

CANADA / JUDGMENT

TB9-02253

COURT

Refugee Appeal Division

DECIDED

27 July 2020

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RAD File / Dossier de la SAR : TB9-02253 TB9-02254 Private Proceeding / Huis clos Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX (a.k.a XXXX XXXX XXXX XXXX XXXX (a.k.a. XXXX XXXX XXXX XXXX XXXX) Personnes en cause Appeal considered / heard at Toronto, ON Appel instruit / entendu à Date of decision July 27, 2020 Date de la décision Panel Joel Bousfield Tribunal Counsel for the persons who are the subject of the appeal Andrew J Maloney 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] This is the decision in the appeals of XXXX XXXX XXXX (the principal appellant) and XXXX XXXX XXXX XXXX (a.k.a. XXXX XXXX XXXX-XXXX) (the minor appellant). They appeal the Refugee Protection Division (RPD) decision dated December 28, 2018, rejecting their claims for refugee protection. They are requesting that the Refugee Appeal Division (RAD) set aside the RPD's negative determination and find that they are Convention refugees or persons in need of protection. In the alternative, they request that the RAD refer the matter back to the RPD for redetermination by a differently constituted panel. They have requested to submit new evidence and an oral hearing.

DETERMINATION

[2] The appeal of the principal appellant is allowed. The RAD finds the RPD's decision regarding her claim is unfair and wrong and therefore sets it aside. However, as the RAD finds that it cannot confirm the RPD's decision or substitute its own decision about her claim under subsections 111(1)(a) or (b) the Immigration and Refugee Protection Act (IRPA)¹ without hearing evidence that was presented to the RPD, it refers her claim back to the RPD under subsection 111(1)(c) of the IRPA for re-determination by a differently constituted panel. The appeal of the minor appellant is dismissed. The RAD finds that the RPD's decision regarding her claim is correct and it confirms the decision of the RPD that the minor appellant is neither a Convention refugee nor a person in need of protection, pursuant to section 111(1) (a) of the IRPA.

BACKGROUND

Basis of Claim

- [3] The minor appellant did not allege a well-founded fear of persecution on a Convention ground or that, on a balance of probabilities, she would be personally subjected to a danger of torture or to a risk to her life or to a risk of cruel and unusual treatment or punishment if she returned to the U.S.
- [4] The principal appellant fears harmful traditional rituals and/or persecution for refusing female genital mutilation (FGM) of the minor appellant at the hands of her extended family if she returns to Nigeria. The rest of the central allegations in her case are set out in paragraphs [7] through [11] of the RPD decision. RPD Decision
- [5] The RPD rejected the claim of the minor appellant because it found that she did not have a well-founded fear of persecution on a Convention ground and that, on a balance of probabilities, she would not be personally subjected to a danger of torture or to a risk to her life or to a risk of cruel and unusual treatment or punishment if she returned to the U.S.
- [6] The RPD rejected the claims of the principal appellant because it found the central allegations of the case, in regards to Nigeria, not credible. REQUEST FOR ADMISSION OF NEW EVIDENCE DECLINED
- [7] The principal appellant requested that the RAD admit several items of new evidence relevant to her claim - evidence of a postal strike, the principal appellant's daughter's birth certificate, emails from a friend discussing FGM and rape, shrine pictures, and a medical report.² As the RAD has allowed her appeal based on the evidence that was before the RPD, the RAD declines to address the admissibility of this evidence because the request is moot. The new items are therefore not admitted and were not considered in deciding the appeals.

ANALYSIS

Determinative Issue

- [8] The appellants do not challenge the RPD's rejection of the minor appellant's claim.
- [9] The determinative issue in this appeal is whether the RPD made credibility assessment errors regarding the claim of the principal appellant. For the following reasons, the RAD finds that it did.
- [10] In rendering this decision, the RAD has considered Chairperson's Guideline 4.3 The RAD has also done an independent assessment of the record. The RAD is reviewing the RPD decision on a standard of correctness. Credibility assessment errors
- [11] The RPD drew negative credibility inferences based on several material inconsistencies in the principal appellant's evidence - see RPD decision paragraph [30].

- [12] The appellants argue that the RPD should not have drawn these negative inferences because the RPD misconstrued the evidence and because a postal work stoppage interfered with the principal appellant's ability to provide clarifying documents to her counsel. The RAD agrees that the RPD made an error here, albeit not the error identified by the appellants. As the RPD acknowledged in paragraph [34] of its decision and as the RAD has verified by listening to an audio recording of the hearing, the RAD finds that the RPD never put these inconsistencies to the principal appellant and gave her an opportunity to explain them. The RAD finds that to be a denial of basic natural justice. However, as the unexplained inconsistencies identified by the RPD are material, the RAD finds that it cannot independently make a positive or negative conclusion about the principal appellant's credibility. Minor appellant's claim
- [13] The appellants do not challenge the RPD's rejection of the minor appellant's claim and the RAD sees nothing in the record to indicate that the RPD made an error in rejecting her claim. The RAD therefore finds that the RPD's decision regarding her claim is correct.

CONCLUSION

- [14] Therefore, as the RAD has found that the principal appellant's hearing in front of the RPD was unfair, the RAD is allowing the appeal of the principal appellant and setting aside the RPD's decision with regards to her claim. As the RAD has found that it cannot confirm the RPD's decision or substitute its own decision as to whether or not the principal appellant is a Convention refugee or a person in need of protection, the RAD therefore refers her claim back to the RPD under subsection 111(1)(c) of the IRPA for re-determination by a differently constituted panel.
- [15] The appellants did not challenge the RPD's rejection of the minor appellant's claim and the RAD's independent analysis sees nothing in the record to indicate why they should. The RAD therefore finds that the minor appellant does not have a well-founded fear of persecution on a Convention ground and that, on a balance of probabilities, she would not be personally subjected to a danger of torture or to a risk to her life or to a risk of cruel and unusual treatment or punishment if she returned to the U.S.
- [16] The RAD therefore dismisses the minor appellant's appeal and confirms the decision of the RPD that the minor appellant is neither a Convention refugee nor a person in need of protection, pursuant to section 111(1)(a) of the IRPA. (signed) JOEL BOUSFIELD Joel Bousfield July 27, 2020 Date 1 Immigration and Refugee Protection Act, S.C. 2001, c. 27, as amended. 2 Exhibit P-2, Appellants' Record, at pp. 4-32. 3 Chairperson 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, March 9, 1993; Update: November 1996, as continued in effect by the Chairperson on June 28, 2002, pursuant section 159(1)(h) of the Immigration and Refugee Protection Act.

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