

Federal Court



Cour fédérale

**Date: 20211101**

**Docket: IMM-6490-20**

**Citation: 2021 FC 1159**

**Ottawa, Ontario, November 1, 2021**

**PRESENT: The Honourable Madam Justice McVeigh**

**BETWEEN:**

**YETUNDE AYODEYI AND ONAOPEMIPO  
OYADEYI**

**Applicants**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION CANADA**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] This is a judicial review of a negative Refugee Appeal Division (“RAD”) determination. The RAD found that the Applicants, a mother and minor son who are citizens of Nigeria, failed to establish their refugee claim with credible evidence.

## II. Background

[2] Yetunde Mutiat Oyadeyi (the “Principal Applicant”, ) and her minor son, Onaopemipo Olanrewaju Soetan (the “Minor Applicant”, ) are citizens of Nigeria. They allege a fear of persecution by the PA’s husband (who is also the MA’s father) and his family. The PA fears physical abuse, and that the MA will be forced to undergo tribal marking.

[3] The PA asserts that her husband has a history of abusing her, and has threatened her and her son. She alleges that a few months into her marriage, in February 2013, her husband began abusing her, including a May 2014 attack with a knife leading to treatment at the hospital. She says that this was reported to police. She further alleges that after this, she left her husband and moved to her family’s home, where she stayed until leaving Nigeria. She alleges that her husband and his family came to the home and threatened her with death, as well as insisting that her son be given tribal markings. She left Nigeria for the United States (“US”) on July 13, 2015, and came to Canada on March 26, 2018 and made a claim for refugee protection. She alleges that her husband has made threats against her and her son since they left Nigeria.

[4] The Refugee Protection Division (“RPD”) heard the Applicants’ claims on May 31, 2019. In a decision dated August 19, 2019, the RPD dismissed their claims, finding that the Applicants had viable internal flight alternatives (“IFA”s) in Benin, Port Harcourt, and Abuja. This was based on the standard 2-pronged IFA analysis that there was insufficient evidence that the agents of persecution could locate them in the proposed IFAs, and that the IFAs were reasonable and not unduly harsh considering all of the circumstances.

[5] The RAD dismissed the Applicants' appeal and confirmed the RPD's decision that neither Applicants are a Convention refugee nor persons in need of protection.

[6] The Applicants were notified that the RAD on appeal would be considering credibility, as well as failure to claim refugee protection in the US, and IFA. The RAD gave the Applicants the opportunity to make submissions on these points. In conclusion, the RAD found – after reviewing the record in its entirety – that the Applicants failed to establish the credibility of the allegations on which they rely. In the decision the RAD found the determinative issue was credibility, and thus they only addressed the issues of credibility and not whether there were a viable IFAs.

### III. Issues

[7] The issues are:

- A. Was the decision of the RAD reasonable?

### IV. Standard of Review

[8] The proper standard of review in this case is reasonableness. As set out by the Supreme Court of Canada in *Vavilov*, at para 23, “where a court reviews the merits of an administrative decision ... the starting point for the analysis is a presumption that the legislature intended the standard of review to be reasonableness.” Reasonableness review begins with the principle of judicial restraint and respect for the distinct role of administrative decision-makers, and the Court does not conduct a *de novo* analysis or attempt to decide the issue itself (*Vavilov*, at paras

13, 83). Rather, it starts with the reasons of the administrative decision maker and assesses whether the decision is reasonable in outcome and process, considered in relation to the factual and legal constraints that bear on the decision (*Vavilov*, at paras 81, 83, 87, 99). A reasonable decision is one that is justified, transparent, and intelligible to the individuals subject to it, reflecting "an internally coherent and rational chain of analysis" when read as a whole and taking into account the administrative setting, the record before the decision-maker, and the submissions of the parties (*Vavilov*, at paras 81, 85, 91, 94-96, 99, 127-128).

V. Analysis

A. *Was the decision of the RAD reasonable?*

(1) Applicants' credibility

[9] The Applicants submit that the RAD Member erred by making determinations as to the Applicants' credibility. They assert that it was not open to the RAD to conduct such an independent assessment.

[10] I do not agree with the Applicants. The RPD, after identifying credibility as an issue, did not make credibility findings but rather focused their analysis on the availability of an IFA, ultimately finding that issue to be determinative. They explicitly accepted the credibility of the claimant's allegations "for the purposes of (their) IFA analysis." The RPD did not accept the Applicants' argument in general, but simply for the purposes of conducting the IFA analysis. This is not exceptional and as an IFA is determinative often the RPD will state that they will

accept the allegations for the purpose of the IFA analysis but that does not mean they found the Applicants credible.

[11] It is well established that the RAD's role in reviewing the RPD is to look at all of the evidence and independently determine whether the RPD made the correct decision (see: *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93), and the RAD clearly stated that this was their role. This is what the RAD did. This is particularly reasonable given that they raised with the Applicants in advance that credibility was a concern and then the Applicants made submissions on credibility. The RAD even went so far to grant the Applicants additional time to respond.

[12] As set out in *Vavilov*, in conducting reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale, to ensure that the decision as a whole is transparent, intelligible and justified. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker. The reasonableness standard requires that a reviewing court defer to such a decision. In this case, I find that the RAD's credibility analysis was reasonable. They correctly noted the presumption of truthfulness afforded to refugee claimants, but noted that this was rebutted by numerous inconsistencies and implausibilities in the Applicants' narrative and evidence. The RAD is entitled to make reasonable findings based on implausibilities, common sense, and rationality (*Alizadeh v Canada (MEI)*, [1993] FCJ No 11 (FCA)). This is what they have done here, and I find this analysis to be reasonable.

(2) New Evidence

[13] The Applicants submit that the RAD unreasonably excluded a psychotherapist's report as new evidence, because it was relevant and material and thus denying its admission was to deny the Applicants due process.

[14] The RAD explained why they did not accept the psychotherapist's report as new evidence. The RAD found that there was insufficient reason as to why the report, which related to the Principal Applicant's experiences in Nigeria and alleged fear of returning, could not have been submitted to the RPD in the time between the hearing and the issuance of the decision. The RAD considered that the Applicants had counsel at the RPD, and ought to have known that this evidence may be admissible and relevant. Additionally this report could have been filed as a post-hearing report before the decision was rendered. I find that the RAD reasonably found that the Applicants had failed to demonstrate why this report could not have been before the RPD,

(3) Otherwise unreasonable

[15] The Applicants argued that the RAD's decision was otherwise unreasonable on several grounds. First, that the RAD failed to consider the Applicants' context as outlined in the Chairman of the IRB's *Guidelines for Women Refugee Claimants*. Second, they submit that the RAD's findings as to the dubiousness of the husband's consent were speculative, and that it was unfair to use the consent as a basis for undermining her credibility. Third, they submit that the RAD Member did not conduct analysis on the submissions and further evidence before them. They do not point to any evidence or submissions in particular.

[16] The RAD explicitly states that they considered the *Chairperson's Guide* and dedicates two long paragraphs to the Applicants' context and conditions, as well as how they may have affected the Principal Applicant's testimony. The RAD found that these considerations informed their assessment and findings, but they reached the conclusions they did nonetheless. I find the RAD's use of the *Chairperson's Guide* to be reasonable, particularly absent any specific points of issue identified by the Applicants, of which there are none.

[17] The RAD did not (contrary to the Applicants' assertion) use the existence of this consent letter to undermine the Principal Applicant's credibility. Rather, the RAD examined the apparent inconsistency between this consent letter and the rest of the Applicants' narrative, and concluded that the implausibility of the husband both tracking and threatening them, while also consenting to them travelling somewhere beyond his reach, undermined her credibility. I find this to be a reasonable conclusion in light of the facts and law before the RAD.

[18] The Applicants have not pointed to anything in particular that the RAD failed to consider or analyze. The RAD is presumed to have considered all the evidence before them unless otherwise demonstrated, as set out in *Jones v Canada (Citizenship and Immigration)*, 2020 FC 1172 at paragraph 13. The Applicants have failed entirely to demonstrate any instance of the RAD failing to consider or dealing improperly with the evidence and submissions before them. As such, I find the RAD's analysis to be reasonable

[19] I will dismiss this application.

[20] The parties did not present any questions for certification.

**JUDGMENT IN IMM-6490-20**

**THIS COURT'S JUDGMENT is that:**

1. The application is dismissed;
2. No question is certified.

"Glennys L. McVeigh"

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-6490-20

**STYLE OF CAUSE:** YETUNDE AYODEYI AND ONAOPEMIPO  
OYADEYI v MINISTER OF CITIZENSHIP AND  
IMMIGRATION CANADA

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** OCTOBER 4, 2021

**JUDGMENT AND REASONS:** MCVEIGH J.

**DATED:** NOVEMBER 1, 2021

**APPEARANCES:**

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