

CANADA / JUDGMENT

MB9-24109

COURT

Refugee Appeal Division

DECIDED

11 September 2020

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RAD File / Dossier de la SAR : MB9-24109

Private Proceeding / Huis clos

Reasons and decision ? Motifs et décision

Person who is the subject of the appeal

XXXX XXXX XXXX

Personne en cause

Appeal considered / heard at

Ottawa, ON

Appel instruit / entendu à

Date of decision

September 11, 2020

Date de la décision

Panel

Desiree Pachkowski

Tribunal

Counsel for the person who is the subject of the appeal

Serge Khoury

Conseil de la personne en cause

Designated representative

N/A

Représentant(e) désigné(e)

Counsel for the Minister

N/A

Conseil du ministre

REASONS FOR DECISION

OVERVIEW

- [1] I dismiss this appeal.
- [2] XXXX XXXX XXXX (herein after: the Appellant) is citizen of Nigeria.
- [3] The Appellant fears members of a traditional religious group that practices Ifa worship. The Appellant alleges that her family suffered a series of attacks from the Ifa group after her mother converted to Christianity. Her mother briefly converted back to the Ifa religion following these incidents.
- [4] In XXXX 2016, the Appellant's mother converted back to Christianity. The Appellant's mother was attacked and killed on XXXX XXXX, 2017. Members of Ifa approached the Appellant after her mother's death, demanding that her mother be exhumed and parts of her body used for rituals. The claimant refused and fled Nigerian in XXXX 2018.
- [5] The determinative issues in the case before the Refugee Protection Division (RPD) were objective basis and Internal Flight Alternative (IFA) in Port Harcourt. The RPD concluded that the Appellant did not establish that her mother died from a spiritual attack on a balance of probabilities. The RPD also concluded that the Appellant had a viable IFA in Port Harcourt or Benin City.
- [6] The Appellant's Counsel argues that the RPD erred when it found that she was unable to establish that her mother was killed by the Ifa.
- [7] Counsel also argues that the RPD erred in its IFA analysis. Counsel submits that the Appellant does not have a safe IFA because the Ifa can locate her in Port Harcourt. Counsel submits that the RPD failed to consider the Appellant's personal circumstances that render the IFA unreasonable.
- [8] After an independent review of the record, I agree with the RPD's conclusions and find them without error.

DECISION

- [9] I dismiss the appeal. The RPD was correct in finding that the Appellant is neither Convention refugees nor a person in need of protection.

NEW EVIDENCE

The evidence presented by the Appellant is rejected

- [10] The Appellant has not formally submitted any new evidence with her appeal. However, Counsel has embedded quotes from websites in the Memorandum of Appeal. Counsel references a blog post from africanspiritualitynow.wordpress.com, published in May 2013, and an article from web.ccsu.edu/afstudy/suptdt99.htm, dated Summer 1999.¹ Counsel relies upon these sources to provide additional details about the Ifa religion that were not before the RPD.
- [11] Counsel has not filed these documents as new evidence. New evidence must be filed before the Refugee Appeal Division (RAD) accompanied by a list of documents.² Counsel has not explained how these documents meet the legal requirements for new evidence.³ Furthermore, in the absence of a proper application for new evidence, I note that these articles are not new. The content predates the RPD decision. I find no reason why these documents were not reasonably available to the Appellant before the RPD's decision. These documents are not admissible as new evidence.

ORAL HEARING

- [12] The Appellant has not requested an oral hearing. I can hold a hearing when there is new evidence that raises a serious, material credibility issue that would require further testimony. As I there is no admissible new evidence, I did not hold an oral hearing.

ANALYSIS

- [13] My role is to look at all the evidence and decide if the RPD made the correct decision.⁴ To do so, I have completed an independent analysis of the record. I listened to the audio of the hearing before the RPD, reviewed the RPD decision and record, and carefully considered all the evidence and submissions.
- [14] For the reasons that follow, I find that the RPD did not err in its assessment of the Appellant's case. I find that the RPD did not violate the principles of natural justice. I find that there is no objective basis for the Appellant's claim. I also find that the Appellant has a viable IFA in Port Harcourt or Benin City.

Objective basis has not been established on a balance of probabilities

- [15] The RPD found that the Appellant did not establish that her mother was murdered by members of the Ifa religious group, on a balance of probabilities. Since the RPD found the Appellant generally credible, the Appellant's Counsel argues that the RPD ought to have considered her testimony regarding the spiritual attack on her mother within the context of her general credibility. Counsel emphasizes that the Appellant has a subjective fear of the Ifa.

- [16] The RPD did not err. The Appellant has not established an objective basis for her fear. I accept that the Appellant may believe that the Ifa possess spiritual powers that would enable them to kill her mother. Like the RPD, I recognized that these beliefs are present in some parts of Nigerian culture. That said, there is no objective evidence to support the Appellant's claim that the Ifa murdered her mother using spiritual powers. According to the Appellant's mother's death certificate, she died of a XXXX XXXX XXXX XXXX XXXX and XXXX.⁵ The Appellant also testified that her mother had a history of XXXX.⁶
- [17] The RPD and the RAD must assess the evidence on the record to determine whether there is an objective basis for the Appellant's subjective fear. This is what is meant by a "well-founded" fear of persecution.⁷ Or, as stated by another Member of the RAD:
- [...] there are many situations in which the fear that people legitimately experience is not supported by the facts of their situation. In other words, they may be more afraid than they need to be. And in these kinds of cases, they would not meet the definition of refugee protection.⁸
- [18] While subjective fear may relate to the Appellant's credibility, in my view, the objective basis for a claim may not. Rather, it depends on the facts of the case. In this case, there is insufficient objective evidence to support the Appellant's claim that her mother died of a spiritual attack, on a balance of probabilities.
- [19] The Appellant's claim rests on the fact that the Ifa killed her mother with a spiritual attack and have threatened to do the same to her if she does not give them her mother's body. Without an objective basis to establish these facts, the Appellant's claim cannot succeed. Finally, even if there were an objective basis for the claim, as will be described below, I find that there is an available IFA in Port Harcourt or Benin City.

The RPD's notice for the IFA was sufficient

- [20] Counsel argues that the RPD failed to give the Appellant proper notice that it would consider IFA as an issue in her case. Counsel argues that the RPD erred by beginning the hearing by stating that IFA would be a determinative issue, then raising the specific locations of Benin City and Port Harcourt later in the hearing. Counsel submits that the RPD only provided the Appellant with two minutes to provide testimony regarding the IFA locations.
- [21] While it would have been preferable for the RPD to name the exact proposed IFA locations at the beginning of the hearing, I do not find that the RPD violated the principles of natural justice by specifying the cities later in the hearing. Contrary to Counsel's argument, I note that the RPD questioned the Appellant on the viability of the IFAs for over ten minutes.⁹ This is significantly longer than two minutes. I find the RPD's questioning thorough. Moreover, the Appellant's Counsel was given the opportunity to make submissions at the end of the hearing, where he could add any further details necessary. The RPD therefore did not err.

IFA

- [22] There are two parts of the legal test for assessing an IFA.¹⁰
- [23] First, I must be satisfied, on a balance of probabilities, that there is no serious possibility of the Appellant being persecuted, and/or no danger of torture, risk to life, or risk of cruel and unusual treatment or punishment in the proposed IFA locations.
- [24] Second, the conditions in the IFAs must be such that it would not be unreasonable, in all the circumstances, for the Appellant to seek refuge there.
- [25] Once an IFA has been identified, the Appellant is responsible for demonstrating that the IFA is unsafe or unreasonable.
- [26] The RPD found that both parts of the legal test for an IFA were satisfied. After an independent review of the record, I find that the RPD did not err in its analysis.

The IFAs are safe

- [27] The Appellant's Counsel submits that the RPD failed to acknowledge that the Appellant's sisters live in hiding in Port Harcourt. Counsel submits that it is only a matter of time until the Ifa locate the Appellant's sisters.
- [28] This argument has no merit. The RPD acknowledged the Appellant's testimony that her sisters live in hiding.¹¹ The RPD considered this fact amongst other elements of the Appellant's case. For instance, the Appellant speculates that the Ifa would find her through her bank account or phone number. However, the RPD considered that the Appellant's sisters have bank accounts and phone numbers and have not been contacted or located by the Ifa. The RPD also noted objective documentary evidence attesting to the fact that this personal information may only be accessed via a court order.¹² The RPD was correct to consider the totality of the evidence. When I do the same, I find that there is therefore insufficient evidence to conclude that the Ifa could locate the Appellant using her bank account and phone number.
- [29] The RPD also noted that the Appellant and her sisters' previous contact with the Ifa occurred at or near their family home. I agree that the Appellant's contact with the Ifa in near her family home does not establish that they would have the means or motivation to approach her in a different city far from her home. After considering all the evidence, the RPD found that the Appellant failed to establish that the Ifa have the means and motivation to find her. This analysis and conclusion are correct.
- [30] After considering the evidence before me, I do not find that the Ifa have the means and motivation to locate the Appellant in Benin City or Port Harcourt, on a balance of probabilities. I am satisfied, on a balance of probabilities, that there is no serious possibility of the Appellant being persecuted, and/or no danger of torture, risk to life, or risk of cruel and unusual treatment or punishment in the proposed IFAs.

The IFAs are reasonable

[31] Relocation will always involve some amount of hardship. However, the threshold to find an IFA unreasonable is high. An unreasonable IFA must have conditions that would jeopardize the Appellant's life and safety. To demonstrate this, the Appellant must provide actual and concrete evidence of adverse conditions which would jeopardize her life and safety.¹³ After considering the particular facts of the Appellant's case, I find that the proposed IFAs are reasonable for the following reasons.

The RPD considered the Appellant's personal circumstances

[32] The Appellant's Counsel argues that the RPD did not sufficiently explain how it applied the Jurisprudential Guide (JG) in its IFA analysis. Counsel submits that an IFA determination must be based on the Appellant's personal circumstances.

[33] The RPD considered the JG because the Appellant fears non-state agents, as was the Appellant's case in the JG. At the time of the RPD's decision, decision-makers were advised to consult the JG in these circumstances. It is true that the remainder of the decision does not explicitly reference the JG. However, the remaining analysis does explicitly consider the Appellant's particular circumstances, including her education, language, work history, and ability to secure housing. The JG was intended to guide an analysis according to the particular facts of a case. I find that the RPD did exactly this. If anything, the absence of reference to the JG indicates that the RPD focused its analysis on the Appellant's circumstances. In any case, the JG is no longer in use. Furthermore, I can remedy any potential error with my own analysis,¹⁴ as follows.

The Appellant's work experience and education do not render the IFA unreasonable

[34] Counsel submits that the Appellant is the sole source of income for her two sisters and she would not be able to continue to support them in the IFA locations.

[35] While Appellant stated that she has been supporting her sisters, there is no evidence on the record to indicate that they are her legal dependents. Although the Appellant's parents have both passed away, I also note that both of the Appellant's sisters are over the age of 18.¹⁵ This situation is distinguishable from that of a single parent supporting children or legal dependents. The Appellant has not submitted any evidence to explain why her sisters are unable to work to support themselves. The Appellant also has not submitted any evidence to demonstrate her ongoing support of her sisters.

- [36] My role is to determine whether the IFA locations are reasonable for the Appellant. The Appellant is responsible for presenting evidence to establish that the IFAs are unreasonable. Absent any further information, the Appellant's decision to provide financial support for her adult sisters appears to be elective. I therefore do not find that the Appellant's choice to support her adult sisters rises to the high threshold required to render the IFA locations unreasonable.
- [37] In any case, I do not find that the Appellant has established that she would not be able to obtain employment in Benin City or Port Harcourt. The Appellant testified that she has XXXX years of experience working as an XXXX XXXX at a XXXX XXXX XXXX firm. The Appellant has completed XXXX years of formal education.¹⁶ Nigerian women complete 8 years of formal education on average.¹⁷ Although the Appellant does not have a XXXX XXXX, her education weighs favourably in my analysis. On a balance of probabilities, I find that the Appellant's combination of employment experience and education are such that she would be able to find employment. I do not find that these circumstances render the IFA unreasonable.

The Appellant's gender does not render the IFA unreasonable

- [38] The Appellant's Counsel argues that the RPD failed to analyze the claim based on the claimant's particular social group: a woman. Counsel submits that women are owed special protection from manipulation, violence, abuse, sexual and physical exploitation, and gender discrimination in the distribution of goods and services.
- [39] I disagree in part. I do not dispute that women and girls have the special protection needs identified above, or that women may be persecuted because of their gender. However, the Appellant's claim is not rooted in her membership to the social group of women. The Appellant fears the traditionalist Ifa group. The Appellant did not claim that the Ifa group targeted her because of her gender. I do not find any other elements of the Appellant's profile or story that link her claim to her gender. As such, there is no nexus to the convention based on the Appellant's membership to a particular social group: women.
- [40] However, the Appellant's gender is part of her personal circumstances that are owed consideration under the second part of the IFA analysis. At the hearing before the RPD, Counsel submitted that it would be unreasonable for her to relocate within Nigeria because she is a single young woman. No further details were submitted. On appeal, Counsel's submissions are also limited. Counsel submits that the JG establishes that single women face greater challenges when relocating within Nigeria. Counsel also invokes an argument regarding state protection with the submissions regarding the Appellant's gender. Counsel states that the Appellant has lost trust in the police. Counsel has not linked this statement to the Appellant's gender.

- [41] While the submissions are limited, the RPD ought to have considered the Appellant's gender as part of her personal circumstances. I will remedy this error by substituting my own analysis as follows.
- [42] Although relocation may be more difficult for single women than women with male partners or single males, the Appellant's circumstances are the most important in the IFA analysis. In this regard, the Appellant has work experience and education as examined above. Access to housing can be one of the larger obstacles for single women resettling in Nigeria, as argued by Counsel. However, as noted by the RPD, the Appellant testified that her cousin could co-sign a lease for her if she asked him.¹⁸ This mitigates any housing concerns. Counsel argues that the Appellant stated that her cousin could not protect her from the Ifa. However, this argument is not related to my analysis of the Appellant's ability to obtain housing or the reasonableness of the IFA locations. Furthermore, the absent an objective basis for her claim, I do not find that this argument renders the IFA locations unsafe or unreasonable.
- [43] Additionally, the Appellant speaks English, Nigeria's official language, as well as Yoruba. I recognize that there are many different languages and dialects in Nigeria,¹⁹ and that this may pose a challenge for the Appellant. However, she is fluent in the country's official language and one of Nigeria's three major languages.²⁰ On a balance of probabilities, I find that this makes her less likely to face linguistic challenges in either of the two proposed IFA cities.
- [44] The Appellant is a Christian. Christianity is the major religion in the south of Nigeria, and the Appellant is free to practice it anywhere in the country.²¹ I find that this weighs favourably in the Appellant's ability to relocate within Nigeria.
- [45] The Appellant's Counsel has not advanced any arguments about indigeneity, but I have considered it none-the-less. I note that indigeneity may cause discrimination for those seeking employment in certain fields. These fields include the public service and political positions, as well as work in the informal sector.²² It also may impact a person's ability to purchase land and access government services including university.²³ Relocation may be difficult because of language, religious and cultural differences, and a lack of family support.²⁴ I acknowledge that this may be difficult for the Appellant. However, I also note that indigeneity is reportedly less significant in large urban centres.²⁵ Port Harcourt and Benin City are both large urban centres.²⁶ Challenges related to Indigeneity also may be mitigated by education or expertise²⁷ and proficiency in English.²⁸ The Appellant has more education than the average Nigerian and speaks English. In the absence of arguments regarding the Appellant's particular circumstances, I find that any potential discrimination would not render the proposed IFA locations unreasonable or unduly harsh.
- [46] Counsel submits that the Appellant has a lack of trust in police and is unwilling to seek out state protection based on past experiences specific to her gender.

- [47] I do not find Counsel's argument regarding the Appellant's trust in or ability to access state protection relevant in my analysis of the IFA. An IFA analysis exists independently of an analysis of state protection. As I have previously determined that the Appellant would be safe from the Ifa in Port Harcourt or Benin City, I do not find that she would need to access state protection from the Ifa.
- [48] When I consider this argument generally, insofar as the Appellant may be hesitant to approach state authorities for protection from other criminal acts, I find it speculative to assume that the Appellant would find herself in this situation. The Appellant's distrust in the police stems from an incident when the police could not help her avoid the spiritual attacks from the Ifa. Apart from this incident, the Appellant has not reported any other negative experiences with the police to qualify her distrust. As previously discussed, I am sensitive to the fact that the Appellant's concerns regarding the spiritual attacks and resultant distrust in the police may be real in her own perspective. However, when I consider that her reported distrust of the police stems from this isolated incident regarding spiritual attacks with no objective basis, I do not find that her feelings towards the police meet the high threshold required to render an IFA unreasonable.
- [49] I have considered the Chairperson's Guideline 4.29 I am sensitive to the fact that Nigeria can be dangerous for all women. I am also mindful of jurisprudence highlighting the need to consider the totality or cumulative effect of the Appellants' personal circumstances to determine whether an IFA location is reasonable.³⁰ However, I do not find that the Appellant has any particular circumstances that would render the IFA location unreasonable for her cumulatively, based on her gender, or otherwise. On a balance of probabilities, I find that the Appellant's personal circumstances lend themselves to her ability to find employment and accommodations. Negative impacts from indigeneity are unlikely in the large and heavily populated IFA locations. Still, the Appellant's profile lends itself to the ability to overcome any potential negative impacts of indigeneity. Although the Appellant may choose to support her adult sisters, I find that her ability to obtain employment and housing would mitigate any potential difficulties that she may face.
- [50] In the absence of further arguments or evidence, I find that the proposed IFA is reasonable in the Appellant's circumstances on both an individual and cumulative basis. The RPD was correct to find that Port Harcourt and Benin City are reasonable IFAs.

CONCLUSION

- [51] I dismiss the appeal and confirm the decision of the RPD that the Appellant is neither Convention refugee nor a person in need of protection.

(signed)

Desiree Pachkowski

Desiree Pachkowski

September 11, 2020

Date

1 Exhibit P-2, Appellant's Record, Appellant's Memorandum, at p.4 at paras.23-24, 27.

2 Refugee Appeal Division (RAD) Rules, Rule 27.

3 Subsection 110(4) of the IRPA; RAD Rule 3(3)(g)(iii); Canada (Citizenship and Immigration v. Singh, 2016 FCA 96; Canada (Citizenship and Immigration) v. Raza FC 385

4Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93; Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145

5 RPD-1, RPD Record, Medical Certificate of Cause of Death, at p.196.

6 Audio recording of hearing before the RPD on August 21, 2019, at 00:56:54.

7 Subsection 96 of the IRPA.

8 X (Re), 2019 CanLII 133738 (CA IRB)

9 Audio recording of hearing before the RPD on August 21, 2019, at 01:21:40 - 01:33:45.

10 Thirunavukkarasu v. Canada (Minister of Employment and Immigration), [1993] F.C.J. No 1172, [1994] 1 F.C. 589 (F.C.A); and, Rasaratnam v. Canada (Minister of Employment and Immigration), [1991] F.C.J. No. 1256, [1992] 1 F.C. 706, 140 N.R. 138 (F.C.A).

11 RPD-1, RPD Record, Reasons and Decision, at p.6 at para.20.

12 RAD-1, National Documentation Package (NDP) for Nigeria, 9 April 2020, tab 1.14: ? Requirements and procedures to obtain a Subscriber Identity Module (SIM) card and to open a bank account; extent to which SIM card and banking information is available to third parties, including authorities and elected politicians (2018-February 2019). Immigration and Refugee Board of Canada. 18 February 2019. NGA106245.E

13 Singh v. M.C.I. IMM-826-13, Noël, September 26, 2013, 2013 FC 988 (CanLII), at para. 40.

14 The latest version of the National Documentation Package (NDP) for Nigeria, published on April 9, 2020, was disclosed to the Appellant for submissions in July 2020. No submissions were received. The Appellant's personal circumstances are analysed within the context of the information in the NDP.

15 RPD-1, RPD Record, BOC Form, at p.41.

16 RPD-1, RPD Record, Schedule A Form, at p.144.

17 RAD-1, NDP for Nigeria, 9 April 2020, at tab 1.6: Nigeria. The World Factbook. United States. Central Intelligence Agency, at p. 6.

18 Audio recording of hearing before the RPD on August 21, 2019, at 01:33:10.

19 RAD-1, NDP for Nigeria, 9 April 2020, at tab 1.8: DFAT Country Information Report: Nigeria. Australia. Department of Foreign Affairs and Trade. 9 March 2018., at p. 8, at para. 2.8.

20 RAD-1, NDP for Nigeria, 9 April 2020, at tab 1.15: Nigeria. L'aménagement linguistique dans le monde. L'aménagement linguistique dans le monde. Jacques Leclerc. 4 July 2017., at pp. 2 - 3.

21 RAD-1, supra, endnote 19, at p.16, at paras. 3.11 - 3.12.

22 RAD-1, NDP for Nigeria, 9 April 2020, tab 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 available to those who ... Immigration and Refugee Board of Canada. 30 October 2019. NGA106361.E, at pp. 7-8, 17.; supra, endnote 19, at p.16 at para. 3.8.

23 RAD-1, supra, endnote 22, tab 13.1, at pp. 8-10.; supra, endnote 19, at p. 16 at para. 3.8, at p. 32 at para 5.24.

24 RAD-1, supra, endnote 19, at p.32 at paras. 5.24 - 5.25.

25 RAD-1, ibid, at para. 3.8; supra, endnote 22, tab 13.1, at p.13.

26 RAD-1, supra, endnote 17, at p. 4.; tab 1.1: Nigéria. L'Encyclopédie en ligne. Larousse.

27 RAD-1, supra, endnote 22, tab 13.1, at pp. 13 - 14.

28 Ibid, at p. 14.

29 The Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution: Update, Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act, IRB, Ottawa, November 13, 1996, as continued in effect by the Chairperson on June 28, 2002, under the authority found in section 159(1)(h) of the IRPA.

30 Haastrup v. Canada (Citizenship and Immigration), 2020 FC 141 (CanLII), at paras. 37 - 43.

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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 (January, 2020)

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