

CANADA / JUDGMENT

MB9-13268

COURT

Refugee Appeal Division

DECIDED

14 January 2020

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RAD File / Dossier de la SAR : MB9-13268 MB9-13269 / MB9-13270 Private Proceeding / Huis clos
Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXX XXXXXXXXXX XXXX XXXX XXXXXXXXXX XXXX XXXX Personnes en cause Appeal considered /
heard at Toronto, ON Appel instruit / entendu à Date of decision January 14, 2020 Date de la
décision Panel Karen McGovern Tribunal Counsel for the persons who are the subject of the
appeal Chunxiang Bao Conseil des personnes en cause Designated representative XXXX XXXX
XXXX Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS
FOR DECISION OVERVIEW

[1] XXXX XXXX XXXX (Principal Appellant) and XXXX XXXX XXXX, XXXX XXXX XXXX
(Associate Appellants), citizens of Nigeria, appeal a decision of the Refugee Protection
Division (RPD), dated May 8, 2019, rejecting their claims for refugee protection.

DETERMINATION

[2] The appeal is dismissed.

BACKGROUND**Allegations**

- [3] The Appellants fear persecution in Nigeria at the hands of the Principal Appellant's husband's family (family). The Principal Appellant (PA) is being threatened by the family for refusing their demands to follow tradition and have her daughters undergo female genital mutilation (FGM). The Appellants came to Canada for protection via the United States on April 27, 2018. RPD Decision
- [4] The RPD found the Appellants had viable Internal Flight Alternatives (IFAs) in Ibadan and Benin City. Grounds of Appeal
- [5] The Appellants argue the RPD failed to analyze the family's motivation to uphold the tradition of FGM. They further argue that the RPD's reasoning was speculative and lacked transparency. ROLE OF THE REFUGEE APPEAL DIVISION (RAD)

- [6] The RAD reviews decisions of the RPD on a standard of correctness after conducting an independent assessment of the evidence before it.¹ 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.² Unless specifically stated below, I have applied a correctness standard.

ANALYSIS

- [7] I have carefully considered the Appellants' arguments and have conducted an independent review and analysis of the RPD record and oral testimony provided at the hearing. Given the nature of the allegations, I have considered the Chairperson's Guidelines on Gender.³ Given the Minor Appellants, I have considered the Chairperson's Guidelines on child refugee claimants.⁴
- [8] The RPD erred by failing to analyze the family's motivation to pursue the Appellants to carry out FGM. The RPD also provided a somewhat cursory assessment of the reasonableness of the proposed IFAs. Having completed my independent review, however, these issues are not determinative. I have concluded that the Appellants do have viable options for IFA in Ibadan and Benin City. IFA is the Determinative Issue
- [9] The test for an IFA is well established in case law. In the first prong, the decision-maker must be satisfied, on a balance of probabilities, that there is no serious possibility of persecution in the proposed IFA. Second, the IFA must be objectively reasonable, considering all the circumstances of the claimants. Once a proposed IFA is identified, the onus is on the claimant to show there is a serious possibility of persecution in the IFA and that the IFA is objectively unreasonable⁵. No Serious Possibility of Persecution The family is not motivated to pursue the Appellants
- [10] The Appellants argue that the RPD failed to consider evidence about the family's interest and desire to uphold their family tradition and failed to consider evidence regarding the PA's husband's daughter dying from FGM.
- [11] I agree. The RPD erred by failing to assess the family's motivation to pursue the Appellants in the IFA. Nonetheless, having conducted my own review and analysis, I have determined that the evidence is insufficient to establish that the family has the interest and motivation to pursue the appellants. My reasons follow below.
- [12] The PA testified that after the Family told her that her daughters must be circumcised, her husband informed her that this was a family tradition. She also testified that her husband recently told her that his daughter from his first marriage had died following FGM in 2007.

- [13] The Appellants argue that her testimony is corroborated by her husband's affidavit, her sister's affidavit, a police report and a trauma centre report, which establishes the family's motivation to have FGM carried out. They argue the family's motivation is particularly strong because they continue to pursue FGM despite the PA's husband's daughter's death as a result of FGM.
- i. Not established that PA's husband's former daughter died from FGM
- [14] I have carefully reviewed the letter of consent and the affidavit provided by the PA's husband as well as the affidavit and letter from the PA's sister. I note that in all of these documents, signed between XXXX and XXXX of 2019, both the husband and the sister indicate their residence as XXXXxxx in Sagamu. This is, according to the PA's testimony and her Basis of Claim (BOC), the address where she lived prior to leaving Nigeria. She also testified that her husband is currently living somewhere in northern Nigeria and does not live at the house. Finally, she testified that no one is currently living in the house because her sister was forcibly evicted by the family in XXXX 2018. It is important to note that the affidavits are sworn or notarized and attest to the husband's and sister's current place of residence. These are significant inconsistencies as the PA has stated that her sister is not living there because of the family's pursuit of her and her daughter. She has also testified that her husband is not living there because his family was bothering him about bringing the PA and her daughters for FGM. These inconsistencies undermine the credibility of the Appellants' narrative.
- [15] I also note that the PA's husband's affidavit was sworn in Abeokuta in XXXX 2019. Country documentation indicates that affidavits sworn in court require the affiant to appear in person.⁶ This also contradicts the PA's testimony that her husband is living in northern Nigeria. It does not seem plausible for the PA's husband to return to Ogun state to have an affidavit commissioned when this service would be available in any Nigerian state court.⁷ In light of these inconsistencies, I have concerns about the trustworthiness of these affidavits. For this reason, I place low weight on these documents.
- [16] The medical report from the XXXX XXXX XXXX XXXX XXXX indicates that a female person named XXXX XXXX XXXX⁸ died following genital mutilation in 2007. The PA's husband's affidavit is the only source that states she was his daughter. As noted above, I have placed low weight on his affidavit. As such, I find the Appellants have not established on a balance of probabilities that the PA's husband's former daughter died following the family performing FGM. ii. Parents can disagree with FGM
- [17] It is also noted that the husband says he does not agree with FGM but can do nothing to protect the PA and his daughters. I also note in the National Documentation Package (NDP) that where both parents disagree with having FGM performed, they may face being ostracized or discriminated by their family, however, this does not rise to the level of persecution.⁹ The PA and her husband both agree that they do not wish FGM to be performed on their daughters, and as such, they can refuse to have it performed. iii. The family is unlikely to be able to locate the PA and her family in the IFA

- [18] PA testified that she would not be safe in the IFA because the family could locate her through her telephone and banking transactions. She also stated that the family is very big and lives across Nigeria. She was unable to provide any names or places of these family members other than her father in law and brother in law who are in Sagamu. She testified that some of the family members worked at a XXXX and a XXXX XXXX but she did not know where or in what role.
- [19] The Appellants argue that the RPD failed to consider other methods by which the family could locate the PA and her family. They suggest the RPD should have asked the PA why her husband has stated that he does not have the power to stop his family from performing FGM. I disagree. The RPD is not required to elicit specific evidence from the PA. The onus on showing there is a serious possibility of persecution in an IFA is on the Appellants.
- [20] In addition, the PA has testified that her husband moved away from his family because they were disturbing him about providing the PA and her daughters. She was asked specifically if her husband has had any other problems since she left Nigeria and mentioned none that involve his family. The PA's own testimony demonstrates that her husband's family has not pursued him to find the PA and perform FGM on his daughters. This supports that the family is not so motivated and is unable to locate him once outside of Sagamu.
- [21] I find that the Appellants have not established, on a balance of probabilities, that there is a serious possibility of persecution in the proposed IFAs. The proposed IFAs are objectively reasonable
- [22] The Appellants argue the RPD's reasoning with respect to the second prong of the IFA test lacks transparency because it does not provide details that support its conclusion. I agree that the RPD analysis is cursory, however, I do not find that the RPD erred in its conclusion that the proposed IFA was reasonable considering the Appellants circumstances.
- [23] The burden rests with the Appellants to demonstrate that the proposed IFAs are unreasonable. It is noted that the threshold for establishing unreasonableness is a high one. In considering whether an IFA is reasonable, the Appellants individual circumstances must be assessed, including travel to the IFA, accomodation, language, employment, education and any specific medical needs.
- [24] The PA was asked several times if there was any reason why she would not be safe or it would be unreasonable for the Appellants to live in the proposed IFAs. She provided no evidence other than that she believed the family would be able to locate her. As such, I have based my analysis solely on the RPD record.
- [25] The PA is well-educated in comparison to the majority of male and females in Nigeria. She has completed 17 years of education, a degree in XXXX and a year of XXXX XXXX.¹⁰ As noted in the Jurisprudential Guide (JG), males have 9 years on average and women have 7. This means that she has a much better opportunity to obtain employment in the IFAs as compared to those without those years of education. In addition, she has been self-

employed for 7 years as a XXXX. This employment experience combined with her education indicate that she will be likely to obtain employment as compared to others in her position.

- [26] The PA speaks English and Yoruba, both of which are spoken predominantly in the proposed IFAs.¹¹ Her daughters also both speak English.
- [27] She and her husband would be able to practice their Muslim faith without interference.
- [28] In terms of accomodation, the PA testified that her husband's XXXX XXXX is still operational, which would provide some means for her to provide payment for housing. Her husband has been able to relocate within Nigeria. Without any evidence to the contrary, he would be able to relocate to be with his family in one of the IFAs.
- [29] I note that education is available for the two Associate Appellants in the proposed IFAs. Finally, I note there are no special medical needs identified.
- [30] The Appellants have failed to meet the high threshold to demonstrate on a balance of probabilities that the proposed IFAs are objectively unreasonable. The RPD hearing was not procedurally unfair
- [31] The Appellants argue that the RPD was biased because his questions all appeared to be related to a pre-determination related to the proposed IFAs. I have carefully listened to the recording of the RPD hearing and do not agree. The RPD reviewed the PA's allegations extensively, at various times, restating the PA's evidence in an effort to clearly understand her testimony. In addition, the PA was asked about state protection as well as to whether she would be unsafe in the proposed IFAs. I am satisfied that the RPD hearing was conducted without bias or pre-determination. There was no breach of procedural fairness.

CONCLUSION

- [32] Pursuant to section 111(1)(a) of the Immigration and Refugee Protection Act (IRPA), I confirm the RPD's decision that the Appellants are not Convention refugees nor persons in need of protection pursuant to section 96 or section 97 of the IRPA. The appeal is dismissed. (signed) "Karen McGovern" Karen McGovern January 14, 2020 Date 1 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93 (CanLII), [2016] 4 FCR 157, at para 103. 2 Ibid., at paras. 69-74. 3 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. 4 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. 5 Rasaratnam v. Canada (Minister of Employment and Immigration) [1992] 1 FC 706. 6 National Documentation Package (NDP) for Nigeria (November 2019), Response to

Information Request (RIR) NGA104978, Item 9.2. 7 Ibid. 8 Exhibit RPD-1, RPD Record, at p. 187. 9 NDP for Nigeria (November 2019), RIR NGA10618, Item 5.12.ssss 10 Exhibit RPD-1, RPD Record, at p.142. 11 X (Re), 2018 CanLII 52123 (CA IRB).

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