

DECIDED
19 January 2023

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[1] I dismiss this appeal. XXXX XXXX XXXX (Principal Appellant), XXXX XXXX XXXX (Associate Appellant), XXXX XXXX XXXX, and XXXX XXXX XXXX (Minor Associate Appellants) appeal a decision of the Refugee Protection Division (RPD) rejecting their claims for refugee protection on August 19, 2022. The Principal Appellant (PA), Associate Appellant (AA), and Minor Associate Appellants (MAAs) are citizens of Nigeria. The PA, AA and MAAs will collectively be referred to as the Appellants. The Appellants fear the PA's extended family members and the Obagie community. The determinative issue for the RPD was credibility. For the Refugee Appeal Division (RAD), the determinative issue is an internal flight alternative (IFA). The Appellants have not met their burden of demonstrating the IFA is not viable in all their circumstances. The appeal therefore must fail.

[2] Given the nature of this claim, I have considered and applied the Chairperson's Guideline 4 - Gender Considerations in Proceedings before the Immigration and Refugee Board (Gender Guideline).¹ When I consider and apply the Gender Guideline to the circumstances of the MAAs, female daughters allegedly facing circumcision, the Appellants have not credibly established their claims and there is an IFA reasonably available to them. DECISION

[3] I dismiss the appeal and confirm the decision of the RPD, for other reasons, that the Appellants are neither Convention refugees nor persons in need of protection. ROLE OF THE RAD

[4] My role is to look at all the evidence and decide if the RPD made the correct decision.²

BACKGROUND

- [5] Based on the Basis of Claim (BOC), narratives and the 2019 and 2021 oral testimony, the following serves as a background of this appeal. The PA is the chosen heir for the Priest Craft called "XXXX XXXX XXXX" who is considered to be the oracle who communicates with gods and deities. The Appellants' supporting documents spell this position as "XXXX XXXX XXXX" and this term has been used in the RPD reasons for decision. For consistency, I will use that spelling instead of "XXXX" (as spelled in the BOC narrative) in this decision. The PA's uncle (his father's older brother), XXXX XXXX, was the current XXXX XXXX XXXX at the time of these events and had become ill, prompting his community to approach the PA to prepare him to take over the position as XXXX XXXX XXXX. The Appellants allege that the PA was chosen to be the next XXXX XXXX XXXX and that entails him engaging in barbaric rituals of which he refuses to do, and his Christian religion does not support. Also, the MAAs, daughters, would have to undergo circumcision which both parents, the PA and AA, refused. They left Nigeria in XXXX 2018 fearing they would be forced by the agents of persecution to engage and be subjected to these traditional practices. They initially went to the United States of America (US) and later came to Canada where they filed their refugee claims. RPD REASONS FOR REFUSAL
- [6] The RPD focused on the credibility of their basis of claim and refused their claims on this issue. APPELLANTS GROUNDS FOR APPEAL
- [7] The Appellants argue the RPD's decision was incorrect. They submit that the RPD failed to consider the Gender Guideline, failed to consider the entirety of the evidence presented, erred by not accepting supporting documents, relied on minor inconsistencies and undertook a microscopic analysis of the evidence. While the RPD mentioned it considered the Gender Guideline, I fail to understand how it applied it in its reasons for decision. Furthermore, I note that the Appellants themselves did not present arguments related to the Gender Guideline to the RPD. I acknowledge the evidence is such that the MAAs as alleged would face circumcision is a gender issue and will consider and apply the Gender Guideline when assessing their claims under the determinative issue of IFA.
- [8] I reject the argument that the RPD did not accept or allow the Appellants the right to file additional information and documents, this is contrary to the evidence before me. Namely, the RPD allowed additional documentary evidence filed by the Appellants as seen in the Consolidated List of Document (CLOD)- De Novo3 and the RPD transcript of its proceedings on September 15, 2021.⁴ As such, I will not consider the Appellants' arguments as they are not supported by the evidence before me nor have, they filed any new evidence to consider at the RAD. RAD FINDS DETERMINATIVE ISSUE TO BE IFA
- [9] The RPD also considered whether the Appellants would have an IFA in Port Harcourt or Abuja. They were questioned on the IFA issue, responded and they were given the opportunity to make submissions on that issue as well. As this is not a new issue, I therefore do not need to give notice to the parties when considering all the evidence before me when

concluding that the IFA is determinative at appeal. Based on the facts of the Appellants before me, regardless of the credibility of their claims, the Appellants have an IFA for the reasons outlined below.

ANALYSIS

IFA

- [10] I have considered the testimony of the PA and AA, and the fact that the PA was the designated representative for the MAAs, and all the documentation before me to conduct an independent assessment of the claims, considering the arguments on appeal.
- [11] At the hearing, the RPD identified Abuja and Port Harcourt as possible IFAs but dismissed their claims on credibility only. When considering the evidence, the determinative issue for RAD is IFA. I applied the two-prong test for IFA5 to determine if there is a serious possibility of persecution or risk of harm in the proposed IFAs and whether the conditions in the proposed IFAs are such that it would not be unreasonable to move there, considering the specific circumstances of the Appellants. Appellants would not face serious possibility of persecution in the IFAs
- [12] There can only be a serious possibility of persecution if the agents of persecution have both the means and the motivation to search for and pursue the Appellant. When considering the evidence there is insufficient evidence to establish, on a balance of probabilities, that the PA's community have the means, resources, or capacity to find the Appellants in Abuja and Port Harcourt. They have not demonstrated that they face a serious possibility of persecution in the IFAs.
- [13] The AA testified that she did not think their family was safe in either IFA proposed by the RPD because [the PA's] family member they are in top --- they are in government positions that they can easily get to us at any given time. Even while [they] were in Lagos there [they] didn't go out, [they] were indoor. It was XXXX that used to go out and get us food and every other thing that we need because they are everywhere in the country.⁶ She also testified that she was personally at risk because [the agents of persecution] are going to kill [her] because they will think --- they think or they know that probably [herself] and [her] husband are the one preventing them to carry out the first rites on which for them to --- which is for them to circumcise the [MAAs], because [she's] the mother, probably they will know that maybe the mother doesn't want such thing to happen to the child. So, they will think [she] is the main person planning for [them] to disappear or for [them] to escape. So that's why [she] thinks that [she] will be at a very big risk.⁷ She also confirmed that while in Lagos for five months at XXXX home, no one came looking for them.⁸ She confirmed she was speculating that had they gone out or move around the neighbourhood in Lagos maybe [they] would have sighted one or two persons that could recognize [them].⁹

- [14] The PA testified that the agents of persecution would stop at nothing to find them but agreed with the AA's testimony. He also testified that his family are among the wealthiest and have connections¹⁰ but failed to provide any supporting evidence to support his testimony.
- [15] The Appellants have failed to demonstrate their agents of persecution have the means and motivation to locate the Appellants in Port Harcourt and Abuja. There is no evidence on the file about the positions that the AA's husband's family has like government wise or in the police. I have also considered the oral testimony of the PA at the most recent RPD hearing that his family came with the Special Anti-Robbery Squad (SARS) when they sealed the PA's father's home and that the "XXXX XXXX XXXX" also have his own special killing squad.¹¹ I note that this evidence that the "XXXX XXXX XXXX" have a special killing squad was never mentioned in the first RPD hearing and the Appellants have not filed any documentary evidence to support the SARS were involved when his agents of persecution were looking for his father, nor did the father's affidavit which is in evidence.¹² In addition, the picture that allegedly shows the priest alone sealing the home and there are no SARS agents present.¹³ The Appellants have failed to meet their burden in demonstrating that the agents of persecution have the means and motivation to find them. Furthermore, given the AA and MAAs were in Lagos for approximately 5 months without anyone coming to find them, despite allegedly remaining indoors except to get their US visas, the agents of persecution did not have the means or motivation to look for the AA and MAAs during that period of time in Lagos.
- [16] I find that the Appellants have not provided sufficient evidence to show that their agents of persecution have the power, influence and means to locate them in the IFAs. The Appellant therefore fails on the first prong of the IFA test. The Appellants do not face a serious possibility of persecution in the IFAs. Port Harcourt and Abuja are viable alternatives for the Appellants
- [17] Port Harcourt and Abuja are a viable alternative for the Appellants, and they have not met their high burden of demonstrating otherwise. As such the IFA test also fails on the second prong of the test for the following reasons.
- [18] Regarding why they could not live in the IFAs, the AA testified¹⁴ they could not live in either IFAs because they do not having anyone living in these places; they speak different languages and it's a different cultures; they would not have peace of mind and the fear of insecurity going on everywhere killing and kidnapping, "you" can't move freely, "you" can't stay on [their] own without watching "your" back; "you" can't walk on the streets without thinking you might be kidnapped or be shot dead or be hit by a car or be robbed. The AA also indicated that here in Canada "you" don't have such, "you" move freely, "you" are happy, "you" have friends around, make friends, and a lot of good people. The AA also agreed her reasons given were generalized and could happen to anybody.¹⁵

- [19] When asked by the RPD if the MAAs could go to school and get an education in the IFAs, the AA said they could not because "probably they are not from the state and don't have the native name" for the reason they will not be accepted in the schools. She further added she knew this for sure as a lot of people end up taking the kids to school or they end up having poor education for the kids.
- [20] When asked by the RPD if they could access healthcare, the AA testified they would be denied healthcare in the IFAs because of their names and they are not a native of those areas and speculated again about having to go to the private hospital and "you" can end up having the kids get into maybe severe sickness as well.
- [21] When asked by the RPD if they could get accommodations, the AA said they could not because of their background, where they are from, the language "you" speak, and due to family background checks. Adding that if "you" are not from there, they treat that person as an outcast.¹⁶
- [22] When asked whether one or the other, Port Harcourt or Abuja, may be better for the Appellants to live, the AA testified they are the same.¹⁷
- [23] The PA was given the opportunity to add anything or elaborate on the AAs testimony regarding the IFAs and he testified that everything she said is true regarding the IFAs.¹⁸
- [24] According to the objective evidence before the RPD,¹⁹ the IFAs are both large urban centres, easily accessible, access to housing, work, education, and health services. Based on their personal profiles, the Appellants speak English, a language commonly used in both IFAs, along with other dialects. Given the PA and AA's education and proven ability to adapt to new environments, they have not convinced me that the MAAs would not be able to get an education and also adapt in the IFAs. There is a difference between being allowed to go to school and having cultural differences from others attending school which the Appellants have not proven the MAAs would face any issues because of their names.
- [25] The Appellants have failed to demonstrate that the IFAs are not a viable alternative for them. Based on their personal circumstances, the PA is in his mid 40s and the AA is in her mid 30s both with XXXX education and work experience in Benin, Lagos, and outside of Nigeria. They have transferrable work experience to bring back to the IFAs. They all speak English, which is an official language of Nigeria; they identify with Christianity as do a large population of Nigeria. Abuja is an urban city with diverse ethnic and religious populations so their name and cultural background would not negatively impact them living there. Urban centres such as the IFAs in this appeal have medical care which is also contrary to their testimony.
- [26] Thought the Appellants have not pointed me to how the Gender Guideline impacts their personal circumstances, turning my mind to the Gender Guideline, I fail to see how the AA and the MAAs gender-related circumstances would lead me to conclude that the IFAs would be unreasonable. The PA and AA have clearly stated that they do not support the MAAs

being circumcised, a choice they have as the MAAs' parents to refuse circumcision being performed on their children. The Violence Against Persons Prohibition (VAPP) in Nigeria (2015) prohibits female genital mutilation (FGM) and the Child Rights Act (2009) in River State (Abuja) sets out that any person who directly or indirectly causes a female child to be subjected to FGM is liable on conviction to a fine not exceeding 50,000 Naira or imprisonment for a term of one year, or both.²⁰ I have also considered section 11.6 of the Gender Guideline and find the Appellants have not met their burden in demonstrating that an IFA does not exist in their personal circumstances.

- [27] Overall, the Appellants have not met their burden in demonstrating, on the balance of probabilities, that it would be objectively unreasonable for them to relocate to Port Harcourt or Abuja. They do not meet the second prong of the IFA test. RAD's conclusion of the IFA analysis
- [28] Based on my independent assessment of the evidence, the Appellants have a viable IFA in Port Harcourt and Abuja. I also find that the Appellants have failed to discharge the burden of showing with clear and convincing evidence that the proposed IFAs are unreasonable or unduly harsh.
- [29] As the Appellants have a viable IFA in the city of Port Harcourt and Abuja, they do not face a serious forward-looking risk of persecution in Nigeria. Their claims therefore fail.

CONCLUSION

- [30] I dismiss the appeal and confirm the decision of the RPD, for other reasons, that the Appellants are neither Convention refugees nor persons in need of protection. (signed) Julie Ryan Julie Ryan January 19, 2023 Date 1 Chairperson's Guideline 4: Gender Considerations in Proceedings before the Immigration and Refugee Board issued by the Chairperson pursuant to paragraph 159(1)(h) of the IRPA, July 18, 2022. 2 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93; Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145. 3 RPD Record, CLOD, p. 110. 4 RPD Proceeding September 15, 2021 - reference to everything being in order according to what had been filed for the 2019 hearing, pp. 2-3; and reference to new documents filed by the Appellants, p. 22. 5 Rasaratnam, Sivaganthan v. M.E.I. (F.C.A., no. A-232-91), Mahoney, Stone, Linden, December 5, 1991. Reported: Rasaratnam v. Canada (Minister of Employment and Immigration), [1992] 1 F.C. 706 (C.A.). 6 Ibid., supra note 4, p.36. 7 Ibid., p. 37. 8 Ibid. 9 Ibid. 10 Ibid. p. 10. 11 Ibid., p. 9. 12 Ibid., supra note 3, PA's father affidavit, pp. 271-272. 13 Ibid., p. 307. 14 Ibid., supra note 4, p. 39. 15 Ibid., supra note 14. 16 Ibid., p. 41. 17 Ibid. 18 Ibid., p. 42. 19 Ibid. supra note 3, Nigeria NDP, June 30, 2022, p. 209; Items 1.45: The socio-economic situation, including demographics, employment rates, economic sectors, and crime rates, as well as access to education, health care and housing, particularly for the cities of Port Harcourt, Abuja, and Kano (2020-May 2022). Immigration and Refugee Board of Canada. NGA200990. 10 June 2020; 12.6: Treatment of Christians who relocate from northern parts of Nigeria by people in Port Harcourt [Rivers State]; whether they face linguistic, economic and social difficulties (2012-November 2013).

Immigration and Refugee Board of Canada. NGA104679.E. 6 December 2013; and 13.1: Role of indigeneship in obtaining employment, housing and social services; how indigeneship is established and identified; obstacles faced by non-indigenes when relocating to Abuja, Lagos or Port Harcourt; assistance to those who...Immigration and Refugee Board of Canada. 30 October 2019. 20 Ibid., NDP Nigeria, Item 5.2: Nigeria: The Law and FGM. 28 Too Many. June 2018, pp. 2-3.

RAD File / Dossier de la SAR : TC2-27332 TC2-27333 / TC2-27334 / TC2-27335 RAD.25.02 (August 20, 2021) 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 (August 20, 2021) Disponible en français

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Prepared on 29 October 2026 · Esheria