

CANADA / JUDGMENT

MB8-27355

COURT

Refugee Appeal Division

DECIDED

12 June 2020

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RAD File / Dossier de la SAR : MB8-27355 MB8-27356 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 Toronto, ON Appel instruit / entendu à Date of Hearing March 10, 2020 Date de l'audience Date of decision June 12, 2020 Date de la décision Panel J. Lourenço Tribunal Counsel for the persons who are the subject of the appeal Ayesha Kumararatne 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 (Minor Associate Appellant), citizens of Nigeria, appeal a decision of the Refugee Protection Division (RPD), dated November 20, 2018, rejecting their claims for refugee protection. The Appellants allege that they fear persecution and a risk to life at the hands of the Principal Appellant's in-laws. The RPD found that the Appellants had a viable internal flight alternative (IFA) in Calabar and rejected their claims.
- [2] For the reasons that follow, I find that the Appellants do not have a viable IFA. As such, I allow their appeal and substitute a decision that they are convention refugees.

BACKGROUND

- [3] The Principal Appellant alleges that she was physically abused by her husband's XXXX XXXX XXXX XXXX XXXX family. She alleges that her husband's family beat her and performed a XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX. She alleges that the police refused to help her as they viewed this as a family problem. The Principal Appellant alleges that her husband's family suspected she XXXX XXXX XXXX XXXX and demanded that she undergo ritual cleansing. The Appellants then fled Nigeria with the help of XXXX XXXX XXXX and came to Canada through the United States.
- [4] The RPD refused the Appellants' claims as it found that they had a viable IFA in Calabar. On appeal, the Appellants introduced new evidence about the Principal Appellant's XXXX XXXX. The Refugee Appeal Division (RAD) invited the Appellants to make submissions on whether Abuja would be a viable IFA for them. The Appellants made submissions and presented

more new evidence setting out that the Principal Appellant's husband XXXX XXXX XXXX XXXX XXXX left Nigeria in XXXX 2019 and came to Canada to advance a refugee claim. The Appellants also submitted evidence outlining the new allegation that the Principal Appellant is now wanted by the Nigerian police. The Appellants argued that they could not relocate to Abuja as XXXX XXXX XXXX's uncle XXXX XXXX XXXX XXXX in that city. Furthermore, the Appellants argue the Principal Appellant would be relocating in Nigeria as a single woman. The Appellants argue that given her profile, relocation would be unreasonable. As such, the Appellants argue that they did not have a viable IFA.

- [5] The RAD held an oral hearing on March, 10 2020 in order to assess the credibility of the Appellant's new evidence. After considering the record, I find that the Appellants do not have a viable IFA in Abuja or Calabar. I find that given the Principal Appellant's profile, relocation would be unreasonable.

PROCEDURAL HISTORY

- [6] An overview of the procedural history of the Appellants' claims is as follows: * The Appellants' claims for refugee protection were heard by the RPD on August 21 and October 16, 2018. * The Appellants' claims were denied by the RPD on November 20, 2018. * The Appellants filed an appeal of that decision to the RAD and perfected their appeal on March 5, 2019. * The RAD sent a notice to the Appellants seeking submissions on a new issue, namely the viability of an IFA in Abuja on October 8, 2019. * The Appellants sought an extension of time to make their submissions and that request was granted. * The Appellants' submissions were received by the RAD on November 9, 2019. The submissions were accompanied by new evidence. * A notice was sent by the RAD setting an oral hearing for March 10, 2020 with the following instructions: The hearing will be restricted to the following issues:

1. The new allegations related to the Principal Appellant's sister XXXX XXXX.
2. The newspaper article and new allegation that the Principal Appellant and her husband are now being XXXX XXXX XXXX XXXX in Nigeria.
3. The viability of an IFA in Abuja. The RAD will require all original documents that were submitted as New evidence, which were:
 - Affidavit of the Appellant sworn November 1, 2019
 - XXXX XXXX article dated XXXX XXXX XXXX 2019
 - Affidavit XXXX XXXX XXXX sworn September 14, 2019
 - XXXX XXXX XXXX dated XXXX XXXX, 2019 Also, we need the BOC and narrative of the Appellant's husband (can be a copy). All these documents must be sent to the RAD no later than January 31, 2019. * The Appellants advised the RAD that the Principal Appellant's husband was unwilling to disclose his basis of claim form or refugee documents as he had not disclosed the reason for his claim to the Principal Appellant. * On March 6, 2020, the

Appellants advised the RAD that the Principal Appellant's husband had been accepted as a convention refugee.

ANALYSIS

Appellants' Arguments

- [7] In the Appellants' original memorandum, they argue that the RPD erred in its IFA assessment. They argued that the Principal Appellant's in-laws had the means and motivation to locate them in Calabar. The Appellants also argued that it was unreasonable for them to relocate to Calabar, especially in light of the new XXXX XXXX about the Principal Appellant's XXXX XXXX XXXX. In the Appellants' further submissions about their ability to relocate to Abuja, they argued that the new evidence establishes that XXXX XXXX XXXX family has the means and motivation to locate them throughout Nigeria. Further, the Appellants now argue that it would be unreasonable for them to relocate to Abuja as the Principal Appellant would be relocating as a single woman with three young children and no familial support.
- ROLE OF THE REFUGEE APPEAL DIVISION
- [8] 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 the assessment and weighing of oral testimony heard, which in particular cases, attracts deference. Unless specifically stated below, I have applied a correctness standard.
- 1 NEW EVIDENCE
- [9] The Appellants did submit new evidence with their appeal initially, and when they were invited to make submissions on the new issue of an IFA in Abuja, they tendered further new evidence and made an application to have it considered. This evidence was not a direct reply to the request for submissions on the viability of the proposed IFA location, therefore I have applied the test for post-perfection evidence in assessing its admissibility. The new evidence submitted after the request for submissions introduced an allegation that XXXX XXXX XXXX XXXXs family XXXX and threatened the Principal Appellant's sister. The new evidence also raised an allegation that the Nigerian police were now also pursuing the Principal Appellant because the Principal Appellant and XXXX XXXX XXXX were wanted for committing an immoral act.
- [10] The list of new evidence is as follows:
1. A XXXX XXXX XXXX date XXXX XXXX, 2019.
 2. A research article from BMC health services research published on June 21, 2015.
 3. An affidavit from the Principal Appellant dated November 1, 2019.
 4. An article from the XXXX XXXX dated XXXX XXXX, 2019.
 5. An affidavit from the Principal Appellant's sister dated September 19, 2019.

6. An extract from the crime diary of the Nigerian state intelligence bureau dated XXXX XXXX, 2019.
7. An affidavit from XXXX XXXX dated March 12, 2020 submitted with post oral hearing submissions.

[11] The new evidence listed as items 3-7 were tendered by the Appellants after their appeal was perfected. As such, I have considered the factors set out in Rule 29(4) of the Refugee Appeal Division Rules.² All of the evidence submitted by the Appellants relates to alleged events that occurred after their appeal was perfected. The new evidence relates to a new allegation that the Principal Appellant's sister XXXX XXXX and threatened, as well as the allegation that the Principal Appellant is XXXX XXXX XXXX XXXX XXXX XXXX. These allegations are relevant to the issue of the Appellants' forward-looking risk and to the viability of the proposed IFA location. Given that these events occurred after the appeal was perfected, the evidence is new and could not have reasonably been provided with the appeal record.

[12] Section 110(4) of the Immigration and Refugee Protection Act (IRPA)³ sets out that an appellant may only present evidence that arose after the rejection of their claim, or that was not reasonably available, or that they could not reasonably have been expected in the circumstances to have presented at the time of the rejection. Where evidence meets the requirements of section 110(4), the RAD will then go on to consider the factors affirmed by the Federal Court of Appeal in Raza and Singh.⁴

[13] As indicated in the preceding paragraphs, this evidence is new and arose after the rejection of the claims. It is also relevant to the appeal as it deals with the forward-looking risk the Appellants face in Nigeria as well as the viability of an IFA. In reviewing the evidence, on its face it appears to be credible. As such, the evidence meets the requirements of section 110(4) of IRPA and the Raza/Singh factors and is being admitted for the appeal.

[14] In considering the new evidence submitted by the Appellants with their appeal (items 1-2), I find that this evidence meets the requirement of section 110(4) as it relates to a XXXX XXXX and report which occurred after the Appellants' claims were denied by the RPD. I note that while the research article was published in 2015, the Appellants could not have been reasonably expected to provide this document to the RPD. The Principal Appellant's XXXX XXXX had not yet occurred and therefore it would not be reasonable to expect that the Appellants would have provided evidence about the availability of XXXX XXXX in Nigeria at that time. In considering the factors in Raza/Singh, I find that this evidence is new and relevant as it deals with the viability of Abuja as an IFA for the Appellants. Given its source, I find that the evidence appears to be credible. As such, it will be admitted for the appeal.

ORAL HEARING

[15] An oral hearing was held pursuant to section 110(6) of IRPA to test the credibility of the new evidence and allegation that the XXXXin Nigeria XXXX XXXX XXXX the Principal Appellant, and that the XXXX XXXX XXXX have threatened her sister. A hearing was held as this new allegation, if it were credible, could have been determinative of the claims. For the reasons

that follow, the appeal is allowed as I find the determinative issue is whether it would be reasonable for the Appellants to relocate to Abuja. Given the Appellants' circumstances, I find that it would be unreasonable for them to relocate to Abuja. The determinative issue is IFA

[16] The test for assessing an IFA is two-pronged and is set out in the Federal Court of Appeal's 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.

[17] Both prongs must be satisfied to find that the Appellants have an IFA. Once the issue of IFA has been raised and the potential IFAs have been identified, the burden of proof rests with the Appellants to show that they do not have an IFA. An IFA must be a realistic and attainable option.⁶

[18] Nigeria is a large country with an area of over 900,000 square kilometres in 36 states.⁷ Nigeria has a population of over 203 million people.⁸ Abuja, the nation's capital, is also one of the largest cities in Nigeria with a population of approximately 2.44 million.⁹

[19] Although I find that there are credibility concerns with the Appellants' new evidence regarding the allegation that the Principal Appellant's sister XXXX XXXX and threatened, as well as the new allegation that the Principal Appellant and her husband XXXX XXXX XXXX XXXX XXXX XXXX, this is not determinative of the appeal.

[20] The RPD accepted the Appellants' allegations that they were targeted by XXXX XXXX XXXX family for ritual cleansing and that the Principal Appellant was subjected to FGM. When the Appellants submitted their new evidence and submissions in regards to the viability of an IFA in Abuja, the refugee claim of the Principal Appellant's husband had not yet been determined by the RPD. A few days before the Appellants' oral hearing, the RPD accepted the refugee claim of the Principal Appellant's husband. This had a significant impact on the determination of whether it was reasonable that the Appellants could relocate to Abuja as now the Principal Appellant would be relocating without her husband. For the reasons that follow, I find it would be unreasonable for the Appellants to relocate within Nigeria without the Principal Appellant's husband given the Principal Appellant's profile. Second Prong: The Appellants have established that it would be unreasonable for them to relocate to Abuja or Calabar

- [21] In its analysis of the 2nd prong of the IFA test, the RPD found that the Appellants had not established that it would be unreasonable for them to relocate to Calabar. The RPD found that the Principal Appellant would not suffer a linguistic challenge upon relocation as she spoke Edo and English. The RPD noted that the Principal Appellant had work experience XXXX XXXX XXXX XXXX XXXX XXXX XXXX As well, the RPD noted that the Principal Appellant had some postsecondary education. The RPD noted that the Principal Appellant claimed she would be unable to secure housing as her husband worked XXXX XXXX and therefore she may be viewed as a single woman. However, the RPD noted that the Principal Appellant was married and that her husband was employed and she would have his support. The RPD found that although unemployment is a challenge in Nigeria, the Principal Appellant's profile put her in a better position compared to the average population. As such, the RPD concluded that the Appellants had not established that they would be unable to relocate to Calabar.
- [22] The Appellants were asked to make submissions about the viability of relocating to Abuja. The Appellants argue that it would be unreasonable for them to relocate given their circumstances. The Appellants argue that the Principal Appellant would be unable to secure employment given her limited work experience and education. Further, the Appellants argue that they would be unable to secure housing in Abuja. They Appellants highlight the new documents in the National Documentation Package (NDP) and argue that the objective evidence demonstrates that it is very difficult for female led households throughout Nigeria. The Appellants also argue that the Principal Appellant's XXXX XXXX would create another barrier to relocation. As such, they argue that they have established that given their circumstances, it would unreasonable to relocate to Abuja.
- [23] I have independently considered the record, including the new evidence and the objective evidence, and I find that it would be unreasonable for the Appellants to relocate to Abuja or Calabar.
- [24] In considering the new XXXX XXXX, I find that the report concludes that the Principal Appellant was experiencing symptoms that met the criteria for XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX.10 The Principal Appellant testified that she continued to suffer XXXX XXXX, but had not actively attempted to seek treatment. She testified that she had previous involvement with the XXXX XXXX XXXX and that she feared that they might take her children if they learned XXXX XXXX XXXX XXXX. Considering her circumstances, I find this to be a reasonable explanation. I have no reason to doubt the Principal Appellant's testimony that she continues to suffer XXXX XXXX related to the violence she suffered at the hands of her in-laws.
- [25] I also note that the XXXX XXXX indicates that if the Principal Appellant was returned to Nigeria it would cause a deterioration in XXXX XXXX XXXX. Therefore, I find that this report establishes that the Appellants' relocation within Nigeria would cause additional XXXX XXXX for the Principal Appellant. The report also indicates that the Principal Appellant would require ongoing XXXX XXXX. I note that the objective evidence indicates that while

there are XXXX XXXX available in Nigeria, they are generally insufficient human resources relative to the population.¹¹ I find that it would be difficult for the Principal Appellant to secure XXXX XXXX, and given her current XXXX XXXX XXXX this would make relocation within Nigeria difficult.

- [26] In considering the Principal Appellant's profile, I find that she would now be effectively relocating as a single woman and that this would increase the difficulty in establishing herself in a new city. At the time of the Appellants' RPD hearing, as well as when they filed their appeals, the Principal Appellant was married and could relocate with her husband. I agree with the RPD's reasoning that at the time the decision, the Principal Appellant would be relocating as a married woman regardless of whether her husband had previously chosen to work XXXX XXXX XXXX. However, those circumstances have now changed. The Principal Appellant's husband has been accepted as a convention refugee in Canada. The Principal Appellant testified that she has no family or other forms of support in Abuja. Therefore, in considering the Principal Appellant's current circumstances, she would be relocating with three young children on her own. I find that it would be extremely challenging for the Principal Appellant to establish herself in the absence of family supports given her XXXX XXXX.
- [27] Furthermore, while I agree with the RPD that the Principal Appellant has some education and work experience, I find that it would be insufficient to overcome the other difficulties I have outlined. I agree with the RPD that this work experience and education would be sufficient if the Appellants were relocating with XXXX XXXX XXXX and if the Principal Appellant did not have XXXX XXXX which could impact her ability to secure and maintain employment. However, given the new evidence that is now before me, the Principal Appellant's work experience in XXXX XXXX XXXX XXXX XXXX XXXX would be insufficient to support herself and three young children in a city where she does not have familial support. I agree with the Appellants that recent reports in the NDP indicate that it is difficult for women to establish themselves without the support of a spouse or other family.¹² Given the unemployment problem in Nigeria, as well as the increased cost of housing, I find that it would be unlikely that the Principal Appellant could sufficiently support herself and her children in a new city. For all of these reasons, I find that the Appellants have established that it would be unreasonable for them to relocate within Nigeria. Therefore, the IFA analysis fails on the 2nd prong and is determinative of the appeal. State protection
- [28] The RPD made no finding on the availability or effectiveness of state protection, however I have reached a determination based on the evidence before me. The Appellants sought the assistance of the police; however, the Principal Appellant's in-laws have not been arrested or prosecuted for the abuse they inflicted on the Principal Appellant. As such, I find that the Appellants have rebutted the presumption of state protection in respect to seeking protection from the Principal Appellant's in-laws.

[29] Further, the objective evidence establishes that despite some efforts by the state to combat FGM and ritual cleansings, the police are generally ineffective and view these as family issues.¹³ Therefore, I find that, on a balance of probabilities, state protection is not available.

CONCLUSION

[30] The appeal is allowed. Pursuant to section 111(1)(b) of the IRPA, the RAD sets aside the determination of the RPD and substitutes its own determination that the Appellants are Convention refugees. (signed) "Jessica Lourenço" Jessica Lourenço June 12, 2020 Date 1 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93, [2016] 4 FCR 157, at para 103. 2 Immigration and Refugee Board of Canada, Refugee Appeal Division Rules, SOR 2012/257. 3 Immigration and Refugee Protection Act, S.C. 2001, c. 27, as amended. 4 Raza v. Canada (Citizenship and Immigration), 2007 FCA 385; Canada (Citizenship and Immigration) v. Singh, 2016 FCA 96, [2016] 4 FCR 230. 5 Rasaratnam v. Canada (Minister of Employment and Immigration), [1992] 1 F.C. 706 (C.A.). 6 Thirunavukkarasu v. Canada (Minister of Employment and Immigration), 1993 CanLII 3011 (FCA), [1994] 1 FC 589. 7 National Documentation Package (NDP) for Nigeria, 29 November 2019, Item 1.6: Nigeria. The World Factbook, United States. Central Intelligence Agency, 13 November 2019. 8 NDP for Nigeria, 29 November 2019, Item 1.6. 9 NDP for Nigeria, 29 November 2019, Item 1.4: EASO Country of Origin Information Report: Nigeria. Country Focus, European Union. European Asylum Support Office, June 2017. 10 Exhibit P-2, Appellant Record, p. 13. 11 NDP for Nigeria, 29 November 2019, Item 1.9: Country Policy and Information Note. Nigeria: Medical and Healthcare Issues. Version 2.0, United Kingdom. Home Office, 28 August 2018. 12 NDP for Nigeria, 29 November 2019, Item 5.9: Whether women who head their own household, without male or family support, can obtain housing and employment in Abuja, Lagos, Ibadan, and Port Harcourt; government support services available to female-headed households (2017-November 2019), Immigration and Refugee Board of Canada, 20 November 2019, Response to Information Request (RIR) NGA106362.E. 13 NDP for Nigeria, 29 November 2019, Item 10.8: Availability and effectiveness of state and police response in both urban and rural areas of southern Nigeria, for people who refuse to participate in ritual practices (2014-October 2016), Immigration and Refugee Board of Canada, 14 November 2016, RIR NGA105659.E.

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Prepared on 26 October 2026 · Esheria