

CANADA / JUDGMENT

TB9-14908

COURT

Refugee Appeal Division

DECIDED

24 January 2020

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

RAD File / Dossier de la SAR : TB9-14908 TB9-14909 / TB9-14910 Private Proceeding / Huis clos
Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXX XXXXXXXXXX XXXX XXXX XXXX XXXXXXXXXX XXXX XXXX Personnes en cause Appeal
considered / heard at Montreal, QC Appel instruit / entendu à Date of decision January 24, 2020
Date de la décision Panel Rouba Al-Salem Tribunal Counsel for the persons who are the subject of
the appeal Oluwakemi Oduwole Conseil des personnes en cause Designated representative XXXX
XXXX XXXX Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre
REASONS FOR DECISION OVERVIEW

- [1] XXXX XXXX XXXX (Principal Appellant), her 15-year-old daughter XXXX XXXX XXXX XXXX
(thereafter XXXX XXXX) and 3-year-old daughter XXXX XXXX XXXX (thereafter XXXX)
(Minor Associate Appellants),¹ are citizens of Nigeria. They are appealing a decision of the
Refugee Protection Division (RPD),² denying their claims for refugee protection.³
- [2] The Refugee Appeal Division (RAD) dismisses the appeal and confirms the decision of the
RPD that the Appellants are neither Convention refugees nor persons in need of protection.

BACKGROUND

- [3] The Principal Appellant XXXX claims that her husband, who she alleges is a senior XXXX
XXXXin Nigeria,⁴ has physically and mentally abused her since the beginning of their
marriage.⁵ On XXXX XXXX, 2017, XXXX left Nigeria for the USA, together with the Minor
Associate Appellants XXXX and XXXX XXXX.⁶ On XXXX XXXX, 2017, the Appellants entered
Canada,⁷ where they made a claim for refugee protection the following day.⁸
- [4] In November 2018, XXXX was informed by one of her husband's friends that her spouse had
re-married, divorced her and disowned the children (thereafter former husband).⁹ She
alleges that she cannot return to Nigeria for fear that her former husband would kill her,¹⁰
and take away her children.¹¹ Alternatively, she alleges that would have her arrested, and
would force her to stand trial in a Shari'a Court for infidelity and prostitution, charges that
she alleges, are punishable by death.¹² In addition, XXXX claims that her former husband
seeks to marry off both of her daughters as soon as they come of age,¹³ and that the first to
be affected by this is her eldest daughter XXXX XXXX.¹⁴

- [5] In its decision, the RPD found that the determinative issue relates to the credibility of the claim.¹⁵ In the alternative, the RPD decided that XXXX failed to rebut, with clear and convincing evidence, the presumption of adequate state protection or that Nigerian government authorities would be unable to protect her or her daughters if she were to return to Nigeria.¹⁶
- [6] On appeal, XXXX argued that the RPD had erred in its credibility findings and in its conclusion that she had failed to rebut the presumption of state protection for her and for her daughters.¹⁷ She also argued on appeal that the RPD did not conduct an independent assessment of the claims of her daughters XXXX and XXXX XXXX that they would be forced into early marriage by her former husband and alleged father, if she were to return to Nigeria.¹⁸ On appeal, she also stated that the RPD's decision was based on the selective use of evidence.¹⁹ SCOPE OF THE RAD REVIEW
- [7] For questions of fact, mixed fact and law, and law, I am required to assess the RPD decisions on a standard of correctness,²⁰ after conducting an independent analysis of all of the evidence.
- [8] In the case of women who were allegedly the subject of domestic abuse, I take note of the Appellants' personal circumstances and seek to apply the Guidelines 4 on Women Refugee Claimants Fearing Gender Related Persecution and the Chairperson Guidelines 3: Child Refugee Claimants: Procedural and Evidentiary Issues when evaluating their appeals. DETERMINATIVE ISSUES
- [9] After conducting an independent assessment of all of the evidence in this case, I find, that the determinative issue is the lack of credibility of XXXX claim. Consequently, I find that it is unnecessary for me to consider the other ground raised by the Appellants, namely that of the adequacy of state protection.²¹
- [10] Except were stated, I found the RPD's credibility findings to be correct. Even where the RPD erred, I did not find that the error was significant enough to undermine the RPD's conclusion that the Appellants' account of events that are central to their claim was not credible.
- [11] I also note that there are additional inconsistencies in the Appellant's evidence which further support the RPD's determination with regards to the lack of credibility. Where I was able to assess the Appellants' credibility using the evidentiary record before the RPD, this does not necessarily raise a new issue, given that the Appellant's credibility was already in question before the RPD.²²
- [12] I advised the Appellants that I will be relying on the the IRB's Response for Information Request (RIR) concerning forced marriage, including child marriage in Nigeria,²³ disclosed in the latest national documentation package (NDP) for Nigeria (29 November 2019). I also invited the Appellants to make submissions should they have any. The Appellants filed further submissions, with new evidence on 17 January 2020 [thereafter further

submissions]. I have also carried out my own independent assessment of the claims of the Appellants that the Minor Associate Appellants would be forced into an early marriage by their alleged father. NEW EVIDENCE

(i) Documents Submitted by the Appellants for Consideration as New Evidence

[13] Attached to the further submissions that were made by the Appellants in response to my disclosure of the independent national documentation, a copy of the following documents was provided:

- (1) An affidavit from XXXX XXXX signed before a Commissioner of Oath in Toronto, Canada on January 14, 2020.
- (2) An affidavit from XXXX XXXX XXXX XXXX cousin, dated January 3, 2020, declared at the Shari'a Court of Appeal in Zamfara State, Nigeria.

[14] Given that these documents respond to my request for submissions when I disclosed to the Appellants that I will be relying on the updated NDP for Nigeria, and specifically the RIR on forced marriages and child marriages, I will not examine whether these documents meet rule 29 of the RAD rules.²⁴ Instead, I have proceeded directly to an assessment of whether or not these documents, meet the requirements of sub-section 110(4) of Immigration and Refugee Protection Act (IRPA). (ii) Legal Test Applied to the New Evidence

[15] Pursuant to subsection (s) 110(4) of IRPA, new evidence will only be admitted when that evidence (1) arose after the rejection of the claim by the RPD; (2) was not reasonably available or (3) was reasonably available but the Appellant could not reasonably have been expected, in the circumstances, to have presented it at the time of the RPD's rejection of the claim. I have the discretion to admit new evidence if it falls under one of these three statutory categories.²⁵ Where any of the new evidence met one of the criteria set out in (s) 110(4), I would then conduct a further assessment of its admissibility based on whether or not it is credible, relevant, and new, as per the Raza factors endorsed in Singh (Raza/Singh factors).²⁶ In this regard, I note that all three factors must be met, and that if any one of them is not met, the proposed document should be refused.

[16] Additionally, it is for the Appellants to make full and detailed submissions in their Memorandum about how any proposed new evidence meets the requirements of (s) 110(4) and how that evidence relates to the Appellants.²⁷ I note that the Appellants have not explained how these documents meet the aforementioned statutory criteria.

- (1) XXXX XXXX Affidavit (Item 1)

[17] In her affidavit, XXXX XXXX makes the following allegations:

- that she found out they will not be going back to Nigeria because her mother XXXX is no longer with her father (para. 1 of the affidavit);
- that she was disappointed she will not be seeing her friends again (para. 2);

- that she found out that two of her closest friends who are her age got married and that this was their parents' decision. In addition, she states that her best friend got married in October 2019 (para. 3);
- that she fears that her father will force her to marry the son of his friend as soon as she finishes her secondary schooling (para 4);
- that her alleged father, despite being loving and supportive of his children, would not hesitate to force her into an early marriage (para.5);
- and that similarly to XXXX who she alleges was forced into an early marriage at the age of 16, she would also be forced into an early marriage (para.6).

[18] Concerning the first criteria under (s) 110(4), the evidence arose after the RPD's rejection of the claim, and after the Appellants' appeal record was perfected. Therefore, I find that the document meets the first criteria of (s) 110(4). With respect to the second criteria, I find that, with the exception of (paragraph 3) of the affidavit, all the remaining paragraphs consist of information that was reasonable available to the Appellants before the RPD's rejection of their claim. In addition, they contain allegations that have already been made by XXXX in her oral and written testimony. In terms of the third criteria, I find that the XXXX XXXX could reasonably have been expected to have presented this information at the time of the RPD's rejection of the claim, particularly since she has testified in front of the RPD. In other words, she had the opportunity to make those allegations in person. Therefore, I find that the only part of the affidavit which meets the requirement of (s) 110(4), is the third paragraph in which XXXX XXXX states that her best friend was forced into marriage in October 2019.

[19] I have subsequently examined whether the third paragraph of Item 1 is credible, relevant and new as per the Raza/Singh factors. In term of the credibility of the evidence, it is part of a sworn affidavit signed under oath in Toronto, and appears on the face of it to be credible. In terms of the relevance of the affidavit, I find that it is relevant, given that it touches on the allegations of the Appellants that girls are often forced into early marriage by their parents in Nigeria. However, in terms of its newness, I do not find that it is capable of contradicting a negative credibility finding by the RPD. This is because the paragraph describes events that have allegedly happened to the affiant's friends but not to the affiant herself. I therefore find that the value of this paragraph is too weak to contradict the adverse credibility findings made by the RPD regarding the Appellants' allegations that XXXX former husband would force XXXX XXXX into an early marriage, if she were to return to Nigeria. I therefore find that the paragraph is rejected as proposed new evidence under the Raza/Singh factors.

(2) The Affidavit of XXXX Cousin (Item 2)

[20] In this affidavit, XXXX cousin XXXX attests that he was a witness to XXXX marriage to her former husband. In addition, he claims to have had knowledge of XXXX opposition to the marriage, but that she had decided to go through with it because of her parents' directives. I

do not find that this document meets the criteria under (s) 110(4). While it was signed by the affiant after the RPD's rejection of the claim, it relates to events that took place before the decision was rendered (XXXX alleged forced marriage in 2002). In the Appellants' further submission, they note that this affidavit was submitted to corroborate XXXX testimony that she was forcefully married to her ex-husband as a child. However, there is no explanation, and I do not see how either, of how this document was not reasonably available to the Appellants before the RPD's rejection of the claim, why they could not reasonably have been expected to have presented this information by then. I therefore find that the affidavit does not meet the requirements of sub-section 110(4) and do not admit it as new evidence.

ANALYSIS

1. Credibility

- [21] In its decision, the RPD found that XXXX did not demonstrate a well-founded fear of persecution,²⁸ and that she was not a credible witness regarding the events that she alleges and which are central to her claim.²⁹ In this regard, the RPD made a negative inference from XXXX frequent reavilment of Nigeria, and her failure to seek refugee protection in a European country that is signatory of the Geneva Convention or in seeking refugee protection in the USA. In addition, the RPD had credibility concerns with regards to objective component of her claim, particularly regarding the events that are central to her claim and the identity of the alleged agent of harm.³⁰
- [22] On appeal, XXXX highlighted the Federal Court decision in Maldonado to argue that there is a presumption that her testimony is true, unless there is a valid reason to doubt its truthfulness. She also alleges that the RPD failed to adhere to this jurisprudence in its evaluation of her claim.³¹ In addition, XXXX claims that she provided plausible explanations to support her allegations that the central events of her claim took place in Nigeria in the manner that she describes, and that she has demonstrated subjective fear from the alleged agent of harm (her former husband).³² XXXX also claimed on appeal that the RPD had relied on credibility and plausibility findings that are minor in nature; that these findings do not deal with the central elements of the claim, and that the RPD has relied on Western standards in its implausibility findings.³³
- (i) XXXX Frequent Reavilment of Nigeria and Failure to Seek Refugee Protection in a Country that is Signatory to the Geneva Convention
- [23] According to XXXX, her arranged marriage to her former husband took place in 2002. Since then, she claims that her former husband regularly beat her, confined her to the home, forced her to drop out of school, forced her to have sexual intercourse with him, and threatened to divorce her.³⁴
- [24] In her oral testimony, XXXX also alleges that she first decided to leave her husband in 2008.³⁵ Since then, her Nigerian passports (issued in 2011 and 2013) that were submitted as evidence by the Appellant, corroborate that XXXX has been granted numerous visas

(including Schengen, Indian, Turkish, Saudi Arabian and Egyptian). The stamps in her passports also indicate that she has travelled to or via several EU countries.³⁶ According to XXXX, prior to their flight from Nigeria, she and her daughters took a holiday trip to Turkey (via Greece), where her former husband owns property.³⁷

- [25] XXXX testified that she did not make a refugee claim during one of those trips for two reasons. The first one, is because her former husband allegedly maintained control over her finances and had confiscated the identity documents belonging to her and her daughters, primarily their passports and original birth certificates.³⁸ The second reason, is that she was allegedly afraid to do so because of his extensive connections in Europe, and because transport to and from the airports and accommodation in the countries that they visited had always been pre-arranged by her former husband.³⁹
- [26] The RPD concluded that XXXX explanation for why, despite her numerous international travels - including on her own with her daughters -⁴⁰, she did not seek protection in a European country that is signatory to the Geneva Convention, was not credible.⁴¹
- [27] On appeal, XXXX argues that the RPD had erred in rejecting her explanations for why she did not make a refugee claim in Europe on one of her travels. She also submits on appeal that the RPD's conclusion does not take into consideration her profile as a Muslim woman facing family stigma because of spousal abuse and because of the violence that she has endured.⁴² I will examine these reasons below before making my finding.
- (a) Allegations that XXXX Former Husband Confiscated the Identity Documents Belonging to the Appellants
- [28] In her oral testimony, XXXX alleges that her former husband confiscated the international passports belonging to her and the Minor Associate Appellants, as well as the genuine birth certificates of the Minor Associate Appellants.⁴³ In addition, she testified that her former husband had confiscated the passports because he knows that she could otherwise run away with the children.⁴⁴
- [29] When the RPD inquired how she subsequently came into the possession of those passports, XXXX claimed that she told her former husband that she needed them to open a bank account for XXXX XXXX.⁴⁵ According to the Principal Appellant, rather than opening a bank account, she used the passports to apply for a US visa.⁴⁶
- [30] The RPD did not find trustworthy nor credible, XXXX explanation that her former husband, whom she alleges was in control of her finances, would not question her need to obtain the passports for the purpose of opening a bank account.⁴⁷ On appeal, XXXX submits that the RPD erred because it speculated about how she was able to obtain those passports.⁴⁸
- [31] I find that the RPD did not err in finding that XXXX explanation was not credible. During the RPD hearing, XXXX testifies that she requested these documents from her husband, and that when she did, "he said no problem and when I am done, I should take it back to where we keep our passport, I told him yes."⁴⁹ In light of XXXX own oral and written testimony

regarding the controlling nature of the husband, and that "he did not trust me at all,"⁵⁰ I conclude that it was correct for the RPD to conclude that her testimony with regards to the alleged ease with which she had obtained the passports was not credible, and to draw a negative inference from this explanation.

- (b) Allegations that XXXX former Husband has Extensive Connections throughout Europe and Managed the Appellants' Means of Transport when Travelling abroad

[32] According to XXXX, one consideration that she put forward for not making a claim for refugee protection during her many travels to countries in Europe, is that she took into consideration the extensive connections that her former husband allegedly has throughout Europe.⁵¹ The RPD did not accept her explanation as plausible. It then drew a negative inference from what it deemed to be a lack of effort by XXXX to make a refugee claim in a European country that is a signatory to the Geneva Convention, and from her frequent re-availment of Nigeria.⁵²

[33] On appeal, XXXX submitted that the RPD had erred in concluding that her explanation for why she did not escape with her children during her travels to Europe and for failing to make a refugee claim was unreasonable. She also alleges that the RPD was not sensitive to the stigma that she has been encountering as a victim of spousal abuse in Nigeria.⁵³

[34] Here, I note that while a failure to claim in a safe third country can be grounds for refusing refugee protection, this failure cannot be determinative,⁵⁴ if the Principal Appellant's explanation has not been considered. Considering a claimant's explanation is necessary to determine whether her behaviour can fairly be considered to constitute evidence of subjective fear,⁵⁵ and whether this fear is well-founded on an objective basis.

[35] After listening to the oral recording of the RPD hearing, I find that the RPD did take her explanations into consideration. The RPD asked XXXX to explain why she alleges that her former husband enjoys extensive connections in Europe. Although she insisted throughout her oral testimony and written submissions that he is very powerful and influential,⁵⁶ she did not provide any objective evidence or details to corroborate those allegations or the extent of this influence in Europe. I therefore find that the RPD was correct in concluding that XXXX has not sufficiently corroborated her allegations that she did not avail herself in a European country when traveling, due to those connections. (ii) The Manner in which XXXX Managed to Obtain Funds to Travel to the USA despite her former Husband's Alleged Control of her Finances

[36] XXXX testified that in order to raise funds for her flight from Nigeria to the USA with her daughters, she discreetly sold the car that was assigned to her "but which was still in his name."⁵⁷ The RPD asked her to clarify how she had managed to sell the car, given her claims that she was under constant surveillance by her former husband's security personnel (including his personal bodyguard).⁵⁸ In response, XXXX stated that she was allowed a limited time to go out to pick up the Minor Associate Appellants.⁵⁹

- [37] In its decision, the RPD found that it would be reasonable to expect that selling the car would have taken some planning, and that, on a balance of probabilities, it would have come to the attention of her former husband or his security guards. Therefore, the RPD found the explanation neither credible nor trustworthy.⁶⁰ I agree with the RPD's conclusion. This is because XXXX explanation contradicts her own previous oral and written testimony regarding the allegedly restrictive measures that her husband imposed on her and her claim that he was monitoring her every move. (iii) The Principal Appellant's Failure to Make a Claim in the USA
- [38] As mentioned, XXXX testified that she first decided in 2008 that she would want to leave her husband. However, she also stated that it was only in XXXX 2017 that she managed to escape to the USA, during her husband's business trip to Dublin.⁶¹ She arrived in the USA on a visa that was issued to her on XXXX XXXX, 2017, and which was valid till November 25, 2019.⁶² Once the Principal Appellant entered the USA, she had permission to legally stay for a period of two weeks.⁶³
- [39] In its decision, the RPD drew negative inferences from the lack of any effort by XXXX to seek refugee protection in the USA,⁶⁴ a country to which she had travelled before and was familiar with, and concluded that this undermines her allegations of subjective fear.⁶⁵ The panel also drew a negative inference from her decision not to use the two week period that she was entitled to legally reside in the USA to inquire about the process of making a refugee claim or explore other alternatives available to her,⁶⁶ and to choose instead travel to Canada, a country for which she had no visa and which she had never visited before.⁶⁷
- [40] On appeal, the Principal Appellant argued that the RPD had erred in deciding that her failure to claim is indicative of the absence of subjective fear and in rejecting the explanation that she had provided.⁶⁸
- [41] I find that the RPD did not err when concluding that the Principal Appellant's explanation for why she did not seek protection in the US was not reasonable, and to draw a negative inference. To begin with, while I take note that refugee claimants are not obliged to seek asylum in the first country which they reach after flight, whether or not they do seize those opportunities may be a relevant factor for the RPD in assessing the credibility of their claims, and could point to a delay in subjective fear.
- [42] I find that XXXX did not provide a reasonable explanation for why she did not seek more information about the process of making a refugee claim in the USA. In response to questions by the RPD as to why XXXX browsed the internet for the sole purpose of finding out more information with regards to the process of making a refugee claim in Canada, but did not seek to find out about the existing process in the USA, XXXX testified that she did not know what the process was in the USA; that she was scared to inquire,⁶⁹ and that she did not know anyone.⁷⁰ In addition, she noted that upon arrival, she found out that asylum seekers were not welcome,⁷¹ and that she was confused.⁷² According to XXXX, as a result of these reasons, she decided to browse the internet to find out about how to make a refugee claim in

Canada.⁷³

- [43] In its decision, the RPD explains that XXXX testimony indicates that she made no effort to find out about to claim refugee protection in the USA, a country to which she has been before. The RPD also points out that, given XXXX alleged fear of returning to Nigeria, and knowing that she enjoyed legal status in the US until November 13, 2017, it was reasonable to expect her to make inquiries about the refugee determination process in the USA, or at the very least, to have tried to find out from immigration officers what different alternatives were available to her. The USA is a signatory of the Geneva Convention and has a functioning immigration system. While the Principal Appellant noted her concerns about making a claim in the USA, and that she stayed in the USA for only two days, I concur with the RPD's finding that XXXX explanations were not sufficient to address her failure to inquire about how to seek refugee protection.⁷⁴ I therefore find that the RPD was correct in concluding that XXXX lack of effort in this respect, undermines the subjective fear basis of her claim.⁷⁵ (iv) The RPD's Concerns Regarding the Minor Associate Appellants' Surnames and their Paternity
- [44] In its decision, the RPD states that it has numerous credibility concerns regarding the surnames of XXXX and XXXX XXXX and their paternity. The first one had to do with the Minor Associate Appellants carrying XXXX surname of 'XXXX XXXX in all of the identity documents that were submitted into evidence (save for one), and not that of their alleged father. The RPD asked XXXX to explain why this was the case, and why a controlling husband would not object to his daughters carrying her last name instead of their father's. In response, XXXX testified that it was because XXXX XXXX stayed with her family for the first three years. XXXX also stated that her former husband was troubled by his surname not being used. The RPD did not accept this as a reasonable explanations for why XXXX XXXX does not carry her father's surname and determined, that on a balance of probabilities, she has a different father than her sister XXXX.⁷⁶
- [45] During the hearing, the RPD panel confronted the Principal Appellant about its concerns that both Minor Appellants were not using their father's surname on their birth certificates quite early on in the RPD hearing.⁷⁷ In this regard, XXXX stated that the legal surnames of XXXX XXXX and XXXX as they feature in their Nigerian passports with which she left Nigeria were incorrect. She also testified that she had requested altered birth certificates for her children, ones in which their appeared as 'XXXX XXXX,⁷⁸ in order to apply for Nigerian passports on their behalf, carrying her own surname, as a way of avoiding any detection at the airport.⁷⁹ When pressed by the RPD for more clarifications,⁸⁰ the Principal Appellant states that the original birth certificates in which her daughters are listed with the legal surname of their father had been in her former husband's possession.⁸¹ It is then that she had their original legal surnames - which appear on the birth certificates that she used to have their Nigerian passports issued - changed.⁸²

- [46] When the RPD then inquired with XXXX if she had needed a consent letter from her former husband and alleged father in order to apply for a US visa on behalf of the Minor Associate Appellants, or in order to take them out of the country,⁸³ XXXX responded that she did not.⁸⁴ Subsequently, when the RPD inquired if XXXX needed to go through any legal process for changing her children's legal surnames, in order to have them referred to with the surname 'XXXX', XXXX responded that she did not.⁸⁵ Consequently, the RPD concluded "that it finds it unusual that such a request was granted without any permission from the child's father,"⁸⁶ and draws a negative inference.
- [47] Subsequently, during the second RPD hearing, XXXX produced on her mobile device a copy of a consent letter, allegedly written for XXXX by XXXX former husband in June 2017, to authorize the child to travel with XXXX to Greece and Turkey.⁸⁷ In the letter, XXXX is referred to as 'XXXX XXXX XXXX XXXX XXXX.' However, no such travel authorization letter was provided in relation to XXXX XXXX, nor was her name included in the letter for her sister. Consequently, the RPD determined that, on a balance of probabilities, the former husband of the Principal Appellant was not the biological father of XXXX XXXX.⁸⁸
- [48] When the RPD asked XXXX to explain why no such letter was available for XXXX XXXX, she stated that XXXX XXXX did not travel with them to Greece at the time, and that even when she did travel to Turkey she had no need for such a letter, because her former husband was allegedly the Nigerian attache in Turkey, at the time.⁸⁹ She also said that this was the only time she ever needed the letter.⁹⁰
- [49] While I concur with the RPD that XXXX did not provide a plausible explanation for why the Minor Associate Appellants carry a legal surname that is different from that of their father, or why she did not need the consent of her former husband to apply for a visa or legally change the surnames of her children, I do not find that this discrepancy on its own is sufficiently persuasive to allow the RPD to conclude, as it did, that on a balance of probabilities, the alleged agent of harm is the father of XXXX, but not of XXXX XXXX.
- [50] However, I do not find that this conclusion by the panel is fatal, as the RPD subsequently concludes that based on its adverse credibility findings with regards to the legal surnames of the Associate Minor Appellants, "whether or not the minor claimants have the same biological father is of no concern to the panel, what is of concern are the numerous credibility issues in the claimant's story that deem the evidence provided to be untrustworthy."⁹¹
- [51] I find that the RPD was correct in making this finding. This is because I do not find that XXXX explanations for how she managed to change the legal surnames of her daughters in the birth certificates or apply for a US visa on their behalf without the father's consent is not plausible. Equally, I do not find the explanation that she offered for why she only had a letter of travel authorization for XXXX from her former husband, but not for XXXX XXXX, to be plausible. I therefore conclude that the RPD did not err when it concluded that these numerous credibility concerns, with which it confronted XXXX, undermine the credibility

of her allegations with respect to central events of her claim, such as that her children's surnames were changed in order to facilitate the Appellants' escape from her former husband as the agent of harm.

- (v) Allegations by XXXX that the RPD did not take into Consideration the Family Stigma that she faces as a Muslim Woman Suffering from Spousal Abuse

[52] As mentioned above, XXXX submitted on appeal that the RPD did not take into consideration the family stigma which she faces as a result of being a Nigerian Muslim woman suffering from spousal abuse. I have stated elsewhere that since the determinative issue in this appeal is credibility, there is no need for me to consider the other grounds raised by the Appellants, including the adequacy of state protection. However, given this particular allegation made on appeal, I will briefly note that I do not agree with the Appellants that the RPD did not consider this allegation and attempted to probe the credibility of those allegations. I have listened to the recording of the oral hearing in its entirety. I find that the RPD questioned XXXX as to why her family, which according to XXXX is also influential, was unable or unwilling to protect her. In her response, XXXX alleged that her family members thought that this was an internal matter, and that they did not help her because her former husband is a very powerful man because of his political influence as an immigration officer. In this regard, she details for example that one of her brothers who also works for the government was not willing to help her because he was afraid that XXXX husband would compromise his position.⁹² In other words, I find that XXXX emphasized in the responses which she gave that the reason for their inaction is her former husband's political influence and not her identity as a Muslim Woman. I find that the RPD considered the responses furnished by XXXX, but determined that she did not provide "a reasonable explanation for not having sought the guidance and/or advice of her own influential family and makes a negative inference from her lack of any effort to seek state protection in Nigeria."

2. The RPD's Independent Analysis of the Claims of the Minor Associate Appellants

- (i) XXXX Allegations that her Former Husband would force her Daughters into Early Marriage

[53] In its decision, the RPD concluded that there is no objective basis for XXXX alleged fear that XXXX former husband would force XXXX XXXX and XXXX into an early marriage.⁹³ While I find that the RPD panel erred by not providing a clear overview of the reasons behind its conclusion that XXXX was not credible with respect to the allegations of XXXX XXXX being forced into a child marriage, I do not find, for reasons explained below, that the error was fatal to the RPD's overall determination for the following reasons.

[54] Firstly, I find that XXXX own behavior, after she arrived in Canada, undermines the credibility of her allegations that she fears her former husband would harm the Associate Minor Appellants by forcing them into early marriage. The RPD asked XXXX to clarify why she feared that her former husband would force her daughters into an early marriage if she were to return to Nigeria. In response, XXXX stated that it was based on a conversation that

she had with her former husband, to which XXXX XXXX allegedly bore witness, approximately 2-3 years ago. In that conversation, XXXX alleges that her former husband mentioned that he would force XXXX XXXX into early marriage, either after prohibiting her from going to school,⁹⁴ or after finishing secondary school.⁹⁵ XXXX also testified that following her arrival in Canada, she did not seek to initiate or maintain contact with her former husband, out of fear that he would find out their whereabouts in Canada and that he would come after her and her daughters.⁹⁶

- [55] The RPD panel then inquired how her former husband came to have access to her phone number in Canada. In response, the Principal Appellant stated that she did not know how he came to have access to her phone number, and that her former husband having access to her phone number scared her.⁹⁷ When the RPD then asked XXXX if she made an effort to change her phone number, after finding out that her former husband had access to it, she responded that she did not because this is the number everyone can reach her at.⁹⁸ Given that a central element of the Principal Appellant's claim is that she fled Nigeria to protect her children from harm by her former husband, I do not find that this is a behavior consistent with a refugee claimant alleging subjective fear of the agent of harm and draw a negative inference.
- [56] Finally, I find additional evidence within the very documents that XXXX has submitted to the RPD which undermines her credibility with respect to her allegation that her former husband is an agent of harm towards the Minor Associate Appellants.⁹⁹ In this regard, I take note of a piece of a letter by the Riverdale Immigrant Women's Center, submitted by XXXX as evidence. In the letter, it is noted that "XXXX XXXX XXXX continued to have contact with her husband, to ensure that her daughters would not feel alienated from him."¹⁰⁰
- [57] XXXX has maintained that she fears that her former husband would harm the Minor Associate Appellants. However, I find that her maintenance of contact with the alleged agent of harm, undermines the credibility of her allegations, and draw a negative inference. (ii) The Oral Testimony of XXXX XXXX
- [58] On appeal, XXXX argued that even though the claims were joined, the RPD should have conducted an individual analysis of the claims of her daughters.¹⁰¹ In this regard, while XXXX acknowledges that her former husband had not been physically abusive to her children, she claims that he would force them into early marriage.¹⁰² On appeal, she also provided documentary evidence seeking to corroborate her allegation about the prevalence of the phenomenon of early and forced marriages in Nigeria, and that it is part of the tradition of the Hausa Tribe.¹⁰³
- [59] While I agree that the RPD decision would have benefited from more reasons to explain how the panel conducted its independent assessment of the claim of XXXX XXXX, I disagree with the Appellants that the panel did not conduct such an assessment. The RPD panel addressed questions to XXXX XXXX. During the testimony, the RPD sought to ensure that the child understood what it means to give a testimony under oath. The panel then inquired with her

about whom she lived with before leaving Nigeria, and what the profession of her father, XXXX former husband, is. XXXX XXXX responded that she lived with her parents and that her father works in immigration. Subsequently, the RPD asked XXXX XXXX if she knew why she was here today. In response, the child testifies that it was "because of the insecurity in Nigeria and the way my dad is treating my mum."¹⁰⁴ In addition, the RPD inquired whether her father has ever physically beaten her, to which she responded that he had not.¹⁰⁵

- [60] I am mindful of the guideline which stipulates that a child claimant may not be able to express a subjective fear of persecution in the same manner that an adult claimant would.¹⁰⁶ At the same time, I take note of the fact that XXXX XXXX did not mention in her testimony any of the allegations that her mother had made, namely that she was witness to the argument which XXXX allegedly had with her former husband, regarding his intention to force XXXX XXXX into marriage as soon as she reaches puberty. In addition, XXXX XXXX testified that she knew that they were no longer on vacation in Canada, because XXXX former husband kept calling her mother and threatening her, and that therefore, "she had no choice but to tell us what was going on."¹⁰⁷ I find that if the allegations that XXXX former husband was seeking to force XXXX XXXX into an early marriage was one of the central reasons for why the Appellants fled Nigeria, it was reasonable for the RPD to expect that she would have mentioned her father's alleged intention to marry her off, in her testimony to the panel, or that Counsel would have posed questions to her in relation to that. (iii) The Documentary Evidence on Early Marriage and Child Marriages in Nigeria
- [61] I have assessed the documentary evidence provided by the Principal Appellant (Exhibit 6).¹⁰⁸ It does not address the issue of early marriage or child marriage. I have also analyzed the information available in the NDP for Nigeria and the Response for Information Request (RIR) disclosed to the Appellants regarding forced marriage and child marriage in Nigeria, as well as submissions that they made in response to my disclosure of this document (thereafter further submissions).
- [62] In her further submission, XXXX highlights that the RIR indicates that the Child Rights Act which prohibits marriage under the age of 18 has not been domesticated in a number of Nigerian states including northern states.¹⁰⁹ In addition, she claims that while they were residents in Abuja, she is from Sokoto State in the north-west of Nigeria, while her former husband is from Katsina State.¹¹⁰ Alternatively, XXXX states in the written narrative attached to her BOC that she is from the Nigerian State of Borno,¹¹¹ situated in the North of the country. In addition, she highlights that children who refuse forced marriage suffer from neglect, ostracism, physical violence and rape,¹¹² and that the forced marriage of children is a function of religious social and cultural beliefs, and influence of the man's family.¹¹³ She also alleges that there is no state protection with respect to girls at risk of forced marriage.¹¹⁴
- [63] The RIR that I have disclosed indicates that the phenomenon of early marriage is common throughout Nigeria. In 2017, it was estimated that approximately 18.5 percent of women aged 15-49 were married before the age of 15.¹¹⁵ However, it also underscores that child

marriage is particularly prevalent in the North,¹¹⁶ and that decisions with respect to this are made primarily by parents.¹¹⁷ In the South, it is mainly driven by poverty and teen pregnancy.¹¹⁸ In addition, the RIR underscores that Islamic law is mainly applied in Northern Nigeria.¹¹⁹

- [64] Furthermore, although a number of Nigerian states have not domesticated the Child Rights Act, the city of Abuja, where XXXX, her former husband and her daughters resided since 2007,¹²⁰ is not located within any of those states.¹²¹ Moreover, XXXX has stated that her husband is both influential and financially well-off,¹²² thereby ruling out that the driving factor is poverty. Even if I were to find that adequate state protection is not available for girls allegedly forced into child marriages, I have, elsewhere in this decision, found that the Principal Appellant and the Minor Associate Appellant XXXX XXXX have not provided sufficiently persuasive evidence to corroborate their allegations that the Principal Appellant seeks to harm the Appellants. Hence, I do not find that the particular circumstances of that Minor Associate Appellant are similarly situated to Nigerian girl children who are at risk of forced marriage.¹²³ (iv) Regarding the RPD's Assessment of all of the Evidence
- [65] On appeal, XXXX alleges that the RPD failed to consider all of the documentary evidence.¹²⁴ While the RPD is required to assess all of the evidence, both oral and documentary, the panel is presumed to have taken all the evidence into consideration whether or not it indicates having so in its reasons, unless a review of the reasons suggests that the tribunal did consider the totality of the evidence.¹²⁵ In addition, the Appellant did not specify in her memorandum of appeal which evidence the RPD had failed to consider.

CONCLUSION

- [66] Although Maldonado states that where a claimant swears that certain facts are true, it also underscores that this presumption prevails "unless there is valid reason to doubt the truthfulness of that person [emphasis added]."¹²⁶ I find that, in the case of the Appellants, the RPD panel has rebutted this presumption. This is because there were real discrepancies, implausibility findings, and omissions internal to the Principal Appellants' written and oral testimony, that give reason to doubt the truthfulness of their allegations. I find that they were serious enough to undermine the overall credibility of the Principal Appellant's allegations with respect to her own claim and that of the Minor Associate Appellants. It is also well-established that general findings of lack of credibility can affect all relevant evidence submitted by a claimant, including documentary evidence, and can ultimately cause the rejection of the claim.¹²⁷
- [67] I also conclude that the RPD panel was correct in deciding that XXXX, as the designated representative of the Minor Associate Appellants, has not discharged of her responsibility to demonstrate that there is more than a mere possibility that her daughters, particularly XXXX XXXX, would be forced into early marriage by her former husband, if they were to return to Nigeria. DECISION

[68] 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 section 111(1)(a) of the Immigration and Refugee Protection Act (IRPA). Rouba Al-Salem Rouba Al-Salem January 24, 2020 Date RAS/in 1 The Principal Appellant was appointed as the designated representative of her two daughters. 2 RPD Decision TB8-06632 dated May 22, 2019. 3 Under sections 96 and 97 of the Immigration and Refugee Protection Act (IRPA). 4 RPD record. Principal Appellant's Narrative, lines 22-26. 5 RPD record. Principal Appellant's Narrative attached to the BOC lines 35, 55-58, 62, 164. 6 Although the Principal Appellant states that she entered the USA on November 14, 2017, a US entry stamp on p. 18 of her Nigerian passport expiring in 2018 indicates that she entered that country on November 13, 2017. See Annex 1 "Package of Information from the Referring CBSA/CIC". 7 RPD record. Principal Appellant's narrative lines 205-206. 8 RPD record. BOC of Principal Appellant, Exhibit 2. 9 RPD record. Updated Narrative of the Principal Appellant to the RPD (November 2018) at lines 33-34 and 36-37. 10 RPD record. Principal Appellant's Narrative attached to the BOC lines 208-210. 11 RPD record. Principal Appellant's Narrative, 87, 207-208 (thereafter Principal Appellant's Narrative) 12 RPD record. Principal Appellant's Narrative lines 214-217. See also Updated narrative of Principal Appellant lines 41, 46-47. 13 Second Oral hearing at 0:31:41. (December 21, 2018). 14 RPD record. Principal Appellant's Narrative attached to the BOC lines 162-163 and 208-210. 15 RPD Decision at para. 6. 16 RPD Decision at para. 22. 17 Principal Appellant's Memorandum of Appeal at paras. 27-38. 18 Principal Appellant's Memorandum of Appeal at paras. 39-40. 19 Principal Appellant's Memorandum of Appeal at para 9. 20 *M.C.I. v. Huruglica, Bujar* (F.C.A., no. A-470-14), Gauthier, Webb, Near, March 29, 2016, 2016 FCA 93 (CanLII). 21 *Campos Shimokawa v. Canada* (Minister of Citizenship and Immigration) 2006 FC 445, at para. 17. 22 *Sary v. Canada* (Citizenship and Immigration), 2016 FC 178, at paras 27-32. 23 National Documentation Package. Nigeria. November 29, 2019. Tab 5.7 : Forced Marriage, including Child Marriage; Prevalence, Related Legislation, State Protection, Support Services and the Ability to refuse Forced Marriage. (November 18, 2019) Immigration and Refugee Board of Canada. NGA106371.E. 24 Rule 29(3) of the Refugee Appeal Division (RAD) Rules (SOR/2012-257). 25 *M.C.I. v. Singh* 2016 FCA 96, at paras. 34-35, 63, 74. 26 *M.C.I. v. Singh* 2016 FCA 96, at paras. 38-49. 27 Refugee Appeal Division Rules, SOR/2012-257, rule 3(3)(g)(iii). 28 RPD Decision at para. 5. 29 RPD Decision at para. 11. 30 RPD Decision at paras. 1-21. 31 Principal Appellant's Memorandum of Appeal at para. 10. 32 Principal Appellant's Memorandum of Appeal at para. 18. 33 Principal Appellant's Memorandum of Appeal at para. 11 and 14. 34 RPD record. Principal Appellant's Narrative attached to the BOC lines 12, 27-35, 43-45 55-59, 83, 164. 35 First Oral Hearing at 0:55:02 (December 7, 2018). 36 RPD record. Exhibit 1. Principal Appellant's Nigerian Passports issued in 2011 and expiring in 2016, as well as Nigerian passport issued in 2013 and expiring in 2018. 37 First Oral hearing at 0:45:16 and 48:23 (December 7, 2018). 38 First Oral hearing at 0:39:46 (December 7, 2018). Principal Appellant's Narrative, lines 165-166. 39 First Oral hearing 0:57:21-0:58:22 (December 7, 2018). Second Oral hearing 0:17:36 (December 21, 2018). 40 RPD record. Principal Appellant's Narrative, lines 190. First Oral hearing at 0:43:55 (December 7, 2018). 41 RPD decision at para. 14. 42 Principal Appellant's Memorandum of

Appeal at para. 15. 43 First Oral hearing at 0:039:47 (December 7, 2018). 44 First Oral hearing 0:39:56 (December 7, 2018). 45 First Oral hearing at 0:07:29 (December 7, 2018). 46 For Principal Appellant, see p. 19 of Nigerian passport expiring in 2018. For the Minor Appellants, see p. 19 of Nigerian Passport of XXXXX XXXXXX expiring 2021 and p. 7 of Nigerian Passport of XXXX XXX XXX expiring in 2022. 47 RPD Decision at para. 13. 48 Principal Appellant's Memorandum of Appeal at para 12. 49 First Oral hearing at 1:07:37 (December 7, 2018). 50 RPD record. Principal Appellant's Narrative, line 179. 51 First Oral Hearing 0:57:21 and 1:03:40 (December 7, 2018) 52 RPD Decision at para. 14. 53 Principal Appellant's Memorandum of Appeal, para. 15. 54 Maximilok, Yuri v. M.C.I. (F.C.T.D., no. IMM-1861-97), Joyal, August 14, 1998 55 Mekideche, Anouar v. M.C.I. (F.C.T.D., no. IMM-2269-96), Wetston, December 9, 1996. 56 Post-Hearing RPD submission at para. 3. 57 RPD record. Principal Appellant's Narrative, line 201. First Oral hearing at 1:06:47 (December 7, 2018). 58 RPD record. Principal Appellant's Narrative, lines 175-178. 59 First Oral hearing at 1:15:58 (December 7, 2018). 60 RPD Decision at para. 13. 61 RPD record. Principal Appellant's Narrative, lines 199-200. 62 US visa and entry stamp available on p. 8 of the Principal Appellant's Nigerian Passport expiring in 2018. Annex 1 "Package of Information from the Referring CBSA/CIC". 63 Ibid. See also RPD decision at para. 7. 64 RPD Decision at paras. 7-8. 65 RPD record. Principal Appellant's Narrative, line 202. RPD decision at para. 7. 66 RPD Decision at para. 8. First Oral hearing at 1:10:31 (December 7, 2018). 67 RPD Decision at para. 7. 68 Principal Appellant's Memorandum of Appeal at para. 23-24. 69 First Oral hearing at 1:13:36 and 1:13: 40 (December 7, 2018). 70 Second Oral hearing at 0:50:06 (December 20, 2018). 71 First Oral hearing at 1:04:09 (December 7, 2018). Second Oral hearing at 0:50:41 (December 21, 2018). 72 Principal Appellant's Memorandum of Appeal at para. 22. 73 RPD Decision at para. 8. First Oral hearing at 1:11:32 (December 7, 2018). 74 RPD Decision at para. 7. 75 RPD Decision at para. 8. 76 RPD Decision at para. 18. 77 First Oral hearing at 0:32: 46 (December 7, 2018). 78 RPD record. Page 268 and 269 of the RPD electronic file. 79 RPD Decision at para. 17. 80 First Oral hearing at 0:38:48 (December 7, 2018). 81 First Oral hearing at 0:39:23 (December 7, 2018). 82 First Oral hearing from 0:34:24-0:38:05 (December 7, 2018). 83 First Oral hearing at 1:09:100 (December 7, 2018). 84 First Oral hearing at 1:09:18 (December 7, 2018). 85 First Oral hearing at 0:40:35 (December 7, 2018). 86 RPD Decision at para. 17. 87 RPD record. Exhibit 10. 88 RPD Decision at para. 17-18. 89 Second Oral hearing at 0:10:07 (December 21, 2018). 90 Second Oral hearing at 0:10:43 (December 21, 2018). 91 RPD Decision at para. 20. 92 First Oral hearing at 1:02:00; 1:02:56; 1:22:49-1:24:14; 1:36:39-1:37:00; 1:50:37-1:50:48; 1:50:53 (December 7, 2018). Second Oral hearing at 0:23:38-0:24:40; 0:46:5; 0:47:03; 0:48:56-0:49:59 (December 21, 2018) 93 RPD Decision at para. 11. 94 Second Oral hearing at 0:31:41 (December 21, 2018). 95 Second Oral hearing at 0:34:07 (December 21, 2018). 96 Second Oral hearing at 0:43:51 and 0:42:45 (December 21, 2018). 97 First Oral hearing at 0:1:48:53 (December 7, 2018). 98 First Oral hearing at 1:49:07 (December 7, 2018). 99 Oluwaseyi Adeoye v. Canada (Citizenship and Immigration), 2018 FC 246, paragraph 15, citing Ibrahim v. Canada (Citizenship and Immigration), 2016 FC 380, paragraphs 21-30. 100 RPD record. Exhibit 7, p. 293. 101 Principal Appellant's Memorandum of Appeal at para. 39. 102 Principal Appellant's Memorandum of

Appeal at para. 39. 103 RPD record. Exhibit 5 and Exhibit 6. 104 First Oral hearing at 2:11:48 (December 7, 2018). 105 First Oral hearing from 2 :12 :27-2 :13 :50 (December 7, 2018). 106 Section B II of the IRB's Chairperson's Guideline 3: Child Refugee Claimants: Procedural and Evidentiary Issues. 107 First Oral hearing at 2:14:37 (December 7, 2018). 108 RPD record. Exhibit 6. 109 Further Submissions at para. 15. 110 Further Submissions at para. 5. 111 RPD record. Principal Appellant's Narrative attached to her BOC, line 4. 112 Further Submissions at para. 20. 113 Further Submissions at para. 24. 114 Further Submissions at paras 14-18. 115 Supra note 23. NGA106371.E at p. 3. 116 Supra note 23. NGA106371.E at p. 2-3. 117 Supra note 23. NGA106371.E at p. 3. 118 Supra note 23. NGA106371.E at p. 3. 119 Supra note 23. NGA106371.E at p. 4. 120 Item 12 in Schedule A of the Principal Appellant. 121 Supra note 23. NGA 106371.E at p. 5. 122 Further Submissions at para. 24. 123 *Su v. Canada (Citizenship and Immigration)*, 2019 CF 75. 124 Principal Appellant's Memorandum of Appeal at para. 9. 125 *Hassan, Jamila Mahdi v. M.E.I. (F.C.A., no. A-831-90)*. 126 *Maldonado v. Canada (Minister of Employment and Immigration)*, 1980 2 F.C. 302. 127 *Sheikh, Abdulhakim Ali v. M.E.I. (F.C.A., no. A-521-89)*.

RAD File / Dossier de la SAR : TB9-14908 TB9-14909 / TB9-14910 RAD.25.02 (April 04, 2019)
Disponible en français 16 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/credibilityassessment-refugee-appeal-division-2020--6a40c3b14cf2c72690fb1a30>

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

Prepared on 28 October 2026 · Esheria