Federal Court  Cour fédérale

Date: 20150814

Docket: IMM-6525-14

Citation: 2015 FC 953

Ottawa, Ontario, August 14, 2015

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

JOHN TAIWO OLUWOLE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board [IRB], confirming a decision of the Refugee Protection Division [RPD] that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the IRPA.

[2] For the following reasons, this application is dismissed.

I. **Background**

[3] The Applicant is a citizen of Nigeria, who alleges he is at risk from the Boko Haram militant group.

[4] The Applicant, a Christian, alleges that he took part in a prayer summit organized by Gospel Faith Mission International in the city of Ado Ekiti, Nigeria from April 26-28, 2013. The Applicant alleges that, during this summit, he lead a prayer asking God to give wisdom and strength to the president of Nigeria to quash Boko Haram and to bring peace to the country.

[5] On May 14, 2013, the government of Nigeria extended a state of emergency in the three north-eastern states where Boko Haram was most active.

[6] According to the Applicant, the Boko Haram group blamed him for the state of emergency because of his prayer, and the Applicant started experiencing harassment. The Applicant alleges that his home was vandalized, that he was pursued in the streets and that he was threatened. He alleges that no one wanted to associate with him because of the risk and that he lost his job. According to the Applicant, he went into hiding, separating from his wife and children, and eventually left Nigeria to come to Canada.

[7] In rejecting the Applicant's claim for refugee protection, the RPD found that the Applicant was not credible and that, in any case, he would have internal flight alternatives [IFA] in the cities of Lagos and Port Harcourt.

[8] On appeal, the RAD confirmed the RPD's decision. The RAD considered whether to admit new documentary evidence and a request by the Applicant for an oral hearing. This new evidence consisted of: a death certificate for the Applicant's wife issued by the National Population Commission; an affidavit of the Applicant's aunt attesting to the death of the Applicant's wife; an affidavit of one of the Applicant's parishioners, who had located a poster depicting the prayer summit the Applicant had attended, along with the poster itself; and, documentary evidence from the internet related to the arrest of Boko Haram suspects in Lagos and Ogun.

[9] The RAD considered the statutory requirements for admission of new evidence on appeal, noting that pursuant to ss. 110(4) of IRPA, such evidence could only be presented if it arose after the rejection of the Applicant's claim or if it was not reasonably available, or the Applicant could not reasonably have been expected to present it, at the time of the rejection. The RAD concluded that the affidavit from the parishioner, the poster, and the internet evidence could reasonably have been available at the time of the RPD hearing or prior to its rejection of the claim. Therefore, those pieces of evidence did not meet the statutory requirements.

[10] The RAD found that the death certificate and affidavit from the aunt did meet these requirements. It then proceeded to examine this evidence pursuant to the factors identified by the

Federal Court of Appeal in *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 [*Raza*] to be considered in assessing new evidence proposed to be adduced under ss. 113(a) of IRPA in connection with a Pre-Removal Risk Assessment [PRRA]. Those factors are newness, credibility, relevance and materiality.

[11] The RAD doubted the credibility of the death certificate. As explained by counsel during the hearing of this application, the Applicant's purpose in attempting to introduce the evidence of his wife's death was to establish that she had been murdered by militants in Lagos State. However, the RAD observed that the death certificate did not indicate the cause of death or support the fact that it was a suspicious death. The RAD also relied on the IRB's National Documentation Package [NDP] for Nigeria, which indicated that a hospital record must be provided in order to obtain a death certificate. None had been provided in this case. Further, the RAD considered documentary evidence that Benin City, in the south of Nigeria, was a center of the engraving industry, from which practically any falsified document could be procured. Based on these credibility concerns, the RAD concluded that the new documentary evidence surrounding the wife's death was inadmissible. The RAD consequently denied the Applicant's request for an oral hearing.

[12] From there, applying the appellate standard of review identified in *Iyamuremye v Canada (Citizenship and Immigration)*, 2014 FC 494 [*Iyamuremye*], *Eng v Canada (Citizenship and Immigration)*, 2014 FC 711 [*Eng*] and *Alvarez c Canada (Citoyenneté et Immigration)*, 2014 CF 702 [*Alvarez*], the RAD found that the RPD had not made any overriding and palpable error in evaluating the credibility of the Applicant. This included upholding the RPD's finding that, if the

posters advertising the prayer summit had been distributed throughout Nigeria as the Applicant alleged, he would have had a copy available to submit to the RPD at his hearing.

[13] The RAD also found that the RPD had not made any overriding and palpable error in coming to the conclusion that the Applicant had IFAs in Lagos and Port Harcourt. The RAD ruled the new evidence with respect to Lagos inadmissible, because it could reasonably have been available at the RPD hearing, and noted that the Applicant had not challenged on appeal the finding of an IFA in Port Harcourt.

II. **Issues**

[14] Based on the parties' submissions, which will be canvassed below, the following are the issues raised by this application:

A. Did the RAD err in its analysis of the availability to the Applicant of an IFA in Lagos and Port Harcourt?

B. Did the RAD err in its treatment of the evidence related to the death of the Applicant's wife?

C. Did the RAD err in its treatment of the evidence surrounding the poster and flyer related to the prayer meeting?

III. **Submissions of the Parties**

[15] The Applicant argues that the RAD erred in declaring his wife's death certificate inadmissible. The Applicant submits that, contrary to the RAD's finding, the NDP indicates that blood relatives can obtain a death certificate from the National Population Commission with proof of identity, even without a hospital certificate The Applicant also argues that the RAD

erred in considering the fact that falsified documents can be obtained in Benin City, as that city had no relevance to the Applicant or his claim.

[16] In relation to the poster, the Applicant argues that the RAD made the same mistake as the RPD in finding that the poster of the prayer summit was material evidence of the claim that the Applicant had failed to provide, by failing to appreciate that the Applicant had provided at the hearing a copy of the flyer which was the same document except in a smaller version.

[17] The Applicant did not raise in his Memorandum of Argument filed in this application any argument with respect to the RAD's findings surrounding the IFAs. However, at the hearing of this application, the Applicant's counsel argued that such findings may have been different if the RAD had not erred in its conclusions with respect to the poster. The Applicant's counsel also noted that the Applicant's affidavit filed before the RAD did refer to and attach evidence that members of Boko Haram were moving into parts of Nigeria including Port Harcourt, which the Applicant argues can be characterized as challenging the RPD's finding that Port Harcourt represented a viable IFA.

[18] At the hearing of this application, the Respondent took issue with the Applicant raising these arguments as they had not been contained in the Applicant's Memorandum of Argument and referred the Court to the decision in *Al Mansuri v Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 22 [*Al Mansuri*], to the effect that the Court has discretion in such a situation.

[19] The Respondent argues that the RAD's decision is reasonable and defensible on any standard of review. The Respondent's principal position is that the RPD found that the Applicant had IFAs in Lagos and Port Harcourt and that the Applicant did not challenge before the RAD the fact that he had an IFA in Port Harcourt, a finding which is determinative of the claim. The Respondent's position is that the reference to Port Harcourt in the Applicant's affidavit cannot be properly characterized as challenging the RPD's finding that Port Harcourt represented a viable IFA, referring the Court to the decision of the Federal Court of Appeal in *Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 as authority that a party must raise an issue directly and clearly in order for a decision-maker to be obliged to consider it.

[20] The Respondent also argues that the RAD properly considered the admissibility of the death certificate. The Respondent submits that the NDP provides that a death certificate from the hospital is required to obtain a death certificate from the National Population Commission and that this requirement applies to blood relatives. Consequently, it was reasonable for the RAD to conclude that, since a hospital certificate had not been provided and given the evidence that fraudulent documents were easily obtainable, the death certificate was not credible and consequently not admissible.

[21] At the hearing of this application, the Respondent's counsel referred the Court to the decision by Justice Gagné in *Singh v Canada (Minister of Citizenship and Immigration)*, 2014 FC 1022 [*Singh*], to the effect that it is an error for the RAD to apply the analysis in *Raza*, which was developed in the context of the admission of evidence in a PRRA, to the admission of evidence under. ss. 110(4) of IRPA. However, the Respondent urges the Court to prefer the

analysis in *Denbel v Canada (Minister of Citizenship and Immigration)*, 2015 FC 629 [*Denbel*], in which Justice Mosley respectfully disagreed with the conclusion in *Singh* and held at paragraphs 40 to 44 that the RAD is entitled to import the *Raza* factors when applying the new evidence rule in ss. 110(4) of IRPA.

[22] On the issue of the poster, the Respondent submits that the RAD considered the finding of the RPD, the evidence before the RPD and the Applicant's arguments, to come to the conclusion that the RPD had made no overriding and palpable error in drawing a negative credibility inference from the Applicant's failure to provide the poster. The Respondent argues that conclusion was open to the RAD.

IV. **Standard of Review**

[23] As noted above, the RAD relied on the decisions in *Iyamuremye*, *Eng* and *Alvarez*, in concluding that the applicable standard of review required it to perform its own assessment of the evidence in order to determine whether the RPD relied on a wrong principle of law or mis-assessed the facts to the point of making a palpable and overriding error. While there is divergence in the jurisprudence from this Court (as recently summarized in *Ngandu v Canada (Citizenship and Immigration)*, 2015 FC 423) surrounding the standard of review to be applied by the RAD, the RAD's articulation of the standard in this case is consistent with the approach adopted in *Iyamuremye*, *Eng* and *Alvarez*. Importantly, neither party raises this as an issue. Having adopted one of the approaches developed by this Court, there is no basis to interfere with the standard of review employed by the RAD in this case.

[24] I also note that Justice Gagné held in *Singh*, at paragraphs 35-42, that the standard of review, when the Court is considering a decision by the RAD whether to admit new evidence under ss.110(4) of IRPA, is one of reasonableness, and I adopt that approach.

V. **Analysis**

A. Did the RAD err in its analysis of the availability to the Applicant of an IFA in Lagos and Port Harcourt?

[25] If the Applicant did not challenge before the RAD the finding that Port Harcourt was a viable IFA, then this issue is determinative and this application must be dismissed. In *Siliya v Canada (Citizenship and Immigration)*, 2015 FC 120 [*Siliya*], Justice Boswell considered a very similar factual situation. Before the RAD, the Applicants had not challenged the RPD's conclusion that there was an IFA. In dismissing the application for judicial review, Justice Boswell stated as follows at paragraph 25:

> [25] I reject the Applicants' argument that the RAD erred by deciding that the existence of an IFA was determinative without assessing their arguments that the RPD had mischaracterized the nature of the risk. The RAD's decision should not be disturbed because the Applicants never challenged the dispositive finding of the RPD as to an IFA and, thus, there was no basis for any appellate intervention by the RAD. Accordingly, the standard by which the RAD reviewed the IFA finding is irrelevant, and even if it was selected erroneously that does not negate the RAD's conclusion in disposing of the Applicants' appeal on the basis that:
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> > [35] The question of internal flight alternative is integral to both the definition of a Convention refugee and that of a person in need of protection. As the Appellants can find viable internal flight alternatives in their own country, they do not require Canada's surrogate protection.

[26] As in *Siliya*, if the Applicant did not challenge before the RAD the RPD's finding that there was an IFA in Port Harcourt, then there was no basis for any appellate intervention by the RAD. Regarding the timing of the Applicant's submissions on this IFA, as acknowledged by the Respondent in oral argument, *Al Masuri* indicates that the Court has discretion how to address such a situation. The non-exhaustive list of factors relevant to the exercise of this discretion are set out at paragraph 12 of that decision:

> …Considerations relevant to the exercise of that discretion, in my view, include:
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> (i) Were all of the facts and matters relevant to the new issue or issues known (or available with reasonable diligence) at the time the application for leave was filed and/or perfected?
>
> (ii) Is there any suggestion of prejudice to the opposing party if the new issues are considered?
>
> (iii) Does the record disclose all of the facts relevant to the new issues?
>
> (iv) Are the new issues related to those in respect of which leave was granted?
>
> (v) What is the apparent strength of the new issue or issues?
>
> (vi) Will allowing new issues to be raised unduly delay the hearing of the application?

[27] Applying these factors, the facts relevant to the new issue were known at the time the application for leave was filed. This factor operates against the Applicant. However, the remaining factors operate in his favour. While the Respondent raised concern about prejudice as a result of the late raising of this issue, the Respondent's counsel addressed the issue very capably in oral argument, as a result of which the hearing of this matter was not delayed. The record disclosed all the facts relevant to the new issue and, in my view this issue is inextricably

linked to the other grounds being considered by the Court. Finally, as explained in more detail below, I consider there to be merit to the Applicant's position that the RPD's finding with respect to Port Harcourt was challenged.

[28] I therefore exercise my discretion to consider the Applicant's argument.

[29] In oral argument, the Applicant's counsel referred the Court to paragraph 34 of his affidavit filed before the RAD, which states as follows:

> 34. Attached and marked as exhibit "C" is a true copy of a newspaper report (Givology – Reuters Edition) confirming that members of Boko Haram are moving to Lagos, Ogun, Rivers state of Nigeria which is Port Harcourt. [emphasis added]

[30] I also note from the Applicant's Application Record that the Memorandum filed by the Applicant's counsel in support of the appeal before the RAD includes a submission that the panel erred by concluding contrary to the documentary evidence that members of Boko Haram are not in the southern part of Nigeria and references the Applicant's affidavit including paragraph 34.

[31] It accordingly appears to me that the Applicants' materials did raise before the RAD an issue with respect to the RPD's IFA finding that Port Harcourt was a viable IFA. However, notwithstanding that the RAD found that in the absence of any submission with respect to Port Harcourt as a viable IFA, there was no dispute on this issue, it nevertheless considered in the alternative whether the RPD had erred in its IFA findings with respect to Lagos and Port Harcourt. In my view, the RAD did not err in finding no palpable error by the RPD in concluding that it would be reasonable and safe for the Applicant to live in Lagos and Port Harcourt. The

RAD referred to the evidence that the RPD had considered, including the NDP and the size and distances involved in the proposed IFAs, and found that the RPD properly considered all the evidence before it and did a thorough analysis in applying both prongs of the IFA test before coming to its conclusion.

[32] In so finding, the RAD notes that the Applicant attempted to rely on new evidence with respect to Lagos but that this was concluded to be inadmissible because it could reasonably have been available at the RPD hearing. This is the evidence referred to above that was attached as Exhibit "C" to the Applicant's affidavit. I have therefore considered whether the Court must review the RAD's decision not to admit this evidence in the context of the decision in *Singh*, which calls into question the RAD's application of the *Raza* test in its decision. However, as noted in the RAD's decision, this particular evidence did not meet the statutory test, because it could reasonably have been available at the RPD hearing. The RAD relied solely on the statutory analysis, and not the application of the *Raza* factors, in declining to admit this evidence. As a result, I find no basis to conclude that the RAD's decision not to admit this evidence is unreasonable.

[33] As held in *Calderon v Canada (Citizenship and Immigration)*, 2010 FC 263, at paragraph 10, the finding that there is a viable IFA is determinative of a refugee claim:

> [10] The question of the existence of an IFA is determinative of the matter. As set out in *Irshad*, above, at paragraph 21, the concept of an IFA is an inherent part of the Convention refugee definition. In order to be considered a Convention refugee, an individual must be a refugee from a country, not from a region of a country. Therefore, where an IFA is found, a claimant is not a refuge or a person in need of protection (see *Sarker v. Canada*

> *(Minister of Citizenship and Immigration)*, 2005 FC 353; [2005] F.C.J. No. 435).

[34] Therefore, in considering the remaining two issues, the evidence surrounding the treatment of the death certificate and the poster, I will first address whether there is any possibility that the outcome of those issues could have any impact on the IFA findings.

B. Did the RAD err in its treatment of the evidence related to the death of the Applicant's wife?

[35] It is necessary for me to address this issue because if this evidence were to be admitted and accepted as support for the Applicant's allegation that his wife was murdered by the Boko Haram militants in Lagos, it could impact the finding that Lagos is a viable IFA. It is not as clear that it could also impact the IFA finding with respect to Port Harcourt. However, if the finding that the Applicant would be safe in Lagos were to be revisited based on the evidence of the wife's death, then the Applicant's claim that he would not be safe anywhere in Nigeria should at least be re-considered.

[36] As noted above, the RAD applied the test as identified in *Raza*, which is the test applicable to new evidence in the context of a PRRA. In *Singh*, Justice Gagné held that it is unreasonable for the RAD to apply *Raza* without considering that its role is quite different from that of a PRRA officer and that the *Raza* test, developed in the context of paragraph 113(*a*) of the Act, is not directly transferable to subsection 110(4) of IRPA. Justice Gagné's analysis is set out as follows at paragraphs 55-58 of *Singh*:

> [55] Accordingly, in order for there to be a "full fact-based appeal" before the RAD, the criteria for the admissibility of

> evidence must be sufficiently flexible to ensure it can occur. Often, the evidence at stake will be essential for proving the factual basis of the errors the claimant alleges were made by the RPD. This consideration becomes all the more pertinent in light of the strict timelines a claimant now faces for initially submitting evidence before the RPD. A claimant now has 50 days to present all documents from the date he or she made the claim; the previous legislative scheme required the documents 20 days prior to a hearing, which, on average, took much longer to take place. When the RPD confronts a claimant on the weakness of his evidentiary record, the RAD should, in subsequent review of the decision, have some leeway in order to allow the claimant to respond to the deficiencies raised
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> [56] But there is more. In Raza, Justice Sharlow distinguishes between the express and the implicit questions raised by paragraph 113(a) of the Act and specifically states that the four implied questions (credibility, relevance, newness and materiality) find their source in the purpose of paragraph 113(a) within the statutory scheme of the Act relating to refugee claims and PRRA applications. In my view, they need to be addressed in that specific context and are not transferable in the context of an appeal before the RAD.
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> [57] In sum, I am of the view that it was unreasonable for the RAD to strictly apply the Raza test in interpreting subsection 110(4) of the Act all the while failing to appreciate that its role is quite different from that of a PRRA officer.
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> [58] In order to achieve statutory coherence, in that the RAD would be able to hear fleshed out appeals of questions of fact and of mixed fact and law, the main issue is whether the evidence "was not reasonably available, or that the person could not reasonably (or normally according to the French version) have been expected in the circumstances to have presented."

[37] I have also considered the analysis of Justice Mosely, set out at paragraphs 40-44 of *Denbel*:

> [40] The RAD was entitled to import the *Raza* factors established for PRRAs when applying the new evidence rule in subsection 110(4). In *Iyamuremye v Canada (Citizenship and Immigration)*, 2014 FC 494 at para 45, Justice Shore held that:

> Considering the dearth of case law interpreting subsection 110(4) and given the essential similarity between the provisions in question, the Court does not find it unreasonable for the RAD to have referred to the factors set out in *Raza*, above, to analyse the admissibility of fresh evidence. This case law established a legal meaning to the general application of the words "new evidence," which, in the Court's view, is consistent with Parliament's clear intention with regard to subsection 110(4) to require that the RAD review the RPD's decision as is, unless new, credible and relevant evidence arose after the rejection, that might have affected the outcome of the RPD hearing if that evidence had been presented to it.
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> [Emphasis in original]

[41] Moreover, the RAD relied on the express language of Rule 29(4) to exclude new evidence tendered after the appeal record was filed. That Rule explicitly lists some of the *Raza* factors.

[42] In *Khachatourian*, above, at para 37, Justice Simon Noël expressed reservations about the propriety of transposing *Raza* to the RAD context, referring to the analysis of Justice Gagné in *Singh v Canada (Citizenship and Immigration)*, 2014 FC 1022 at paras 44-58. Once again, I respectfully disagree. As Justice Shore observed in *Iyamuremye*, subsections 110(4) and 113(a) contain virtually identical language. In light of the overall structure of these provisions, I accord no significance to the slight discrepancy in the French text ("qu'elle n'aurait pas normalement présentés" versus "qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés").

[43] When interpreting legislative intent, the Court must give priority to the written text in the absence of any lexical ambiguity. The Court's opinions on best policy cannot supplant the text of the law; nor can select passages from the Hansard. In my view, Parliament intended these two provisions to enshrine the same legal test. If Parliament had intended to establish more flexible admissibility rules in RAD appeals, it would not have replicated the restrictive language which governs PRRAs.

[44] I am satisfied that the RAD reasonably excluded the contested evidence for the reasons it provided. The applicant focused on the RAD's exclusion of her son's letter under Rule 29(4). In my view, the RAD reasonably excluded the letter due to its low relevance and probative value. It also expressed reasonable concerns that the letter could have been available earlier.

[38] Justice Locke recently considered these somewhat divergent authorities in *Niyas v Canada (Citizenship and Immigration)*, 2015 FC 878 and, at paragraph 27, referred to their apparent reconciliation through Justice Kane's decision in *Ching v Canada (Citizenship and Immigration)*, 2015 FC 725:

> [27] I agree with Justice Gagné and Justice Noël that the purpose of creating the RAD was to give a "full-fact based appeal". However, it is also true that that sections 113(a) and 110(4) of IRPA "contain virtually identical language". I am mindful that "where words in a statute have received a judicial construction and the legislature has repeated them without alteration […], the legislature must be taken to have used them in the sense in which they have been construed by the court": Elmer A. Driedger, *Construction of Statutes*, 2d ed (Toronto: Butterwoths, 1983) at p 125. Justice Kane's decision in *Ching* at para 58 seems to reconcile these two positions: "If the RAD refers to *Raza* for guidance, given the analogous wording of the provisions, the RAD must consider how those factors should be adapted to the context of new evidence submitted on an appeal of specific issues." Hence, the factors in *Raza* are useful guidance, which should however be considered with a view of fostering the applicant's right to a "full-fact based appeal".

[39] Guided by this authority, my conclusion is that the RAD's application of the *Raza* factors to the new evidence surrounding the death of the Applicant's wife was reasonable. In examining the evidence pursuant to the *Raza* factors, the RAD reached the conclusion that the evidence was not credible. Even in the absence of the RAD's attention to *Raza*, it would have been required to consider the credibility of the evidence before considering its impact on the Applicant's appeal. There was therefore no inconsistency between the RAD's application of the *Raza* factors and the Applicant's right to a full fact-based appeal.

[40] However, the Court must still consider whether, as argued by the Applicant, the RAD erred in its assessment of the credibility of the death certificate. In that respect, I do not agree

with the Applicant's argument that the NDP indicates a blood relative can obtain a death certificate from the National Population Commission without providing a certificate from the hospital where the deceased died. The relevant extract from the NDP states as follows:

> The National Population Commission (NPC) in Nigeria indicates on its website that one of the functions of its Vital Registration Division is the "design, production and issuance of births and deaths certificates" (Nigeria n.d.) However, a counsellor at the Deputy High Commission of Canada to Nigeria in Lagos, indicated, in correspondence with the Research Directorate, that it is not common for the NPC to issue death certificates because most people do not see the need to do so (Canada 25 Feb. 2011). But if someone does try to obtain a death certificate from the NPC, he or she must present a death certificate issued by the hospital in which the person died, an application and proof that the deceased is a blood relative (ibid.).
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> The Counsellor also indicated that if the person who wants the death certificate is Christian, he or she must have the deceased certified by a hospital so that the body can be "deposited in the mortuary" (Canada 25 Feb 2011). According to the Counsellor, it is not necessary for the person to have died in the hospital in order to obtain a death certificate from there (ibid.). Furthermore, a hospital-issued death certificate is considered a legal document (ibid.).
>
> Somewhat similarly, the First Secretary at the Nigerian High Commission in Ottawa, in a telephone interview with the Research Directorate, indicated that hospitals issue death certificates and inform the NPC (Nigeria 23 Feb. 2011). A doctor's report indicating that the person is dead is needed to get a death certificate (ibid.). The cost to obtain the death certificate, according to the First Secretary, "varies from hospital to hospital" (ibid.). Information on the time it takes to issue a death certificate could not be found within the time constraints of this Response.
>
> The First Secretary indicated that the wife, husband, children or siblings of a deceased person are able to obtain the death certificate (ibid.). This statement was corroborated by the Counsellor, who indicated that, by providing proof of identity, the biological children or someone who is a blood relative of the deceased can obtain a death certificate (Canada 25 Feb. 2011). The Counsellor also added that a "family member sometimes could be someone appointed to represent the family as a result of literacy or financial ability (ibid.)

[emphasis added]

[41] I read the NDP evidence in the same manner as the RAD, that it is blood relatives (or in some cases their representatives) who are entitled to obtain death certificates from the NPC, but that to do so they must present a certificate from the hospital where the person died. I cannot find fault with the RAD in its interpretation of the NDP evidence.

[42] I also do not find it unreasonable for the RAD to have considered the evidence that practically any falsified document can be obtained from Benin City. The Applicant's Memorandum of Argument argues that the death certificate was not issued in Benin City. However, if the document were falsified, it would of course not necessarily reflect on its face where it was actually produced.

[43] Overall, the findings of the RAD with respect to the credibility of the death certificate are intelligible and within the range of acceptable outcomes and therefore are reasonable

C. Did the RAD err in its treatment of the evidence surrounding the poster and flyer related to the prayer meeting?

[44] The Applicant's counsel argued that the RAD erred in its conclusions with respect to the flyer and poster and that its IFA findings may have been different if it had not so erred. The RPD's decision demonstrates that the Applicant argued before the RPD that he would not be safe anywhere in Nigeria because the flyer and poster, which contained a photograph of him, had been widely distributed throughout the country. Therefore, while the RPD's findings with respect to the poster related principally to the Applicant's credibility, I have considered whether the

RAD erred in its treatment of this evidence because of the possibility that such error could influence the IFA findings.

[45] The Applicant argues that the RPD and the RAD failed to appreciate that the poster, which the Applicant failed to produce at the RPD hearing, is simply a larger version of the flyer that the Applicant had produced. I have reviewed both decisions and have not identified a reviewable error on the part of the RAD on this issue. I note the RPD's use of the terms "poster", "pamphlet" and "flyer" in referring to the documents related to the prayer summit. The Applicant emphasizes that there are only two different documents, one being a larger version of the other. The RPD refers to the "pamphlet and poster" and did not find it credible that the Applicant was unable to provide a copy, given his testimony that they were distributed throughout Nigeria. It is not entirely clear from the RPD's decision whether it was using the terms "pamphlet" and "poster" to refer interchangeably to the large size document, or whether it understood these to be two separate documents.

[46] However, I find that nothing turns on this, as it is clear that the RPD understood that the Applicant had filed with the RPD a copy of the flyer from the prayer meeting and that this was a document that had a photo of him, along with his name and the title "prayer leader". The RPD was assessing the Applicant's credibility based on his inability to provide the poster, considering its alleged wide distribution, despite its alleged similarity to the pamphlet.

[47] It is also apparent that the RAD understood the Applicant's argument that the poster and the flyer were just two different sized version of the same document. The RAD described the

alleged error it was being asked to consider as "holding that the Appellant should have kept a copy of the poster to advertise the crusade and in not accepting the explanation that the poster is no different from the flyer". The RAD proceeds to conclude that the RPD had made no palpable and overriding error in finding that, if the posters were distributed throughout Nigeria as the Applicant testified, he would have available a copy to submit to the RPD. The RAD's treatment of this issue does not demonstrate a misapprehension of the evidence, and I can find no reviewable error in its decision not to interfere with the RPD's findings on this issue.

[48] I therefore find no error on the part of the RAD in this matter and accordingly must dismiss this application. Neither of the parties has requested that any question be certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed. No question is certified for appeal.

"Richard F. Southcott"

Judge

EDERAL COURT

SOLICITORS OF RECORD

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