

CANADA / JUDGMENT

TB9-06103

COURT

Refugee Appeal Division

DECIDED

31 January 2020

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RAD File / Dossier de la SAR : TB9-06103

TB9-06104 / TB9-06105 / TB9-06106

TB9-06107 / TB9-06108

Private Proceeding / Huis clos

Reasons and decision ? Motifs et décision

Persons who are the subject of the appeal

XXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX
XXXXXXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX

Personnes en cause

Appeal considered / heard at

Ottawa, ON

Appel instruit / entendu à

Date of decision

January 31, 2020

Date de la décision

Panel

Susan Brown

Tribunal

Counsel for the persons who are the subject of the appeal

Josephat Nwabuokei

Conseil de la|des personne|s 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] The Appellants, XXXX XXXX XXXX (Principal Appellant), his spouse, XXXX XXXX XXXX, and their minor children XXXX XXXX XXXX, XXXX XXXX XXXX, XXXX XXXX XXXX and XXXX XXXX XXXX, citizens of Nigeria, appeal a decision of the Refugee Protection Division (RPD), dated January 29, 2019, rejecting their claims for refugee protection. The Principal Appellant is the designated representative of his minor children.
- [2] The Appellants fear persecution in Nigeria because the Principal Appellant is perceived to be gay and he refused to be installed as new chief priest of his family's shrine, which would result in the human sacrifice of the oldest male minor Appellant and the circumcision of the female Appellants. The RPD found that the Appellants' claims were not credible. The Appellants argue that the RPD erred in its credibility finding.
- [3] The Appellants submit new evidence under section 110(4) of the Immigration and Refugee Protection Act (IRPA) and request a hearing under section 110(6). I have not accepted the new evidence and so deny the hearing request.
- [4] Following my independent review, I confirm the decision of the RPD that the Appellants' claims were not credible and dismiss the appeal.

BACKGROUND

- [5] According to their Basis of Claim Forms (BOCs),¹ the Appellants were born in 1977, 1982, 2008, 2010, 2013 and 2015.
- [6] At a meeting with his local community chief in XXXX 2017, the Principal Appellant was declared as the next in line to inherit the title of chief priest. The Principal Appellant's late father and uncle had previously held the title. The Principal Appellant refused the position because he opposes the traditional barbaric practices that would harm his children. On XXXX XXXX XXXX 2017, the Appellants received a letter from a lawyer accusing the Principal Appellant of being gay and giving the Appellants three months to vacate their home. The Appellants believed that the extended family made these accusations because the Principal Appellant refused the position of chief priest.

- [7] On XXXX XXXX, 2017 the Principal Appellant was summoned by the chief to the palace where he was forced against his will to participate in an initiation ceremony. His face was painted and head shaved while he was unconscious. The Principal Appellant was told that the second part of the initiation ceremony would take place on XXXX XXXX, 2017. The Principal Appellant reported these incidents to the police who told him that they would not intervene in a personal matter. The Appellants' personal lawyer advised them to leave the country.
- [8] The Appellants applied for visas to the United States in XXXX 2017, which were issued at the end of that month. In mid-XXXX 2017, the Appellants received a telephone call from a police inspector advising them that a petition had been submitted regarding the Principal Appellant's sexual orientation and he was ordered to report. The Appellants fled Nigeria for the United States on XXXX XXXX, 2017 and entered Canada on October 21, 2017.
- [9] The Appellants' claims were received on November 7, 2017 and the amended narratives on December 27, 2017 and October 23, 2018. The claims were heard on November 6, 2018 and January 23, 2019. The RPD gave its decision on January 29, 2019.

ADMISSIBILITY OF NEW EVIDENCE PRESENTED ON APPEAL

- [10] Section 110(4) of the IRPA provides that an appellant may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection. In Singh² the Federal Court of Appeal dictates a narrow interpretation of section 110(4): the conditions set out therein must be met, and there is no room for discretion on the part of the RAD. If the section 110(4) threshold is met, then the new evidence must also meet jurisprudential requirements of credibility, relevance and newness.³
- [11] The Appellants are applying to present a letter of invitation dated XXXX XXXX, 2019 from Csp. XXXX XXXX of the Inspector-General of Police to the Principal Appellant regarding the "investigation of allegation of same sex activities."⁴
- [12] The Principal Appellant's evidence is that, according to his brother, "the Police visited my house on or about XXXX XXXX, 2019 and met [my brother] there. When they asked of me and he told them I was not around, they served him with a letter of invitation dated XXXX XXXX XXXX 2019 under cover of which they mandated me to report to their office to answer their continuing investigation into allegations that I am a bisexual person."⁵
- [13] The RAD Rules⁶ are very clear that the Appellants' memorandum must include full and detailed submissions regarding how any new evidence meets the requirements of section 110(4) and how that evidence relates to the Appellants.⁷

- [14] Except for the presentation of a DHL proof of delivery on XXXX XXXX XXXX 2019, no explanation is given as to why information about the delivery of a letter of invitation on XXXX XXXX, 2019 was not presented at the RPD hearing on January 23, 2019, especially in light of the Principal Appellant's evidence in the psychological report that "he speaks to his brother in Nigeria by telephone as frequently as twice monthly"⁸ and his testimony that his brother calls him often to tell him what is happening at home.⁹
- [15] Given that the new evidence arose prior to the rejection of their claim and the Appellants offer no explanation as to why they could not reasonably have been expected in the circumstances to have presented it prior to the rejection of the claim, I find that the new evidence does not meet the section 110(4) threshold.
- [16] Even if the new evidence did meet the section 110(4) threshold, I have a number of concerns about its authenticity including:
- * all references to the police in the evidence presented to date by the Appellants references the XXXX Police Station but the new evidence is from "The Inspector-General of Police, XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX Lagos;
 - * the allegations against the Principal Appellant the new evidence changed from allegations that he is gay to allegations that he is bisexual;
 - * the new evidence does not reference any of the previous police information about the allegations against the Principal Appellant:
 - o the XXXX XXXX, 2017 notice to vacate which was copied to the police;
 - o the XXXX 2017 investigation of Inspector XXXX¹⁰;
 - o the visit by the police to the Principal Appellant's lawyer on XXXX XXXX XXXX 2018; or
 - o the Principal Appellant's failure to report to the police when summoned in XXXX 2017 and XXXX 2018;
 - * the Appellants did not present the arrest warrant referenced in the new evidence which would have been issued on or about XXXX XXXX XXXX 2019; and
 - * the new evidence takes the form of a "letter of invitation" which document is not referenced in the objective evidence about documents issued by police during criminal investigations, "during a criminal investigation, the police issues police investigation reports, search warrants, warrants of arrest and 'warrant[s] to release exhibit or dispose.'"¹¹

ORAL HEARING AT THE RAD

- [17] The Appellants request a hearing pursuant to section 110(6) of the IRPA which says the RAD may only hold a hearing if there is new (section 110(4)) evidence that raises a serious issue with respect to the credibility of the Appellant, is central to the RPD's decision, and that, if accepted, would justify allowing or rejecting the refugee protection claim. As I did not accept the new evidence, I deny the Appellants' application for a hearing.

SCOPE OF THE RAD REVIEW

- [18] The RAD reviews decisions of the RPD on a standard of correctness after conducting an independent assessment of the evidence before it. The exception to this rule is where the RPD enjoys a meaningful advantage in assessing and weighing the oral testimony heard, which in particular cases attracts deference.¹² Unless specifically stated below, I have applied the correctness standard.

ANALYSIS

- [19] The RPD identified nexus and credibility as the determinative issues. The RPD found that the adult Appellants' opposition to traditional practices on the grounds that they are barbaric and unbecoming is not linked to a Convention ground. The RPD found that the Appellants were not credible in their allegations, citing concerns about the reliability of the documents presented and inconsistencies and contradictions affecting the core of their claims. Specifically, the RPD found the Principal Appellant gave contradictory accounts of accusations regarding his sexual orientation and a notice of eviction made on account of his perceived sexual orientation. The RPD also found that there was inconsistent evidence about the sacrificial death of the Principal Appellant's oldest brother. With respect to the corroborative evidence presented by the Appellants, the RPD found: the affidavits were not signed or dated; the photographs had little probative value; and noted the lack of documentation to corroborate the deaths of the Principal Appellant's father and uncle or the mysterious circumstances of their deaths alleged by the Appellants. The RPD also made a negative credibility finding because the Principal Appellant provided very little detail about the chief priest position.
- [20] The RPD concluded that the Appellants did not establish, on a balance of probabilities, that: the Principal Appellant is perceived to be a gay person by his community; his community has a tradition of sacrificing first-born sons as a ritual practice; the Principal Appellant is being pursued by his extended family to inherit the position of chief priest; or that the oldest female minor Appellant faces persecution for refusing circumcision. The RPD found that none of the Appellants face a serious possibility of persecution or a personalized risk of harm on the basis of the Principal Appellant's refusal to inherit the chieftaincy.

[21] The Appellants argue that the RPD made errors:¹³ in its credibility and plausibility determination; failing to engage and apply the psychologist's report; misapprehending the Appellants' evidence; and failing to assess the Appellants' claims under section 97 of the IRPA. The Appellants also argue that the RPD erred in failing to consider and apply the Gender Guideline, and finding that the Principal Appellant's opposition to the chief priest position did not have a nexus to a Convention ground when it was clearly based on his personal beliefs (religion) and political opinion.

Credibility

[22] A recent Federal Court decision¹⁴ has laid out the relevant principles in analyzing credibility in the context of refugee claims:

- * Refugee applicants are presumed to tell the truth, but this is a presumption rebuttable by the applicant's lack of credibility, e.g. where the evidence is inconsistent with sworn testimony or where the applicant's explanation for the inconsistencies is not satisfactory;
- * Even though they may be insufficient when taken individually or in isolation, the accumulation of contradictions, inconsistencies and omissions regarding crucial elements of a refugee claim can support a negative conclusion about an applicant's credibility;
- * A negative credibility finding cannot be based on minor contradictions that are secondary or peripheral to the refugee protection claim;
- * A lack of credibility concerning central elements of a refugee protection claim can extend and trickle down to other elements of the claim and be generalized to all of the documentary evidence presented to corroborate a version of the facts;
- * Credibility findings should not be made based strictly on the absence of corroborative evidence. Where corroborative evidence should reasonably be available to establish an essential element of a claim and there is no reasonable explanation for its absence, a decision-maker can draw a negative inference of credibility based on the claimant's lack of effort to obtain such corroborative evidence; and
- * Conclusions can be drawn concerning an applicant's credibility based on implausibilities, common sense and rationality.

[23] I have reviewed the evidence on the record, the recordings of the November 6, 2018 and January 23, 2019 hearings and the Appellants' submissions. As summarized below, I find that the presumption of truth was rebutted by the omissions, inconsistencies and contradictions in the Appellants' evidence about central elements of their claims which were not satisfactorily explained. I find that the Appellants did not establish, on a balance of probabilities, that: the Principal Appellant is perceived to be gay; the oldest minor male Appellant risks human sacrifice; the female Appellants risk circumcision; or that the Appellants risk persecution or harm from their community because the Principal Appellant has refused the position of chief priest.

Perception of Principal Appellant as a gay person

- [24] The evidence to support the claim that the Principal Appellant is perceived to be a gay person was presented in an eviction letter from a lawyer; his two amended BOC narratives; an affidavit from his lawyer; and his testimony.
- [25] The Principal Appellant claims that he is being persecuted by his community because he is perceived to be gay. His BOC attached a lawyer's letter dated XXXX XXXX, 2017 with the following subject line: A CASE OF NUISANCE AND BREACH OF PEACE IN PERFORMING ACT OF GAY CONSITUTED BY MR. XXXX XXXX XXXX AT XXXX XXXX XXXX XXXX XXXX XXXX URGENT NEED TO IMMEDIATLEY VACATE FROM THE COMMUNITY. The letter also states, "before now the community had approached you to stop the act of performing gay in the community and which you know that such act is against the law of the Country. The head of the Community and the members appealed to you to abate the nuisance constituted by you, all but to no avail you still continue."¹⁵
- [26] In the first amendment to his BOC the Principal Appellant says:
- I became more afraid when all of a sudden, I received a letter dated XXXX XXXX 2017, from a certain lawyer-XXXX XXXX XXXX XXXX XXXX XXXX, accusing me of being a gay person and giving me 3 months to vacate the community where I was living. I immediately suspected that my extended family members may be behind the letter, they probably want to cook up stories or allegations against me to lay a foundation for my arrest by the Police. Maybe that is true or may be [sic] that is not true.¹⁶
- [27] In the second amendment to his BOC, the Principal Appellant says that in mid-XXXX 2017 he received a call from a policeman called Inspector XXXX, who told him that a petition had been submitted against him by a lawyer on behalf of his family members who accused him of being a gay person and corrupting the community. Inspector XXXX told the Principal to come to the police station for questioning. The Principal Appellant said that he was in Abuja for a job and would return in a month, and Inspector XXXX "warned that I must immediately report at the police station upon my return and I promised him that I would report unfailingly."¹⁷
- [28] The supporting affidavit from the Principal Appellant's lawyer says that the Principal Appellant "told me he could not say whether he was gay or not, but that he has found himself wanted to have romantic relationship with guys at some points. He also stated that he has gay friends who usually attend night parties and that he had always restrained himself from engaging in the acts because of the risks involved in Nigeria."¹⁸ The lawyer also said that the police visited his office on XXXX XXXX, 2018 and "told me that they received a petition from a lawyer's office and members of [the Principal Appellant's] family to the effect that the [Principal Appellant] was a gay person that [he] had been constituting nuisance to the neighbourhood for some time. They told me that [the Principal Appellant] was wanted in connection with those allegations."¹⁹ The lawyer reported that the police said that a country-wide warrant of arrest would be issued against the Principal Appellant if he

did not report to their station within 30 days.

[29] At the first hearing the Principal Appellant testified that he "is not a gay."²⁰ When asked about his sexual orientation at the second hearing, the Principal Appellant first testified that he was bisexual but then testified that he was only attracted to women.²¹ He testified that the XXXX XXXX and his neighbour think that he is gay because of his association with three gay friends whom he went to school with when he was 25 years old, and because the XXXX XXXX knows his friends are gay, they think the Principal Appellant is gay. When asked, he said that he did not know how the XXXX XXXX knew about the friends he had when he was 25 years old.²²

[30] The starkest contradiction relates to the Principal Appellant's evidence about the underlying reason for his receipt of the notice to vacate: his testimony that it was due to his association with three gay men he went to school with when he was 25 years old versus his BOC narrative which said that his family wanted to cook up stories. When the RPD asked the Principal Appellant to explain, he testified that he was overwhelmed at the time he wrote his BOC and had trouble remembering all the facts and he now thinks that it was his neighbour.²³ The RPD found that this was not a satisfactory explanation because the Principal Appellant remembered details and dates in his testimony.

[31] Following my own review, I found numerous inconsistencies, contradictions and omissions in the evidence to support the RPD finding that the Principal Appellant did not establish, on a balance of probabilities, that he is perceived by the community to be gay:

* The XXXX XXXX, 2017 notice to vacate contradicts the Principal Appellant's testimony that it was based on his association with gay friends as the notice mentions, "the act of performing gay" and references warnings that were given to the Principal Appellant;

* The XXXX XXXX XXXX 2017 notice is copied to "The Division Police, XXXX" and the Principal Appellant says he attended at the XXXX Police Station on XXXX XXXX XXXX 2017, but his BOC makes no reference to any discussion of the XXXX XXXX, 2017 notice at that meeting;

* The Principal Appellant testified that he did not have any problems with people in his community due to the fact that he was perceived to be gay, from the receipt of the notice to vacate until he was contacted by the police in mid-XXXX 2017;²⁴

* According to the Principal Appellant, he was not contacted by the police about the allegations that he was gay until mid-XXXX 2017 although they were copied on the XXXX XXXX XXXX 2017 notice to vacate;

* The Principal Appellant testified that he was not gay but considered gay due to his association with gay friends when he was 25, which is contradicted by the evidence of his lawyer, who stated that the Principal Appellant told him he could not say whether he was gay or not but that he wanted to have romantic relationships with guys and that he attended night parties with his gay friends;

* Although the Principal Appellant amended his BOC narrative on October 22, 2018 to reference his contact with Inspector XXXX in mid-XXXX 2017, he fails to mention that the police visited his lawyer on XXXX XXXX, 2018 and allegedly issued a warrant for his arrest thirty days later; and

* When asked by the RPD if there was a warrant for his arrest the, Principal Appellant testified, "I don't know."²⁵

Ritual sacrifice of oldest minor male Appellant

[32] The evidence to support the claim that the oldest minor Appellant would be subject to a ritual sacrifice was presented in the Principal Appellant's BOC and amended narratives; an affidavit from a neighbour; an affidavit from the Principal Appellant's brother; and the testimony of the Principal Appellant.

[33] The BOC narrative says that when the Principal Appellant's father became the chief priest around XXXX, the Principal Appellant "had an elder brother XXXX XXXX who died under mysterious circumstances shortly before my father became the new chief priest. It was when I became older that I became aware of the practice that requires chief priests to use their first sons for sacrifice to the deity before becoming chief priest."²⁶

[34] The Principal Appellant did not, however, list his elder brother XXXX in his BOC.²⁷ When asked why he was not listed, the Principal Appellant testified that he did not list him because he was deceased.²⁸ When the RPD pointed out that he listed another brother, XXXX, as deceased, the Principal Appellant said he was mistaken because he did not have an interpreter and did not understand and that the brother he listed as deceased was not, in fact, deceased.²⁹

[35] The Appellants argue that the RPD erred because this issue is "trivial, irrelevant, peripheral and/or not central to the [Appellants'] claim"³⁰ and because it did not take into account the Principal Appellant's explanation in his amended BOC narrative that he was rushed, stressed and had a language barrier with his first lawyer and prepared his original BOC.³¹

[36] I do not agree with the Appellants that the inconsistencies in the evidence relating to the death of the Principal Appellant's brother XXXX are peripheral as the alleged human sacrifice of the older minor Appellant is a central element of the Appellants' claims for protection.

[37] Considering both the testimony of the Principal Appellant and his amended BOC narrative, I find that neither reasonably explain why the Principal Appellant did not list his brother XXXX in his BOC, why he listed his brother XXXX as deceased or why he did not amend these alleged errors in his BOC form when he presented two amended BOC narratives. I find that the absence of XXXX from the Principal Appellant's BOC is inconsistent with his evidence that he died under mysterious circumstances when his father became chief priest.

- [38] I also find that the credibility of the affidavit presented by Appellants from the brother listed as deceased in the Principal Appellant's BOC, XXXX, is tainted by the Principal Appellant's inability to provide a reasonable explanation as detailed above. I note that a document which would have verified XXXX identity, e.g. the compulsory Nigerian national identity card,³² was not presented.
- [39] The Appellants also presented an undated affidavit from a community member, XXXX XXXX,³³ who said that his son was asked to serve at the XXXX shrine and, after his son refused, he was abducted and killed by members of the extended family. In addition to being undated and unaccompanied by identity verification, the affidavit presented very little detail, was not about the sacrifice of an eldest son of a chief priest, and the XXXX family was not identified by the Principal Appellant as his extended family, i.e. the XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX families.³⁴
- [40] For all of these reasons, I agree with the RPD that the Appellants did not establish, on a balance of probabilities, that there is a tradition of sacrificing the first-born son of the chief priest or that the oldest minor Appellant would be subject to ritual sacrifice if he returns to Nigeria.

Forced circumcision of female Appellants

- [41] The Appellants' evidence about the forced circumcision is not consistent. In the BOC narrative the Appellants claim that the oldest minor female Appellant must be circumcised and go through a cleansing ritual before the oracle.³⁵ They also claim that if they refuse, the female adult Appellant and the oldest minor female Appellant will be forcefully circumcised.³⁶ The Principal Appellant testified that he feared that his daughters (plural) would be circumcised³⁷ and later referenced the forced circumcision of a daughter (singular).³⁸ At the second hearing the Principal Appellant testified that fears his daughters faced FGM and then said it was only the first daughter who was eight years old.³⁹ The female adult Appellant testified that she was afraid that her daughter would be circumcised.⁴⁰ She did not mention that she or the other minor female Appellant risked forced circumcision.
- [42] The only corroborative evidence presented by the Appellants was an article which says that FGM continues in Nigeria, despite its being outlawed; however, the article does not address mandatory FGM as prerequisite for the inauguration of a chief priest.⁴¹ Following my own review, I note that the objective evidence reports the following information about FGM in Nigeria:

* The prevalence of FGM may depend on one's ethnic background, prevalence of FGM in the extended family and the parents' education;⁴²

* In Nigeria, parents appear to have the ability to refuse FGM;⁴³

* The sources give no indication of risk of kidnapping and forced FGM, where the parents are not consensual;⁴⁴

* The performing of FGM depends on the educational level and economic status of the family, with better education and more affluent families more resistant to the practice;⁴⁵

* A person who is the parent of a minor child who is opposed to them undergoing FGM within communities that practise it may face discrimination and ostracism for going against cultural or family traditions.⁴⁶

[43] The objective evidence does not indicate a practice of taking children by force to perform FGM in Nigeria over the objections of their parents. Following my own review of the objective evidence, I found a single unsubstantiated reference in a study conducted in four Nigerian states, Delta, Ekiti, Imo and Kaduna, which reported a case in which a maternal grandmother allegedly took her granddaughter to be cut against the mother's wishes.⁴⁷ Nor are there any reports of parents who refuse FGM being at risk to life or risk of cruel and unusual treatment or punishment or danger.

[44] I find that the evidence does not support the Appellants' claims that the community would kidnap the adult female Appellant and the oldest minor female Appellant to have them circumcised if they were to return to Nigeria.

Refusing chief priest position

[45] In addition to the credibility issues identified above, the RPD made negative credibility inferences from the absence of documentation about the deaths in mysterious circumstances of the former chief priests, the Principal Appellant's father and uncle, and the inability of the Principal Appellant to provide details about the chief priest despite it being a long-standing tradition in his family. Taking all these concerns into consideration, the RPD concluded that the Principal Appellant "is not being pursued by his extended family to inherit the chieftaincy, on a balance of probabilities."

[46] With respect to the absence of documentation about the deaths of the Principal Appellant's father and uncle, the Appellants argue that the RPD erred because it applied North American standards regarding records of deaths. While the Appellants' argument that it could be difficult to obtain a certificate for the death of the father who died in 1975 may be valid, the same arguments do not apply to the recent death of the uncle in 2016 in the face of objective evidence⁴⁸ about the procedure in Nigeria for obtaining death certificates. As detailed above, the Federal Court has found that where corroborative evidence should reasonably be available to establish an essential element of a claim and there is no reasonable explanation for its absence, a negative credibility inference can be made from the Appellants' lack of effort to obtain such corroborative evidence.

[47] The Appellants argue they deserve the benefit of the doubt, but I find that the circumstances of this case, where the Principal Appellant's general credibility has not been satisfactorily established, do not attract the application of the benefit of the doubt, which was addressed in a very recent Federal Court decision:⁴⁹

As noted by the Court in *Noga v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 454 [Noga], benefit of the doubt principle "applies in a limited number of circumstances". It should only be given "when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility", which assumes "coherent and plausible" statements on the latter's part. (Noga at paras 10 to 12).

[48] With respect to the failure of the Principal Appellant to provide details about the position of chief priest, the Appellants argue that there was no requirement for him to do so and, as he did not participate in the idol worship as an adult, he could not be expected to do.

[49] I agree with the RPD that the Principal Appellant's testimony about the chief priest position was not clear, as he testified the role of a chief priest as dealing with idol and sacrificial issues but also as chief of the whole community and prescribing the laws and the whole community being under him.⁵⁰ I also note that the Principal Appellant's testimony about the chief priest position is much broader than described in the objective evidence which relates the role to a particular shrine.⁵¹

[50] The Appellants make another argument, which is not very clear, but suggests that the Principal Appellant's testimony in this regard was affected by his psychological condition:

Further, the appellants submit that even though the principal appellant was in a position to provide full details of the "chieftaincy rule [sic] but failed to do so, the appellants submit that the panel erred by drawing a negative inference on the principal appellants' inability to provide full detail the panel, without considering and analysing whether the principal appellant's psychological condition could have explained his inability to provide more than a "vague" details of the chieftaincy rule. [sic].⁵²

[51] The Appellants appear to be arguing that it was reasonable for the Principal Appellant to withhold full details of the chief priest role given his psychological condition. As detailed below, I find that the psychological report is not a panacea for deficiencies in the Principal Appellant's testimony.

[52] The Appellants argue that the RPD erred when it found that the Principal Appellant's opposition to the chief priest position did not have a nexus to a Convention ground when it was clearly based on his personal beliefs (religion) and political opinion. The Appellants do not cite any authority for their argument. Following my own review, I did not find clear authority on the issue.⁵³ I find that the issue is not determinative. The RPD's credibility assessment, as detailed above, took account of the Principal Appellant's refusal of the chief priest position in its section 96 analysis, which overlapped with the other elements of the claim relating to the human sacrifice of the oldest minor male Appellant and the forced

circumcision of the female Appellants.

- [53] The Appellants also argue that the RPD erred when it did not undertake a section 97 analysis. This is clearly contradicted by the RPD reasons with respect to the Principal Appellant's refusal to take the chief priest position: "in order to find that the claimants are a person in need of protection, the [RPD] must assess the risk of harm."⁵⁴ With respect to the other elements of the claim, the Federal Court has stated very clearly that a section 97 analysis is not required following a credibility analysis and clear negative findings:

The Respondent submits that the Board was not required to conduct a separate section 97 analysis as it made very clear findings that it found the Applicant's story to be false. While case law has held that there may be circumstances where a separate section 97 is appropriate (*Kilic v Canada* (Minister of Citizenship and Immigration), 2004 FC 84 (CanLII) at para 29; *Sanchez v Canada* (Minister of Citizenship and Immigration), 2007 FCA 99 (CanLII) at para 15), it is not necessary where the applicant has been found to be not credible (*Plancher v Canada* (Minister of Citizenship and Immigration), 2007 FC 1283 (CanLII) at paras 16-17 [Plancher]). In this case, the Board clearly did not believe that the Applicant was in a homosexual relationship and found that he fabricated his story to support a false claim. Having rejected the Applicant's story outright, there was no remaining basis upon which a claim of risk was made out.⁵⁵ [emphasis added]

- [54] Since the RPD correctly found that the Appellants did not credibly establish their claims, it was not necessary to conduct a separate section 97 analysis on the Principal Appellant's perceived bisexuality, the human sacrifice of the oldest minor male Appellant or the forced circumcision of the female Appellants.

Psychological assessment

- [55] The Appellants submit that the RPD failed to properly evaluate Dr. XXXX psychological assessment.⁵⁶ I do not agree and note that the RPD made specific reference to the psychological assessment in the reasons.⁵⁷

- [56] A 2018 Federal Court decision summarizes the considerable Federal Court jurisprudence which specifically addresses the use of psychological evidence in refugee claims:⁵⁸

The jurisprudence has cautioned that the recounting of events to a psychologist or a psychiatrist does not make these events more credible and that an expert report cannot confirm allegations made by a claimant. For example, in *Rokni v Canada* (Minister of Citizenship and Immigration), [1995] FCJ No 182 (QL), 53 ACWS (3d) 371 (FCTD), and *Danailov v Canada* (Minister of Employment and Immigration), [1993] FCJ No 1019 (QL), 44 ACWS (3d) 766 (FCTD), the Court noted that opinion evidence is only as valid as the truth of the facts upon which it is based. The same caution was noted by Justice Phelan in *Saha v Canada* (Minister of Citizenship and Immigration), 2009 FC 304 (CanLII) at para 16, 176 ACWS (3d) 499: "It is within the RPD's mandate to discount psychological evidence when the doctor merely regurgitates what the patient says are the reasons for his stress and then reaches a medical conclusion that the patient suffers stress because of those reasons."

In *Czesak v Canada* (Minister of Citizenship and Immigration), 2013 FC 1149 (CanLII) at paragraphs 37-40, 235 ACWS (3d) 1054, Justice Annis noted concerns about psychological reports that advocate in the guise of an opinion and "propose to settle important issues to be decided by the tribunal." Justice Annis found that in such cases, without some way to probe the opinion, little weight should be attached to it.

The RAD is entitled to scrutinize psychological reports and discount opinions on the issues that it or the RPD, as the decision-maker, should make and to consider that the account provided by a refugee claimant to their psychologist or psychiatrist is their own account.

[57] Federal Court jurisprudence also confirms that a psychological report cannot serve as a cure-all for any and all deficiencies in a claimant's testimony:⁵⁹

The Board reasonably found that a psychiatric report, or in this case a doctor's or counsellor's letter, submitted as evidence where there are concerns regarding the claimant's testimony, amounts only to opinion evidence that is only as valid as the truth of the facts on which it is based. Further, that it cannot serve as a cure-all for any and all deficiencies in a claimant's testimony (*Rokni*, above; *Danailov*, above; *Arizaj v Canada* (Minister of Citizenship and Immigration), 2008 FC 774 at para 26). The Board had stated that it had credibility concerns and, therefore, it was open to it to consider the corroborating letters in the context of those concerns (*Lebrun v Canada* (Minister of Citizenship and Immigration), 2009 FC 233 at para 6). Also see *Singh v Canada* (Minister of Citizenship and Immigration), 2013 FC 202 at para 40. Accordingly, the Board assigned little weight to these reports and it is not the task of this Court to reweigh this evidence.

[58] Following his approximately 60-minute, in-depth clinical interview with the Principal Appellant, Dr. XXXX found that the Appellant satisfies diagnostic criteria for stressor-related disorder with prolonged duration and requires mental health treatment which might include stress-management and supportive counselling.⁶⁰

[59] Dr. XXXX recited the Principal Appellant's experiences with his stress-related problems, which included: problems with concentration and memory, intrusive ideation; his mind going blank; and becoming distracted and forgetful.⁶¹ The report goes on to state:

Concentration and memory problems are common among people exposed to traumatic stress. Problems are exacerbated under pressure, such as arises in the high-stakes context of immigration proceedings. Symptoms may take the form of difficulty understanding questions, requiring questions to be repeated or rephrased, or an apparent difficulty in formulating a coherent response. Stress-related cognitive problems can lead to difficulties in providing clear and consistent testimony. Should such problems become evidence, it will be important to understand that they likely reflect the disorganizing effects of traumatic stress rather than an attempt to evade or obfuscate.⁶²

[60] I find that the RPD conducted the hearing in accordance with the direction given by the psychologist's report that "in light of his distress, cognitive problems, and vulnerability, it is advisable to allow [the Appellant] ample opportunities to take breaks during the testimony.⁶³ The Principal Appellant was questioned for less than 30 minutes⁶⁴ at the first hearing and just under 80 minutes at the second hearing.⁶⁵ The RPD made it clear at the outset of the first hearing that if the Appellants did not understand a question, they may ask the RPD to rephrase the question. When asked if he had anything further to add, the Appellants' counsel did not raise any issues regarding accommodations for the Principal Appellant or at all. ⁶⁶ Neither of the adult Appellants asked for breaks, and counsel for the Appellant did not raise any issues about accommodation at either hearing. Appellant's counsel did not reference the psychological assessment until he made his submissions at the conclusion of the second hearing and asked that the RPD consider the assessment in relation to credibility issues. Appellants' counsel did not make any submissions that the RPD had not accommodated the Principal Appellant in accordance with the recommendations of Dr. XXXX.⁶⁷ I find that the RPD properly considered the psychological assessment of the Principal Appellant.

Gender Guideline

- [61] The Appellants submit that the RPD committed an error in failing to properly consider and apply the Gender Guideline. The Appellants seem to be suggesting that the female adult Appellant suffered sexual violence and that the RPD failed to consider and make a determination as to whether she suffered from difficulties testifying as a result. Following my review of the record, I did not find any allegations or evidence that the female adult Appellant suffered sexual violence or that the need for the accommodation was raised at either of the RPD hearings by either the female Appellant or her counsel.
- [62] I do note that the RPD specifically stated that it recognized that the claim involved gender-related violence, forced circumcision, and that it considered the Gender Guideline.⁶⁸ I find that the RPD properly considered and applied the Gender Guideline.

CONCLUSION

- [63] 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 IRPA.

(signed)

"Susan Brown"

Susan Brown

January 31, 2020

Date

- 1 RPD-1, RPD Record, Exhibits 2-7, pages 17-80, as amended Exhibit 8, pages 81-86, Exhibit 11, pages 245-249.
- 2 Minister of Citizenship and Immigration v. Parminder Singh, 2016 FCA 96.
- 3 Ibid., and Raza v. Canada (Minister of Citizenship and Immigration), 2007 FCA 385.
- 4 P-2, Appellants' Record, page 133.
- 5 P-2, Appellants' Record, page 21.
- 6 Refugee Appeal Division Rules, SOR/2012-257 (RAD Rules).
- 7 Ibid., RAD Rules (3)(e) and 3(g)(iii).
- 8 RPD-1, RPD Record, page 243, Exhibit 11.
- 9 RPD-1, RPD Record, Heading of January 23, 2018, Audio Recording 1:14:13-1:14:29.
- 10 RPD-1, RPD Record, page 248, Exhibit 11, Second Amended BOC Narrative, para. 13.
- 11 RPD-1, RPD Record, Exhibit 8, National Documentation Package, Nigeria, 10 July 2018, tab 10.3: Documents issued by police during criminal investigations or in response to a complaint, including police reports; procedures for an individual to obtain a copy of a police report within the country as well as from abroad; appearance of ... Immigration and Refugee Board of Canada. 6 November 2017. NGA105999.E, page 1.
- 12 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93 (CanLII).
- 13 P-2, Appellants' Record, pages 136-137, Appellants' Memorandum, paras. 5-9.
- 14 Lawani v. Canada (Citizenship and Immigration), 2018 FC 924 (CanLII), paras. 21-26.
- 15 RPD-1, RPD Record, Exhibit 2, page 29.
- 16 RPD-1, RPD Record, page 83, Exhibit 9, para. 9.
- 17 RPD-1, RPD Record, page 248, Exhibit 11, para. 13.
- 18 P-2, Appellants' Record, page 111, para. 10.
- 19 Ibid., pages 110-111.
- 20 RPD-1, RPD Record, Hearing of November 6, 2018, Audio Recording 0:32:25.
- 21 RPD-1, RPD Record, Hearing of January 23, 2019, Audio Recording 0:42:00-0:43:40.
- 22 Ibid., Audio Recording 0:45:00-0:52:55.
- 23 Ibid., Audio Recording 1:20:45-1:24:20.
- 24 Ibid., Audio Recording 1:05:50-1:06:30.

- 25 RPD-1, RPD Record, Hearing of January 23, 2019, Audio Recording 1:15:39-1:16:30.
- 26 RPD-1, RPD Record, page 82, Exhibit 9, para. 5.
- 27 RPD-1, RPD Record, page 23, Exhibit 2.
- 28 RPD-1, RPD Record, Hearing of January 23, 2019, Audio Recording 0:22:15-0:22:53.
- 29 Ibid., Audio Recording 0:22:55-0:23:50 and 1:12:45-1:13:30.
- 30 P-2, Appellants' Record, page 148, Appellants' Memorandum, para. 45.
- 31 RPD-1, RPD Record, page 81, Exhibit 9, para. 1.
- 32 RPD-1, RPD Record, Exhibit 8, National Documentation Package, Nigeria, 10 July 2018, tab 3.9: National Identity Cards, including implementation of the National Identity Card Policy, requirements and procedures, security features, uses, and whether the card is mandatory. Immigration and Refugee Board of Canada. 9 October 2015. NGA105311.E.
- 33 RPD-1, RPD Record, page 239, Exhibit 11.
- 34 RPD-1, RPD Record, page 82, Exhibit 9, para. 4.
- 35 RPD-1, RPD Record, page 82, Exhibit 9, para. 6.
- 36 RPD-1, RPD Record, page 83, Exhibit 9, para. 7.
- 37 RPD-1, RPD Record, Hearing of November 6, 2018, Audio Recording 0:32:52-0:33:00.
- 38 Ibid., Audio Recording 0:35:50-0:36:05.
- 39 Ibid., Audio Recording 0:24:40-0:26:20.
- 40 RPD-1, RPD Record, Hearing of January 23, 2019, 1:29:30-1:29:48.
- 41 RPD-1, RPD Record, pages 250-260, Exhibit 11.
- 42 RPD-1, RPD Record, Exhibit 8, National Documentation Package, Nigeria, 10 July 2018, tab 5.28: Prevalence of female genital mutilation (FGM), including ethnic groups in which FGM is prevalent, particularly in Lagos State and within the Edo ethnic group; consequences for refusal; availability of state protection; the ability of a family ... Immigration and Refugee Board of Canada. 13 September 2016. NGA105628.E. and tab 5.30: Country Policy and Information Note. Nigeria: Female Genital Mutilation (FGM). Version 1.0. United Kingdom. Home Office. February 2017.
- 43 Ibid.
- 44 Ibid.
- 45 Ibid., tab 5.12: Whether parents can refuse female genital mutilation (FGM) of their daughter; state protection available (2016-October 2018). Immigration and Refugee Board of Canada. 29 October 2018. NGA106183.FE.

46 Ibid., tab 5.30, para. 2.3.8.

47 Ibid., tab 5.12, page 2.

48 RPD-1, RPD Record, Exhibit 8, National Documentation Package, Nigeria, 10 July 2018, tab 3.8: Process to obtain a death certificate from the National Population Commission (NPC), including persons entitled to obtain one, the documents that must be submitted, the cost, and the time required to issue the certificate. Immigration and Refugee Board of Canada. 7 March 2011. NGA103704.E.

49 MPSEP v. Gebrewold, 2018 FC 374 at paragraph 28.

50 RPD-1, RPD Record, Hearing of November 6, 2018, Audio Recording 0:36:50-0:40:45.

51 RPD-1, RPD Hearing, Exhibit 8, National Documentation Package, Nigeria, 10 July 2018, tab 12.2: The role of the Chief Priest of the town of Umunede, Delta State, including traditional religious beliefs and practices, preparation for initiation, initiation rites and succession to the office; information on the names of current and past... Immigration and Refugee Board of Canada. 21 October 2015. NGA105312.E and tab 12.11: Consequences for a person to refuse a chief priest or fetish priest position for which they have been selected in south and central Nigeria. Immigration and Refugee Board of Canada. 6 July 2010. NGA103485.E.

52 P-2, Appellant's Record, page 154, Appellants' Memorandum, para. 69.

53 Alli v. Canada (Minister of Citizenship and Immigration), 2002 FCT 479 (CanLII); Nosakhare v. Canada (Minister of Citizenship and Immigration), 2001 FCT 772 (CanLII); Nogheghase v. Canada (Citizenship and Immigration), 2011 FC 1409 (CanLII); Larenas v. Canada (Minister of Citizenship and Immigration), 2006 FC 159 (CanLII); Igbinosa v. Canada (Citizenship and Immigration), 2011 FC 1427 (CanLII).

54 RPD-1, PRD Record, page 7, RPD Reasons, para. 21.

55 Ismaili v. Canada (Citizenship and Immigration), 2014 FC 84 (CanLII), para. 64 cited with approval in Al-Abayechi v. Canada (Citizenship and Immigration), 2018 FC 360 (CanLII), para. 20.

56 RPD-1, RPD Record, Exhibit 11, pages 241-244.

57 RPD-1, RPD Record, page 8, RPD Reasons, para. 23.

58 Iyere v. Canada (Citizenship and Immigration), 2018 FC 67 (CanLII), paragraphs 47-49.

59 Shatirishvili v. Canada (Citizenship and Immigration), 2014 FC 407 (CanLII), paragraph 46.

60 RPD-1, RPD Record, Exhibit 11, pages 243 and 244.

61 Ibid., page 243.

62 Ibid.

63 Ibid., page 244.

64 RPD-1, RPD Record, Hearing of November 6, 2018, Audio Recording, 0:21:00-0:49:20.

65 RPD-1, RPD Record, Hearing of January 23, 2019, Audio Record, 0:05:25-1:24:24.

66 RPD Hearing of November 6, 2018, Audio Recording, 0:20:15-0:20:55.

67 RPD-1, RPD Record, Hearing of January 23, 2019, Audio Record, 1:48:10-1:51:24.

68 RPD-1, RPD Record, page 6, RPD Reasons, para. 15.

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Prepared on 28 October 2026 · Esheria