

CANADA / JUDGMENT

TB9-29550

COURT

Refugee Appeal Division

DECIDED

20 February 2020

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RAD File / Dossier de la SAR : TB9-29550 TB9-29551 / TB9-29552 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 Personnes en cause Appeal considered / heard
at Ottawa, ON Appel instruit / entendu à Date of decision February 20, 2020 Date de la décision
Panel Christina Harrison Baird Tribunal Counsel for the persons who are the subject of the
appeal Stella I Anaele 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 and XXXX XXXX (Associate Appellants) are citizens of Nigeria. The Appellants claim they are at risk of being harassed, physically assaulted and even murdered, because the Principal Appellant converted from Islam to Christianity. They fear the extended family of the Principal Appellant, and the Nasrul-lahi-li Fathi (NASFAT). The Appellants appeal a decision of the Refugee Protection Division (RPD), rejecting their claims for refugee protection.
- [2] The determinative issue in this appeal is Internal Flight Alternative (IFA). I find that the Appellants have a viable IFA in Port Harcourt, in the south of Nigeria. Therefore, I dismiss the appeal. The Appellants are neither Convention refugees nor persons in need of protection.
- [3] The RPD found the documentary evidence did not show that converts from Islam to Christianity face persecution, but rather they face ostracism. The RPD also concluded that a viable IFA exists for the Appellants in Lagos or Port Harcourt.
- [4] The Appellants argue that the RPD misrepresented or ignored parts of their evidence; used country information selectively and erroneously to support its negative conclusion; failed to assess properly the Internal Flight Alternative (IFA); and wrongly rejected their testimony, solely because it was not corroborated.

ANALYSIS

There is no new evidence

- [5] The Appellants have stated that they are not submitting new evidence.¹ Nonetheless, they have included the Principal Appellant's affidavit dated November 18, 2019, within the Appellant's Record. I agree that this is not new evidence. It provides a helpful summary of the testimony at the RPD hearing, with references to the audio recording, and makes some argument in support of the appeal. Therefore, its contents are either not 'new,' or not 'evidence.'
- [6] Exhibit A to the affidavit is a XXXX XXXX XXXX that was not evidence before the RPD.² I cannot admit this document into the record as evidence. The Appellants may present only evidence that arose after the rejection of their claim on August 20, 2019, or evidence 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.³
- [7] Exhibit A is a Canadian document dated June 1, 2018, more than a year before the RPD rejection. The Appellants have not provided evidence or argument that it was not reasonably available, or that they could not have been expected to present it earlier. On the face of it, the Principal Appellant is identified as the sole proprietor of a business. I find it more likely than not that this document was reasonably available to him, and that he could reasonably have been expected to present it before the RPD rejection. Therefore, it is not new evidence. The RAD cannot convene an oral hearing
- [8] The Appellants' request for an oral hearing is dismissed. The RAD must proceed without a hearing, on the basis of the record of the proceedings of the RPD.⁴ Exceptionally, the RAD has discretion to hold an oral hearing when there is additional documentary evidence and three conditions are met.^{5,6} Since no party to the appeal has provided new evidence, I cannot hold a hearing. The Appellants have faced persecution in the past
- [9] I find the RPD erred when it concluded that the previous mistreatment to which the Appellants were subject was discrimination and not persecution. Their oral and written testimony describes a campaign of harassment by extended family and adherents of Islam in their home state of Ekiti, as well as incidents in Niger State, and in XXXX, Ebonyi State. This harassment culminated in assaults, both verbal and physical. At the time of the physical assault in XXXX 2013, the female Appellant was about 30 weeks pregnant. During the last attack in XXXX 2017, the minor Appellant was seven years old and was injured. The female Appellant's shop was destroyed in that attack.⁷
- [10] It was not necessary for the female Appellant to show a causal link between the assault and the loss of both her unborn child and her womb. It is clear to me that the mistreatment of the Appellants has been sustained,⁸ and has escalated to jeopardize their basic human rights to freedom of religion, physical integrity, and livelihood.⁹ It is persecution. The Appellants have an IFA in Port Harcourt
- [11] The RPD correctly stated the two-part legal test for an IFA, including the aspects of risk and reasonableness. The RPD also correctly noted that once it had identified an IFA, it was up to the Appellants to show that the IFA was not viable.¹⁰ The RPD conclusion about the viability

of an IFA in Port Harcourt is correct. I find it is correct because the Appellants have not shown it is more likely than not that the people who wish to harm them have the means to find them in Port Harcourt. I also find that it is reasonable for the Appellants to seek refuge in Port Harcourt. The Appellants would not face a serious possibility of persecution in Port Harcourt

- [12] I find that the RPD was correct to conclude that the Appellants had presented insufficient evidence to demonstrate the agent of persecution could find them in Port Harcourt. However, I draw the conclusion based on different evidence.
- [13] I appreciate that it may have been difficult for the Appellants to produce documents to corroborate the power and influence of the Principal Appellant's father and uncle in the mosque in Ekiti; and to corroborate that this influence also reaches his extended family, and the broader Islamic community. I also acknowledge that a large urban population alone cannot be considered protection against persecution in an IFA.
- [14] I have considered the Principal Appellant's fears that he will be found in Port Harcourt based on: being found after relocating previously; the influence of his father and uncle in the Islamic community; the reach and persistence of the NASFAT organization; the presence of his relatives in Port Harcourt; and recognition of his name from his uncle's preaching and his own work in radio and television.
- [15] Being found after relocating - The Appellants have been found and harassed in Niger State, in a small village in Ekiti State, and in XXXX, Ebonyi State. I find that this does not lead to a conclusion that they will be found in Port Harcourt.
- [16] The Principal Appellant testified that he told certain friends about his plans to relocate to Niger State with his family. He suspects that one of his confidants told someone else, and that is how he was found in Niger State by a Yoruba person who urged him to return to Islam.¹¹ In his amended Basis of Claim narrative, he referred to this as an encounter with NASFAT.¹² The Principal Appellant also testified that he had been working as an XXXX XXXX XXXX XXXX XXXX XXXX XXXX, and that his uncle had used his name as an example of an infidel in public speeches.¹³ He stated in his immigration forms that he worked as a XXXX XXXX XXXX XXXX XXXX XXXX Ekiti State until XXXX 2013.¹⁴ I find that all of these circumstances played a role in the Principal Appellant being found after only two weeks in Niger State in XXXX 2014. I note also that Niger State is in Nigeria's Middle Belt, where stigma and violence against Islamic converts to Christianity is more prevalent than in the south of Nigeria, where Port Harcourt is located.¹⁵

- [17] The Principal Appellant explained, and it is supported in documentary evidence, that Ekiti is a small and homogeneous state, home to a close-knit subgroup of the Yoruba people. He testified that he and his family went to stay with his wife's grandmother in a small village in Ekiti when they returned from Niger State. I find it more likely than not that the people aiming to harm the Appellants could find them in the village easily, because Ekiti State is small and the female Appellant was known to have family in the village.
- [18] The Principal Appellant testified that he was working as an XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX.16 I find that this contributed to his family being found in XXXX.
- [19] Reach of the father, uncle and NASFAT - I do not doubt the Principal Appellant's testimony that his father and his uncle are influential. I understand that his uncle was able to mobilize people from NASFAT to harangue him to come back to mosque and pray every weekend in Ekiti. I also accept that the Principal Appellant attributes the harassment in Niger and Ebonyi to his uncle's preachings. What is missing, in my view, is any proof that this threat is ongoing or prospective, that his uncle has influence in Port Harcourt, or that the agents of persecution would have the means to find him there if he were not working in XXXX XXXX XXXX. The Appellants have not shown that NASFAT members would act to harm them in the future, either at the instigation of the Appellant's uncle, or of their own initiative. The documentary evidence does not show on a balance of probabilities that NASFAT persecutes converts to Christianity.
- [20] Relatives in Port Harcourt - The Principal Appellant testified that Ekiti people are accomplished and widespread in Nigeria. He stated that he had kin in Port Harcourt, but he did not name any individual, nor give the degree of relation. I have no information about the numbers of Ekiti people present in Port Harcourt who would know the Principal Appellant and his family. In contrast, he testified that he had family, including siblings, in Lagos; and for that reason, I have not included Lagos in my analysis of the IFA.
- [21] Name recognition - The Principal Appellant's fear of return to Nigeria is based on two fundamental ideas about his occupation with which I respectfully disagree. First, he posits that his name carries XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX. Second, he appears intent on returning to his work in XXXX XXXX XXXX.
- [22] I find that he has not shown on a balance of probabilities that his name carries the said recognition value. While I accept his sworn testimony that he was an XXXX XXXX XXXX XXXX, there is no direct evidence of the reach of his work. Appellant's Counsel at the RPD submitted that he was a XXXX XXXX XXXX XXXX XXXX. With respect, I do not find the evidence to support this submission in the record. Moreover, I find this was a material fact, the means to prove which would have been within the Appellants' control. It is reasonable to expect that XXXX renown in Nigeria could have been supported with excerpts from previous XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX. I have no such evidence. Rather, I have letters of employment from two XXXX at the state level, with no indication of their

reach, and no explanation of the Principal Appellant's XXXX XXXX XXXX work.

- [23] I find also that the Principal Appellant's choice to work in XXXX XXXX XXXX is not a protected right because it does not engage a principal of fundamental human rights or dignity. 17 The evidence does not suggest that his XXXX XXXX XXXX work was related to his faith or politics. While the Appellants cannot be expected to go back to Nigeria and live in hiding, it is reasonable to expect that the Principal Appellant would draw on other skills to find work that is not so prone to publicize his name and location. For example, he has worked as an XXXX and as an XXXX XXXX worker. I find that work in one of these fields would not curtail his freedom to practice and profess his religion, to give expression to any immutable personal characteristic, to express his political views or to earn a living. I find it more likely than not that the Appellants could live safely, undiscovered by the putative agents of persecution, if they were to relocate in Port Harcourt. The Appellants are unlikely to risk torture, death or cruel treatment in Port Harcourt
- [24] I also find that the IFA in Port Harcourt is viable because, there, the Appellants likely would not be subjected to a danger of torture, a risk to their life or a risk of cruel and unusual treatment or punishment.
- [25] The reasoning I used above to analyze the risk of persecution also extends to my analysis of these additional risks at the hands of the Principal Appellant's relatives or NASFAT. The Appellants have not shown it is more likely than not that either group has the means to find and harm them in Port Harcourt nearly three years after the culminating incident in XXXX XXXX XXXX, in a place where they have no personal connections, and where they would establish themselves in the Christian community. The IFA in Port Harcourt is reasonable
- [26] I find the RPD was correct that it is reasonable for the Appellants to seek refuge in Port Harcourt. The standard for unreasonableness is quite high, requiring the Appellants to bear inconvenience and discomfort, reduced quality of life, loss of status and disappointment, but not danger to their life or safety.¹⁸
- [27] Transportation - As noted in the Nigeria Jurisprudential Guide and cited in the RPD Reasons, Nigerians have the right to reside in any part of their country. Port Harcourt is a major urban area serviced by sea port, airport and roads. The Appellants would be able to travel safely to Port Harcourt without undue hardship.
- [28] Language - Port Harcourt is also an international hub for the oil industry. I find that being speakers of both Yoruba and English would likely help the Appellants to establish themselves there.
- [29] Education and Employment - As the RPD noted, each of the adult Appellants has substantial formal education and more than a decade of work experience in Nigeria. Notably, the Principal Appellant worked as an XXXX for about 14 years. I understand from his testimony that the Principal Appellant would have preferred to continue his career in XXXX XXXX XXXX. However, I find disappointment about a change of occupation is contemplated and

tolerated by the high legal threshold for unreasonableness. On the evidence before me, I find it more likely than not that the Appellant's XXXX skills would be in demand in the context of international corporate activities in the oil sector in Port Harcourt. Moreover, the female Appellant's entrepreneurial skills could also be useful as the family re-establishes itself in a new city. The Appellants provided no evidence that they expect to experience discrimination in employment because they are not from Port Harcourt.

- [30] Accommodation - I adopt the reasons of the RPD with respect to accommodation. The Appellants have not brought evidence to show hardship to secure accommodation in Port Harcourt.
- [31] Religion - Since the Principal Appellant is a convert from Islam, the impact of this characteristic in Port Harcourt must be considered. I do not agree with the implication of Appellants' submission that "Muslims who convert to Christianity are prone to endanger their lives,"¹⁹ if this is intended to include all converts in all parts of Nigeria. This reference in the documentary evidence is specifically to the Hausa-Fulani people in the north. Therefore, the RPD correctly discounted this information as not probative of the Appellants' situation. I find that the greater danger to converts from Islam is found in the north and the Middle Belt of Nigeria. It is reported that Yoruba people generally accept interreligious conversions, which engender a "subtle rivalry" in the south, in contrast with the "bitter rivalry between Christianity and Islam found in the North."²⁰ I conclude that Port Harcourt is a reasonable IFA from a religious perspective.
- [32] Health care - I adopt the reasons of the RPD with respect to health care. The Appellants have not brought evidence to show hardship to access physical or mental health services in Port Harcourt.
- [33] In summary, I find there is no serious possibility that the Appellants will be persecuted for their religion in Port Harcourt. Moreover, I find they have not shown they would be subjected to a danger of torture, a risk to their life or a risk of cruel and unusual treatment or punishment in Port Harcourt. Finally, I find that it would be reasonable for them to travel to and relocate in Port Harcourt. As a result, they do not require Canada's protection.

CONCLUSION

- [34] The RAD dismisses the appeal and confirms the decision of the RPD that the Appellants are neither Convention refugees nor persons in need of protection, pursuant to section 111(1)(a) of the Immigration and Refugee Protection Act (IRPA). (signed) "Christina Harrison Baird" Christina Harrison Baird February 20, 2020 Date 1 P-2, Appellant's Record, Written Statement, p. 14. 2 P-2, Appellant's Record, Master Business Licence, p. 23. 3 Subsection 110(4), Immigration and Refugee Protection Act (IRPA). 4 Subsection 110(3), IRPA. 5 Subsection 110(6), IRPA. 6 Balde v. Canada (Minister of Citizenship and Immigration), 2015 FC 624, at para. 32. 7 RPD-1, RPD Record, Basis of Claim, pp. 28 and 39. 8 Biro v. Canada (Citizenship and Immigration), 2012 FC 1120, para. 19. 9 Chan v. Canada (MEI), [1995] 3

S.C.R. 593, at para. 69. 10 RPD-1, RPD Record, RPD Reasons, paras. 15-17. 11 RPD-1, RPD Record, Audio recording of the hearing on July 18, 2019, hour 0:19. 12 RPD-1, RPD Record, Amended Basis of Claim narrative, pp. 25-29 at 26, para. 8. 13 RPD-1, RPD Record, Audio recording of the hearing on July 18, 2019, hours 0:11, 0:38 and 0:41. 14 RPD-1, RPD Record, Exhibit 1, IMM5669, p. 121. 15 RPD-1, RPD Record, Exhibit 8, Item 1, p. 453; and Item 2, pp. 456-457. 16 RPD-1, RPD Record, Audio recording of the hearing on July 18, 2019, hour 0:28. 17 Sanchez v. Canada (Citizenship and Immigration), 2007 FCA 99 (CanLII), para. 18. 18 Ranganathan v. Canada (Minister of Citizenship and Immigration), 2000 CanLII 16789 (FCA), paras. 14-15. 19 P-2, Appellant's Record, Memorandum of Argument, para. 19. 20 RPD-1, RPD Record, Exhibit 8, Item 2, p. 457.

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Prepared on 28 October 2026 · Esheria