do the Appellants explain, how the RPD Member failed to apply this section of the Guidelines or how this failure explains the vagueness in the Elder Associate Appellant's testimony.

[61] As noted by the RPD Member, the Elder Associate Appellant testified that, at the time of the hearing, he considered himself to be a bisexual man, having accepted this realization a couple of years before the hearing. The RPD Member asked the Elder Associate Appellant

about the meaning of the word bisexual and the significance of this realization, to which he responded that it meant being in a relationship with someone else, having always known himself to be different and having both male and female friends at school. While I do not find the Elder Associate Appellant's response particularly evasive, I agree with the RPD that his testimony was vague.

- [62] Later in the hearing, counsel asked the Elder Associate Appellant how he eventually came to acknowledge and accept his sexuality, to which he responded that, in 2012, he had a lot of growing up to do, getting to know himself and figuring out what he is.
- [63] I agree with the RPD finding that the Elder Associate Appellant was vague in his testimony regarding these events. One would expect that the Elder Associate Appellant would be able to provide more details regarding his realization that he was bisexual and how he came to accept this.
- [64] Counsel asked the Elder Associate Appellant about relationships other than the one in high school and he responded that there was nothing tangible, that he was still on the edge about relationships and was not too sure how to go about it. Once again, I agree with the RPD that the Elder Associate Appellant's testimony continued to be vague.
- [65] The RPD acknowledges in its reasons that corroborating evidence from family and friends may not be available in cases involving SOGIE and that a person's testimony may be the only evidence. However, the RPD notes that the Elder Associate Appellant has lived in Canada since 2011 and has not alleged keeping his sexual identity secret.
- [66] I agree that corroborative evidence should have been reasonably available in the Elder Associate Appellant's circumstances for the same reasons as the RPD. In addition, the Elder Associate Appellant testified that he is still in touch with XXXX, who lives in Canada and with whom he had a relationship with in high school.²¹ In his testimony, the Elder Associate Appellant indicated that he had shared his sexuality with some of his close friends.²² I also note that the Elder Associate Appellant's sister is in Canada attending university. Taking these circumstances into account, in addition to the fact that the Elder Associate Appellant has lived in Canada since 2011 and has not alleged keeping his sexual identity secret, I find that corroborative evidence should reasonably have been available.
- [67] I do not see, nor do the Appellants explain, how the RPD Member applied stereotypes or made inappropriate assumptions. The Appellants refer to two sections of the SOGIE Guidelines that caution avoiding stereotypes or inappropriate assumptions, namely that individuals would know at a young age that they were an individual with diverse SOGIE or became sexually active at a young age or that individuals with diverse SOGIE would actively participate in LGBTIQ+ culture in Canada. The basis upon which they argue that the RPD Member assumed that the Elder Associate Appellant knew he was an individual with diverse SOGIE at a young age or became sexually active at a young age is unclear from the Appellants' submissions. Further, the RPD reasons do not demonstrate that the RPD Member applied these stereotypes or made inappropriate assumptions.

- [68] The RPD Member refers to there being no evidence of the Elder Associate Appellant's LGBTIQ activities in Canada other than an email from The 519. However, the reasons do not indicate that the RPD Member expected that the Elder Associate Appellant would participate in such activities in Canada.

The documentary evidence does not overcome the credibility concerns

- [69] The Appellants submit that the RPD failed to consider the documentary evidence which they state is detailed and consistent with the Appellants' evidence. The Appellants submit that the RPD only mentioned the psychological report referring to the Principal Appellant's suicide attempt and the affidavit of the housekeeper not referring to it. The Appellants also submit that the RPD failed to consider the other affidavit and letters.
- [70] I find that the RPD did not err in not specifically referring to these documents in its reasons. The RPD does not need to refer to every piece of evidence in its reasons. Rather, the RPD is presumed to have taken all of the evidence into consideration whether or not it indicates having done so in its reasons, unless the contrary is shown.²³ The mere fact that the tribunal fails to refer to all of the evidence when rendering its decision does not necessarily signify that it ignored evidence, if a review of the reasons suggests that the tribunal did consider the totality of the evidence.²⁴ In her reasons, the RPD Member states, while not every piece of evidence will be referred to, she carefully considered the entirety of the evidence in reaching her decision.²⁵
- [71] I have reviewed the documentary evidence as part of my independent assessment. I find that the documents fail to overcome the credibility concerns in the Appellants' evidence.

The affidavit of the Principal Appellant's friend²⁶

- [72] A large portion of the friend's affidavit recounts information that was not directly observed by the author but rather appears to be information relayed by the Principal Appellant. I also note an error in the affidavit regarding the year of death of the Principal Appellant's husband. I assign this portion of the letter little weight.
- [73] The portion of the affidavit that the author appears to have direct knowledge of is assisting in arranging the Appellants' flights and advising them to flee to Canada. As this portion of the letter is not probative, I assign it little weight.

The housekeeper's affidavit²⁷

- [74] The majority of the information contained in the housekeeper's affidavit appears to be directly observed by the author. The affidavit refers to the author helping the Principal Appellant escape from confinement, the reasons for her confinement and her treatment while confined. The affidavit refers to the brother-in-law's plans to execute "Mr. XXXX XXXX XXXX," which is the name of the Principal Appellant, and is inconsistent with the Appellants' evidence that the brother-in-law was planning to execute the Younger Associate Appellant

whose name is XXXX XXXX XXXX. As a result of this credibility concern, I assign this affidavit no weight.

Mrs. XXXX Letter²⁸

[75] This handwritten letter refers to the difficulty that the Appellants must have had in leaving Nigeria to be safe. I find this letter not probative. Also, I note that this letter is unsworn and that no identity document is attached to confirm its author. For these reasons, I assign no weight to this letter.

Mr. XXXXs Letter²⁹

[76] This handwritten letter refers to the brother-in-law looking for the Principal Appellant and that he threatened that the worst is yet to happen. The letter has some probative value in that it refers to the brother-in-law's continued interest in the Appellants. However, this is inconsistent with the Principal Appellant's testimony that the brother-in-law was not interested in the Appellants if they are outside Nigeria. I also note that this letter is unsworn and that no identity document is attached to confirm its author. For these reasons, I assign no weight to this letter.

Principal Appellant's letter to the Elder Associate Appellant³⁰

[77] This handwritten letter from the Principal Appellant to the Elder Associate Appellant is dated XXXX XXXX, 2015 and refers to the Principal Appellant refusing the brother-in-law's proposal, the brother-in-law telling their family that the Elder Associate Appellant is gay and that the Principal Appellant believes that he would not be safe in Nigeria. I assign some weight to the letter.

Psychologist's report³¹

[78] The Appellants submitted a report from Psychologist XXXX XXXX XXXX, dated XXXX XXXX, 2017. The psychologist diagnoses the Principal Appellant as having chronic Post-Traumatic Stress Disorder and Major Depressive Disorder.

[79] The majority of the report refers to information that the Principal Appellant relayed to the psychologist regarding her fear of return to Nigeria, similar to that contained in her BOC narrative and testimony. As discussed above, the underlying facts of the Principal Appellant's claim were found not to be credible. A report based on the same facts that were found not credible deserves little evidentiary weight and fails to overcome the credibility concerns with the Principal Appellant's evidence. Further, as discussed above, the psychologist's report includes reference to a suicide attempt by the Principal Appellant that is not referred to in her BOC narrative or testimony, for which she failed to provide a reasonable explanation. I accept the psychologist's diagnosis, however the diagnosis does not establish the cause of the Principal Appellant's condition. I assign the psychologist's report no weight in establishing the credibility of the Appellants' claim.

[80] As a result of the foregoing, I find that the documentary evidence fails to overcome the credibility concerns in the Appellants' evidence.

CONCLUSION

[81] Sworn testimony is presumed to be true unless there is reason to doubt it.³²

[82] With respect to the Principal Appellant's claim, I find that the presumption of truth has been rebutted by a material omission in the BOC narrative, delay in claiming, reavailment and delay in leaving Nigeria. I find the Principal Appellant's delay and reavailment for which she failed to provide reasonable explanations, demonstrate that she lacked subjective fear. I find that these credibility concerns rebut the presumption of truthfulness and undermine the Principal Appellant's credibility with respect to the allegations that form the basis of her claim. As a result, I find that the Principal Appellant has not established on a balance of probabilities the allegations that form the basis of her claim.

[83] With respect to the Elder Associate Appellant's claim, I find that the presumption of truth has been rebutted by his vague testimony and his five-year delay in making a claim for refugee protection, for which he failed to provide a reasonable explanation. I find the Elder Associate Appellant's lengthy delay in claiming demonstrates that he lacked subjective fear. I find that these credibility concerns rebut the presumption of truthfulness and undermine the Elder Associate Appellant's credibility both with respect to his sexuality and the allegations that form the basis of his claim. As a result, I find that the Elder Associate Appellant has not established on a balance of probabilities his sexual orientation and the allegations that form the basis of his claim.

[84] Therefore, the RPD's determination that the Appellants are not Convention refugees or persons in need of protection is correct. The appeal is dismissed.

DETERMINATION

[85] 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 paragraph 111(1) (a) of the IRPA.

(signed)

"Linda Krajcovic"

Linda Krajcovic

February 07, 2020

Date

1 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93 (CanLII), [2016] 4 FCR 157, paras. 70 and 103.

2 Chairperson's 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 13, 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.

3 Chairperson's Guideline 9: Proceedings Before the Immigration and Refugee Board of Canada Involving Sexual Orientation and Gender Identity and Expression. Guidelines issued by the Chairperson pursuant to paragraph 159(1)(h) of the Immigration and Refugee Protection Act.

4 Exhibit RPD-1, RPD Record, RPD Reasons, at p. 9, para. 22.

5 Awuh v. Canada (Citizenship and Immigration), 2019 FC 1619 at para. 7; Plaisimond v. Canada (Citizenship and Immigration), 2010 FC 998 at para. 82; Basbaydar v. Canada (Citizenship and Immigration), 2019 FC 387 at para. 71.

6 Exhibit RPD-1, RPD Record, Exhibit 1 at p. 82.

7 Exhibit RPD-1, RPD Record, Exhibit 1 at p. 82.

8 Exhibit RPD-1, RPD Record, Exhibit 1 at p. 83.

9 Exhibit RPD-1, RPD Record, Exhibit 2 at p. 2.

10 Exhibit RPD-1, RPD Record, Exhibit 2 at p. 28.

11 RPD Hearing Recording, January 18, 2019 at 00:10:30.

12 RPD Hearing Recording, January 18, 2019 at 00:19:05.

13 RPD Hearing Recording, November 15, 2018 at 00:17:35.

14 Exhibit RPD-1, RPD Record, RPD Reasons, at pp. 14-15, paras. 41-42.

15 RPD Hearing Recording, January 18, 2019 at 1:02:49.

16 Exhibit RPD-1, RPD Record, Exhibit 4 at p. 52.

17 RPD Hearing Recording, January 18, 2019 at 00:57:10.

18 RPD Hearing Recording, January 18, 2019 at 00:58:45.

19 RPD Hearing Recording, January 18, 2019 at 1:06:38.

20 Rule 3(3)(g)(i)-(ii), Refugee Appeal Division Rules, SOR/2012-257.

21 RPD Hearing Recording, January 18, 2019 at 00:44:40.

22 RPD Hearing Recording, January 18, 2019 at 1:00:00.

23 Florea, Constantin v. M.E.I. (F.C.A., no. A-1307-91), Hugessen, Desjardins, Décary, June 11, 1993; Kisungu, Guyguy Tshika v. M.C.I. (F.C.T.D., no. IMM-3807-00), Nadon, May 8, 2001, 2001 FCT 446.

24 Hassan, Jamila Mahdi v. M.E.I. (F.C.A., no. A-831-90), Isaac, Heald, Mahoney, October 22, 1992, Hassan v. Canada (Minister of Employment and Immigration) (1992), 147 N.R. 317 (F.C.A.).

25 Exhibit RPD-1, RPD Record, RPD Reasons, at p. 8, para. 17.

26 Exhibit RPD-1, RPD Record, Exhibit 8 at pp. 351-352.

27 Exhibit RPD-1, RPD Record, Exhibit 8 at p. 353.

28 Exhibit RPD-1, RPD Record, Exhibit 13 at p. 430.

29 Exhibit RPD-1, RPD Record, Exhibit 13 at p. 431.

30 Exhibit RPD-1, RPD Record, Exhibit 13 at p. 429.

31 Exhibit RPD-1, RPD Record, Exhibit 8 at pp. 354-357.

32 Maldonado v. Canada (Minister of Citizenship and Immigration), [1980] 2 F.C. 302 (C.A.).

RAD File / Dossier de la SAR : TB9-08028

TB9-08029 / TB9-08030

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/credibility-refugee-appeal-division-2020--6a40c3b24cf2c72690fb1d4e>

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

Prepared on 27 October 2026 · Esheria