

CANADA / JUDGMENT

MB9-08222

COURT

Refugee Appeal Division

DECIDED

28 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 : MB9-08222

MB9-08223 / MB9-08224

Private Proceeding / Huis clos

Reasons and decision ? Motifs et décision

Persons who are the subject of the appeal

XXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX

Personnes en cause

Appeal considered / heard at

Toronto

Appel instruit / entendu à

Date of decision

January 28, 2020

Date de la décision

Panel

Cheryl Braden

Tribunal

Counsel for the persons who are the subject of the appeal

Dov Maierovitz

Barrister and Solicitor

Conseil des personnes en cause

Designated representative

XXXX XXXX XXXX

ReprésentantI désigné€

Counsel for the Minister

N/A

Conseil du ministre

REASONS FOR DECISION

OVERVIEW

- [1] XXXX XXXX XXXX (Principal Appellant), XXXX XXXX XXXX and XXXX XXXX XXXX (Associate Appellants), citizens of Nigeria, appeal a decision of the Refugee Protection Division (RPD), dated March 19, 2019, rejecting their claims for refugee protection.
- [2] The Appellants are originally from Lagos state, in Nigeria. They allege that they learned in February 2016 that the Principal Appellant's husband (the husband), who is also the father of the Associate Appellants, is expected to join a secret society in Nigeria because his own father is a member. It is alleged that the secret society is powerful and that it is not possible to decline to join or to seek police protection from them, as its members are in powerful positions across Nigerian society.
- [3] It is further alleged that a condition of joining the society is that the husband must agree to sacrifice his eldest son (the elder Associate Appellant) to be killed, and that the husband's elder brother was sacrificed and killed for the same reason in 1969.
- [4] The Appellants allege that in order to avoid the secret society and the required sacrifice, they fled with the husband and relocated to Ibadan, Nigeria in April 2016. While they kept their location a secret, they remained in touch with various family members by telephone. In September 2016, the husband's father called and warned him that the society knew he had betrayed them and was looking for them, and had promised to wipe the family off the earth.
- [5] As a result, the Appellants and the husband decided to leave Nigeria. They initially made applications for visas to travel to the United States of America (USA) in September 2016, which were rejected. They made subsequent applications in November 2016 that were approved, and they received visas to travel to the USA on November 14, 2016.
- [6] The Appellants remained in Ibadan after the visas were issued. They allege that on December 1, 2016, the husband's father was arrested on the basis of false charges instigated by the secret society. They assisted him to obtain legal assistance to fight these charges, which they felt were an attempt to lure the husband out of hiding. The Appellants continued to remain in Ibadan.

- [7] On July 22, 2017, the Principal Appellant was involved in a car accident, which she alleges was the result of being chased and run off the road by an unknown man. It is alleged that the husband's father visited the husband in Ibadan shortly thereafter and told him that the secret society knew where the family was living and had orchestrated the accident.
- [8] The Appellants, along with the husband, left Nigeria after the Principal Appellant was released from the hospital and travelled to the USA on XXXX XXXX, 2017. They later made their way to Canada on XXXX XXXX XXXX 2017 and made refugee claims.
- [9] The husband's refugee claim was suspended, while the Appellants' claims continued and were heard by the RPD on January 30, 2019. The RPD rejected the Appellants' claims on March 19, 2019 on the basis of credibility.

DETERMINATION

- [10] The appeal is dismissed. Following my independent analysis of the record, I find that the RPD correctly concluded that the Appellants' allegations are not credible, on a balance of probabilities.

ROLE OF THE RAD

- [11] The jurisprudence of the Federal Court of Appeal in *Huruglica*¹ establishes that the Refugee Appeal Division (RAD) is empowered to conduct a hybrid appeal of RPD decisions. This means that the RAD must conduct its own independent analysis of the RPD's decision and determine whether or not the RPD erred. The standard of review of the RPD's findings is correctness, except in limited circumstances in which it is demonstrated that the RPD enjoyed a meaningful advantage in assessing oral evidence.
- [12] Having reviewed evidence in the RPD record and listened to the audio recording of the hearing, I find that the RPD did not have a meaningful advantage over the RAD in assessing the evidence before it. I have therefore applied a correctness standard in my review.

ANALYSIS

- [13] The RPD found that the husband, who testified as the primary witness at the Appellants' hearing, was not a credible witness due to inconsistencies and omissions, and that the Principal Appellant's own testimony lacked credibility due to a significant omission. It also found that the Appellants' failure to leave Nigeria at the first opportunity undermined the credibility of their allegations. For the reasons that follow, I uphold the findings of the RPD and find that it correctly concluded that the Appellants have not established that they are at risk of harm or danger in Nigeria, as described in sections 96 and 97 of the Immigration and Refugee Protection Act, on a balance of probabilities.

The RPD correctly concluded that the husband was not a credible witness

- [14] The Appellants relied on the narrative that had been provided by the husband, and also relied on his testimony as the primary witness who testified before the RPD. The RPD made three adverse credibility findings related to the husband.
- [15] First, the panel noted that the husband's testimony about when his father told him about two key events conflicted with the information in the Appellants' narrative: the alleged fact that the father's elder brother (the husband's uncle) had gotten him involved in a secret society, and the alleged fact that the husband's elder brother had been sacrificed and killed by the secret society in 1969, when the father joined.
- [16] While the narrative indicates that the husband's father told him about these things when they met at the father's house on February 14, 2016, the husband testified that his father told him during a second meeting at the husband's house, on March 13, 2016. When this discrepancy was pointed out by the RPD at the hearing, the husband testified that his father gave him "an overview" during the February meeting and went into more detail when they met again in March.
- [17] The RPD rejected this explanation, finding that the timing of when the husband first learned of these critical details is not something that he would reasonably forget.
- [18] On appeal, the Appellants argue that the RPD erred in making an adverse finding based on this inconsistency, which they submit is unreasonably microscopic. They argue that two meetings were only a month apart and it is reasonable that the husband could confuse what was said at which meeting, and that while the language used by the husband in testimony was vague, it can also be construed in such a way so as not to be inconsistent with the information in the narrative.
- [19] I reject this argument. I agree with the RPD that the revelation that the husband's father was forced into a secret society by his own brother, and had sacrificed his eldest son (the husband's brother) to that society would be a shocking and memorable event, and it is reasonable to expect him to remember and recount it consistently. The husband's testimony is clear that he learned of these events during the meeting in March, and that his reaction on that day was shock because he never expected his father to say those things². This is not consistent with his claim in the narrative that he was told about them a month earlier in February. I draw an adverse inference with respect to the husband's credibility on the basis of this material inconsistency.
- [20] Second, the RPD found that the omissions in the husband's testimony regarding the content of the phone call from his father in September 2016 were material and significant, and that these omissions further undermined the husband's credibility.

- [21] The narrative indicates that the husband's father called in September 2016 after the family had relocated to Ibadan to evade the secret society, and told him that "the society already knew that he had betrayed them and they promised to ruin him and wiped [sic] away my family from the surface of the earth and asked us to be more careful so the secret members do not locate us"³.
- [22] The husband's testimony was only that his father called and warned him that the secret society was "seriously looking" for them and they should be careful. When asked if his father had said anything else, he responded "just that I should be very, very careful". When the RPD pointed out that the narrative provided further details, and he responded that he had "just summarized it". He was asked again later in the hearing specifically about why he had not mentioned the threat made by the secret society, and he responded that his father had told him about the threat, but it skipped his mind at the hearing⁴.
- [23] The RPD rejected this explanation and found that the omission undermined the husband's credibility. On appeal, the Appellants submit that the testimony was not inconsistent with the narrative and is an accurate summary of the September 2016 conversation. They argue that the RPD has been overzealous in its analysis and erred in drawing an adverse credibility inference based on consistent testimony.
- [24] I do not accept the Appellants' argument. The narrative indicates that as a result of the call, they approached a travel agency to seek help to flee the country, as they feared that their lives were in danger. Given that this phone call allegedly triggered their decision to flee, I do not accept the explanation that the husband simply forgot about the death threat that was allegedly relayed to him during the call. I further note that he was not asked for a summary of the phone call, and was even questioned specifically by the panel as to whether anything else was said.
- [25] I find that the RPD did not err in drawing an adverse inference against the husband's credibility with respect to this important omission, and I also draw an adverse inference on that basis.
- [26] Finally, the RPD noted that there was a major contradiction in the husband's testimony as to when he last saw his father. He was asked when he had last seen his father, and testified that it was in March 2016, when his father shared the details of his involvement with the secret society with him. The RPD pointed out that there was an allegation in the narrative related to the husband's father visiting him in Ibadan in July 2017 shortly before the family fled to the USA, at which time the father allegedly gave him the deed to the family property in Apapa, Nigeria.
- [27] The husband acknowledged that the July 2017 visit did indeed take place as described in the narrative, and went on to describe it in detail. He testified that it was significant because his father told him the secret society knew where the family was hiding in Ibadan, and that the secret society had been responsible for the Principal Appellant's car accident. This conversation allegedly triggered the family's decision to flee from Nigeria a few days later⁵.

Yet the husband was unable to explain to the RPD why he omitted to mention this pivotal visit when asked about the last time he had seen his father.

- [28] The RPD found that it was reasonable to expect him to remember this event given its significance, and drew an adverse inference on the basis of this material omission. The Appellants have not disputed this finding on appeal. While the RPD characterized it as an omission, it is more properly described as a contradiction. I agree with the RPD that it is a significant and material issue with the husband's testimony, and I also draw an adverse credibility inference against the husband on this basis.
- [29] In addition to the foregoing omissions and inconsistencies identified in the husband's testimony, the RPD noted that his failure to leave Nigeria after the family received their visas for the USA was incompatible with their alleged fear and allegations of ongoing threats, and that this incompatible behaviour also undermined the husband's credibility. For the reasons outlined further below, I agree with the RPD's finding in this regard.
- [30] The RPD considered the omissions and inconsistencies, along with the delay in departure, discussed above and concluded that the husband was not credible, and as a result the panel did not believe the core allegations that his father was in a secret society, and that the husband was being forced to join and offer his own son as a sacrifice.
- [31] I find, for the reasons given above, that the RPD's credibility findings are correct and as a result, I agree that the husband is not credible and the core allegations with respect to the risk of harm from members of the secret society are not established, on a balance of probabilities.

The RPD correctly concluded that the Principal Appellant is not credible

- [32] The claims of the entire family were based on the husband's narrative. The Principal Appellant relied primarily on the husband's testimony to support her own claim and those of her children. She was present during his testimony and then was given an opportunity to address the RPD and add any details or further information she wished the panel to consider. She did not dispute or correct the testimony given by her husband.
- [33] The RPD asked her specifically about the car accident that she was involved in on July 20, 2017. In the narrative, the accident is described as follows:

A fatal accident occurred on Thursday 20th of July 2017 when my wife was coming back from market where she went for food shopping, she said she noticed one car with tinted glass chasing her car, she tried to drive faster so as to escape and that is all she could remember. I have to know about the incidence [sic] when I received a call at about 11am from a police officer that my wife has been rushed to the hospital due to fatal accident that occurred

- [34] At the hearing, the Principal Appellant described the accident in great detail⁶. She testified that she had observed a man following her from stall to stall though the open-air market in Ibadan. She saw the man up close and noticed that he had a scar on his face and neck. She

became concerned, so she went to her car and left the market. She then observed the man following her in his car. She stopped at a sugar cane stand at the side of the road. The man also stopped, and again was very close to her such that she saw the scar on his face. She returned to her car and the man followed her in his car, waving at her to stop. The next thing she knew, she woke up in the hospital.

- [35] When asked why she did not provide this level of detail in the narrative, she responded that she was not the one who wrote the story. She added that she told her husband about the man and he thought mentioning the chase was enough.
- [36] The RPD rejected this explanation, noting that the Principal Appellant had affirmed that the narrative was correct and complete at the outset of the hearing. Further, the Appellants were represented by counsel who had filed other minor amendments to the Basis of Claim documents in advance of the hearing.
- [37] The panel also pointed out that the police report submitted in evidence did not mention anything about the man following her through the market. The Principal Appellant testified that she told the police everything in the hospital, and that her husband was there when she told them. The RPD rejected this explanation, reasoning that it was unlikely that the police would fail to record everything she had said, particularly since there was information that could assist them in identifying the assailant.
- [38] The Appellants argue that the RPD erred in making a negative credibility finding on the basis that the details of the chase were omitted from the narrative. They submit that she has remained consistent in her core allegation that she got into a car accident after being pursued by an unknown man, and that the fact that she provided further details in the hearing is not a reasonable basis to reject her allegation outright.
- [39] I disagree. The brief statement included in the narrative specifically indicates that this was all that the Principal Appellant could remember about the accident, despite the fact that she recounted the additional facts of the pursuit through the market and the assailant's identifying features in detail, not only at the RPD hearing but also reportedly at the hospital in front of her husband, and then told him again while he was preparing the narrative for their refugee application. I find that the omission of these facts from the narrative is both material and significant, and I find that it undermines her credibility.
- [40] The Appellants further allege that the RPD erred in rejecting the police report. Following a review of the RPD decision, I find that the RPD did not reject the police report. Rather, it accepted it for what it said, which was that the Principal Appellant was involved in a car accident in Ibadan on July 20, 2017, and that she alleged that someone had been chasing her which caused the accident.
- [41] The report does not provide any further support to the version of events testified to by the Principal Appellant, and does not establish that the accident was linked to the alleged targeting of the Appellants by the secret society. I agree with the RPD's treatment of the

police report. While I accept that the police report is credible evidence and that the accident occurred as outlined in the police report, I do not find that the Principal Appellant has credibly established that it happened under the additional circumstances to which she testified.

- [42] In consideration of the material omission in her own testimony, and in consideration of the Principal Appellant's reliance on the testimony of her husband, which I have found to lack credibility, as well as her own failure to leave Nigeria at the earliest opportunity, I find that the Principal Appellant is not a credible witness and that she has failed to establish the allegations at the core of the claim, on a balance of probabilities.

The adverse finding regarding delay is correct

- [43] As mentioned above, the RPD made an adverse credibility finding on the basis of the Appellants' delay in leaving Nigeria, which the Appellants dispute on appeal.
- [44] The Appellants and the husband first sought visas to travel to the USA in September 2016 after the husband's father relayed a threat that the secret society was looking for them and had promised to wipe the family from the earth⁷. At this time, they were living in Ibadan where they had relocated a few months earlier in order to evade the secret society.
- [45] Their first visa application was rejected and they reapplied in November 2016. This application was approved and they received their visas to travel to the USA on November 14, 2016. However, they remained in Ibadan after receiving their visas.
- [46] It is alleged that a few weeks later on December 1, 2016, the husband's father was arrested on false charges that were initiated by his brother, a member of the secret society. The husband testified before the RPD that he believed these charges had been instigated by the secret society in order to lure him and his family out of hiding⁸.
- [47] When asked why they did not leave Nigeria with their visas when they received them in November, or in December when his father was charged, the husband testified that it was due to fear of the unknown in the USA, as the family had a comfortable life in Nigeria, his business was doing well and he had heard that the USA was not immigrant friendly.
- [48] The RPD found this explanation to be incompatible with the allegation of fear from the threats in September 2016 that spurred them to apply for the visas, and the charges purportedly laid against the father in December to draw the husband out of hiding. The panel concluded that the failure to leave Nigeria at the first opportunity in the face of ongoing fears and threats undermined the credibility of both the Appellants and the husband.

- [49] The Appellants argue that the RPD erred in failing to accept the reasonable explanation for failing to leave earlier. They submit that it was only the accident in July 2017 in which the Principal Appellant was harmed that gave rise to a perception of real and immediate danger that justified them leaving everything behind to leave the country. They further submit that there was no reason to believe that the threat relayed by the husband's father was anything more than an attempt to intimidate or an empty threat.
- [50] I cannot accept this argument. The Appellants and husband clearly felt that the threat was credible. The narrative is clear that the Appellants and the husband approached the travel agency shortly after the threat was relayed in September 2016, because "we needed to flee from the country as our lives are in danger"⁹. They were motivated enough to reapply in November after being rejected earlier, suggesting that the impetus to leave still existed in their minds in November. Then, only a few weeks after receiving the visas, the husband's father was arrested which was perceived as another attempt by the secret society to locate the husband and Appellants.
- [51] I agree with the RPD that the failure to act and leave the country at an earlier opportunity is incompatible with the allegations of fear at the hands of a dangerous and powerful secret society. As such, I find that the delay in leaving Nigeria after they received visas to the USA undermines the credibility of the allegations at the core of the claim.

There is insufficient documentary evidence to overcome the adverse credibility findings

- [52] The Appellants have also argued on appeal that the RPD erred by failing to consider the documentary evidence presented in support of their claim. They submit that the evidence corroborates the claim and demonstrates that the husband's father has been subjected to malicious prosecution, that the Principal Appellant has been injured in a vehicle accident after she was being pursued by an unknown man, and that the Appellants are being sought after by secret society members.
- [53] With respect to the alleged malicious prosecution, the evidence on the record¹⁰ simply establishes that charges were laid and dealt with through the courts, and ultimately resolved in the husband's father's favour. It does not address the motivation of the complainant, nor link the complainant or the charges to the secret society. Furthermore, even if it was accepted that the secret society orchestrated false charges against the husband's father, there is no evidence to link these charges to the secret society's alleged pursuit of the Appellants and the husband, beyond the narrative and the testimony of the husband which have been found to lack credibility.
- [54] I note that another document¹¹ was produced dated April 3, 2018, purporting to be an invitation to the husband's father to attend for questioning in connection to an investigation being undertaken by the anti-kidnapping section of the Nigerian Police in Lagos. No further information was provided either in testimony or in the body of documentary evidence filed

at the RPD. As such, I am unable to conclude that this document refers to a malicious prosecution of the husband's father or that it has any connection to the Appellants and their claims.

- [55] As noted by the Appellants, the RPD has no obligation to mention every piece of documentary evidence before it. The burden of explanation increases with the relevance of the evidence to the disputed facts¹².
- [56] Following my own examination of the evidence related to the alleged malicious prosecution, I do not find that it is sufficiently relevant to the disputed facts at the core of these claims. The issue of whether the husband's father was subjected to malicious prosecution is not central to or determinative of the Appellants' claims that they are at risk of harm from members of the secret society. Thus, I cannot find that the RPD erred in failing to expressly consider the issue, and I give this evidence no weight in establishing the core allegations of the Appellants' claim.
- [57] As discussed above, the RPD did consider the evidence related to the Principal Appellant's accident and accepted that the accident had occurred, but found that it was not established to have occurred in the context described or for the reasons alleged. I agree with the RPD's approach and finding on this point and find no error.
- [58] While I find that the RPD erred in failing to expressly consider the corroborating affidavits and letters¹³ submitted in support of the allegation that the Appellants are being sought after by secret society members, following my own examination of this evidence, I do not find that it is capable of proving the core allegations of the Appellants' claim or of overcoming the significant credibility concerns with respect to the Principal Appellant and the husband.
- [59] The information in the affidavits provided is based primarily on information that was provided to the affiants by the Appellants and does not provide independent corroboration of the allegations at the core of their claims. As such, I give them little weight in establishing these allegations.
- [60] I further find that the letter from the husband's father, while generally supportive of their allegation that the secret society is looking for the husband, is not a sufficiently reliable or probative piece of evidence. It is not a sworn statement and has no proof of identity of the author annexed to it. It is also fairly vague and does not corroborate or address the many specific allegations that should be within the father's personal knowledge, according to the Appellants' allegations. As such, I give it little weight in establishing the allegations at the heart of the claim.
- [61] The remaining corroborative documents tendered by the Appellants provide corroborating evidence of peripheral events or facts that are not central to the claim, such as the husband's employment situation in Nigeria and the transfer of the family land from the husband's father to the husband. Even accepting that they are credible and probative, these do not

establish that the allegations at the core of these claims are true. It was therefore not an error for the RPD to fail to address them in its reasons and I give them no weight in establishing the allegations that the Appellants are at risk of harm from the secret society in Nigeria.

[62] Following my consideration of the documentary evidence tendered by the Appellants, I find that it is not sufficient to credibly establish the allegations at the heart of their claim, on a balance of probabilities.

CONCLUSION

[63] In light of my conclusions that the Principal Appellant and her husband are not credible witnesses, and that there is insufficient documentary evidence to credibly establish their allegations, I find that the Appellants have failed to establish their allegations that they are at risk of harm in Nigeria from members of the secret society, on a balance of probabilities.

[64] 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.

(signed)

"Cheryl Braden"

Cheryl Braden

January 28, 2020

Date

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

2 RPD hearing recording, 40:34 - 45:12.

3 Exhibit RPD-1, RPD Record, pp.21-22.

4 RPD hearing recording, 1:14:13 - 1:16:46; 1:50:38 - 1:52:33.

5 RPD hearing recording, 1:52:40 - 1:57:57; 2:01:36.

6 RPD hearing recording, 2:17:10 - 2:28:30.

7 Exhibit RPD-1, RPD Record, pp.21-22; RPD Recording, 1:14:13 - 1:16:46.

8 RPD hearing recording, 1:35:40.

9 Exhibit RPD-1, RPD Record, p.22.

10 Exhibit RPD-1, RPD Record, Exhibits P-22, P-23, P-25, pp.195-200, pp.207-209.

11 Exhibit RPD-1, RPD Record, Exhibit P-26/Record p.210.

12 Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration), 1998 CanLII 8667 (FC), para.17.

13 Exhibit RPD-1, RPD Record, Exhibits P-31 to P-37, pp.218-228.

RAD File / Dossier de la SAR : MB9-08222

MB9-08223 / MB9-08224

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--6a40c3c14cf2c72690fb62ef>

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

Prepared on 28 October 2026 · Esheria