

DECIDED
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- [1] This is an appeal of a decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB) of Canada rejecting the claims of XXXX XXXX XXXX (the Principal Appellant or XXXX), his wife, XXXX XXXX XXXX (the Associate Appellant or XXXX) and their five children, XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXXandXXXX XXXX XXXX XXXX [collectively as a family, the Appellants], for reasons relating to the existence of a viable internal flight alternative (IFA) within Nigeria.
- [2] The RPD examined the Appellants' evidence and considered XXXXandXXXX XXXX testimonies before determining and concluding that the Appellants have a viable IFA in the cities/regions of Abuja or Port Harcourt, Nigeria.
- [3] The RPD determined that the Appellants provided insufficient evidence that the alleged agent of harm, a traditional fraternal sect otherwise known as the Ogboni Secret Society (hereafter the OSS), has the continued interest, motivation or capacity to search out the Appellants throughout Nigeria and that, based on the documentary evidence, it would be objectively reasonable for the Appellants to relocate to Abuja or Port Harcourt.
- [4] Before the RAD, the Appellants question the RAD's standard of review, seek the admission of new evidence and argue that the RPD erred in determining the existence of viable IFAs for the Appellants. DECISION

- [5] Not unlike the RPD, the RAD finds that the determinative issue of this matter is an IFA, and, for the reasons outlined below, the Appeal is dismissed. CONTEXT
- [6] The Appellants lived in Lagos, Nigeria before fleeing to the United States of America and crossing over into Canada to seek refuge. The Appellants are followers of the Islamic faith; indeed, in XXXX 2016, both XXXX and XXXX were installed with chieftaincy titles within their local Muslim community. However, and prior to these installations, XXXX father, himself a committed Muslim, passed away in XXXX 2015. Unbeknownst to XXXX XXXX as he so reports, his father was allegedly a member/leader of the OSS who had allegedly pledged XXXX, as his first-born son, to be his successor within the OSS. XXXX, who reports his initial disbelief and shock in discovering these circumstances, alleges that his problems began after he refused to accept the succession. XXXX purports to have refused not only the repeated requests but the threats he asserts he received from the OSS for him to join them and to carry out his father's succession. XXXX maintains that he voiced and upheld these refusals based on his Islamic faith and notwithstanding his termination of employment and an alleged physical beating, both of which, he believes, were perpetrated by the influence and at the hands of the OSS.
- [7] XXXX further reports that following his beating from the suspected assailants, his wife reported the incident to the police and that the police refused to intervene or to investigate. As such, XXXX reports having moved to a hotel and lived in a Mosque in Owerri in the Nigerian State of Imo for a month before eventually returning to Lagos, acquiring a VISA for the U.S.A. and then fleeing to the U.S.A. without his family in XXXX 2016. XXXX contends he waited for his family to join him in the U.S.A. for over six months, before they all crossed into Canada to seek refuge. NEW EVIDENCE
- [8] Evidence from the person who is the subject of the appeal is only admissible if it meets the conditions set forth in subsection 110(4) of the Immigration and Refugee Protection Act (IRPA). That is, proposed new evidence is only admissible if it arose after the claim was rejected, or it was not reasonably available, or the person could not reasonably have been expected to present it at the time the claim was rejected.¹ If one of these conditions is met, the RAD will also consider if the evidence is credible, relevant and new.²
- [9] The Appellants tendered three documents which they purport to be new evidence: (i) a medical report concerning the Principal Appellant (hereafter the Medical Report); (ii) a printout of a daily press review service originating from the internet and entitled AllAfrica (hereafter News Article #1); and (iii) a news article from Vanguard (Lagos) also distributed on the AllAfrica internet site (hereafter News Article #2).
- [10] Appellants' Counsel submitted the documents en liasse with the Appellants' Memorandum of Appeal (MOA). Appellants' Counsel filed the documents in accordance with RAD Rule 3(3)(g)(iii); more specifically, Appellants' Counsel submitted arguments as to how these documents meet the conditions for their applicability in accordance with RAD Rule 3(3)(g)(iii)³. In accordance with subsection 110(4) of the IRPA, the RAD reviewed each of the

documents independently and in relation to all evidence in the file. Following said review, the RAD finds that the Medical Report is inadmissible under subsection 110(4) of the IRPA as there is no evidence that can be extracted from the content of the Medical Report that the Appellants could not reasonably have been expected to provide to, or to plead before, the RPD. Moreover, and with respect to the criteria of newness and credibility, not only is the Medical report dated XXXX XXXX XXXX 2018 (i.e. over a year prior to the date of the RPD Hearing), but on page 2 of the Medical Report (i.e. Page 11 of the Appellants' MOA) it provides that XXXX was already being followed for the same medical condition while he was in Nigeria. With respect News Article #1 and News Article #2, the RAD notes that each of these documents appear to have been published after the date of the RPD decision (i.e. May 16, 2019) and to report on events which occurred after said date. For these reasons, the RAD must now proceed with an examination of each of these two documents in accordance with the jurisprudence of the Federal Court of Appeal so as to determine the extent of their credibility, newness and relevance. News Article #1

- [11] News Article #1 appears to have been published (or at least printed) on May 26, 2019, shortly following the RPD decision and is alleged to provide excerpts from the Premium Times (Abuja) for events which occurred throughout Nigeria the previous week (i.e. the week of Sunday, May 19, 2019, through Thursday, May 23, 2019). The RAD finds therefore that, based on these dates, News Article #1 satisfies the "newness" and "credibility" criteria. However, following its review and analysis of News Article #1, the RAD finds that it does not satisfy the relevance criteria. News Article #1 reiterates and describes the general troubles throughout the whole of Nigeria. News Article #1 makes no specific or general mention or reference to the Appellants, nor is there any specific or general mention or reference to the OSS. Indeed, all of the incidents reported in News Article #1 occurred in Nigerian States other than Abuja or Port Harcourt. For example, news Article#1 reports of incidents having occurred in the Nigerian States of Edo, Kaduna, Osun, Borno and Katsina. The News Article #1 makes no mention of any incidents in Abuja or Port Harcourt, that is, the Nigerian regions/cities that the RPD determined as being viable IFAs for the Appellants. For these reasons, the RAD finds that News Article #1 does not satisfy the "relevance" criteria established by the Federal Court jurisprudence⁴ and for this reason, the RAD concludes that News Article #1 is inadmissible as new evidence. News Article #2
- [12] For the same reasons as provided for News Article #1, News Article #2 satisfies the newness and credibility criteria established by the Singh/Raza jurisprudence. However, and following its review and analysis, the RAD also concludes that News Article #2 does not satisfy the relevance criteria. News Article #2 discusses the alleged targeting of Christians in varying areas throughout Nigeria but more specifically in the Northern geographic area of Nigeria. Furthermore, News Article #2 does not mention or reference the Appellants or the OSS in any general or specific manner. Indeed, News Article #2 appears to be describing alleged attacks, or the lies surrounding said attacks. The RAD finds it difficult to associate the relevance of a description of alleged attacks on Nigerians of the Christian faith when the Appellants have alleged persecution based their steadfast commitment to their Islamic faith.

For all these reasons, the RAD finds that News Article #2 does not satisfy the "relevance" criteria established by the Federal Court jurisprudence⁵ and for this reason, the RAD concludes that News Article #2 is inadmissible as new evidence. ROLE OF THE RAD

- [13] The RAD has applied a correctness standard in its review of the RPD decision. In short, and unlike as was asserted by the Appellants in their MOA, the role of the RAD is to look at all the evidence and decide if the RPD made the correct, as opposed to a reasonable, decision.⁶

ANALYSIS

- [14] After considering the Appellants' arguments and having conducted an independent review and assessment of their RPD record, listening to the recording of the RPD hearing and examining all of the evidence placed before it, the RAD agrees with the RPD's decision that the Appellants did not establish that there is a serious possibility of persecution or that there exists, on the balance of probabilities, a danger of torture or a risk to life or cruel and unusual treatment or punishment upon their relocation to the proposed IFAs of Abuja or Port Harcourt.
- [15] The Appellants assert that the RPD incorrectly applied the two-prong test set out by the Federal Court of Appeal in *Rasaratnam*⁷ (hereafter the *Rasaratnam Test*). They contend that the RPD failed to recognize that the OSS was able to locate XXXX in Owerri within a couple of days after XXXX had allegedly moved there to hide. The Appellants further contend that the RPD incorrectly considered the influence and power of the OSS given its alleged links to public organizations such as the police, judiciary and government establishments. Finally, they assert that the RPD only assessed the objective evidence of the Nigerian National Documentation Package (NDP)⁸ in a way that mitigated towards a rejection for the Appellants and which found the proposed IFAs safe and reasonable. In short, the Appellants argue that they rebutted the presumption of state protection and that there is no IFA for them given the serious possibility of persecution throughout the whole of Nigeria. IFA-FIRST PRONG
- [16] The RPD examined and considered the Appellants' allegations that XXXX was purportedly located and continued receiving menacing phone calls from the OSS in Owerri after he fled there to hide as a result of the alleged attack he sustained in XXXX of 2016. However, the RPD did raise questions about XXXX use of the same phone number, his testimony that he did not or could not change said number and about his family's use and maintenance of their same phone numbers while they themselves remained in Lagos throughout the entire period of the alleged threats and even subsequent to XXXX departure from Nigeria in XXXX 2016; a period that lasted for greater than six months. The RPD recognized the limited influence/power and capabilities of the OSS in locations beyond the geographic areas of Ogun State or Lagos. The RPD considered XXXX allegations that the OSS influenced his employer (who XXXX "believed" to be a member of the OSS because he "smelled funny" and "always carried raw meat") to terminate his employment, notwithstanding that the Appellants' evidence provides that the termination of employment was the result of a

restructuring process undertaken by the employer. Finally, the RPD examined XXXX testimony and allegations that his father pledged XXXX to be his successor within the OSS. The RPD recognized the inconsistency in XXXX testimony in this regard, stating that XXXX was "unable to confirm" the role, title or details of his father's alleged involvement with the OSS before it concluded that XXXX provided insufficient evidence that his father's alleged role within the OSS was so vital as to expect that the OSS would expend time and resources to track XXXX and his family throughout Nigeria. The RPD concluded its first prong analysis by determining that the Appellants presented insufficient evidence to demonstrate that the OSS had the means, motivation or interest to search out the Appellants throughout the whole of Nigeria.

[17] The RAD finds the RPD correctly conducted the required first prong analysis.

Notwithstanding that the Appellants may have testified credibly, the RAD's own first prong examination leads the RAD to the same conclusion as that of the RPD. Without "mitigating the evidence towards a rejection", the RAD notes that the Nigerian NDP⁹ clearly stipulates that "positions within the OSS are not inherited", "that the primary means of membership is voluntary", that "...in essence, only someone who has had a history with [the OSS] in a very close manner can be intimidated into joining" and that under "...most situations individuals deliberately join these societies because they want power, financial rewards and success...". XXXX testified that he never had any knowledge of his father's involvement with the OSS, that he was "shocked" to discover his alleged membership, that he could not provide any details about his father's title, membership or obligations, if any, towards the OSS. As such, the RAD finds there is insufficient evidence, if any, that the OSS continues to expect XXXX to carry on his father's obligations, if any, towards them. The RAD also notes that the Nigerian NDP that was applicable at the time of the RPD hearing¹⁰ as well as the more recent NDP's¹¹ provide that the OSS influence does not extend beyond pocket areas in Ogun State and Lagos and is predominant in the cities of [Egba, Egbado and Abeokuta. The Nigerian NDP makes no mention of the existence or influence of the OSS in Abuja or Port Harcourt. The RAD further notes that the Nigerian NDP stipulates that only "some" OSS members are from the elite and the organizations cited by the Appellants. The RAD finds this latter evidence insufficient to overturn the presumption of state protection. Finally, the RAD agrees with the RPD's finding that XXXX inconsistent and incongruous testimony about his continued need to maintain a phone number for what is now, after almost four years, a non-functioning business/company to be insufficient evidence that the OSS would be able to use said phone number to locate him in Abuja or Port Harcourt, and this, notwithstanding that there is no evidence before the RAD that the OSS has attempted to locate XXXX by this number since his departure from Nigeria.

- [18] For all these reasons, the RAD finds that, as was correctly concluded by the RPD, the Appellants did not sufficiently establish that there is a serious possibility of persecution or, on a balance of probabilities, a risk of harm from the OSS in the IFAs of either Abuja or Port Harcourt. The RAD must now examine whether or not the RPD correctly assessed the reasonableness of these latter regions/cities for the Appellants. IFA-SECOND PRONG
- [19] The Appellants contested the reasonableness of Abuja and Port Harcourt in a general fashion by intertwining (i.e. mixing) their arguments concerning the new evidence (already determined as being inadmissible) with the high rate of unemployment in Nigeria. In essence, the Appellants do not raise any contestations about the RPD's second prong examination, rather, they attempt to raise new arguments before the RAD about unreasonableness of Abuja or Port Harcourt because of XXXX medical condition and because employment would be less likely for him in either of the two IFA locations. As noted and determined above, XXXX medical condition was not an issue that was pleaded before the RPD and the "new evidence" relating to said condition was determined inadmissible by the RAD. As such, any argument raised before the RAD referring to said medical condition is equally inadmissible and must be disregarded. The RAD takes this opportunity to reiterate that it is not a de novo forum in which issues not previously raised before the RPD can be raised before the RAD in an attempt to seek an alternative decision.
- [20] The RPD reviewed Nigerian NDP and considered the issue of indigeneship, language, ethnicity, education, health and employment and noted that the Appellants would be able to communicate, integrate and have equal access to education, healthcare and employment. The RPD noted that in each of the proposed IFAs the religious divide was roughly 50/50 between Christians and Muslims and that there was insufficient evidence that the Appellants would not be able to practice their Islamic faith openly and regularly in either of the two cities or regions. The RPD did acknowledge the high cost of living in both IFAs and that there may be a period of adjustment for the Appellants before they secure housing and employment; however, the RPD further acknowledged that, not unlike the Appellants voiced concerns about crime or violence in both cities/regions, such a readjustment would not be any different than the average Nigerian relocating to either location. As for the issue of the Boko Haram, the RPD acknowledged their existence in the Northern geographic area of Nigeria but concluded there was insufficient evidence that the Appellants would themselves be specifically targeted by them. The RPD considered all the circumstances, including those specific to the Appellants, and concluded that the proposed IFAs would be objectively reasonable and not unduly harsh for the Appellants.
- [21] The RAD takes this opportunity to reiterate that an IFA must be realistic and attainable and that the Appellants cannot be required to encounter great physical danger or undergo undue hardship in travelling and staying there. The Federal Court has set a high threshold for the test of unreasonableness; for an IFA to be considered unreasonable, it must be demonstrated, with concrete evidence, that the individual's security and life would be in danger within the proposed IFA. The Appellants only raised issues concerning the XXXX

medical condition and his ability to find employment as the provider for his family. The Appellants did express a lack of mosques in Port Harcourt and Abuja, but they raised no contestations about the RPD's conclusions regarding ethnicity, indigeneship, education, language or access to healthcare and housing.

- [22] In this case, and for the reasons below, the RAD, after conducting its jurisprudentially required independent second prong analysis of the proposed IFAs, finds that the RPD was correct and that the Appellants' relocation to Abuja or Port Harcourt would not create any undue hardship or place their personal security or lives in great danger. Abuja
- [23] Document 1.4 of the Nigerian NDP12 provides that Abuja is the Capital of Nigeria situated in the Federal Capital Territory (FCT) with an estimated population of approximately 2,919 million inhabitants and wherein English, the official language of Nigeria, is the common language. The documentation provides that there is a relatively equal religious mix between Nigerians of the Christian and Muslim faiths and there is access to education and healthcare (albeit expensive healthcare but such a situation would not be any more different for the Appellants than for any other Nigerian living in Abuja). According to Document 1.23 of the NDP Abuja is the least difficult place to start a business ranking first out of Nigeria's 36 States and is the second-lowest region for unemployment ranking slightly behind Lagos. Abuja is Nigeria's second fastest growing city behind Lagos yet the 600,000 deficits in houses does not propel the owners of houses to sell or to rent their properties at any price with the result being a vacancy in housing. According to 1.17 of the most recent Nigerian NDP, Abuja is one of two regions in Nigeria which does not establish or place non-indigene limitations or quotas on governing policies. And while there is evidence, as was alluded to by the Appellants that there have been some ethnic cultural or religious clashes, the Appellants would not be subjected to any different danger than the average Nigerian living and working in Abuja. Port Harcourt
- [24] The NDP evidence demonstrates that Port Harcourt ranks amongst the largest cities in Nigeria and is similar in population to Abuja. Port Harcourt ranks amongst the highest cities within Nigeria for access to healthcare and, more particularly with specialized teaching hospitals. Being a port city, Port Harcourt ranks high in the provision of security. The RAD notes that neither the most recent NDP nor the NDP referenced by the RPD contains any glaring negative reports or documentation which demonstrate that Port Harcourt does not rank much lower than Abuja in terms of employment, education or religious freedom. Nor were any such reports alleged by the Appellants in their MOA.
- [25] For all these reasons, and given all the circumstances, including circumstances personal and particular to the Appellants, the RAD finds that it would not be unreasonable or unduly harsh for the Appellants to relocate to Abuja or Port Harcourt and that, following an independent two prong examination, the Appellants do have viable IFAs in either of these two Nigerian cities/regions.

DETERMINATION

- [26] The RAD finds that the Appellants have not satisfied their requirements to establish that they face the serious possibility of any forward-looking persecution, or, on a balance of probabilities, a personal risk to their life or a risk of cruel and unusual treatment or punishment, or a danger of torture and that they are not "Convention Refugees" pursuant to Section 96 of the IRPA nor persons in need of protection pursuant to subsection 97 (1) of the IRPA because, as was correctly concluded by the RPD, there exists viable IFAs for the Appellants within Nigeria.
- [27] The RAD dismisses the appeal and confirms the decision of the RPD, the whole pursuant to paragraph 111 (1) (a) of the IRPA. (signed) Robert Cox Me Robert Cox March 16, 2020 Date RC/tm 1 Immigration and Refugee Protection Act (IRPA), s. 110(4). 2 Canada (Citizenship and Immigration) v. Singh, 2016 FCA 96 ; Raza v. Canada (Citizenship and Immigration) 2007 FCA 385 3 See Tiodunmo v. Canada (Citizenship and Immigration), 2019 FC 1489 4 Canada (Citizenship and Immigration) v. Singh, 2016 FCA 96 ; Raza v. Canada (Citizenship and Immigration) 2007 FCA 385 5 Ibid 6 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93; Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145 7 Rasaratnam v. M.E.I. (F.C.A., No. A-232-91) 8 Nigerian NDP April 30, 2019-Documents NGA104213.E 9 Ibid 10 Ibid 11 Nigerian NDP August 20, 2019, and Nigerian NDP November 29, 2019-Documents NGA 106269.E 12 Nigerian NDP April 30, 2019 (please see endnote 8).

RAD File / Dossier de la SAR : VB9-04360 VB9-04361 / VB9-04362 / VB9-04363 VB9-09225 / VB9-09226 / VB9-09227 RAD.25.02 (January, 2020) 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 (January, 2020) Disponible en français

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