

CANADA / JUDGMENT

TB9-18305

COURT

Refugee Appeal Division

DECIDED

8 January 2020

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RAD File / Dossier de la SAR : TB9-18305 / TB9-18306

TB9-18307 / TB9-18308 / TB9-18309

Private Proceeding / Huis clos

Reasons and decision ? Motifs et décision

Persons who are the subject of the appeal

XXXX XXXX XXXX

XXXX XXXX XXXX

XXXX XXXX XXXX

XXXX XXXX XXXX

XXXX XXXX XXXX

Personnes en cause

Appeal considered / heard at

Vancouver, BC

Appel instruit / entendu à

Date of decision

January 8, 2020

Date de la décision

Panel

Ron Liberman

Tribunal

Counsel for the persons who are the subject of the appeal

Richard Odeleye

Barrister and Solicitor

Conseil des personnes en cause

Designated representative

XXXX XXXX XXXX

for

XXXX XXXX XXXX

XXXX XXXX XXXX

XXXX XXXX XXXX

Représentant(e) désigné(e)

Counsel for the Minister

N/A

Conseil du ministre

REASONS FOR DECISION

INTRODUCTION

- [1] XXXX XXXX XXXX (Principal Appellant), his spouse XXXX, and their minor children, XXXX, XXXX and XXXX, (collectively the Appellants), appeal the decision of the Refugee Protection Division (RPD) dated April 30, 2019, denying the claims for refugee protection under section 96 and finding them not to be persons in need of protection under section 97(1) of the Immigration and Refugee Protection Act (IRPA).¹
- [2] The Appellants did not include new evidence with this appeal, and did not request an oral hearing.

DETERMINATION

- [2] On behalf of the Refugee Appeal Division (RAD), I have conducted an independent analysis of all the evidence concerned, including listening to an audio recording of the RPD hearing, as well as considering the Appellants' Appeal Record, the RPD Decision, the Appellants' Basis of Claim (BOC) Forms, and the entire balance of the RPD Record.
- [3] In reaching my decision, I have considered the Chairperson's Guideline 4 - Women Refugee Claimants Fearing Gender-Related Persecution (Gender Guideline)² and also the Chairperson's Guideline 3 - Child Refugee Claimants: Procedural and Evidentiary Issues.³

- [4] The Appellants have argued that the RPD erred in not mentioning the Gender Guideline in its reasons, but I find that this does not amount to an error because; (1) there were no specific allegations of gender-related persecution made by the Appellants in their claims; and (2) because despite failing to mention the Gender Guidelines, the RPD did consider the factors that are set out in the Gender Guidelines that it was expected to consider when assessing the reasonableness of the proposed Internal Flight Alternative (IFA) in the second prong of the IFA test.
- [5] I find that the Appellants are not Convention refugees or persons in need of protection.
- [6] The determinative issue in this case is the existence of a viable IFA in Port Harcourt.

OVERVIEW AND FACTUAL BACKGROUND

- [7] The Appellants allege they are in danger because the Principal Appellant knows of monies unlawfully retained by the Principal Appellant's former employer (Former Employer) on behalf of the former First Lady of Nigeria, and also that the Appellants' lives are at risk on account of the Principal Appellant's refusing to join the Ogboni cult, as well as for demanding back pay and severance from the Former Employer.
- [8] The Principal Appellant alleges as follows: he was employed as the XXXX XXXX of the XXXX XXXX XXXX in Nigeria (Company). In XXXX 2015, he discovered that funds provided by the XXXX XXXX XXXX XXXX XXXX (XXXX) to associated companies, XXXX XXXX and XXXX XXXX XXXX, had been improperly allocated for use in funding the former First Lady of Nigeria's election campaign.
- [9] In XXXX 2015, the Principal Appellant provided a letter of resignation to the Company. His supervisor at the time delayed in accepting his resignation. In XXXX 2015 the supervisor met with the Principal Appellant and indicated that he did not want him to leave his employment, and that the Principal Appellant's name had been submitted to the Ogboni cult for him to become a member in order to further the interests of the Company.
- [10] The Principal Appellant then engaged a lawyer to obtain money he was owed by the Company. In XXXX 2015 he handed over the remaining property in his possession that belonged to the Company. He received a promise that all monies owing to him would be paid, however he did not receive any monies from the Company.
- [11] In XXXX 2017 on the instructions of the Principal Appellant, his lawyer contacted the former supervisor to ask for payment. However, his lawyer was rebuffed by the Company and told to sue. The Principal Appellant then told his lawyer to say that he would proceed to sue, and the Principal Appellant also threatened to reveal the Company's illegal payments made for the benefit of the former First Lady of Nigeria.

- [12] Soon afterwards, the Principal Appellant alleged that he started receiving threatening calls. There was an attempt to abduct his children from school. In XXXX 2017, he received phone calls threatening his life, and he received a call from the Ogboni that his initiation was imminent. Following that, an attempt was made to break into the apartment where he was living with his family at the time.
- [13] On XXXX XXXX, 2017, the Appellant states he received a text message from his former supervisor re-iterating that the Principal Appellant had been nominated for the cult, and that if he refused he would be killed.
- [14] The Principal Appellant believes an attempt was then made to kidnap his wife. He applied for a Canadian visa, which was denied in XXXX 2017. That same month, the Principal Appellant alleges the family's car was intercepted by another vehicle, which blocked its path and thereby forced it to stop; the Appellants including the children were dragged out, and they were threatened that they must forget about the former First Lady's case or they would be killed. They were also told not to file a lawsuit against the Company or they would be killed. The Principal Appellant reported some matters to the police, but they were reluctant to take a full statement. The police gave him a limited extract of his statement.
- [15] The Appellants relocated to Ibadan but the Principal Appellant says they were followed, which then led them to flee to Osun State. As they were sought out there as well, they fled back to Lagos and stayed at a friend's home in hiding. As they already had a US visa, the Appellants fled to the US in XXXX 2017 and entered Canada shortly after that through an irregular border crossing.
- [16] The Appellants fear they will be located and harmed by the former supervisor, acting on behalf of the Company and its associates, and by the Ogboni Cult if they were to return to Nigeria.

RPD Decision

- [17] In summary, the findings of the Member are below:

* The Member found the allegations of pursuit by political thugs and gang members not to be credible; and,

* The Member found the Appellants have a viable IFA in Port Harcourt.

- [18] As a result, the claims did not qualify under section 96 or section 97(1) of the IRPA.

Appellant's arguments

- [19] Counsel for the Appellant argued:

* The credibility findings were erroneous and were based on peripheral matters, suspicion, and conjecture;

- * There was an error in the assessment of evidence and in the IFA analysis: the Member failed to consider all relevant evidence and factors; the evidence indicates the agents of harm are motivated and resourced to locate Appellants, the Panel did not take into consideration the profile of the adult Appellant's when determining the reasonableness of the IFA, and also did not take into consideration trauma that would be caused by the hardships of relocating to the proposed IFA;
- * A mistake in the credibility findings would lead to a mistake in the IFA findings;
- * It was a mistake to conduct an IFA analysis given the RPD's negative credibility finding;
- * It was an error to disbelieve the testimony because of a lack of corroborative evidence; the RPD failed to apply the presumption of truthfulness;
- * The RPD erred when it found that all communication with the Company stopped in 2015 as correspondence after that date was sent to the Principal Appellant's lawyer;
- * The RPD mischaracterized evidence of why there was a delay in leaving Nigeria and claiming refugee status, there is a reasonable explanation in the BOC and the testimony;
- * It was unreasonable of the Member to expect corroborating documents for all alleged events;
- * The Member erred in not accepting that the Ogboni cult were pursuing the Appellants;
- * The Member failed to assess the female Appellant's claim based on the Gender Guideline, which ought to have been meaningfully applied.

ROLE OF THE RAD

- [20] The RAD reviews decisions of the RPD on a standard of correctness after conducting an independent assessment of the evidence before it.⁴
- [21] 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, may attract deference. Unless specifically stated below, I have applied a correctness standard.

ANALYSIS

New Evidence

- [22] An Affidavit by the Principal Appellant was included in the Appellant's Appeal Record. The Affidavit contains arguments, which ought properly to have been submitted as part of Counsel's Memorandum. Nevertheless, I have considered the arguments made in the Principal Appellant's Affidavit in addition to the arguments made in Counsel's Memorandum. The Principal Appellant states in the Affidavit that no new evidence is included. In the event that any paragraphs of this Affidavit could be considered evidentiary in nature, I find the Appellants have failed to demonstrate that any purported new evidence arose after the rejection of their claims or were otherwise not reasonably available at the

time of their RPD hearing and as such have failed to meet the requirement of section 110(4) of IRPA.

Minor US citizen appellant

[23] The Appellants do not contest the RPD's finding that the Minor Appellant, XXXX XXXX XXXX, is a citizen of the US who did not assert a claim against the US, and is not a Convention refugee under section 96 of IRPA or a protected person under section 97(1) of IRPA. In my independent analysis of the evidence I agree with the RPDs findings in this regard and I adopt the RPDs reasons in support of this finding.

Appellants claims only assessed under section 97(1) of the IRPA

[24] The RPD found that the allegations relating to the remaining Appellants, (Principal Appellant), XXXX, XXXX and XXXX, were that they were victims of crime, that they had no Nexus to a Convention ground, and accordingly assessed their claims only under section 97. The Appellants do not contest this finding on appeal. I have conducted an independent assessment of the evidence and I agree with the RPD's findings and I adopt the RPD's reasons in respect of this finding. Accordingly, I have only assessed these Appellants' claims under section 97 of IRPA.

Internal Flight Alternative

[25] For the purposes of analyzing the viability of an IFA, I will assume, except where indicated otherwise, that the Appellants' allegations are credible. I proceed with my analysis of whether the RPD was correct in its finding that there is a valid IFA in Port Harcourt for the Appellants.

[26] The test for assessing an IFA is two-pronged and is set out in the Federal Court of Appeal decision in *Rasaratnam*.⁵

- (1) The Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists and/or the claimant would not be personally subject to a risk to life or risk of cruel and unusual treatment or punishment or danger, believed on substantial grounds to exist, of torture in the IFA.
- (2) Moreover, the conditions in the part of the country considered to be an IFA must be such that it would not be unreasonable in all the circumstances, including those particular to the claim, for him to seek refuge there.

Although the Appellants alleged that the attacks, threats and harm they suffered were related to the Company having received funds for the former First Lady of Nigeria, from the Ogboni cult, and from the police, when asked by the RPD Member if he had experienced any problems with the Ogboni, the Principal Appellant responded "I can't say"⁶ and explained he knows people are looking for him, they might be members of the Ogboni or they might be political adversaries of his former supervisor (emphasis added).

- [27] The Principal Appellant, in his BOC, also mentioned receiving a text message from his former supervisor to the effect that if he did not join the Ogboni, he and his family would face death. However, there is no evidence that the copy of the threatening text message provided by the Appellants that appears in the Record emanates either from the Ogboni, from his former supervisor, or indeed from his former supervisor's political adversaries. I find the Appellants have failed to adduce sufficient credible evidence to demonstrate on a balance of probabilities that the attacks, threats and harm they suffered were perpetrated by the Company and their associates or by the Ogboni cult.
- [28] The Principal Appellant also indicated in his testimony that the police had come looking for him, and provided evidence of that. However, they have not produced any evidence that the police intended to cause the Appellants any harm. In fact, the evidence is that the Appellants approached the police on several occasions to report the various incidents detailed in their allegations and that in some instances the police took their statements. The Appellants have provided numerous police reports in their evidence. The Appellants have not provided an explanation for why they purportedly fear the police now, which stands in contrast with their actions in voluntarily approaching the police for protection and assistance on multiple occasions when they resided in Nigeria
- [29] I find the Appellants have failed to adduce sufficient credible evidence to establish on a balance of probabilities that they face harm from the Nigerian police and/or that any faction of the police is in league with the Company or the Ogboni cult.
- [30] The Principal Appellant alleges that because he is a member of the XXXX XXXX XXXX XXXX and has a certificate from the XXXX XXXX XXXX of Nigeria, his former supervisor who held high positions in these organizations could find him in Port Harcourt. The RPD found the Appellants failed to explain how the Principal Appellant could be found because of his belonging to the XXXX XXXX. I agree. Moreover, I find there is no evidence that his former supervisor works at an operational level in either of these organizations. Additionally, the Principal Appellant has previously run his own business in Nigeria, and could seek employment in other fields. I therefore find the Appellants have not provided sufficient credible evidence to demonstrate that his former supervisor and or associates of the Company have the means to locate him in Port Harcourt and or that they are sufficiently motivated to locate and harm the Appellants in the IFA.

- [31] With regard to allegations of pursuit by the Ogboni cult, I agree with the RPD's finding that the Appellants have failed to provide sufficient credible evidence to demonstrate that the Ogboni have the means and or are motivated to pursue and harm him in the IFA. Indeed, the Principal Appellant himself, in his sworn testimony, stated he did not know if it was the Ogboni who were pursuing him.
- [32] The Appellants have also not provided sufficient credible evidence that the political adversaries of his former supervisor would be motivated to pursue and harm them in Port Harcourt. I agree with the RPD's finding that the Appellants have not provided sufficient evidence to demonstrate the Principal Appellant is connected to the former First Lady's problems. The Principal Appellant stated that these persons had the means to locate the Appellants in Port Harcourt because they are well-connected. However, I agree with the RPD's finding that the Appellants have failed to provide sufficient evidence to demonstrate that suggests these political adversaries have the means to locate the Appellants in the IFA.
- [33] The Principal Appellant, as per his own testimony quoted earlier, was unable to identify exactly who his prospective attackers might be. I find on a balance of probabilities that the Appellants have failed to provide sufficient credible evidence to establish that the individuals who threatened them were connected in any way with the Company and the Principal Appellant's former supervisor, political adversaries of the former supervisor, or the Ogboni cult.
- [34] In summary, I conclude that the Appellants have failed to provide sufficient credible evidence that their alleged adversaries have the means and motivation to pursue them in the IFA.
- [35] I therefore agree with the RPD's finding that, on a balance of probabilities, the Appellants do not face a section 97(1) risk of harm in Port Harcourt, and therefore the first prong of the IFA test is satisfied.
- [36] Turning now to the second prong of the IFA, I have carefully considered the arguments of Appellant's Counsel in paragraphs 55 to 66 of the Memorandum.
- [37] Counsel contends the RPD failed to take into consideration the testimony of the Appellants that "they would not be able to live their lives freely and openly" and they "would not be able to go out and look for a job" and that they would face threats from government agencies. However, I have found that the Appellants do not face a section 97(1) risk of harm from any of the alleged persecutors in the IFA. As such I find the Appellants have not established that they would have to live their lives in hiding in the IFA. There is also not sufficient reliable evidence to establish that the Appellants would be unable to seek employment in the IFA. There is no evidence to suggest that approaching government agencies is dangerous for them. I reject this argument.

- [38] Counsel also stated the RPD failed to consider the difficulties inherent in moving to Port Harcourt, namely that they do not have employment or housing in Port Harcourt, that they will receive no assistance from the Nigerian government and that do not know anyone in that city, have no relatives there, and accordingly their lives will be in danger.
- [39] I agree with the RPD that, based on evidence in the Record, including the information provided regarding the Principal Appellant's employment and the Co-Appellant's Schedule A form, they are highly educated, they both have solid employment records in Nigeria, and are proficient in English. Additionally, as per his own evidence the Principal Appellant was employed as a XXXX XXXX of the Company, and has operated his own business in Nigeria. The Principal Appellant is aged 43, while his spouse, the Co-Appellant, is 37. I have considered NGA104679.E in the National Documentation Package (NDP), to which Counsel referred, and I agree with the RPD that, although finding employment and being able to rent accommodation in Port Harcourt presents challenges, in the circumstances of the Appellants, these are similar to the challenges they faced when they lived previously in Lagos, and even though I recognize that in Port Harcourt they will not have relatives to assist them, I find these are challenges they are well placed to overcome.
- [40] Furthermore, while I accept the country documentation shows some discrimination in parts of Nigeria towards non-indigenes, as alleged by Counsel, the evidence before me, does not demonstrate that there is a level of discrimination that would amount to persecution, or that the state or local government in Port Harcourt are likely to force the Appellants to leave because they are Yorubas.
- [41] As pointed out by the RPD, the Federal Court imposes a very high standard before it can be found that an IFA is unreasonable: "It requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions"⁷. The rationale for this is that persons claiming as Convention refugees are expected to first seek refuge in their own country, and only if they are not safe there are they entitled to ask another country for protection.
- [42] I find that the difficulties raised by Appellants' Counsel in the Memorandum would not, on a balance of probabilities, amount to circumstances that threaten the life or safety of the Appellants. Furthermore, I agree with the RPD that, since Port Harcourt has an international airport, the Appellants could safely travel there. I find that there is insufficient reliable and credible evidence to demonstrate that they are at risk when travelling through the airport because of the Nigerian police, as is alleged in the Memorandum.
- [43] With respect to Counsel's argument that the RPD failed to address the Gender Guideline, I disagree. While the Memorandum refers to "abused women" and to a section of the NDP that refers to women who head their own households. The Principal Appellant also alleged that, if returned to Nigeria, his spouse, the Co-Appellant, would be obliged to seek employment in the role of a person who supplies sexual services for a fee. However, I find these arguments

to be without merit because the Co-Appellant's profile is distinguishable from those Counsel has referred to in the NDP. There is no evidence that the Co-Appellant is an abused woman, or that if returned to Nigeria she would do so without the Principal Appellant. I agree with the RPD that she is in fact a sophisticated and educated woman who is likely to be able to find remunerative employment in other fields. I find the RPD applied the correct considerations when assessing the Gender Guideline in relation to this claim and the RPD also considered the Co-Appellant's safety when travelling to and living in Port Harcourt.

[44] I also agree with the RPD's assessment of the psychological report, showing a diagnosis of XXXX XXXX XXXX XXXX XXXX, and find, in common with the RPD, that the evidence shows mental health care is available in Port Harcourt and that there is no indication it would be unavailable or inaccessible to the Appellants. I have considered the argument advanced by Counsel that the Appellants, given their psychological makeup, may not be able to reach the proposed IFA or survive in it. The burden lies on the Appellants to demonstrate that this is the case, but I find there is no evidentiary basis for this assertion, and that it amounts to speculation.

[45] Consequently, I find that the second prong of the test for an IFA is met, and that the Appellants have a viable IFA in Port Harcourt. As a result, the claims of the Appellant, the Co-Appellant and their minor children who are nationals of Nigeria fail under both sections 96 and 97(1) of IRPA.

DETERMINATION

[46] Pursuant to section 111(1)(a) of the IRPA, the RAD confirms the decision of the RPD that the Appellants are not Convention refugees or persons in need of protection. The appeal is dismissed.

(signed)

"Ron Liberman"

Ron Liberman

January 8, 2020

Date

1 Immigration and Refugee Protection Act, SC 2001, c.27.

2 Immigration and Refugee Board of Canada, Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act: Guideline 4 - Women Refugee Claimants Fearing Gender-Related Persecution, Effective date: 13 November 1996.

3 Immigration and Refugee Board of Canada, Guidelines issued by the Chairperson pursuant to Section 65(3) of the Immigration Act: Guideline 3 - Child Refugee Claimants: Procedural and Evidentiary Issues, Effective date: September 30, 1996.

4 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93.

5 Rasaratnam v. Canada (Minister of Employment and Immigration) [1992] 1 FC 706 (FCA)

6 Exhibit P-2, Appellant's Record, p. 58.

7 Ranganathan v. M.C.I., 2000 CanLII 16789 (FCA), paras 13-17

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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 (April 04, 2019)

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