

CANADA / JUDGMENT

MB9-07536

COURT

Refugee Appeal Division

DECIDED

15 September 2020

Research copy typeset by Esheria. Not court-issued or certified. A source URL was not supplied in the case record.

RAD File / Dossier de la SAR : MB9-07536 MB9-07537 Private Proceeding / Huis clos Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXX XXXX XXXXXXXX XXXX XXXX Personnes en cause Appeal considered / heard at Montreal, QC Appel instruit / entendu à Date of decision September 15, 2020 Date de la décision Panel Rouba Al-Salem Tribunal Counsel for the persons who are the subject of the appeal Stewart Istvanffy Conseil des personnes en cause Designated representative N/A Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION OVERVIEW

- [1] XXXX XXXX XXXX XXXX (Principal Appellant) and XXXX XXXX XXXX (Associate Appellant) are citizens of Nigeria, who were residents of Benin City, and are of Christian faith.¹ They are both appealing a decision by the Refugee Protection Division (RPD), dated March 11, 2019, rejecting their refugee protection claim. According to the Appellants, they fear returning to Nigeria because they would be persecuted or harmed by XXXX XXXX XXXX XXXX in-laws, following the Principal Appellant's husband's death,² particularly by the brothers-in-law XXXX, who is allegedly a senior police officer.³
- [2] The Appellants left Nigeria on XXXX XXXX XXXX 2017, to the USA with the help of a friend of their father (XXXX).⁴ They allegedly remained in the USA till XXXX XXXX XXXX 2017, after which they entered Canada and filed a refugee claim during that same month.⁵
- [3] In its decision, the RPD concluded that the Appellants are not Convention refugees or persons in need of protection.⁶ According to the RPD, this is because the panel did not find the Appellants to be credible witnesses with respect to central aspects of their claim, and because there were significant omissions, discrepancies, and contradictions in their testimonies, and in their written evidence, as well as the failure of the Appellants to provide reasonable explanations for them.⁷
- [4] In this regard, the panel found firstly that the appellants failed to provide sufficient evidence to establish that the alleged agent of harm was a police officer anywhere in Nigeria and that he had major influence throughout the country as the Appellants claimed.⁸ This is despite having alleged that they did not file any complaint with the Nigerian police and that they were forced into hiding because of his influence.⁹ Secondly, the RPD drew a negative inference from the Appellants' failure to file any complaint anywhere in Nigeria with respect to the abuses that they have allegedly suffered at the hands of XXXX.¹⁰

- [5] Thirdly, the RPD did not find that the Appellants established that, on a balance of probabilities, the alleged agent of harm would force female genital circumcision (FGM) onto the Associate Appellant as alleged.¹¹ Fourthly, the RPD made a negative inference from the Appellant's failure to claim refugee status in the USA, where they had remained from XXXX XXXX 2017 and considered the reasons that they provided for their failure to claim, unreasonable.¹² Lastly, the panel pointed out another discrepancy, namely that although the Appellants alleged that they were thrown out of their home by the in-laws in XXXX 2016, they provided on their Schedule A that they lived at the same address (their home) up and till their departure from Nigeria in 2017.¹³
- [6] On appeal, the Appellants submit that the RPD erred in its analysis of facts and in its decision to give little weight to the documentary and personal evidence filed by them, and that it did not analyze all of the evidence before rendering its decision.¹⁴ In this regard, the Appellants also argue that they cannot be expected to know the motive of the agent of harm for insisting on subjecting the Associate Appellant to FGM, and that FGM has been recognized as a motive of persecution in partial opposition to what has been stated by the RPD panel in its decision.¹⁵ Moreover, they submit that the panel did not address their lack of credibility but confronted them about the lack of evidence.¹⁶
- [7] Secondly, the Appellants submit that the panel erred in paying no attention to the objective situation in Nigeria and the evidence of the power of cults in Nigeria.¹⁷ Thirdly, the Appellants allege on appeal that the panel erred in rejecting their refugee protection claim because of their failure to file a claim in the USA, on the ground that this does not mean that the person could not be a valid refugee claimant, and that since the arrival of President Trump, the situation in the USA is very different for refugee claimants than in Canada.¹⁸
- [8] In her further submissions, the Principal Appellant alleges that the RPD should have accepted the documentary evidence submitted by the Appellant.¹⁹ In addition, she submits that the RPD did not seriously consider the gender-based nature of the persecution alleged by the Appellants; that the gender guidelines should have been applied, when it is clear that there is a lack of state protection in these kind of circumstances, and that the RPD has not seriously considered the probability of FGM for the Associate Appellant.²⁰ DECISION
- [9] I dismiss the appeal. The RPD was correct in finding that the Appellants are neither Convention refugees nor persons in need of protection. NEW EVIDENCE
- [10] With their appeal record, the Appellants submitted the following documents: * A letter from lawyers and members of the Nigerian Bar Association (dated XXXX XXXX XXXX 2019), who are solicitors of XXXX XXXX XXXX XXXX, a neighbor of the Principal Appellant, alleging that he witnessed the abuse that was inflicted on the Appellants during the husband's burial in 2016. It also states that XXXX is a senior police officer (superintendent of police) and a person who believes in diabolical ways, and that he has formed a group to actively search for the Appellants (thereafter Exhibit A).²¹ * A letter from XXXX XXXX XXXX XXXX, one of the Principal Appellant's older brothers (dated XXXX XXXX XXXX 2019). In it, he alleges that

XXXX is a senior police officer with the Nigerian police force, that he and the other in-laws have targeted the Appellants with physical abuse because they believe that she was responsible for the Principal Appellant's husband's death, and because they want to take over his property (thereafter Exhibit B).²² * A letter from XXXX XXXX, a friend of the Associate Appellant (dated XXXX XXXX XXXX 2019). In it, she alleges that in XXXX 2016, she can attest that the family of her friend's father wanted to force her to get circumcised and that XXXX informed her during the burial that he is a police officer (thereafter Exhibit C).²³

* A letter from XXXX XXXX, the Chairman of the rental association of which the Principal Appellant allegedly was a member of before her husband's death (dated XXXX XXXX XXXX 2019). In it, he alleges that the Principal Appellant was physically and verbally abused by her in-laws before, during and after the burial of her husband, and that XXXX is a senior police officer, who wanted to force her to follow certain pagan traditions and cultures and force the Associate Appellant to be circumcised (thereafter Exhibit D).²⁴ * A letter from XXXX XXXX XXXX at the XXXX XXXX Church, Nigeria, (not dated) in which he alleges that XXXX is an occult and a police officer, that he is still looking for them to kill them and that he threw them out of their home which forced them to seek refuge in his church. He also alleges that XXXX wanted to perform certain rituals and have the Associate Appellant circumcised (thereafter Exhibit E).²⁵ * The following media reports and articles: CNN, "Female Circumcision," (January 11, 2018) (thereafter Exhibit F(i)); the Children Human Rights Network Blog, "Female Genital Mutilation: More must be done to save lives," (February 6, 2018) (thereafter Exhibit F(ii)); 28 Too Many, "Country Profile: FGM in Nigeria," (date unknown) (thereafter Exhibit F(iii)); CNN, "Brutality promoted Nigerian Government to act" (August 20, 2018) (thereafter Exhibit (iv)); Open Society Justice Initiative, "Criminal Force: Torture, Abuse and Extrajudicial Killings by the Nigerian Police Force," (not dated) (thereafter Exhibit F(v)); David Matta, "Credibility of Refugee Claimants," in Immigration Law Reporter item 21 (not dated) (thereafter Exhibit F(vi)).

- [11] After the appeal was perfected on May 2, 2019, the Appellants submitted the following documents: * A XXXX report (dated XXXX XXXX XXXX2020), following a clinical assessment of the Principal Appellant on XXXX XXXX XXXX 2020, by the Clinique Expertise XXXX Montérégie. According to the report, the Principal Appellant suffers from XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX the chronic type of XXXX XXXX (Exhibit 13). Analysis of the Evidence
- [12] According to the law,²⁶ I can only accept evidence that (i) arose after the RPD decision; or (ii) was not reasonably available at the time of the decision; or (iii) that could not reasonably have been expected in the circumstances to be brought to the RPD by the Appellants before the panel rejected their claim. If the evidence meets one or more of these requirements, I must decide if the evidence is new, credible, and relevant as per the Raza/Singh factors before I can accept it.²⁷

- [13] If the evidence was submitted after the appeal was perfected, and in deciding whether to accept the request, I must consider any relevant factors listed in Rule 29(4) of the RAD rules namely, (i) the documents relevance; (ii) its probative value and (iii) whether it contains new evidence.
- [14] With respect to Exhibits A-E, I do not find that they meet any of the criteria of subsection 110(4) of IRPA. While they are all dated after the RPD rendered its decision regarding the Appellants' claim, they all refer in their content to events that took place before the RPD's rejection. In the Affidavit of the Principal Appellant (dated XXXX 2019), submitted to the RAD, she explains that this evidence was not submitted before because all this evidence was provided last month but that "I have never been asked for this before."²⁸ However, I note that the Appellants were represented by Counsel to the RPD; that they did not allege misrepresentation and that the information on the IRB website concerning "Important instructions for refugee claimants," underscores that claimants should "obtain and submit whatever documents you can to support your claim."²⁹ I also do not find that the Appellants have established that these exhibits were not reasonably available at the time of the RPD's rejection of their claim, or that they could not reasonably have been expected in the circumstances to bring the evidence before to the RPD prior to the claim's rejection. I therefore do not find that Exhibit A-E meet any of the criteria of subsection 110(4) of IRPA and do not admit them into evidence.
- [15] With respect to the media reports in Exhibit 12, I note that three of them, namely exhibits (i)-(iii) all date before the RPD's rejection of the claim. The Appellants have also not explained, nor do I see on the face of it, why these exhibits were not reasonably available at the time of the decision; or could not reasonably have been expected in the circumstances to be brought to the RPD by the Appellants before the rejection of their claim. I reach a similar conclusion with respect to Exhibits 12(iv)-(vi) they were not dated. Nor is there any indication that the content arose after the RPD decision. Hence, I do not find that Exhibits 12(i)-(vi) meet any of the criteria of subsection 110(4) of IRPA and do not admit them into evidence.
- [16] With respect to Exhibit 13, in considering the factors under rule 29(4), I find that it is relevant to the Principal Appellant's claim, of probative value and that it contains new evidence concerning the XXXX health status of the Appellant. I therefore admit it under rule 29(4) of the RAD rules. I also agree with the Principal Appellant, that it meets one or more of the criteria under subsection 110(4). This is because it arose after the RPD decision; was not reasonably available at the time of the decision; or could not reasonably have been expected in the circumstances to be brought to the RPD by the Appellants before the RPD rejected the claim.³⁰ With respect to the Raza/Singh factors, I find that given its source and circumstances, it is credible. I also find that it is relevant in the sense that it is capable of proving or disproving a fact that is relevant to the claim of protection, and that it is new, in the sense of proving a fact that was unknown to the refugee claimant at the time of the RPD hearing, namely that she has been diagnosed with XXXX XXXX I therefore admit Exhibit 13 into evidence. REQUEST FOR AN ORAL HEARING

- [17] In the Appellant's written statement, the Principal Appellant requested an oral hearing to be held, pursuant to subsection 110(6) of Immigration and Refugee Protection Act.
- [18] Although I have admitted a document into evidence, I do not find, for reasons I will explain below, that it raises a serious issue with respect to the credibility of the person who is the subject of the appeal; that is central to the decision with respect to the refugee protection claim, and that if accepted, would justify allowing or rejecting the refugee protection claim. The request to hold an oral hearing is therefore rejected.

BACKGROUND

- [19] In her narrative, the Principal Appellant alleges that two weeks after her daughter's birth, in XXXX, her brother-in-law XXXX XXXX approached her and her husband with the demand that they have her circumcised. According to the Principal Appellant, both she and her husband refused because of their Christian faith.³¹
- [20] Following the death of her husband in 2016 of XXXX XXXX,³² the Principal Appellant alleges that her in-laws blamed her for his death, and for his refusal to abide by their traditions given that, unlike the rest of his family, he was a Christian.³³ She also claims that they approached her with the demand, once again, to have her daughter circumcised, and that they expected her to go through with certain traditions that they follow, such as drinking the water in which her husband's dead body was washed, as a precondition for proceeding with the burial.³⁴ When she allegedly refused all these demands, she claims that female members of XXXX family physically attacked her.³⁵
- [21] According to the Appellants, one week after the burial, ceremony, the in-laws threw them out of the home and physically attacked the Principal Appellant. This resulted in her dislocating her left shoulder.³⁶ Consequently, the Appellants allegedly sought refuge on the premises of the XXXX XXXX Church, which is the Church that they affiliate with in Benin City.³⁷ They remained there, up and till a friend of the late husband, by the name of XXXX, offered to help them leave the country, assisted them with applying for US visas and with buying tickets in XXXX 2017 to leave Nigeria.³⁸
- [22] Once having arrived in the USA, the Appellants stayed with XXXX for the first month. However, they allege that afterwards, he asked them to leave because his family in Nigeria was being threatened by XXXX. They subsequently left from Boston, where they resided, to Chicago, where they stayed at their Church's branch for the remaining months that they spent in the USA.³⁹

ANALYSIS

- [23] My role is to look at all the evidence and decide if the RPD made the correct decision.⁴⁰ In reaching my findings, I have also given consideration to the IRB Chairperson's Guideline 4- Women Refugee Claimants fearing Gender-Related Persecution.⁴¹

- [24] For the following reasons, I find that the RPD was correct in its conclusion that based on the Appellant's oral and written testimony, and the personal evidence and objective documentary evidence that they have submitted, they did not establish the allegations that are central to their claim, namely that there is a serious possibility that they would be persecuted by the Principal Appellant's in-laws, particularly by her brother-in-law XXXX, or that they would face harm by them if they returned to Nigeria.
- (1) The Appellant's inability to provide personal information regarding the alleged agent of harm's age, rank, and place of work and their failure to file a complaint with Nigerian authorities
- [25] In its decision, the RPD pointed out that the Appellants allege that XXXX, is a senior police officer in Benin City (Edo State),⁴² and that following her husband's death, he wanted to see her dead, and to submit the Associate Appellant to FGM. In addition, they allege that he enjoys major influence amongst their in-laws, as well as with other police officers and police stations throughout the country.⁴³ However, the panel found that the Appellants were unable to provide information as to his age, place of work and rank, or to demonstrate that they made an effort to seek more information about the principal agent of harm.⁴⁴ The RPD also drew a negative inference from the Appellants' failure to provide any kind of evidence relating to the existence of the alleged agent of harm, his relationship to them, and his occupation as a police officer, such as letter from family members.⁴⁵
- [26] In their oral testimony, the Appellants alleged that they would not feel safe anywhere in Nigeria, and did not seek to file a police report with respect to the in-laws' takeover of their home; the harm that they inflicted on the Principal Appellant, the threats to have her killed and to have the Associate Appellant circumcised. According to the Appellants, the main reason is XXXX far-reaching influence as a senior police officer.⁴⁶ When the RPD panel inquired with the Principal Appellant why she did not attempt to claim ownership of her home and to report the family's takeover of the house to Nigerian authorities, she responded that they would not take it seriously because this is "how it works there."⁴⁷ The Associate Appellant also responded that you need police officers to enforce the law, and given that XXXX is part of that law-enforcement body, they could not be expected to report it to the police.⁴⁸ Furthermore, she alleged that given that he has worked for a very long time for police authorities, he has built a considerable network of contacts and has access to their information. Hence, even if they should decide to live somewhere else in Nigeria, he would be able to access this information and find them.⁴⁹
- [27] On appeal, the Appellants submit that XXXX is an XXXX XXXX of police.⁵⁰ On appeal they also argue that the RPD did not address their lack of credibility and only confronted them about the lack of evidence for their allegation that XXXX is a police officer,⁵¹ and that he is a member of the traditional cult called the Ogboni cult but that the RPD did not want to hear about him being a member of a powerful cult.⁵² Counsel to the RPD also stated that the panel cannot expect the agent of harm to hand over a paper saying that he is a police officer, or to have furnished the Appellants with a copy of his ID proving that he is working as a

police officer.⁵³

- [28] To begin with, I do not find that there is any evidence in the recording of the RPD hearing or in the RPD decision that supports the Appellant's allegations that the RPD member did not want to hear about the Appellant's allegations that XXXX was a member of the Ogboni cult. While the Principal Appellant underscored that he and his family believed in certain traditions that were different from those of their own Christian faith, I do not find support for her allegations that she mentioned during the RPD hearing that he was a member of that specific cult.
- [29] I also find that the RPD was correct in expecting the Appellants to be able to provide more information about the alleged agent of harm, most notably his rank and place of work as a police officer. This is because his role as a police officer is central to their claim. When during the hearing, Counsel questioned the Associate Appellant if she knew where in Benin city XXXX worked, she responded that she did not know.⁵⁴ Similarly, when he asked her if she knew his rank, she responded that she did not know more than that he has a senior rank.⁵⁵ Subsequently, when she was asked on what basis she alleged that XXXX enjoys influence all over Nigeria, she responded that it is because he can access information as to their whereabouts, and then send a request to other police stations to request that they help him locate them and send the Appellants back.⁵⁶
- [30] Moreover, while on appeal the Principal Appellant indicated that he is an XXXX XXXX police officer, it is not clear to me why this information was not provided by the Appellants to the RPD when the panel inquired about his rank during the hearing. In this regard, I point out that when the panel inquired why there is nothing in the evidence which she submitted, which indicates that he is a police officer, she responded that she did not know where he works,⁵⁷ or that she had to write it down.⁵⁸
- [31] I do not find that this explanation is satisfactory, particularly since the Appellants were represented by Counsel. In addition, the Appellants alleged that it is precisely his position and his contacts and influence with other members of the law enforcement authorities that would allow him to identify their whereabouts should they seek to relocate to any other place within Nigeria. Moreover, I note that the Principal Appellant had alleged that XXXX wanted to have her daughter circumcised for a very long time (i.e. two weeks after she was born). Hence, I find that it was correct for the RPD to expect the Appellants, to have more information about the alleged agent of harm, particularly given that they claim that it is because of his position and influence, that they fear that they would be persecuted or harmed by him if they were to return to Nigeria. At the least, I find that the RPD did not err in expecting the Appellants to demonstrate that they have made an effort to seek this information about him.
- [32] I concur with the RPD panel that the personal evidence which the Appellants submitted to the RPD does not contain any information which indicates that XXXX worked for the Nigerian police authorities or that he is currently working for them. In this regard, I point

out for example the two letters from the physician at the Clinique des Demandeurs d'asile et des Réfugiés (Montreal), both of them dated XXXX 2018, which states that they fled Nigerian because of the Principal Appellant's loss of her husband; that the family home was seized by her in-laws and brother-in-law, and that they want to force the Associate Appellant to undergo FGM. Similarly, the letters from their Church's branches in both Benin (where they allegedly hid from the family) and in Chicago (where they stayed after XXXX could no longer house them) only mention that assistance has been offered to the Appellants and that they have gone through a great deal of traumatic experiences. However, it does not make any reference to XXXX or establish the Appellant's allegations that he is a police officer.⁵⁹

- [33] Thus, while I agree with the Appellants that it is an error for the RPD to require documentary evidence corroborating a refugee claimant's allegations, this is not the case if there are valid reasons to question a claimant's credibility. As stated by the Court of Appeal in Adu, this is because "[t]he "presumption" that a claimant's sworn testimony is true is always rebuttable, and, in appropriate circumstances, may be rebutted by the failure of the documentary evidence to mention what one would normally expect it to mention."⁶⁰ Given my earlier findings, that the RPD did not err in expecting the Appellants to demonstrate in their written or oral testimony that they have made an effort to seek this information about him, I find that the RPD had valid reasons to question the Appellants' credibility with respect to their allegations that the agent of harm is a police officer with the alleged influence to find them and harm them if they returned to Nigeria.
- [34] The RPD also asked the Appellants to explain why they did not attempt to file a complaint at one of the numerous police stations throughout the country (and not necessarily at the police station where he works at), including in a jurisdiction other than Edo State, or seek the help of her siblings to file a complaint outside of Edo State.⁶¹ In response, the Appellants stated that they refrained from seeking any protection from police authorities, including by filing a complaint, because even if they were to file a report in another state, they would be expected to file a report in the jurisdiction where the events happened, namely Edo State.⁶² According to the Associate Appellant, given that XXXX is a senior police officer, he would be able "kill" the complaint right then and there.⁶³ Counsel to the RPD also argued that while the agent of harm may not have influence throughout Nigeria, and that the Appellants were not alleging that he did, there is ample objective documentary evidence which points out that laws are not enforced in Nigeria, and that it is common for police officers to use their influence, including to track someone down across the country is common.⁶⁴ He also underscored that as a police officer, he has contacts through which he can intimidate two women who are on their own in a patriarchal society.⁶⁵
- [35] While there may be objective evidence to support the Appellants' allegations that laws are not necessarily enforced,⁶⁶ and that mechanisms for dealing with police misconduct and ensuring accountability for abuses that they have committed often fall short of ensuring accountability,⁶⁷ I do not find that this objective documentary evidence is pertinent to the particular circumstances of the Appellants. This is because they have not established that

the alleged agent of harm is a Nigerian police officer in the first place, or that he has the level of influence and connections that would allow him to evade the applicability of the law or in order to identify the whereabouts of the Appellants in order to harm them. The same documentary evidence also indicates that a number of internal investigation mechanisms for receiving and processing public complaints about police misconduct do exist, which the Appellants could have made use of, including for the crimes of corruption and harassment.⁶⁸ I therefore find that the RPD was correct in drawing a negative inference from the lack of efforts by the Appellants to file a complaint with Nigerian authorities anywhere in Nigeria.

- (2) The Appellant's inability to establish that there is a serious possibility that the Associate Appellant would be forcefully subjected FGM if she would return to Nigeria

[36] In its decision, the RPD found that since the Appellants did not establish the existence of the police officer or his relationship to them, they have not established, on a balance of probabilities that he would enforce FGM on the Associate Appellant.⁶⁹ In support of its conclusion, the RPD pointed out that XXXX had for the past XXXX years (constituting the age of the Associate Appellant at the time of the RPD hearing) respected the wishes of his brother not to have the Associate Appellant circumcised.⁷⁰ Secondly, the panel pointed out that the objective documentary evidence indicates firstly that the federal law enforced in 2015 prohibits FGM. The panel also underscored that Edo is a state that has enacted anti-FM legislation as of June 2018 (i.e. before the RPD rendered its decision).⁷¹

[37] Thirdly, according to the RPD, the evidence also indicates that although FGM is still practiced in some areas more than others throughout Nigeria, only the parents make decisions concerning FGM, and that those who refuse do not face any consequences, retaliation or threats.⁷² The panel also pointed out that the Associate Appellant was an adult when she left Nigeria and was therefore entitled to make her own decisions.⁷³

[38] On appeal, the Appellants submit that although they could not explain why XXXX wanted to circumcise the Associate Appellant other than that he wanted to apply ancient traditions which he believed in, and because of the anger that he may have felt towards the Principal Appellant, this act can be considered a motive of persecution. In addition, it can take place even if the Appellants do not fully understand the internal motives of the agent of persecution.⁷⁴

[39] I agree with the Appellants that FGM can be considered a motive of persecution and can take place, without the Appellants having to understand the internal motives of the agent of persecution. I also agree with the Appellants that having laws does not necessarily mean they are enforced in each and every situation or circumstance.⁷⁵ However, I find that the RPD was correct in its conclusion that based on the objective documentary evidence concerning Nigeria as well as the particular circumstances of the Appellants, they have not established their allegations that the agent of harm would, on a balance of probabilities be motivated to subject the Associate Appellant to FGM. In this regard, the RPD panel correctly

pointed out to the Appellants during the hearing that the independent documentary evidence underscores that the decision of whether to proceed with FGM, rests mainly with the parents, and that parents who refuse to go forward with it do not face consequences.⁷⁶ According to one source addressing whether parents can refuse FGM of their daughter, and whether state protection is available, in some cases the decision depends on the consensus of both parents. In other situations, the decision depends particularly on mothers. The same source also states that in other states where there is a high prevalence of FGM the male head of the household had the last word.⁷⁷

[40] I also find that the time lapse, of 23 years since his last alleged attempt to demand that she be circumcised is pertinent. During the hearing, the RPD pointed out to the Appellants that despite the objection by the Principal Appellant and her late husband (because they are Christians) to his demands to go through with the FM, at no point in time did XXXX try to kidnap the Associate Appellant to force her to be circumcised.⁷⁸ When the RPD inquired whether XXXX took measures to force this practice upon the Associate Appellant, the Appellants responded that he did not, and that the reason why they did not is because she, the Principal Appellant took a stand against it.⁷⁹ By way of explanation the Appellants stated that XXXX refrained from taking any steps while his older brother (the Principal Appellant's husband) was alive, out of respect for him,⁸⁰ because they were equally afraid of him (given that he was the older sibling), and that after he died he wanted to seek revenge.⁸¹ In this regard, the RPD did not accept as reasonable, the Associate Appellant's explanation that they would respect his decision while alive but not after he died.

[41] Even if in contrast to the RPD,⁸² I were to accept the Appellant's explanation, that XXXX was emboldened by his brother's death to realize his alleged objective of circumcising the Associate Appellant, for reasons that they are unaware of, according to the independent documentary evidence, despite deeply rooted traditional practices, parents who refuse FGM and their children can be protected by the state, and that Edo state is one of the states that have adopted anti-FGM legislation.⁸³ In this regard, I have found that the Appellants have not established that XXXX is a police officer with the alleged influence to track them down anywhere in Nigeria, I also find that explanation which they have provided, namely that it is due to the influence of XXXX as a police officer, is not credible as an explanation for why they he continues to be a threat to them. I therefore conclude that the RPD did not err when it decided that the Appellants did not establish that there is a serious possibility that the Associate Appellant would be forcefully subjected FGM if she would return to Nigeria.

(3) Failure of the Appellants to claim Refugee Status in the USA

[42] In its decision, the RPD concluded that their failure to apply for refugee protection in the USA, and the explanation that they have furnished for not doing so, namely that they did not know how to go about it, is not credible.⁸⁴ In this regard, the panel also pointed out that during their stay of several months in the USA, they benefited from the help of XXXX XXXX at whose place of residence they stayed, and that subsequently, they went to live with the branch of their Church in Chicago.⁸⁵ In other words, according to the panel they were not

alone or abandoned in the USA.⁸⁶

- [43] When Counsel to the RPD inquired with the Associate Appellant what their plan was when they left Nigeria, she responded that it was to go somewhere far away where they could start afresh and that they put their trust into XXXX and his ability to help them.⁸⁷ She also testified that she never asked XXXX how it is that he was planning to help them stay in the USA,⁸⁸ and did not really know what to do.⁸⁹ The Associate Appellant also testified that she did not know the type of USA visas they had, that XXXX did not tell them how the system works, and that they did not know anything about the possibility of applying for refugee status in the USA.⁹⁰ In this regard, Counsel to the RPD also explained that when someone like XXXX helps the Appellants with all their travel preparations, it is normal for them to place their trust in that person; for their judgement to be altered and for them not to ask questions. In addition, he alleges that the Appellants were frustrated and disappointed when XXXX asked them to leave.⁹¹
- [44] When asked by the RPD panel and Counsel to the RPD why they did not in turn ask the Church branch in Chicago which housed them, for help in filing an asylum claim, the Appellants responded that their hopes had already been dashed after XXXX had asked them to leave, that they did not know anyone in Chicago, and that they felt that the Church had already done a lot for them by giving them a place to stay, so they did not feel that they could ask for more.⁹² I do not find that the responses provided by the Appellants are satisfactory, given their allegations that they were afraid to go back to Nigeria. I therefore conclude that the RPD was correct in its decision to draw a negative inference from the Appellants' failure to claim in the USA,⁹³ to conclude that it demonstrated a lack of subjective fear. Moreover, as the RPD pointed out, the Appellants remained for an estimated 8 months in the USA, during which they did not demonstrate that they made an effort to inquire about ways to remain permanently in the USA or finding out how to make a refugee claim.⁹⁴ Furthermore, I do not find that the Appellants' explanations for why they did not file refugee claims in the USA to be satisfactory.
- [45] Here, I point out that the RPD inquired why given that the Appellants were aware that they did not have permanent status in the USA, they did not ask for refugee status. In response, the Associate Appellant stated that at the time of arrival in the USA, they did not know what type of US visa they were granted and that since it was XXXX who applied on their behalf for the visa and had the passports, she only started reading about the different types of US visas available afterwards.⁹⁵ Moreover, she claims that she only found out about the possibility of applying for refugee status when she read news online that one could apply for refugee status in Canada, and that subsequently, the pastor of the Church in Chicago confirmed that this was true and that Canada was a more welcoming place and more accepting of refugees.⁹⁶ I do not find this explanation satisfactory, given that the Appellant's stopover in the USA was far from short and the Associate Appellant's admission that she had become aware that their status in the USA was not permanent. I find that the behavior of the Appellants and the explanations that they furnished establish on a balance of probabilities, a

lack of subjective fear.

(4) Other Discrepancies

[46] In its decision, the RPD pointed out that although the Appellants had testified that they were forced to leave their house by the in-laws who had seized the property in XXXX 2016, and that they had to go into hiding at the Church up and till they left Nigeria, in the forms which they filled in upon their arrival to Canada, they indicated that they were still living at the same address of their former place of residence (i.e. their home) up and till their departure from Nigeria.⁹⁷ The panel also found that the Principal Appellant's explanation for this omission, namely that she did not "see it," was not credible,⁹⁸ given that the Appellants had reiterated at the beginning of the hearing that the content of their BoC is truthful, complete and correct and that they fully understood the questions in English.⁹⁹

[47] The omission is found in Schedule A of both Appellants. I find that this omission is a serious one that goes to one of the central allegations of the Appellants' claim, namely that they were forced out of their house by the in-laws and that they had to go into hiding. Moreover, I do not find that the explanation provided by the Appellants was satisfactory. When the RPD inquired why it is they listed their home address at which they lived uninterruptedly from 2007 till XXXX 2017, and did not include the church address, the Appellants responded that it was a temporary address and not a permanent one. When then the panel asked them to clarify how it is that they listed their home as the permanent address when they allege that the family took over their home and that they lived for months somewhere else, they responded that they did not know and that it was a mistake.¹⁰⁰ In this regard, I also find that the explanation offered by Counsel, namely that the home address is the only fixed address they had, and that the Appellants' decision not to include any other one, is because it is that of a temporary shelter is also not satisfactory.

[48] As the RPD pointed out, the Appellants testified at the beginning of the hearing that the information they have provided in their BoC is complete, accurate and true and that it requires no modifications, and that they speak and understand English enough to sign a document without the assistance of an interpreter and to proceed with the hearing ¹⁰¹ I therefore agree with the RPD's findings and conclude that this discrepancy undermines the Appellants' allegations concerning central allegations of their claim, namely that the in-laws forced them out of their property and go into hiding.¹⁰²

(5) The XXXX Report admitted into Evidence

[49] I have admitted Exhibit 13 into evidence. However, in reaching my decision, I have assigned the document little probative weight for the following reasons: the report states that a XXXX is treating the Principal Appellant, following a prescription from a family physician. However, it is not clear from the report when these symptoms began, who has conducted the independent XXXX evaluation, or what the particular qualifications and experience of that professional is with respect to the Principal Appellant's particular condition.¹⁰³ In addition, I note that while the report underscores that its diagnostic impressions are that the

Principal Appellant suffers from XXXX XXXX XXXX XXXX XXXX of XXXX XXXX and that if she is not treated with evidence-based XXXX her symptoms may worsen, the report makes no recommendations that she undergoes such XXXX or that she will receive this kind of treatment in the future. The only recommendation made in the report that is of a medical nature, is that the Principal Appellant be directed to the Guichet d'accès en santé mentale from the CLSCS (recommendation 4). However, there are no instructions in the report to the CLSCS of any specific long-term treatment plan in response to the XXXX related findings.

- [50] With respect to the other recommendation made by the report,¹⁰⁴ I do not find that it is within the knowledge of the evaluator to determine whether there is appropriate treatment in Nigeria for the Principal Appellant's XXXX (recommendation 3), or what the factual foundation on which the report writer based his/her conclusion. I also find that the recommendations 1-2 of the report: that the Principal Appellant has access to a female judge who has good knowledge of FGM and of the concept of traditional land values and its importance to tribal life in Nigeria, and that the Associate Appellant not be deported, do not fall within the medical expertise or knowledge of the report writer, particularly since he/she have not disclosed the factual foundation or basis for making those recommendations. With respect to the fifth recommendation, that she be declared a vulnerable individual, I note that at no point in time during the RPD hearing, in the appeal or in the further submissions, did the Principal Appellant or Counsel, request that she be identified as a vulnerable person, that she be granted procedural accommodation for this purpose or that it impacted the ability and quality of her testimony at the RPD hearing. In this regard, the report states that the Principal Appellant "did not appear to present a short-term memory problem, which was not formally assessed."¹⁰⁵ Given that I am not holding an oral hearing, there is no reason for me to determine whether the Appellant would require procedural accommodation at a later stage. Furthermore, even if I were to accept that assessment that the Principal Appellant suffers from moderate PTSD, I underscore that it does not predispose me to making a particular determination of the case on its merits.

CONCLUSION

- [51] I dismiss the appeal and confirm the decision of the RPD that the Appellants are neither Convention refugees nor persons in need of protection. Rouba Al-Salem Rouba Al-Salem September 15, 2020 Date 1 RPD-1, RPD Record, Schedule A of the Appellants, item 5. Exhibits P-6 and P-7 consisting of certificates of baptism submitted by the Appellants to the RPD. 2 RPD-1, RPD Record, Exhibit P-8 submitted by the Appellants to the RPD consisting of the certificate of death of the Principal Appellant's husband. 3 RPD hearing on March 11, 2019 from 0:13:58 till end of 0:14:37. 4 RPD-1, RPD Record, Principal Appellant's written narrative attached to the Basis of Claim (BoC) form at p. 2. Item 2(e) of BoC. 5 RPD-1, RPD Record, Principal Appellant's Schedule 12, item 10. RPD decision at para. 4. Principal Appellant's BoC at item 12. RPD hearing from 0:13:24 till end of 0:13:45. 6 RPD-1, RPD Record, RPD decision at para. 5. 7 RPD-1, RPD Record, RPD decision at para. 7. 8 RPD-1, RPD Record, RPD decision at para. 12. 9 RPD-1, RPD Record, RPD decision at para. 12. 10 RPD-1,

- RPD Record, RPD decision at para. 13. 11 RPD-1, RPD Record, RPD decision at paras. 23 and 25. 12 RPD-1, RPD Record, RPD decision at para. 28. 13 RPD-1, RPD Record, The Appellants' Schedule A, item 12. RPD decision at para. 29. 14 Exhibit P-2, Appellant's Record, Principal Appellant's Memorandum of Appeal at paras. 12 and 18 and 49. 15 RPD-1, RPD Record, RPD decision at paras. 16-17. 16 RPD-1, RPD Record, RPD decision at paras. 47. 17 RPD-1, RPD Record, RPD decision on at para. 14. 18 RPD-1, RPD Record, RPD decision at paras. 23-24. 19 P-3, Further submissions by the Principal Appellant to the RAD (July 15, 2020) at para 14. 20 P-3, Further submissions by the Principal Appellant to the RAD (July 15, 2020) at paras. 20-22. 21 Exhibit P-2, Appellant's Record, Principal Appellant's Memorandum of Appeal at p. 6 submitted to the RAD 22 Exhibit P-2, Appellant's Record, Principal Appellant's Memorandum of Appeal at p. 8 submitted to the RAD 23 Exhibit P-2, Appellant's Record, Principal Appellant's Memorandum of Appeal at p. 13 submitted to the RAD 24 Exhibit P-2, Appellant's Record, Principal Appellant's Memorandum of Appeal at p. 15 submitted to the RAD
25. Exhibit P-2, Appellant's Record, Principal Appellant's Memorandum of Appeal at p. 19 submitted to the RAD. 26 Immigration and Refugee Protection Act, S.C. 2001, c. 27, ss. 110(4). 27 Canada (Citizenship and Immigration v. Singh, 2016 FCA 96; Canada (Citizenship and Immigration) v. Raza FC 385 28 Exhibit P-2, Appellant's Record, Appellant's Affidavit submitted to the RAD available at p. 1 of the RAD file at paras. 18-19. 29 <https://irb-cisr.gc.ca/en/refugee-claims/Pages/ClaDemGuideInstruct.aspx>. 30 P-3, Further submissions (July 15, 2020) at para. 28. 31 RPD-1, RPD Record, Principal Appellant's written narrative at p. 1. RPD hearing at 0:17:21 32 RPD-1, RPD Record, Principal Appellant's written narrative at p. 1. 33 RPD-1, RPD Record, Principal Appellant's written narrative at p. 1. RPD hearing at 0:15:39. 34 RPD hearing on March 11, 2019 from 0:15:39 till end of 0:16:32 and at 0:24:21. 35 RPD-1, RPD Record, Principal Appellant's written narrative at p. 1 Principal Appellant's written narrative at p. 1. RPD hearing from 0:35:26 till end of 0:35:33. 36 RPD-1, RPD Record, Principal Appellant's written narrative at p. 1. Exhibit P2, letter from CLSC in Montreal (dated January 30, 2018) submitted to the RPD. 37 Exhibit P10, letter from the Pastor 38 RPD-1, RPD Record, Principal Appellant's written narrative at p. 1. Copies of US visa on p. 8 of each of the Appellants' Nigerian passport valid from November 2016-November 2018. 39 RPD-1, RPD Record, Principal Appellant's written narrative at p. 2. 40 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93; Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145 41 Effective date November 13, 1996, available at <https://irb-cisr.gc.ca/en/legal-policy/policies/Pages/GuideDir04.aspx> 42 RPD hearing on March 11, 2019 from 0:14:33 till end of 0:14:37 and at 0:27:32. 43 RPD-1, RPD Record, RPD decision at paras. 9 and 11. Principal Appellant's narrative at p1-2. 44 RPD-1, RPD Record, RPD decision at paras. 10 and 14. 45 RPD-1, RPD Record, RPD decision at para. 15. 46 RPD hearing on March 11, 2019 from 0:26:24 till end of 0:26: 57; at 0:27:32. 47 RPD hearing on March 11, 2019 from 0:28:11 till end of 0:28: 38. 48 RPD hearing on March 11, 2019 at 0:29:19. 49 RPD hearing on March 11, 2019 at 0:31:03. 50 Exhibit P-2, Appellant's Record, Principal Appellant's Memorandum of Appeal at paras. 11-12. 51 RPD-1, RPD Record, RPD decision at paras. 47. 52

Exhibit P-2, Appellant's Record, Affidavit of the Principal Appellant submitted to the RAD at para. 5. 53 RPD hearing on March 11, 2019 at 02:40:21. 54 RPD hearing on March 11, 2019 from 01:22:25 till end of 01:23:02. 55 RPD hearing on March 11, 2019 from 01:23:59 till end of 01:24:05. 56 RPD hearing on March 11, 2019 from 01:24:23 till end of 01:16:09. 57 RPD hearing on March 11, 2019 from 01:21:48 till end of 01:22:14. 58 RPD hearing on March 11, 2019 from 01:26:45 till end of 01:27:51. 59 RPD-1, RPD Record, Exhibit P9 and P10 submitted by the Appellants to the RPD. 60 Adu, Peter v.M.E.I. (F.C.A., no. A-194-92), Hugessen, Strayer, Robertson, January 24, 1995. 61 RPD hearing on March 11, 2019 at 0:30:09, 0:31: 46 and 0:41:40. 62 RPD hearing on March 11, 2019 at 01:44:57. 63 RPD hearing on March 11, 2019 at 0:29:48. 64 RPD hearing on March 11, 2019 at 02:50:45. 65 RPD hearing on March 11, 2019 at 02:25:32. 66 Exhibit P-2, Appellant's Record, Affidavit of the Principal Appellant submitted to the RAD at para. 15. 67 RIR (NGA 104979.E), "Nigeria: Complaints Mechanisms available for Cases of Police Misconduct, including Effectiveness (2013-October 2014," (November 7, 2014) which represents item 10.6 of the updated NDP (July 2020) and featured under the same item number of the version of the NDP that was available to Appellants during the RPD hearing (December 21, 2018). 68 RIR (NGA 104979.E), "Nigeria: Complaints Mechanisms available for Cases of Police Misconduct, at p. 6. 69 RPD-1, RPD Record, RPD's decision at para. 23. 70 RPD-1, RPD Record, RPD decision at paras 22-23. 71 RIR, (NGA 106183.FE) "Nigeria: Whether Parents can refuse Female Genital Mutilation (FGM) of their daughter, state protection available (2016-October 2018)," which represents item 5.12 of the updated NDP (July 2020)and featured under the same item number of the version of the NDP that was available to Appellants during the RPD hearing (December 21, 2018) at p. 6. RPD oral hearing at 0:41:40. RPD decision at para. 19. 72 RPD-1, RPD Record, RPD decision at paras. 19 and 20. 73 RPD-1, RPD Record, RPD decision at para. 24. 74 Exhibit P-2, Appellant's Record, Principal Appellant's Memorandum of Appeal at paras. 16-17. 75 RPD hearing on March 11, 2019 at 0:43:28. 76 RPD hearing on March 11, 2019 at 0:48:0 and at 0:48:54. 77 RIR (NGA 106183.FE), "Nigeria: Whether Parents can refuse Female Genital Mutilation (FGM) of their daughter, state protection available (2016-October 2018)." at pp. 1-2. 78 RPD hearing on March 11, 2019 at 0:48:54. 79 RPD hearing on March 11, 2019 from 0:37:19 till end of 0:37: 26. 80 RPD hearing on March 11, 2019 at 0:50:47. 81 RPD hearing on March 11, 2019 at 0:50:12 and from 01:43:22 till ed 01:43:54. 82 RPD-1, RPD Record, RPD decision at para. 18. 83 RIR, (NGA 106183.FE) "Nigeria: Whether Parents can refuse Female Genital Mutilation (FGM) of their daughter, state protection available (2016-October 2018)," at p.5. 84 RPD-1, RPD Record, RPD decision at para. 27. 85 RPD-1, RPD Record, RPD decision at para. 26. 86 RPD-1, RPD Record, RPD decision at para. 27. 87 RPD hearing on March 11, 2019 from 01:48:57 till end of 01:49:11. 88 RPD hearing on March 11, 2019 from 01:49:42 till end of 01:49:52. 89 RPD hearing on March 11, 2019 at 01:59:20. 90 RPD hearing on March 11, 2019 from 01:03:52 till end of 01:04:08. Affidavit of the Principal Appellant submitted to the RAD at para 20. 91 RPD hearing on March 11, 2019 at 02:33:34. 92 RPD hearing on March 11, 2019 from 01: 09:22 til end of 01: 11:52 and from 01:57:39 till end of 01:57:55. 93 RPD-1, RPD Record, RPD decision at para. 28. 94 RPD hearing on March 11, 2019 at 01:09:22. 95 RPD hearing on March 11, 2019 from 01:05:03 till end of 01:06: 39. 96 RPD hearing on March 11, 2019 at 01:08:39. 97 RPD-1,

RPD Record, RPD decision at para. 29. 98 RPD-1, RPD Record, RPD decision at para. 30. 99 RPD-1, RPD Record, RPD decision at para. 31. 100 RPD hearing on March 11, 2019 from 0:54:46 till end of 0:58:10. 101 RPD hearing on March 11, 2019 from 0:08:03 till end of 0:09:49 102 RPD-1, RPD Record, RPD decision at para. 31. 103 P-3, Exhibit 13, part of further submissions (July 15, 2020) at pp. 1-2. 104 P-3, Exhibit 13, part of further submissions (July 15, 2020) at pp. 9-10. 105 P-3, Exhibit 13, part of further submissions (July 15, 2020) at p 7.

RAD File / Dossier de la SAR : MB9-07536 MB9-07537 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

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

CASE PAGE <https://chat.esheria.ai/case-law/canada/minister-credibility-refugee-appeal-division-2020--6a40c3bf4cf2c72690fb5da7>

A source URL was not supplied in the case record. Consult the court's original record before reliance.

Prepared on 28 October 2026 · Esheria