

CANADA / JUDGMENT

MB9-03279

COURT

Refugee Appeal Division

DECIDED

17 November 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 : MB9-03279 MB9-03280 Private Proceeding / Huis clos Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXX XXXXXXXX XXXX XXXX Personnes en cause Appeal considered / heard at Montreal, QC Appel instruit / entendu à Date of decision November 17, 2020 Date de la décision Panel Ayanna Roberts Tribunal Counsel for the persons who are the subject of the appeal N/A 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] I allow this appeal. XXXX XXXX XXXX (Principal Appellant) and XXXX XXXX XXXX (Minor Appellant) are citizens of Nigeria.
- a. The Principal Appellant fears the Badoo Boys cult criminal group in Lagos State, Nigeria. Her claims are as follows. On XXXX XXXX, 2017, she saw five members of the Badoo Boys while walking in the street at night near her home in Ikorodu, Lagos State. They told her that no one who sees them lives. She escaped when the Badoo Boys hid from an oncoming vehicle's lights. The driver saw her screaming, stopped to collect her, and helped her escape. She asked the driver to take her to her church in Agege, Lagos State, where she called her husband who was in Port Harcourt. He advised her to remain at the church for the night. The next morning, her husband advised that they should not call the police, who were suspected to be collaborating with the Badoo Boys. After her third day staying in the church, her neighbour called to report suspicious men searching around her house. Her husband decided not to return home for fear of being killed by the Badoo Boys. After researching her options on the Internet, the Principal Appellant decided to seek refuge in Canada. She arrived in Canada with her youngest child, the Associate Appellant, on September 14, 2017 and immediately requested asylum. Since arriving in Canada, her husband has been located and attacked by the Badoo Boys and her daughter has been assaulted by people suspected to be cult members.
- b. The RPD found that the Principal Appellant was not credible, primarily because there was a contradiction related to whether or not she returned to her home after August 3, 2017. The Appellants argue that she did not contradict herself, and that the RPD did not consider a medical report indicating that she has problems with memory and maintaining her train of thought.

- c. The determinative issue for the Refugee Appeal Division is whether the Appellants face a prospective risk of harm in Nigeria at the hands of the Badoo Boys.
- d. The Appellants face a prospective risk of harm in Nigeria at the hands of the Badoo Boys. The RPD erred in its assessment of the Principal Appellant's credibility. The RPD failed to consider a credible medical report in its evaluation of the Principal Appellant's testimony. The RPD did not consider credible personal documentary evidence that establishes the facts of the Appellants' claim on a balance of probabilities. Objective documentary evidence and the Appellants' personal evidence indicates that they cannot access adequate state protection or an internal flight alternative in Nigeria. DECISION
- [2] The appeal is allowed. I substitute my own decision that the Appellants are persons in need of protection. NEW AND LATE EVIDENCE The evidence presented by the Appellants is accepted
- [3] On September 2, 2020, the Appellants requested that the RAD consider new evidence.¹ The evidence is an affidavit from the Principal Appellant's adult daughter in Nigeria. In the affidavit, the Principal Appellant's daughter affirms that, in Ogun State, in XXXX 2020, she was physically and sexually assaulted by a group of cultists who asked about her mother's whereabouts during the assault. The affidavit is accompanied by a medical report detailing her injuries, and photos of the injuries.
- [4] According to the law,² I can only accept evidence that:
- i. arose after the RPD decision; or ii. was not reasonably available at the time of the decision; or iii. that the Appellants could not reasonably have been expected in the circumstances to bring to the RPD before the decision.
- [5] In the case of late evidence, I must consider whether the documents and submissions could have been provided with the Appellant's record.³
- [6] If the evidence meets one or more of these requirements, I must decide if the evidence is new, credible, and relevant before I can accept it.⁴
- [7] The incident described in the affidavit occurred in XXXX 2020, after the RPD issued its decision and after the Appellants perfected their appeal. I consider that the evidence is new and could not have been presented with the Appellant's record. The evidence is relevant as it could confirm that the Badoo Boys cultists are still interested in locating the Principal Appellant. I do not have any reason to doubt its credibility.

ANALYSIS

- [8] My role is to look at all the evidence and decide if the RPD made the correct decision.⁵ Credibility The Appellants are credible about their claims. The RPD erred in its assessment of their credibility.

- [9] The agents of persecution are members of the Badoo Boys. The most recent objective evidence⁶ affirms that the Badoo Boys are a cultist criminal group primarily operating in the area of Ikorodu, Lagos State. However, incidents relating to the Badoo Boys have been reported on Lagos Island, in Ogun State and in Oyo State. The Badoo Boys' modus operandi is ritualistic in nature, involving raping victims and wiping their private parts with handkerchiefs to offer to alleged sponsors, smashing victims' heads with a grinding stone, and selling blood-soaked handkerchiefs for hundreds of thousands of naira. Evidence related to the ability of the state to deal with the Badoo Boys' criminal activities is mixed. Various state authorities claim to have arrested hundreds of cult members resulting in a significantly reduced number of incidents. However, there have continued to be recent reports of similar ritualistic incidents suggesting that the Badoo Boys continue to carry out killings in their reported areas of operation.
- [10] Given that the Badoo Boys are not reported to be related to the state authorities, I will analyse the Appellants' risk pursuant to section 97 of the Immigration and Refugee Protection Act (IRPA).
- [11] The RPD incorrectly found that the Principal Appellant was not credible for the following reasons:
- a. She testified that she had never gone back to her home in Ikorodu since August 3, 2017, but her Schedule A immigration form⁷ indicates that she lived in Ikorodu until XXXX 2017. She then testified that she had gone back to her home once or twice after August 3, 2017, to pick up her belongings. The RPD considered that she contradicted and amended her testimony. The RPD did not accept her explanation that she did not understand the question in the Schedule A form and found that the timing of her departure from Ikorodu is a key moment in her claim.
 - b. She testified that she did not return to work after August 3, 2017, whereas her Schedule A immigration form⁸ indicates that she worked until XXXX 2017. The RPD did not accept her explanation that she did not properly understand the question.
 - c. She testified that her pastor was contacted by the Badoo Boys and that they threatened to kill everyone in the church if they see her there again. This information was omitted from her Basis of Claim (BOC) form narrative. The RPD did not accept her explanation that she did not remember the incident and was confused, citing the fact that she could have amended her BOC.
 - d. She testified that her husband was contacted by the Badoo Boys at least eight times; this information was omitted from her BOC. She explained that she had already submitted her BOC by the time she received notice of the phone calls. The RPD did not accept her explanation that she was not aware that she could amend her BOC.

e. Though she submitted a medical report attesting to her problems with memory and concentration, the RPD did not find that her medical issues sufficiently explained the various omissions and contradictions relating to her credibility.

f. The RPD did not find that other personal documentary evidence that she submitted overcame her lack of credibility.

[12] The Appellants argue that the RPD's credibility finding is unreasonable because:

a. The RPD did not consider that the Principal Appellant was nervous and crying during the course of the hearing.

b. The RPD focused on the number of trips made to her home in Ikorodu, did not acknowledge that she completed her Schedule A immigration form without the benefit of counsel, and did not give her the benefit of the doubt.

c. The omission of the threats made to the pastor from her BOC narrative should not be fatal because not all details are included in the BOC and the inclusion of details in the BOC should not be the yardstick used to impugn credibility.

d. The RPD completely discounted that the Principal Appellant's husband received death threats simply because the information was omitted from her BOC. They argue that a refugee claim is not a memory test.

e. The RPD failed to consider Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution when it did not accord the Principal Appellant the benefit of the doubt in light of her impaired memory and concentration.

f. The RPD did not question the Principal Appellant or her counsel about what was the objective examination used by her doctor to arrive at the conclusion that she had suffered from trauma before discounting the report, and erred by characterizing the doctor's conclusion about having suffered trauma as a "bold assertion".

g. The RPD failed to consider her personal documentary evidence, including an affidavit indicating an attack on her spouse, without undertaking a full and fair examination of each document. The Appellants argue that this is a breach of procedural fairness. The BOC omissions and perceived contradictions in testimony are not enough to conclude that the Principal Appellant's testimony is not credible given the medical report confirming that she has difficulty with memory and with maintaining her train of thought.

[13] At the start of the hearing, the RPD asked the Principal Appellant whether her BOC was complete, or whether she had anything to add. The Principal Appellant initially answered that her BOC was complete. Counsel intervened and requested permission to ask the question in a different way. The RPD accepted Counsel's request. Counsel asked the Principal Appellant whether anything else happened after she signed the BOC. The Principal Appellant responded in the affirmative. The RPD then explained that the point of his question had been to determine whether anything else had happened. The Principal

Appellant related that she had received a distress call from her daughter involving events that had affected the Principal Appellant's husband. The RPD asked whether she had anything else to add. The Principal Appellant's response is not audible on the hearing recording, however, the RPD's comments appear to confirm that the Principal Appellant indicated that she had nothing else to add, perhaps based upon a nonverbal communication.⁹

- [14] In my view, the exchange surrounding the confirmation of the BOC at the start indicates that the Principal Appellant did not clearly understand that she should inform the RPD of all new or missing information that was not already contained in her BOC narrative. Given this confusion, I find that it is not enough for the RPD to detract from the Principal Appellant's credibility based upon the BOC omissions. There were already indications when RPD requested confirmation of the BOC's content that the Principal Appellant had more to say. This should have been considered in the evaluation of her credibility.
- [15] While the omission of key details from the BOC narrative does not enhance an appellant's credibility, their inclusion in the BOC is not the only way to evaluate the credibility of a person's testimony. The information should also be compared to the relevant documentary evidence, whether personal or objective.
- [16] Concerning the omission of the threats to the pastor, the Appellants provided an affidavit from the pastor where he affirms that after they left Nigeria, he received a phone call threatening him with death if he is hiding the Principal Appellant.¹⁰ The content of the affidavit is consistent with the Principal Appellant's testimony. I have no reason to doubt the credibility of the affidavit and I give it weight and probative value to establish that the Badoo Boys targeted the pastor and church. The Appellants' documentary evidence indicates that the Badoo Boys do target churches who have held vigils in support of their victims.¹¹ This documentary evidence adds to the credibility of their assertion.
- [17] Concerning the omission of over eight threatening phone calls from the Badoo Boys to her husband, the Principal Appellant explained that she did not know that this is the kind of information he wanted when he asked if she wanted to amend her BOC at the start of the hearing. I accept her explanation given the confusion surrounding the BOC confirmation at the start of the hearing. The Appellants provided an affidavit¹² from the Principal Appellant's husband in which he confirms that he received phone calls threatening him and demanding that he produce his wife. The content of the affidavit is consistent with the Principal Appellant's testimony. I accord it weight and probative value to establish that her husband has been threatened by the Badoo Boys. The Principal Appellant did not provide contradictory testimony about when she left her home in Ikorodu.

- [18] Moreover, a medical report¹³ attesting to the Principal Appellant's state of mind was before the RPD. This report indicates that the Principal Appellant has trouble with memory and concentration. It explicitly states that she loses her train of thought but eventually comes around to making her point. Listening to the hearing, I note that the Principal Appellant's testimony followed this pattern. The RPD should have taken the medical report into consideration when assessing her testimony.
- [19] This is particularly important when considering the Principal Appellant's testimony about whether or not she returned to her home in Ikorodu after August 3, 2017.¹⁴ In response to a question about how long she remained in hiding at her church, she spontaneously indicated that she never went back to the house. When pressed to elaborate, she clarified that she was supposed to go home, but she was scared so she stayed in a small motel in the next street, still located in Ikorodu. She explained that she was sleeping in the small motel and going back and forth to her home to take some things but never staying there at night. While it did take the Principal Appellant a moment to completely explain her train of thought about where she lived between August 3, 2017 and her departure from Nigeria, she was ultimately coherent and offered clear explanations for her behaviour during that time.
- [20] Similarly, when the RPD confronted the Principal Appellant with her Schedule A immigration form stating that she had lived at her home address until September 2017, she did not simply answer that she did not understand the question as stated by the RPD in its decision. She qualified that statement by explaining that she thought she had to indicate the date at which she completely packed her things and moved out.¹⁵
- [21] When detracting an appellant's credibility based upon contradictory testimony, it is important to correctly characterize that testimony in the decision. The RPD erred by selectively describing the Principal Appellant's responses and by using that incorrect characterization to raise a credibility concern. The RPD also erred by failing to consider a credible medical report indicating that the Principal Appellant is suffering from troubles with memory and concentration and that explains why her answers were sometimes unclear from the start.
- [22] I want to acknowledge the Appellants' argument that the Principal Appellant was crying during this testimony and that this should be considered. I disagree with the Appellants because the Principal Appellant had already demonstrated that she was credible about her responses prior to crying. However, I acknowledge that after she clarified her answers, the RPD member told her that he did not understand her answer and asked her to reclarify the dates around when she last lived at her home. It is after this statement that the Principal Appellant began crying. I find that this incident further demonstrates the error related to the RPD's failure to consider the medical report. Had the RPD integrated the notion that the Principal Appellant needed time to clarify her thoughts and responses, the Principal Appellant may not have had an emotional response to the questioning.

- [23] It is important to clarify that a medical report stating that a person has cognitive troubles does not automatically absolve the person of the need to provide credible testimony. However, in this case, the Principal Appellant did respond credibly to the RPD's questions. She did not contradict herself when she said that she did not go back to her home simply because she returned to collect her things, or because she responded to the Schedule A question according to her official move out date. The Principal Appellant has established that she and her son face a prospective risk of harm in Nigeria
- [24] Overall, I agree with Counsel's submissions at the end of the RPD hearing that the Principal Appellant was credible and that any potential credibility concerns are explained when the medical report is taken into consideration. On a balance of probabilities, I find that the Principal Appellant has established that she was seen and identified by the Badoo Boys because they had a flashlight focused on her, but that she did not see them other than to know that they were a group of about five. Though she testified that she would not be able to identify them specifically, I accept that they saw her and likely knew who she was because she is a XXXX in her XXXX who XXXX publicly in the neighbourhood. I accept that they told her that whoever sees them must die and that this is what creates a prospective risk of harm and a motivation to locate her specifically.
- [25] I accept that both her husband (in XXXX 2018) and her daughter (in XXXX 2020) were threatened or attacked by suspected cultists who asked about the Principal Appellant's whereabouts. I accept that those suspected cultists are or were members of the Badoo Boys and that they are still interested in locating her. Given that her husband was in Port Harcourt at the time of the threats, and that her daughter was in Ogun State when she was attacked, I find that the Badoo Boys have the ability to locate her or her family members in enough locations in Nigeria to eliminate the possibility of an internal flight alternative. The objective evidence indicates that the state authorities have had limited success with their attempts to rein in or eliminate the threat of the Badoo Boys.¹⁶ This evidence, together with the fact that her husband and daughter were subject to attacks or threats by the Badoo Boys over a period of two years, leads me to believe that the state cannot adequately protect the Appellants from this harm.
- [26] I find that the Principal Appellant's son, the Minor Appellant, is at risk because evidence shows that entire families have been killed¹⁷ and that her own family members have been attacked.

CONCLUSION

- [27] The appeal is allowed. I substitute my own decision that the Appellants are persons in need of protection. (signed) Ayanna Roberts Ayanna Roberts November 17, 2020 Date AR/dd 1 P-3. New evidence. 2 Subsection 110(4) of the IRPA. 3 Refugee Appeal Division Rules. Subsection 29(4). 4 Canada (Citizenship and Immigration v. Singh, 2016 FCA 96; Canada (Citizenship and Immigration) v. Raza FC 385 5 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93; Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145 6 National

Documentation Package, Nigeria, 31 July 2020, tab 7.33: Badoo cult, including areas of operation and activities; state response to the group; treatment of Badoo members or alleged members (2016-December 2019). Immigration and Refugee Board of Canada. 6 January 2020. NGA106397.E. 7 RPD Record. Schedule A. Form IMM 5669. Question 12. Page 57. 8 Idem. Question 8. Page 56. 9 Hearing Recording. Between 14:15 minutes and 18:42 minutes. 10 RPD Record. P-6. Affidavit by Pastor XXXX XXXX XXXX & Email sending affidavit. Pages 128-130. 11 RPD Record. '10 things to know about Badoo, the ritual cult terrorising Ikorodu residents.' July 6, 2017. Pages 140-142. 12 RPD Record. P-14. Affidavit by husband of XXXX XXXX XXXX. Pages 104-105. 13 RPD Record. P-23. Lettre d'observation médicale authored by Dr XXXX XXXX. Page 102. 14 Hearing Recording. Between 47:17 and 53:21 15 Hearing Recording. Between 54:03 and 16 Idem, at note 6. 17 Idem, at note 6.

RAD File / Dossier de la SAR : MB9-03279 MB9-03280 RAD.25.02 (January, 2020) Disponible en français 2 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 (January, 2020) 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--6a40c3bf4cf2c72690fb5cb7>

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

Prepared on 26 October 2026 · Esheria