

CANADA / JUDGMENT

MB9-18868

COURT

Refugee Appeal Division

DECIDED

5 February 2020

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RAD File No. / No de dossier de la SAR : MB9-18868 MB9-18869 / MB9-18870 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 Appeal considered / heard at Ottawa, Ontario Appel instruit / entendu à Date of decision February 5, 2020 Date de la décision Panel Pascale Aubin Tribunal Counsel for the persons who are the subject of the appeal Claude Whalen Conseil des personnes en cause Designated representative XXXX XXXX XXXX Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du (de la) ministre REASONS FOR DECISION OVERVIEW

- [1] XXXX XXXX XXXX, the principal appellant, citizen of the Democratic Republic of the Congo (DRC); XXXX XXXX XXXX, the associate appellant, citizen of Angola; and their minor son, XXXX XXXX XXXX, citizen of the United States, are appealing against the decision of the Refugee Protection Board (RPD) rejecting their refugee protection claim on July 29, 2019.
- [2] The principal appellant alleges a fear of persecution in the DRC by reason of her gender and her paternal family, because she had a son out of wedlock with a partner who is not from her tribe.
- [3] The principal appellant allegedly left the DRC in 2014 to live in the United States, where she stayed with her uncle. She started dating her partner, the associate appellant, in 2016. When she told her uncle that she was pregnant, he told her that there would be consequences for her disobedience, because she had been promised in marriage to another man. Her father was supposedly absolutely furious. She allegedly claimed asylum in the United States, but fearing deportation after statements made by the Trump administration, she, her partner and their son came and claimed refugee protection in Canada.
- [4] The associate appellant fears returning to Angola because of his religion. He has allegedly been a member of the Light of the World church since 2011. He was supposedly arrested and detained by the authorities twice in 2014. He left for the United States on XXXX XXXX, 2014.

STANDARD OF REVIEW

- [5] Regarding questions of fact, mixed fact and law, and law, the Refugee Appeal Division (RAD) applies the correctness standard. Unless stated otherwise in my reasons, I have applied the correctness standard of review to all findings.

ANALYSIS

- [6] The determinative issue is whether the RPD erred in finding the appellant was not credible. To do so, I reviewed the RPD's reasons for decision and listened to the recording of the RPD hearing. I also read and analyzed all of the evidence on the record, including Chairperson's Guideline No. 4 and the appellants' memorandum. The Refugee Protection Division's credibility findings for the appellants
- [7] In this case, the RPD found that the appellants' credibility was severely undermined and they therefore failed to demonstrate, on a balance of probabilities, the truth of their allegations. The RPD was of the opinion that they did not demonstrate a reasonable fear of persecution under section 96 of the Immigration and Refugee Protection Act (IRPA), or that, on a balance of probabilities, there is a risk under subsection 97(1) of the IRPA if they returned to their country of citizenship. More specifically, the RPD found that:
- a. The associate appellant was not a credible witness because there were contradictions and a lack of knowledge about the values and ideas of the Light of the World Church. There were also contradictions and omissions related to his second arrest and several omissions with regard to the disappearance of his cousin, the 2019 police searches and his uncle having to flee his home because of the police searches.
 - b. The principal appellant was not credible because of several contradictions regarding her family's reaction to her relationship and the birth of her son. There were also omissions in her Basis of Claim Form (BOC Form) about the death threats received by her family, the risk of forced marriage should she return to the DRC. The RPD concluded that the principal appellant did not have any characteristic that put her at risk for being a victim sexual or gender-related violence in the DRC. Appellant's allegations
- [8] In her memorandum, the principal appellant alleges that the RPD erred in finding that she was not credible and that she would not be at risk should she return to the DRC. She argues that having failed to include a death threat in her account is not sufficient to find that she is not credible, especially because she stated that she would [translation] "face the consequences."
- [9] The associate appellant criticizes the RPD for finding him not to be credible simply because of his supposed contradictions regarding his membership in the Church of the Light in Angola, the lack of details related to his prison escape and the failure to include in his account that one of his cousins from the church had been reported as missing after two meetings with the police. Credibility
- [10] After conducting my own analysis of the evidence on the record and the recording of the hearing, I find that the appellants' arguments are unfounded and the RPD's decision is correct for the following reasons. Contradiction between the associate appellant's testimony and the documentary evidence regarding the Church of the Light in Angola.

- [11] In the memorandum, the associate appellant argues that he explained that these contradictions arise from false information propagated by the state to discredit the church. He cited a passage from Tab 12.2 of the National Documentation Package (NDP) on Angola and states that it is possible to conclude that the government made false accusations against the church.
- [12] After analyzing the documentary evidence, I note that Tab 12.3 of the NDP¹ for Angola states that the Seventh Day Adventists of the Light of the World are millennialists who predicted the end of the world in 2015. Their leader urged his disciples to sell or abandon everything they owned and to follow him into the mountains to wait for the end of the world.² His precepts are contested by state authorities and representatives of the Adventist Church.
- [13] Among other things, Kalupeteka told his followers to not participate in the population census carried out by authorities in Huambo Province or in polio vaccine campaigns. The movement recuses the tithe, certain Seventh Day Adventist doctrines and ancestor and former chief worship, a concept that contradicts the teachings of traditional Angolan chiefs.
- [14] When questioned by the RPD about the specific beliefs of the Light of the World Church, he answered that they pray toward God, with their eyes set on God.³ He also states that the youth are encouraged to work, study, and live in cities, and that he did not condemn medical treatments.⁴ Furthermore, when questioned about whether he shared these beliefs, he replied that he did, that he believed and followed what the prophet said.⁵ However, the documentary evidence states that the prophet actually advocates absconding to the mountains and avoiding vaccination campaigns. Therefore, I cannot accept the associate appellant's argument, because a comparison of his testimony and the objective documentary evidence reveals undeniable differences.
- [15] Furthermore, I am of the opinion that the associate appellant's answers were vague and I would have expected more details with regard to the beliefs of this church, all the more so because he has allegedly been a member for almost three years.⁶
- [16] The documentary evidence cited by the associate appellant and the evidence on the record does not demonstrate that these things were written to discredit the prophet; instead, it is a declaration made by government authorities stating that because of its practices, the Light of the World group is a source of concern. Although this source does not indicate whether or not the statements are true, Tab 12.3 of the NDP⁷ on Angola provides a full description of the history, practices and precepts of the Sétimo Dia a Luz do Mundo [Light of the World] evangelical church and its leader, José Julino Kalupeteka; it confirms the anti-census and anti-polio-vaccination campaigns. This undermines his credibility as an active member of that church. Prison release

- [17] The RPD found that the associate appellant contradicted himself with regard to his prison escape. The associate appellant admits that he did not give all of the details about his escape, including that a police officer gave him a guard uniform to get out, but it is clearly written in his BOC Form that a police officer had intervened.
- [18] Once again, I cannot accept the associate appellant's argument, because the information and the details about how he escaped prison are not trivial given that the arrest of June 20, 2014, and his detention were the main catalysts in his decision to leave his country to save his life. I note that the RPD asked a clear and specific question to find out why in his BOC Form he states that he had been released, but in his testimony he referred to an escape; he claimed that he had mixed up the words in French.⁸
- [19] I am of the opinion that the contradiction between release and escape cannot simply be explained by [translation] "mixing up the words in French," because the associate appellant uses that term twice in his BOC Form—once for the release on June 10, 2014, following the first arrest and again in the context of the second arrest when he describes the arrest and detention on June 20, 2014. I therefore find that, on a balance of probabilities, the associate appellant fully understood the meaning of the word "release," which undermines his credibility. Cousin reported missing, searches and summonses from Angolan authorities
- [20] The RPD drew a negative inference with regard to the associate appellant's credibility because he failed to mention in his BOC Form that one of his cousins in the church had gone missing and that he had been summoned twice by the police. He failed to mention in his BOC Form that the two summonses had been received.
- [21] The associate appellant admits to these omissions, but argues that they are insufficient to conclude that he was not a member of the church and that he did not experience the events that drove him to flee the country.
- [22] When the RPD confronted the associate appellant about these omissions, I note that he explained he had been aware of the summonses since January 2019.⁹ In light of their allegations that form the basis of their refugee protection claim, I draw a negative inference regarding their credibility because he did not state in or amend his BOC Form to include the information about his cousin's disappearance, about the fact that he was being sought by the Angolan authorities that patrolled his street twice a week, or about the fact that he had been summoned twice by the police, as these elements are central to their alleged fears.
- [23] Furthermore, considering that the associate appellant fears the Angolan authorities because of his connection to the Light of the World Church, that he was aware of this information several months before the hearing and that he is represented by counsel, the male appellant could have modified his BOC Form to include these key elements of his claim, but he did not. Just like the RPD, I find this undermines his credibility.

- [24] The associate appellant testified that the summonses were original documents. The RPD questioned him because it noted that it was in fact a photocopy. The associate appellant's explanation that the documents had been sent to him so he could not know whether they were copies¹⁰ is unsatisfactory, because the onus is on the appellant to establish that the documents are authentic; he did not do this. After analyzing this document, at first glance, I note that the seal and signature are identical on both summonses, which are written in Spanish and signed one week apart from each other.
- [25] Considering the associate appellant's testimony in which he states that he was aware of the two summonses and that his uncle allegedly had to leave his home because the Angolan authorities' searches, I would have expected him to provide a more detailed answer regarding how he got these documents. What is more, the fact that the associate appellant failed to include these important documents related to alleged fear undermines his credibility. For these reasons, I do not give any weight to the two summonses. Contradiction between the principal appellant's testimony and BOC Form regarding the alleged death threats
- [26] The RPD drew a negative inference with regard to the principal appellant's credibility with regard to the alleged death threats. The principal appellant maintains that despite not having written the words "death threats," it is clearly written that she was going to face the consequences. She argues that it was hard for her to write her story and that there are clues in the BOC Form that she received death threats.
- [27] When questioned by the RPD to find out why she testified that her father and grandfather wanted to kill her, but her BOC Form states that her family refused to talk to her and maintain contact because she had disobeyed their traditions. The principal appellant explained that after she gave birth it was difficult for her to write the story, she was stressed and had health problems; it would be easier for her to explain herself orally.¹¹ I am of the opinion that this behaviour is inconsistent with that of a person who fears for her life, because she testified that her father and grandfather threatened to kill her using mystical and physical forces against her and her child. The death threats she described are not trivial details, I would have expected them to be included in the BOC Form. I thoroughly read the BOC Form and I cannot accept the argument that her writing that she would face the consequences is a clue that she had received death threats. The onus was on the principal appellant to provide explanations about the clues in her BOC Form during her testimony; she did not do this.
- [28] The RPD confronted the principal appellant regarding the contradiction between death threats and the allegations written in her BOC Form; she testified that she had had health problems and that it was difficult for her to write her story. Although I sympathize with the principal appellant's situation, this does not compensate for the difference between the BOC Form, which describes her family refusing to talk to her and that she would face the consequences, and her testimony, in which she alleged death threats. There is a significant contradiction between the testimony and the BOC Form, as it was about a fear of being

killed by her father and grandfather; the negative inference drawn by the RPD is correct.

- [29] Following the principal appellant's failure to state in her BOC Form that her family would force her to marry another man should she return to the DRC, the RPD drew a negative inference regarding her credibility. The principal appellant argues that her BOC Form fully describes that they had chosen a man for her to marry.
- [30] Based on my analysis of all of the evidence, although it does not explicitly state that the principal appellant would be forced to marry another man should she return the DRC, I remain of the opinion that her story is inconsistent with her claims for the following reasons.
- [31] First of all, based on my analysis of the recording of the hearing, the principal appellant was questioned about why she wrote, [translation] "He told me to never call him back, because I had gone against tradition, that because of my choice, I would not be able to marry the man he had chosen," which suggests that after her relationship and pregnancy, her father's chosen spouse for her was no longer an option. The female appellant stated that she knew that explaining things at the hearing would be easier than writing it, but does not provide any further explanation.¹² The principal appellant alleged in her testimony that she was threatened over the telephone and that if it had been in person, she would have ended up in the cemetery. In my opinion, this explanation is insufficient, as it does not compensate for the fact that her story states that her father refused to speak to her and that she could no longer marry the spouse he had chosen for her and would have to repay the dowry. I am of the opinion that if the principal appellant's allegations regarding forced marriage and death threats were true, she would have mentioned in her BOC Form that her father and grandfather wanted to kill her and her child. This undermines her credibility.
- [32] I paid particularly careful attention to the hearing transcript and I found the testimony to be confusing, unclear and contradictory. At the beginning of the hearing, as required, the appellants were questioned about the truthfulness of the contents of their BOC Forms and they confirmed that the contents were correct. The RPD raised several contradictions between their testimonies and their BOC Forms, for which the explanations were unsatisfactory. It gave them every opportunity to provide the required details, which they did not do. As such, I find that the RPD's conclusion is correct. Residual risk
- [33] The principal appellant did not contest the RPD's decision that she was unable to establish a serious possibility of gender-related persecution. Despite this fact, I carried out an independent assessment of the RPD's conclusions on the matter. I agree with the RPD, which concluded that, for the reasons it provided, the appellant did not establish a serious possibility of gender-based persecution. Minor child

- [34] The minor appellant has American citizenship. As the designated representative, the principal appellant did not provide any evidence or testimony about the minor appellant fearing persecution or being personally subjected to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment in his country of nationality, the United States. The RPD did not err in limiting its risk assessment for the minor appellant to his country of citizenship, the United States.

CONCLUSION

- [35] I conclude that the evidence on the record does not establish a serious possibility that the appellants would be persecuted, especially because it is not even clear what the associate appellant's involvement with the Church of the Light was or that the principal appellant received death threats. The appellants are therefore not refugees under section 96 of the IRPA. Furthermore, the evidence does not establish, on a balance of probabilities, that they would face a risk to life or a risk of cruel and unusual treatment or punishment. They are therefore not persons in need of protection under section 97 of the IRPA.
- [36] As set out in paragraph 111(1)(a) of the IRPA, the RAD confirms the determination of the RPD that the appellants are neither Convention refugees nor persons in need of protection.
- [37] The appeal is dismissed. (signed) "Pascale Aubin" Pascale Aubin February 5, 2020 Date IRB translation Original language: French 1 National Documentation Package (NDP) on Angola, Tab 12.3. 2 NDP Angola, Tab 12.3. 3 Testimony, 36:39 to 36:45. 4 Testimony, between 28:02 and 39:14. 5 Testimony, 46:29 to 46:50. 6 Testimony, between 36:39 and 45:00. 7 Supra, endnote 1. 8 Testimony, 59:00 to 1:02. 9 Testimony, 1:41. 10 Testimony, between 1:32 and 1:34. 11 Testimony, 2:19 to 2:21. 12 Testimony, 2:24 to 2:25.

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