Federal Court  Cour fédérale

Date: 20200819

Docket: IMM-7049-19

Citation: 2020 FC 830

Ottawa, Ontario, August 19, 2020

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

JOY UWAIFO OTABOR
UYI ERHOKPADAMWEN
DEBORAH OSAWUONAMEN EWERE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is a judicial review of the decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada which granted an application from the Minister of Public Safety and Emergency Preparedness to vacate the refugee protection conferred to Uyi Erhokpadamwen [Mr. Erhokpadamwen], Joy Uwaifo Otabor [Ms. Otabor], Deborah Osawuname

Ewere [Deborah] and Dane Uyi Ewere [Dane]. Although the RPD decision also revoked Dane's refugee status, he is not listed as an applicant, because he was found to be a citizen of the United States of America [US].

[2] The Applicants admit the misrepresentations they made in their refugee claims. They do not deny now that they lied about: their identities; how many passports they held; time spent in the US; when they left Nigeria; the nationality of Dane and in the male applicant's case the name of his "true love" and who she was married to.

[3] The RPD concluded that the previous decisions granting the Applicants convention refugee status resulted directly or indirectly from misrepresenting or withholding material facts relating to a relevant matter. The RPD found that all aspects of the claims of Mr. Erhokpadamwen and Ms. Otabor were subjected to misrepresentations. In conclusion, the RPD found that there was insufficient evidence, as considered at the time of the first determination, to justify refugee protection.

Preliminary Issue

[4] The style of cause will be amended to reflect "The Minister of Citizenship and Immigration" as the Respondent.

II. Background

[5] The Applicants (Mr. Erhokpadamwen, Ms. Otabor and Deborah) are citizens of Nigeria.

[6] Ms. Otabor filed a claim for refugee protection in Canada for herself and her two minor children on August 10, 2011, which the RPD granted on November 13, 2012.

[7] In her Personal Information Form [PIF] narrative, Ms. Otabor alleged that events taking place in Nigeria between February 15, 2008 and July 21, 2011 lead her to flee the country. She claimed she was engaged to her college boyfriend named "Osamuyi Benedict Izevbigie". She alleged that on February 20, 2008, she was forced to marry a powerful chief and ex-police officer [the Chief]. When she married him she was already pregnant from her boyfriend, and gave birth to a daughter on October 2, 2008. She asserted that the Chief subjected her to domestic and sexual abuse and prohibited her from going anywhere unaccompanied.

[8] Ms. Otabor alleged that her bodyguard helped her visit her boyfriend and a second child was conceived and born on September 3, 2010. Ms. Otabor claimed that on June 24, 2011, the Chief became furious because he suspected the children might not be his, and threatened to kill her, the children and her fiancé.

[9] Ms. Otabor said that the Chief was planning the circumcision of her daughter prior to her third birthday. Ms. Otabor said they managed to escape the Chief, and with the assistance of an "officer". She claimed that they left Nigeria, transited through Europe and arrived in Canada on July 22, 2011, using fraudulent passports. She stated her fiancé did not come with them because there was not enough money.

[10] Mr. Erhokpadamwen separately filed a claim for refugee protection in Canada on March 13, 2012, which the RPD granted on June 18, 2014.

[11] In his PIF narrative, Mr. Erhokpadamwen claimed that events taking place between August 2008 and March 2012 lead him to flee the country. He told the story of falling in love a woman named “Amina Ahmed”, to whom he became engaged and with whom he conceived a daughter. Mr. Erhokpadamwen claimed Amina was forced to marry a powerful oil business man, who became enraged when he learned he was not the biological father of Amina’s child. On June 12, 2011, Amina allegedly contacted Mr. Erhokpadamwen to tell him to run for his life, and he heeded her warning. Mr. Erhokpadamwen alleged that an elaborate series of events ensued: he escaped to his cousin’s place, he learned his cousin’s roommate was beheaded (apparently having been mistaken for Mr. Erhokpadamwen), he was attacked by four men and he hid with different friends until he was able to pay a travelling agent to take him abroad. He claimed he left Nigeria on March 11, 2012, and arrived in Canada the next day.

[12] The Canada Border Services Agency [CBSA] in the spring of 2015 received information suggesting Ms. Otabor had made a false refugee claim or a refugee claim under a false name. On August 28, 2015, a CBSA agent conducted an interview with Ms. Otabor during which she declared she had never travelled to the US that the only time she took the plane was in July 2011 when she arrived in Canada, that all her siblings were in Nigeria and that she has a boyfriend she met at church, “Yui Erhokpedamwen”.

[13] In September 2015, the American authorities confirmed that Ms. Otabor's fingerprints matched those of Joy Izevbigie, who had obtained a joint US visa with her daughter and fiancé, "Osamuyi Benedict Izevbigie". Ms. Otabor had entered the US in June of 2009 to attend her brother's wedding. She had entered again in June of 2010 and had not taken her return flight.

[14] Similarly, in January 2016, the American authorities matched Mr. Erhokpadamwen's fingerprints with those of "Osamuyi Benedict Izebigie", who had entered the US in October 2008, June 2009 and June 2011 using a Nigerian passport. He had last entered the US on June 3, 2011, and had not taken his return flight.

[15] A hearing to vacate the refugee status of the Applicants was held on September 19, 2019, and on November 5, 2019, after which the RPD granted the application.

III. Issue

[16] The issue is whether the RPD's decision to grant the application to vacate the Applicants' Convention refugee status is reasonable.

IV. Standard of Review

[17] Under the *Vavilov* framework (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]), where a court reviews the merits of an administrative decision, the starting point is a presumption that reasonableness is the applicable standard. This

presumption can be rebutted in specific types of situations, none of which arise in the present case.

[18] When conducting reasonableness review, a court must examine the administrative decision-maker's reasons with respectful attention and consider the decision as a whole (*Vavilov* at paras 84-85).

[19] To determine whether a decision is reasonable, a reviewing court asks whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision (*Vavilov* at para 99). A decision may be unreasonable because it is in some respect untenable in light of these constraints or because of a fatal flaw it the decision-maker's overarching logic (*Vavilov* at paras 102-105). The burden is on the party challenging the decision to show that it is unreasonable (*Vavilov* at para 100).

V. Analysis

[20] The relevant legal provisions are attached at Annex A.

A. *Applicants' position*

[21] The vacation process under s 109 of the *Immigration and Refugee Protection* Act, (S.C. 2001, c. 27) [IRPA], requires the RPD to engage in a two-part process. First, the RPD must determine whether the decision granting refugee protection was obtained as a result of direct or

indirect misrepresentation, or of withholding material facts relating to a relevant matter. Second, if the answer at the first step is affirmative, the RPD must determine whether there remains sufficient evidence considered at the time of the initial determination of the claim to justify refugee protection. If so, the RPD may deny the application.

[22] The Applicants do not argue that the first step of the test is not met. Without explicitly stating it, they seem to concede that it is. Rather, they argue that the RPD erred in law by failing to properly exercise its discretion under s 109(2) of the IRPA, more specifically by failing to "meaningfully assess whether sufficient untainted evidence remained to support the original determination" (*Sethi v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1178 at para 25 [*Sethi*]).

[23] The Applicants point to *Sethi*, above, and *Babar v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 216 [*Babar*], as two examples of cases where this Court sent the matter back for redetermination due to such a failure on the tribunal's part. They say that *Sethi* and *Babar*, above, stand for the proposition that "a decision-maker is compelled to review any evidence on the record that is left untainted by misrepresentations" before rendering a decision to vacate refugee protection.

[24] In *Sethi*, the Court found that none of the applicant's misrepresentations nor any of the evidence filed by the respondent contradicted the applicant's general story that she had suffered domestic violence in Pakistan. The RPD's failure to "meaningfully assess whether sufficient

untainted evidence remained to support the original determination" was fatal, leading the Court to allow the application for judicial review.

[25] In *Babar*, where the refugee claim was based on the applicant's membership in a political group, the applicant acknowledged that he had made misrepresentations. This lead the decision-maker to make a general finding of lack of credibility and to grant the application to vacate his refugee status. The Court allowed the application for judicial review, concluding that the tribunal was required, despite the adverse credibility finding, to examine the independent evidence, to determine what evidence was not tainted, and to assess whether there was sufficient evidence to allow for a positive determination.

[26] The Applicants submit that the RPD's reasons suggest that the board member "reasoned that the misrepresentations of the applicants [were] so pervasive that a diligent review of the assertions and evidence provided in the PIF application package that was untainted by the misrepresentation[s] would be pointless".

[27] The Applicants complain the RPD's analysis is "bereft of any review of the assertions or evidence submitted by the applicants in their refugee claims that did not conflict with the time periods" for which the RPD determined they were not in Nigeria.

[28] The Applicants note that the RPD concluded that some of the events described in Ms. Otabor's PIF did not occur given that she was not in Nigeria from June 24, 2009 to November

27, 2009, and from June 26, 2010 to July 21, 2011. Yet, the Applicants point out, Ms. Otabor stated in her PIF that some of the events that led her to flee Nigeria began on February 15, 2008:

- on February 20, 2008, she was kidnapped and forced to marry the Chief, and she suffered sexual and domestic abuse at the hands of the Chief from that point on;
- on April 6, 2008, she tried to escape;
- on June 11, 2008, she attempted suicide by overdosing on drugs (and a medical report attesting to the overdose was submitted to the RPD in support of her claim);
- sometime around August 2011, the Chief planned to circumcise Deborah, and the child's life was at risk if he discovered she was not from him.

[29] As for Mr. Erhokpadamwen, the RPD determined that he had been in the US for periods in 2008 and 2009 and never returned to Nigeria after entering the US again in June 2011. The RPD did acknowledge that part of his claim in his PIF occurred prior to June 2011, as far back as February 2009.

[30] The Applicants submit that whether the untainted evidence would have been sufficient to sustain refugee protection is immaterial; rather, what is germane is whether the RPD reviewed the untainted material on the record before rendering a decision. In this case, the Applicants submit that the RPD did not even acknowledge the parts of the claims and evidence that were left untainted, let alone review them before rendering a decision. The Applicants assert that failing to perform that review amounts to a reviewable error.

[31] I cannot agree with the Applicants that the RPD erred for the reasons that follow.

[32] The RPD listed the issues with which the Applicants were confronted with as follows (at para 27):

a) their real identifies as disclosed by US authorities;

b) their relationship as spouses or *de facto* spouses;

c) the existence of undisclosed valid passports issued to them under other names;

d) their previous trips to the US and the length of their sojourns;

e) the place of birth of Dane Uyi EWERE as, according to the American authorities, he was born in the US;

f) the authenticity and timeframe of their alleged events in support of their refuge claims in Canada;

g) their omission to claim asylum in the US.

(Attached as Annex B is a Timeline)

[33] The RPD summarily concluded that it was not satisfied that other sufficient evidence was considered at the time of the first determination to justify refugee protection (at para 45):

> Considering the extensive level of misrepresentation, which touches almost all aspects of the respondents' refugee claims, it is the panel's view that there is insufficient evidence to justify refugee protection, pursuant to section 109(2) of the IRPA.

[34] This finding is reiterated in the Conclusion section (at para 48):

> Furthermore, the tribunal concludes that there is insufficient evidence, as considered at the time of the first determination, to justify refugee protection.

[35] I find that the brevity of the RPD's analysis on the s 109(2) issue does not render the decision unreasonable. When the decision is read as a whole, the RPD's reasoning on this issue is sufficiently justified, transparent and intelligible. In short, once the ubiquitous misrepresentations came to light, nothing from the Applicants' initial stories was left standing. This is what the RPD meant when it stated there was insufficient evidence to justify refugee protection pursuant to s 109(2) "[c]onsidering the extensive level of misrepresentation, which touches almost all aspects of the [Applicants]' refugee claims" (para 45). It is impossible to reconstruct a cogent story of persecution from the evidence considered at the first determination, as there was essentially nothing left. The RPD is not required to "catalogue" the evidence left untainted by the misrepresentations.

[36] In the case of Mr. Erhokpadamwen, there is no merit to his submission that the RPD erred in omitting to consider the evidence from periods when he was not in the US: given his admission that "Amina" was a fiction and that most of what he declared in his refugee claim was false, his original evidence as whole was eviscerated (see Timeline in Annex B).

[37] As for Ms. Otabor, while it is true that the RPD did not explicitly refer to the evidence from her original claim that fell outside the periods during which she is now known to have been in the US, it is clear that the RPD considered that this evidence could not be relied on. This is apparent not only from the RPD's conclusory statements in paragraphs 45 and 48 of the decision, but also in its list of misrepresentations in paragraph 42, and its observation in paragraph 40 that Ms. Otabor went as far as stating that "the family name of her daughter was the name of her

alleged agent of persecution in Nigeria, in order to avoid having to disclose the family name of her biological father".

[38] Ms. Otabor's initial claim of being essentially held captive by the Chief did not accord with her now disclosed travels to the US. Similarly, her allegations of persecution lost credibility in the light of the revelation that she chose to return to her persecutor in Nigeria instead of staying in the US – despite her explanation, at the hearing, that she did not know that claiming asylum was a possibility and that she hoped that things would change, allowing her to go back to work and use her degree. While the RPD did not explicitly make these observations, these considerations were implicit in its finding that there was insufficient evidence to justify refugee protection in light of the "extensive level of misrepresentation" (para 45 of the decision - see Timeline in Annex B).

[39] The case at bar is distinguishable from *Sethi* and *Babar*, as there was no *independent* evidence considered at the first determination that remained untainted and that could justify the Applicants' continued refugee protection. While the medical report concerning Ms. Otabor's Vallium overdose corroborated one incident described in her narrative, it did not support her claim of domestic abuse in the same manner the medical reports did in *Sethi*. In addition, the letters and reports apparently confirming the violence and abuse Ms. Otabor had suffered were not truly independent since they were based on her account of events.

[40] Even if it was just a matter of the dates being misrepresented and the RPD not considering the remaining evidence, this position too must fail. This issue arose in *Canada*

(Minister of Public Safety & Emergency Preparedness) v Gunasingam, 2008 FC 181 [*Gunasingam*]. In that case, at the hearing on the application to vacate, the applicant explained that the treatment he claimed to have been subjected to at the hands of the Sri Lankan authorities and the army actually occurred, only several months earlier – not during the period he was now known to have spent in Malaysia. On judicial review, the Court was adamant the applicant's new dates (and incidentally, his new version of events) could not be taken into account (paras 15-17):

> 17 I have no hesitation in holding that Mr. Gunasingam's new dates are simply not relevant. The fact remains that he represented that he was persecuted in Sri Lanka in May and June 2001, when he was actually in Malaysia. Those events cannot be taken into account, irrespective of when they may have taken place.

[41] Therefore, if any reliance is to be placed on *Gunasingam*, the RPD was not required, nor indeed permitted, to consider a new version of events in which the Applicants had simply changed the dates of the incidents that had happened to them (and in Mr. Erhokpadamwen's case, some details regarding the identity of his lover and the man she was forced to marry, among other elements of his story).

[42] That being said, I acknowledge the more demanding approach taken by the Court in *Mansoor v Canada (Minister of Citizenship & Immigration)*, 2007 FC 420 [*Mansoor*].

[43] In my view, the present case is distinguishable from *Mansoor* because there remained essentially no allegations found to be credible at the first determination that were not shown to be misrepresentations. The Applicants' identities, their documentation, the nature of their relationship, the information about their children, the events that allegedly lead them to flee Nigeria – the RPD concluded these were all touched by the misrepresentations. There was

essentially nothing left to support the original claims. Even the facts Ms. Otabor alleged in her PIF to have occurred in early 2008 were tangled in the “tissue of lies” that unravelled once the Applicants’ stays in the US came to light and once they were subject to further questioning at the vacation hearing. The allegations of forced marriage, the domestic and sexual abuse, the fear that her daughter would be circumcised and the moment when that fear arose were all at least indirectly connected to the misrepresentations.

[44] This is a case where the Court can comfortably “connect the dots on the page” because “the lines, and the direction they are headed, may be readily drawn” (*Vavilov* at para 97, citing *Komolafe v Canada (Minister of Citizenship and Immigration)*, 2013 FC 431 at para 11).

[45] Ultimately, while it may have been preferable for the RPD to explain its analysis under s 109(2) in greater detail, the reasons, read as a whole, meet the requirements of justification, transparency and intelligibility (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 25; Vavilov at para 128).

JUDGMENT in IMM-7049-19

THIS COURT'S JUDGMENT is that:

1. The Style of cause will be amended to have the Respondent be: The Minister of Citizenship and Immigration;
2. The Application is dismissed;
3. No question is certified.

"Glennys L. McVeigh"
Judge

Annex A – Relevant legislation

Immigration and Refugee Protection Act, SC 2001, c 27

Applications to Vacate

Vacation of refugee protection

109 (1) The Refugee Protection Division may, on application by the Minister, vacate a decision to allow a claim for refugee protection, if it finds that the decision was obtained as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter.

Rejection of application

(2) The Refugee Protection Division may reject the application if it is satisfied that other sufficient evidence was considered at the time of the first determination to justify refugee protection.

Allowance of application

(3) If the application is allowed, the claim of the person is deemed to be rejected and the decision that led to the conferral of refugee protection is nullified.

Annulation par la Section de la protection des réfugiés

Demande d'annulation

109 (1) La Section de la protection des réfugiés peut, sur demande du ministre, annuler la décision ayant accueilli la demande d'asile résultant, directement ou indirectement, de présentations erronées sur un fait important quant à un objet pertinent, ou de réticence sur ce fait.

Rejet de la demande

(2) Elle peut rejeter la demande si elle estime qu'il reste suffisamment d'éléments de preuve, parmi ceux pris en compte lors de la décision initiale, pour justifier l'asile.

Effet de la décision

(3) La décision portant annulation est assimilée au rejet de la demande d'asile, la décision initiale étant dès lors nulle.

Annex B – Timeline

Events as described in Mr. E's PIF	**Events as described in Ms. O's PIF**	**Information regarding Applicants' travel to the US**
	February 15, 2008: Ms. O's parents tell her she cannot marry her fiancé. February 16, 2008: Her parents announce that they betrothed her to a chief.	
	February 20, 2008: Ms. O is taken away by the chief, two of his bodyguards and a police officer. She starts to face sexual and domestic abuse from the chief and his other wives.	
	Two weeks later, Ms. O learns she is 4 weeks pregnant, but does not tell the chief.	
	April 6, 2008: Ms. O tried to run away by climbing the back fence.	
	June 11, 2008: Ms. O tried to take her life by overdosing on drugs (Vallium 5). She was taken to the hospital and survived. After that incident, the chief assigned a body guard to watch over her.	
August 3, 2008: Mr. E meets Amina Ahmed.	**August 4, 2008: The Chief asks the bodyguard Peter to take Ms. O shopping; she pleads him to secretly take her to her fiancé's house. From that point on,**	

	she is able to occasionally see her fiancé.	
	October 2, 2008: Ms. O gives birth to her daughter.	
		October 24, 2008: Mr. E entered the US and departed on November 29, 2008.
February 14, 2009: Mr. E and Amina get engaged; they spend the week together.		
February 20, 2009: Amina leaves for Abuja, calls Mr. E to tell him she got home safely, after that he can no longer reach her.		
June 2009: Amina calls Mr. E and tells him what happened (3 weeks after returning home she was forced to marry a man named Alhaji; 2 weeks after getting to his house she learned she was 6 weeks pregnant)		**June 24, 2009: Ms. O and Mr. E enter the US (to attend her brother's wedding).**
	September 12, 2009: Ms. O told the Divisional Police Officer about the chief's abuse, but received no help.	
November 2, 2009: Amina delivers a baby girl; in November 2009 Amina calls Mr. E to tell him.		

For the next 18 months, Mr. E tries to get on with his life.		
		November 27, 2009: Ms. O and Mr. E depart from the US.
		June 26, 2010: Ms. O enters the US. She does not take a return flight.
	September 3, 2010: Ms. O gives birth to a son. ***(She states she got pregnant a second time when her daughter was a year and 11 months, which means she would have gotten pregnant around September 2010… I suppose she meant she gave birth a second time when her daughter was a year and 11 months?)***	
	April 11, 2011: the Chief beats Ms. O particularly badly (hits her left hand so hard that she continued to need to go see a doctor in Canada)	
		June 3, 2011: Mr. E enter the US. He does not take a return flight.
June 12, 2011: Amina called Mr. E to warn him that Alhaji had vowed to kill him after finding out the child was not his (problem with blood match).	**June 24, 2011: Chief learned that Ms. O has been seeing her school boyfriend and that the children might not be his; he swears to kill Ms. O, her fiancé and the children if they are indeed not his. Peter helps Ms. O contact**	

	her fiancé to tell him to run for his life.	
June 13, 2011: Mr. E packs his things and goes to stay with his cousin at his off campus hostel	**June 26, 2011: Peter helps Ms. O and her children escape the Chief's house and take the bus to Ibadan to stay with her fiancé's friend Allison Osazee.**	
July 12-13, 2011: Mr. E and his cousin go eat at his cousin's girlfriend's place, they end up spending the night; the next morning a neighbour from the cousin's hostel tells them the cousin's roommate was beheaded and his head placed by the College gate.	**July 3, 2011: while at church with Allison, they get a call from his neighbour saying that some people were at his house with two policemen asking for Ms. O. She later learns the Chief had gone to beat up her family and that her sister had finally revealed her location. They check into a hotel instead of returning to Allison's house.**	
Next five months (July-November 2011): Mr. E stays with his friend Kingsley in Port Harcourt.	**July 4, 2011: They take a bus to Lagos. They spend 18 days with a distant cousin of her fiancé in Lagos. An officer finds passports that resemble Ms. O and the children.**	
	July 21, 2011: Ms. O and the children leave Lagos. Her fiancé could not come because the officer said the money he paid only covered Ms. O and the children. **They transit somewhere and arrive in Canada.**	

	August 10, 2011: Ms. O files a claim for refugee protection in Canada.	
December 27, 2011: Mr. E is attacked by a group of four men while in Kingsley's home. He is placed in the trunk of their car and is discovered when the car runs into a police check point. He is taken to a nearby clinic and kept in police protection that night. The next morning, the Divisional Police Officer tells warns him the police can't protect him from Alhaji forever as he is very powerful and they cannot arrest him. **(Mr. E later learns that on December 26, 2011 his family was beaten up, locked up and threatened until they gave the address where he was.)**		
December 29, 2011: Mr. E leaves to stay with his friend Samuel in Lagos.		
February 2, 2012: Mr. E leaves for Ibadan after Samuel noticed strange men walking around his house for 3 days. (Mr. E later learns his house was "bungled".) Mr. E's friend Amadin introduces him to a travelling agent. He pays him 1 million Naira to get him out of the country.		

March 11, 2012: Mr. E and the travelling agent leave Lagos, transit in Germany on March 12, 2012 and arrive in Canada the same day.		
March 13, 2012: Mr. E files a claim for refugee protection in Canada.		
	November 13, 2012: Ms. O's and her children's refugee protection claims are granted.	
June 18, 2014: Mr. E's claim for refugee protection is granted.		
		May 6, 2015 and July 8, 2015: CBSA receives a tip concerning Ms. Otabor's refugee claim.
		August 28, 2015: CBSA agent interviews Ms. O.
		September 19, 2019: Vacation hearing.
		November 5, 2019: RPD grants the application to vacate.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7049-19
STYLE OF CAUSE:	JOY UWAIFO OTABOR, UVI ERHOKPADAMWEN AND DEBORAH OSAWUONAMEN EWERE v MINISTER OF IMMIGRATION AND REFUGEE CANADA

HEARING HELD BY VIDEOCONFERENCE ON JULY 27, 2020 FROM OTTAWA, ONTARIO (COURT AND PARTIES)

DATE OF HEARING:	JULY 27, 2020
JUDGMENT AND REASONS:	MCVEIGH J.
DATED:	AUGUST 19, 2020

APPEARANCES:

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