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XXXX 2016 and arrived in the United States (US). They made a claim for US asylum in XXXX 2017, which was abandoned in XXXX 2017. The Appellants arrived in Canada by illegal border crossing seeking refugee status on XXXX XXXX XXXX 2017. RPD Decision

- [6] The RPD found the PA and MA had not credibly established their allegations. There were material omissions in the Appellants' original Basis of Claim (BOC) that were not reasonably explained. There was no objective evidence to support the allegation that the PA's father died from a spiritual attack at the hands of his family. In addition, the RPD found the Appellants' delay in leaving Nigeria, the delay in claiming asylum in the US and the abandonment of their US asylum claim demonstrated a lack of subjective fear. Grounds of Appeal
- [7] The Appellants argue that the RPD made unreasonable credibility findings. They submit that the RPD should not have rejected the PA's testimony that she believes in spiritual attacks as documentary evidence of spiritual attacks are non-existent. They argue the RPD erred in its assessment of the XXXX report and that the Appellants did attempt to relocate in Ibadan. Further, they submit that the Appellants did leave Nigeria before their daughter was scheduled to have female genital mutilation (FGM) performed on her on XXXX XXXX XXXX XXXX 2016. Finally, they argue the Appellants' delay in claiming in the US was because they were dependent on their lawyer and that the abandonment of their US asylum claims is reasonable in light of the US administration's approach to refugees. NEW EVIDENCE
- [8] The Appellants indicate in their written statement² that they are not submitting new evidence. However, attached to the PA's affidavit are two exhibits - an article and a copy of an email - described as "rebuttal evidence".³ There is no further information about these two documents in the PA's affidavit.
- [9] There is no category of evidence in RAD proceedings entitled rebuttal evidence. As such, I will assess the two documents attached to the PA's affidavit as new evidence. It is well established that new evidence must meet the requirements of subsection 110(4) of the Immigration and Refugee Protection Act (IRPA) as well as be admissible pursuant to the Raza/Singh factors.⁴ The new evidence must have either arisen after the claim was rejected, was not reasonably available at the time the claim was rejected or could not have been reasonably expected in the circumstances to have been presented at the time the claim was rejected. The new evidence must appear to be credible in source and circumstance on its face and contain information that is relevant to the claim. Article regarding spiritual attacks is not admitted
- [10] The article is entitled "Symptoms of demonic influence or attack!".⁵ In their memo, the Appellants indicate this article was revealed by a "quick search on Google". The article is undated; however, I note that comments dated in January, April and May 2019 are posted in response to the article.⁶

- [11] Although the article is undated, the comments posted in response are all dated prior to the RPD decision on July 24, 2019. It is therefore clear that the article did not arise after the Appellants' claims were rejected.
- [12] The PA's affidavit offers no explanation as to why the article was not reasonably available to the Appellants at the time of the RPD decision, as required by the RAD Rules.⁷ I note that the Appellants argue in their memo that it was the result of a quick Google search. This suggests that the article was reasonably available prior to the RPD's decision.
- [13] With respect to whether the Appellants could not have been reasonably expected to have presented the article prior to the RPD's decision, I again note that the PA's affidavit contains no explanation in this regard. It is the claimant's responsibility to put forward such available documents that support their claim to the RPD.⁸ The Appellants' allegations are that they fear their families will cause them to become spiritually sick if they return to Nigeria because they have not followed family traditions. This is a key component of their claim and one that they cannot say they did not reasonably understand their obligation for to provide supporting evidence prior to the rejection of their claims. In addition, I note from the transcript of the hearing⁹ that the RPD spent considerable time asking questions of the PA with respect to the nature of spiritual killings. From June 6, 2019, the second sitting of the RPD hearing onward, the Appellants were aware that evidence regarding spiritual killings was an issue under consideration by the RPD.
- [14] For these reasons, I find that the undated article does not meet the requirements of subsection 110(4) and is therefore not admitted on this appeal. Email from Appellants to US lawyer is not admitted
- [15] The second document submitted appears to be a copy of an email from the Appellants to their US lawyer dated XXXX XXXX XXXX 2017. It is entitled "Documents from immigration in canada [sic]".¹⁰ The Appellants attach 4 jpg documents in the email indicating it is in response to the US lawyer's request. Only the first page of each document is visible in a very small photograph. It is not possible to discern the contents of the documents as the images are very small.
- [16] The PA's affidavit offers no explanation as to why the email was not reasonably available to the Appellants at the time of the RPD decision. The email is dated XXXX 2017 approximately 18 months prior to the RPD decision on July 24, 2019. It is therefore clear that the email did not arise after the Appellants' claims were rejected.
- [17] With respect to whether the Appellants could not have been reasonably expected to have presented the email prior to the RPD's decision, I again note that the PA's affidavit contains no explanation in this regard. In the BOC, the Appellants were specifically asked to identify whether they have made asylum claims elsewhere and what the status of those claims were. The Appellants indicated that they had made asylum claims in the US.¹¹ This question on the BOC provided notice to the Appellants that their asylum claim in the US was relevant to their claim in Canada. In addition, I note that on the first of the two hearings held by the

RPD, April 17, 2019, the RPD informed the Appellants that the abandonment of their US claim was an issue in the RPD hearing.¹² Given the notice from the RPD, it would be reasonably expected that the Appellants would present any evidence relating to their US asylum claims.

- [18] For these reasons, I find that the email does not meet the requirements of subsection 110(4) and is therefore not admitted on this appeal. No jurisdiction to hold an oral hearing
- [19] The Appellants have not requested an oral hearing. However, given that they did submit new documents to be considered on appeal, I have assessed whether an oral hearing should be granted. Under subsection 110(6) of the IRPA, I may hold a hearing if new evidence is admitted that raises a serious issue with respect to credibility, is central to the refugee claim and, if accepted, would justify allowing or rejecting the claim.
- [20] As no new evidence has been admitted, there is no jurisdiction for me to hold an oral hearing. ROLE OF THE RAD
- [21] The RAD reviews decisions of the RPD on a standard of correctness after conducting an independent assessment of the evidence before it.¹³ The exception to this rule is where the RPD enjoys a meaningful advantage in the assessment and weighing of oral testimony heard, which, in particular cases, attracts a standard of review of reasonableness.¹⁴ Unless specifically stated below, I have applied a correctness standard.

ANALYSIS

- [22] I have carefully considered the Appellants' arguments as well as reviewed the RPD record and the transcript of the RPD hearings. I have concluded that the RPD did make a minor error in reaching the conclusion that the Appellants did not seek to relocate to Ibadan. Despite this minor error, the RPD did not err in its conclusion that the Appellants are not convention refugees nor persons in need of protection. Based on my own assessment, I have concluded that the PA and MA made material omissions in their initial narratives that were not reasonably explained. Further the delay in leaving Nigeria, failure to claim in the US and abandonment of their US asylum claims are all demonstrative of a lack of subjective fear. The RPD's findings that the PA and MA lacked credibility and acted in a manner inconsistent with subjective fear are upheld.
- [23] The determinative issues are credibility and lack of subjective fear. Omissions in the original Basis of Claims are not reasonably explained
- [24] On XXXX XXXX XXXX 2017, the PA and MA submitted individual narratives in their BOCs.¹⁵ The Appellants submitted the PA's amended narrative on XXXX XXXX XXXX 2018. The amended narrative contains new allegations and events not included in the original narrative. I will highlight those that are most significant.

- [25] The description of the PA's family ritual was amended to specify that it included FGM as well as chest incisions: "a traditional rite they usually perform for every female child between the ages of 7 and 12 years on every 20th of December. It also includes There is female circumcision and incision cut on our chest and it is physically on my body which is life threatening during the operation traditional rituals"¹⁶ [additions in underline; removals in strikethrough]
- [26] A new allegation was added that the MA's family has a tradition of ritual markings for all children: "Likewise, my husband family were in support on this [sic] traditional rituals too because they too have their own culture and ritual they normally perform for every child at the age of 12 years and above. There is one traditional mark at the back of every child born in their family and this is used as a sign of connection among the children according to what my husband told me.¹⁷ However, at this point we were confused and disturbed and my husband decided to travel down to his hometown named XXXX XXXX to discuss with his family members headed by XXXX XXXX XXXX who is my husband's uncle. He made him realize that he must submit to his In-laws demand because even if our tradition is not carried out their own traditional rites will still have to be performed.¹⁸ They threatened to the extent of invoking spiritual sickness that will lead to my husband's death if he fails to yield to their family traditional rituals. They also made him realize that our little boy will also be inscribe [sic] a mark at his back as they have done also to him when he was young. They claimed it is for protection of members of the family."¹⁹
- [27] Finally, the amended narrative states that the Appellants went to Ibadan after the PA's father's death. Both families were able to locate them there and continued to pressure them to perform the traditions on their children.
- [28] Given the significant amendments, the RPD questioned why such key allegations would not have been included in the original narratives. The PA testified that they were under pressure to complete the application while living in a shelter and that they had difficulty communicating with their lawyer in Montreal. When they retained a new lawyer in Toronto, they were asked to tell their stories and everything then came out. She said that she was not aware of her husband's family's tradition until he told their lawyer in Toronto. The RPD did not accept this explanation as the PA's amended narrative indicates that the MA's family threatened them while they were in Ibadan. The RPD also considered the psychological report indicating that the PA suffers from memory and concentration problems that could result in problems in testifying. The RPD found the report was not applicable as the PA testified in a comfortable manner and the omissions were in written documents. The XXXX report
- [29] The Appellants argue that the XXXX report should be interpreted as indicating the PA suffers from general XXXX XXXX and that the RPD erred by giving little weight to the report. They argue the RPD erred because "XXXX can be selective and the panel's conclusion of inconsistencies is unreasonable".²⁰

- [30] With respect, it seems the Appellants' have misconstrued the RPD's finding regarding the XXXX report. The RPD gave the report little weight because the credibility concern of omitting central allegations in the original narrative were not reliant on the PA's XXXX. No finding was made that the PA's testimony was inconsistent. The RPD specifically stated that no negative inference was drawn with respect to the PA's testimony relating to XXXX. Rather, the RPD found that information about the PA's XXXX was not probative because the BOC omissions were not reliant on the PA's XXXX. In other words, the information in the XXXX report was not helpful in explaining the key omissions in the original BOCs.
- [31] In my review of the XXXX report, I note the PA is described as having symptoms common to those of people exposed to XXXX XXXX. Such symptoms include concentration and XXXX problems.²¹ The report further states: "XXXX XXXX XXXX did not report severe XXXX XXXX, but these may intensify at her Refugee Hearing. Difficulties are exacerbated under pressure, such as arises in the high-stakes context of Immigration proceedings. Symptoms may arise during the Hearing in the form of difficulty understanding questions, requests for questions to be repeated or rephrased, inability to retrieve specific details of the past, or an apparent inability to formulate a coherent response. XXXX-related XXXX problems can lead to difficulties in providing clear and consistent testimony. Should such problems become evident, it will be important to understand that they likely reflect the disorganizing effects of XXXX XXXX rather than an effort to evade or obfuscate."²²
- [32] I note that the report clearly states the PA does not report XXXX XXXX XXXX, but focuses on how the PA's XXXX problems may be intensified while testifying at the RPD hearing. There is no information in the report suggesting that the PA would have had XXXX XXXX XXXX XXXX that she would not report key allegations central to her refugee claim.
- [33] The RPD noted that the PA "answered questions promptly and in a coherent manner and did not demonstrate difficulty with concentration or XXXX problems."²³
- [34] Further, the RPD made clear that it drew no negative inference from the PA's testimony. Rather, the omission concerns were not reliant on the PA's XXXX or testimony. The XXXX report does not create an inference that the PA has XXXX problems that would have prevented her from providing information about all of the allegations in the original narrative.
- [35] I find no error in the RPD's rejection of this explanation nor in the analysis of the XXXX report. I accept the RPD's conclusion in this regard.
- [36] These omissions from the Appellants initial narratives are central to their claim for refugee status and therefore significant. As such, I draw a negative inference as to the credibility of the PA and MA. No objective basis for spiritual attacks

- [37] The RPD found that there was no evidence that the PA's father died of a spiritual attack, nor was there any objective evidence that spiritual attacks can kill someone. The Appellants argue that the RPD erred by expecting documentation about spiritual attacks, as that type of evidence is non-existent. They argue the RPD ought to have relied upon the fact of the belief system of their people, whether or not that belief is true.
- [38] Having carefully reviewed the RPD record including the country documentation, I cannot agree that the RPD erred. While I accept that the Appellants believe that the PA's father was killed by a spiritual attack, there is insufficient credible evidence to find that the father's death was at the hands of the in-laws. The cause of death listed as XXXX XXXX XXXX XXXX XXXX XXXX XXXX²⁴ and there is no connection or reference to spiritual attacks made. Similarly, the lack of objective evidence of spiritual attacks does not support the Appellants' allegation that they will be subject to spiritual killings if they return to Nigeria.
- [39] I find that the Appellants have not demonstrated, on a balance of probabilities, that the PA's father's death was the result of a spiritual attack. The Appellants did attempt to relocate in Ibadan
- [40] The RPD found that the PA's testimony that the Appellants went into hiding in Ibadan was inconsistent with the PA's amended narrative and the PA did not provide an explanation. The RPD further found that the Appellants moved back to Lagos after a 3-weeks vacation in Ibadan despite the PA's testimony that they knew after her father's death that they were unable to protect their daughter from the PA's family. This demonstrated a delay in leaving Nigeria that was not consistent with subjective fear.
- [41] The Appellants argue that the RPD engaged in knit-picking the evidence of the PA and MA. They point out that the PA's amended narrative stated they went on vacation to Ibadan and planned to settle down permanently, however, this was dependent on the MA obtaining a transfer to Ibadan.
- [42] Having reviewed the RPD record and hearing transcript, I have concluded that the RPD did err in reaching its conclusion. The PA's amended narrative states as follows: "6. Out of fear from my family elders led by my uncle XXXX XXXX XXXX, we decided to relocate to Ibadan after we are done with the whole burial of my father...This immediate arrangement was made due to my husband vacation at his work place for 3 wks. We planned to use the vacation in settling down at Ibadan permanently..."²⁵
- [43] Although the amended narrative does not specifically mention going into hiding, it does connect the move to Ibadan with fear of the PA's family and could be understood as an attempt to protect their daughter. I view the inconsistency between the amended narrative and the PA's testimony as superficial. The Appellants have submitted evidence that establishes, on a balance of probabilities, they sought to relocate to Ibadan to avoid the PA's family. I note that the RPD's error is minor in nature and does not detract from the significant credibility concerns as noted above. Delay in leaving Nigeria

- [44] Following their vacation in Lagos, the Appellants returned to Lagos at the end of XXXX 2015. They returned to the same address in Lagos where the children went to school and did not leave Nigeria until XXXX XXXX XXXX 2016. The RPD found the Appellants' actions to be inconsistent with fearing for their lives as well as fearing that their daughter would be kidnapped and be forced to undergo FGM.
- [45] The Appellants argue that there was no delay in leaving Nigeria as the daughter was only XXXX years old at the time. The threat of circumcision was specified to be XXXX XXXX XXXX 2016 and the Appellants left before XXXX XXXX.
- [46] In my review of the record, I note the daughter was born in XXXX 2010 and would have been XXXX years old when the Appellants left Nigeria. This is inconsistent with the PA's testimony and amended narrative that states they left Nigeria before the FGM and ritual was scheduled to occur in XXXX XXXX XXXX 2016 when their daughter was XXXX years old. It is also inconsistent with the PA's testimony that they feared harm from her family once her father had died. I agree with the RPD that the Appellants' actions in returning to their home and staying for an additional 13 months in Nigeria is not behaviour expected of persons fearing for their lives and the safety of their daughter. I find the Appellants' actions are inconsistent with subjective fear. Failed to claim asylum in US for 6 months
- [47] The Appellants argue that the RPD was overzealous in rejecting the Appellants' explanation that their US lawyer told them they were required to wait 6 months after arrival before claiming asylum. They argue the Appellants were vulnerable and dependent on their lawyer and their failure to claim is well explained.
- [48] The RPD found that the explanation was unreasonable to believe and noted that there was no evidence submitted by the Appellants to support that they had retained a lawyer and had received such advice.
- [49] Having conducted my own assessment, I find no error in the RPD's decision. The Appellants are expected to provide available supporting documents with their claim or explain why they were unable to obtain them. The Appellants had notice that delay in claiming was an issue.²⁶ I confirm and accept the RPD's finding in this regard. The delay in claiming demonstrates a lack of subjective fear. Abandonment of US claim not reasonably explained
- [50] The RPD found that the Appellants abandoned their US refugee claims without reasonable explanation. The Appellants' explanation that they feared deportation in the US did not make sense because they knew they were entering Canada illegally but did not try to find out if there was a risk of deportation in Canada. The RPD also rejected the Appellants' claims that there was no possibility that their US asylum claims would be heard.
- [51] The Appellants argue that the RPD erred by not accepting the Appellants' testimony that they did fear being deported in the US. The difference between the risk of being deported in Canada was that they would have an opportunity to have a fair hearing in Canada, unlike in the US.

- [52] Having completed my own review and assessment, I do not find that the RPD erred. There is no documentary evidence that indicates that the US administration is no longer a signatory to the UN Convention on Refugees, nor that it does not comply with international obligations with respect to refugee claims. I agree with the RPD conclusion and accept the finding that the Appellants' abandonment of their claims for asylum in the US is inconsistent with having a subjective fear of persecution in Nigeria.
- [53] In summary, I find the Appellants have not credibly established that they feared harm at the hands of the PA's family if they did not submit their daughter for FGM and ritual cuts. Their delay in leaving Nigeria, delay in claiming asylum in the US and their abandonment of their US asylum claim all demonstrate a lack of subjective fear. I find there is no serious possibility of persecution under s. 96 and no risk to life or cruel and unusual treatment or punishment or danger of torture under s. 97.

CONCLUSION

- [54] 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). (signed) "Karen McGovern" Karen McGovern February 18, 2020 Date 1 Guideline 3: Child Refugee Claimants: Procedural and Evidentiary Issues, Guideline Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act, IRB, Ottawa, November 25, 1996, as continued in effect by the Chairperson on June 28, 2002, under the authority found in section 159(1)(h) of the Immigration and Refugee Protection Act. Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution: Update, Guideline Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act, IRB, Ottawa, November 25, 1996, as continued in effect by the Chairperson on June 28, 2002, under the authority found in section 159(1)(h) of the Immigration and Refugee Protection Act. 2 Exhibit P-2, Appellants' Record, Written statement, at p. 65. 3 Ibid, at p. 17. 4 *Singh v. Canada (Citizenship and Immigration)*, 2014 FC 1022 (CanLII), [2015] 3 FCR 587 5 Exhibit P-2, Appellants' Record, Exhibit C, at p. 57. 6 Ibid, at p. 61. 7 Subsection 3(3)(g), RAD Rules, pursuant to subsection 161(1) of the Immigration and Refugee Protection Act. 8 Rule 11, Immigration and Refugee Board, Refugee Protection Division Rules, SOR/2012-256. 9 Transcript of RPD hearing, at pp. 38, 41-45. 10 Exhibit P-2, Appellants' Record, Exhibit D, at p. 63. 11 Exhibit RPD-1, RPD Record, Exhibit 2, at p. 28, para. 10. 12 Transcript of RPD hearing, at p. 3. 13 *Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93 (CanLII), [2016] 4 FCR 157, at para. 103. 14 Ibid, at paras. 69-74, and *X (Re)*, 2017 (CanLII) 33034 (CA IRB). 15 Exhibit RPD-1, RPD Record, Exhibit 2, at pp. 27-29 ; Exhibit 3, at pp. 41-43. 16 Ibid, at p. 27, para. 2. 17 Ibid, para. 4. 18 Ibid, at para. 7. 19 Ibid, at para. 8. 20 Exhibit P-2, Appellants' Record, at pp. 76-77, para. 19. 21 Exhibit RPD-1, RPD Record, Exhibit 11, at p. 220. 22 Ibid. 23 Exhibit RPD-1, RPD Record, RPD Reasons, at p. 11, para. 32. 24 Exhibit RPD-1, RPD Record, Exhibit 9, at p. 159. 25 Exhibit RPD-1, RPD Record, at p. 28, para 6. 26 Transcript of RPD hearing, at p. 2.

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