Federal Court Cour fédérale

Date: 20220411

Docket: IMM-7451-19

Citation: 2022 FC 508

Ottawa, Ontario, April 11, 2022

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

LOVETH ITOHAN OBASUYI
ISREAL TOSAHENRUMEN OBASUYI
ISIAH TOSAYAWMEN OBASUYI
HANNAH UWASOTA OBASUYI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

and

MICHAEL DOREY

Intervener

JUDGMENT AND REASONS

[1] The Applicants seek judicial review of a decision of the Refugee Appeal Division (RAD) dated October 15, 2019, dismissing their appeal of a decision of the Refugee Protection Division (RPD) that concluded they were not Convention refugees or persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001 c. 27 [the *Act*].

[2] The Applicants claim that they were denied a fair hearing because of the incompetence of the counsel that represented them before the RPD and the RAD. They also assert that the RAD decision is unreasonable because the panel failed to apply the correct test for determining whether they had an internal flight alternative (IFA).

[3] For the reasons that follow, I do not find that their allegations of incompetent counsel are sufficient to demonstrate that they were denied a fair hearing. I am also not persuaded that the RAD's decision is unreasonable. The application for judicial review will therefore be dismissed.

I. Background

[4] The Applicants in this case include the Principal Applicant, Itohan Loveth Obasuyi, as well as her three children. The Principal Applicant is the designated representative for her children, and their claims flow from hers. The Applicants are all citizens of Nigeria from Benin City.

[5] The Principal Applicant was a victim of female genital mutilation (FGM), and claims that she fled Nigeria in an effort to protect her daughter from suffering the same fate. She says that she fears that her daughter will be subjected to FGM by her in-laws, and that she will face kidnapping and severe punishment for refusing to allow her daughter to be subjected to it.

[6] The RPD rejected the claims, because the panel found that the Applicants have a viable IFA in Port Harcourt. The RPD noted that the Principal Applicant did not provide any explanation as to how her in-laws could track her down in Port Harcourt if they sought refuge there. The RPD also found it was not unreasonable to expect the Applicants to relocate to Port Harcourt, based on the assessment of the factors set out in the Nigeria Jurisprudential Guide, as well as the Principal Applicant's evidence.

[7] The Applicants appealed the denial of their claim to the RAD, arguing that the RPD had erred in finding that they had to demonstrate that the agents of harm had the means and ability to find them in Port Harcourt. They also argued that the RPD erred by failing to consider all of the factors listed in the Jurisprudential Guide and by not properly applying the *Chairperson's Guideline Number 4 on Women Refugee Claimants Fearing Gender-Related Persecution* (*Gender Guidelines*). They did not submit any new evidence or request an oral hearing.

[8] The RAD dismissed the Applicant's appeal on October 15, 2019, and confirmed the RPD's decision that the Applicants were neither Convention refugees nor persons in need of protection. The RAD found there was no evidence that the Principal Applicant's in-laws had the ability to find the Applicants in Port Harcourt. On the second branch of the IFA test, the RAD noted that the Principal Applicant had testified that the only reason she could not move to Port Harcourt was her fear that her in-laws could track her down there, and she had stated that there were no other factors that made the IFA unreasonable.

[9] The Applicants seek judicial review of the RAD decision. Because they allege incompetent representation, the Applicants provided notice to their former counsel, as required

by this Court's *Protocol on Allegations Against Counsel* dated March 7, 2014 (*Protocol*). Their former counsel, Mr. Dorey, was granted leave to intervene in this proceeding and provided an affidavit and submissions. The Applicants provided further affidavit evidence (discussed below), and made submissions in response to those of their former counsel. The Respondent also filed further submissions.

[10] In addition, the Applicants claimed that an Immigration Consultant they hired also provided incompetent representation. The Principal Applicant states in her affidavit that the Consultant offered her assistance with filing her Notice of Application for Leave and Judicial Review (Originating Notice) after she moved from Montreal to Windsor. She said that she thought the Consultant was a lawyer, and he filed the Notice on her behalf after she provided the payment he demanded.

[11] The Applicants claim that the Consultant did not provide competent representation, and thus he was provided notice of these allegations. The Consultant filed a letter denying the allegations. However, there is no evidence that the Applicants provided the Consultant with their perfected Motion Record, as they were required to do pursuant to the Court's *Protocol*, and they advanced no submissions against him at the hearing. It is therefore not necessary to address the allegations of incompetent representation by the Consultant.

II. Issues and Standard of Review

[12] There are two main issues in this case:

A. Were the applicants denied a fair hearing because of the incompetence of the counsel who represented them before the RPD and the RAD?

B. Is the RAD decision unreasonable because of the flawed IFA analysis?

[13] The allegations regarding the competence of counsel go to the Applicant's right to fully present their case, which is an aspect of procedural fairness. Questions of procedural fairness require an approach resembling the correctness standard of review that asks "whether the procedure was fair having regard to all of the circumstances" (*Canadian Pacific Railway Company v Canada (AG)*, 2018 FCA 69 at para 54 [*Canadian Pacific*]). As noted in *Canadian Pacific* at para 56, "the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond."

[14] The second issue is to be assessed under the reasonableness standard of review, in accordance with *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. Under the *Vavilov* framework, a reviewing court "is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints" (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*] at para 2). The burden is on the applicant to satisfy the Court "that any shortcomings or flaws relied on… are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100, cited with approval in *Canada Post* at para 33).

[15] In addition, certain preliminary procedural issues were raised, including the Applicant's request for an extension of time, and the admissibility of further evidence they submitted as part of their record in this application.

III. Preliminary Issues

A. *Extension of Time*

[16] Although the RAD decision was issued on October 15, 2019, the Applicants did not file their Originating Notice until December 11, 2019, well after the expiry of the 15-day limitation period. They explain that they faced delays because they moved from Quebec to Windsor, and they had to gather the funds needed to pay their representative to file their judicial review materials.

[17] The Respondent argues that the Applicants have failed to demonstrate that an extension of time is warranted, because they do not provide an explanation for the entire period of delay. There is no indication that the Respondent has been prejudiced by the delay.

[18] In the circumstances of this case, I find that it is in the interests of justice to grant the extension of time (*Canada (Attorney General) v Larkman*, 2012 FCA 204 at para 9). The Applicants have demonstrated a continuing intention to challenge the RAD decision, and they have offered a general explanation for the delay, although I agree with the Respondent that more details should have been provided.

[19] Rule 6(2) of the Federal Courts' *Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 [*Rules*], provides that a request for an extension of time shall be determined at the same time, and on the same materials, as the application for leave. Consistent with the clear legislative intent expressed in this provision, the extension of time is normally addressed explicitly when leave was granted (*Singh v Canada (Citizenship and Immigration)*, 2021 FC 93 at paras 14-16). The jurisprudence confirms that this explicit treatment is not a mandatory requirement in all cases (*Fayazi v. Canada (Citizenship and Immigration)*, 2021 FC 1019 at paras 13-14, and *Pingault v Canada (Citizenship and Immigration)*, 2021 FC 1044 at para 14).

[20] Although the leave Order in this case does not explicitly grant an extension of time, the Applicants had clearly requested one in their Originating Notice. On January 27, 2020, the newly-retained counsel for the Applicants made an informal request for an extension of time to serve and file their perfected Record, explaining that counsel had only recently been retained, and that certain delays had been encountered in obtaining the Applicants' complete file from the former counsel. The Respondent took no position on this request. Following a brief further delay and a further request for an informal extension of time, to which the Respondent consented, Prothonotary Furlanetto (as she then was) granted the extension of time.

[21] In the circumstances of this case, to the extent it was necessary for the extension of time to be addressed by the Judge granting leave, in my view it was implicit in the Court's Order granting leave that the extension of time was also granted (see *Ogiemwonyi v Canada (Citizenship and Immigration)*, 2021 FC 346 at para 14). If this is mistaken, considering the circumstances of this case, I find that it is in the interests of justice to grant the Applicants' request for an extension of time, *nunc pro tunc.*

B. *Applicants' Further Evidence*

[22] The Applicants submitted further evidence in support of their claim regarding incompetence of counsel, including: an affidavit of Itohan Loveth Obasuyi; copies of communications with the Immigration Consultant, Benjamim Chike Allisson; a letter from the Canada Border Services Agency (CBSA); a Law Society complaint against Mr. Dorey; correspondence with Mr. Dorey requesting the Applicants' file, as well as affidavits of Soo Jin Lee and Nicole Arghandewal. All of these documents were appended as exhibits to the affidavit of Josef Brown (the latter three individuals are employed by the Applicants' counsel's law firm).

[23] The Applicants submit that this new evidence is admissible under the procedural fairness exception to the general rule that applications for judicial review should be determined based on the record that was before the decision maker whose decision is under review (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 20).

[24] I agree. The new evidence is relevant to the determination of whether the Applicants were denied procedural fairness, and is not something they could have reasonably presented before the RAD because they were not aware of their claim at that time. However, I will give little weight to the affidavits of Soo Jin Lee and Nicole Arghandewal because they are affidavits of employees of the Applicants' counsel's law firm, about matters in contention in this case, that were filed as an exhibit to the affidavit of another employee of the same law firm. No explanation was provided about why these affidavits could not be filed separately so that they

could be subject to cross-examination, and so they will be given little weight (see *Krah v Canada (Citizenship and Immigration)*, 2019 FC 361 at para 17).

IV. Analysis

A. *Were the applicants denied a fair hearing because of the incompetence of the counsel that represented them before the RPD and the RAD?*

[25] The Applicants submit that the outcome of their hearing before the RAD would have been different if their former counsel, the Intervener in these proceedings, had provided competent representation. They focus on two alleged failures by their former counsel: (i) not putting forward a personalized and strong claim on their behalf; and (ii) failing to ensure effective communication in a language they understood. The latter is essentially an argument that the former counsel should have brought in a translator so that the Principal Applicant could communicate with him in her mother tongue, the Edo language.

(1) Applicants' Submissions

[26] The Applicants argue that the Intervener should have known that the narrative put forward by the Principal Applicant was inadequate because it was so general and was missing details that were crucial to her claim. They say that is it no answer to state that the Principal Applicant completed the form herself, because experienced counsel would have known that more was needed to substantiate her claim. This aspect of their argument is summarized in their Further Memorandum of Argument:

> 65. The half page narrative is brief and weak and should never have been put forward to the RPD as is. It clearly lacks crucial information that should have been addressed, such as the nature of the persecution, IFA, the fear of the Applicants etc. It was the

> Intervener's responsibility to put forward a strong claim for the Applicants by asking them specific questions about their claim and why they are making a refugee claim in Canada.

[27] In addition, the Applicants point to the lack of documentary evidence from the Intervener to back up his claims that he had several meetings with the Principal Applicant and that he asked her for more details and whether there was anything she wanted to add to her narrative. They argue that the lack of proof of such due diligence by the Intervener is an indication of incompetent representation.

[28] The Applicants contend that a further demonstration of counsel's incompetence is the fact that their appeal record consisted of only four and a half pages and did not address specific conditions in Port Harcourt – although such evidence was readily available. The failure to address all of the factors enumerated in the Jurisprudential Guide for Nigeria contributed to the dismissal of their appeal, and the Applicants submit that this is an indication that they were denied a fair hearing because of the Intervener's incompetence.

[29] The Applicants also note that the Intervener failed to suggest a medical evaluation of the Principal Applicant, despite the fact that it should have been obvious that she had experienced mental health challenges because of her horrific experience in Nigeria. They say that the need for medical evidence should also have been clear because the Principal Applicant is a single mother with three children facing an entirely unfamiliar legal system in a new country. They submit that the Intervener's failure to obtain a psychiatric assessment is another sign of incompetent representation.

[30] Turning to the interpretation question, the Applicants contend that their new counsel's first interactions with the Principal Applicant demonstrated that she needed an interpreter to be able to express the details of her experience and to fully articulate her claim. They say that the Intervener should have known this, and his failure to arrange for an interpreter contributed to the denial of their claim. They note that the Intervener recommended that the Principal Applicant request an interpreter for her hearing before the RPD because he recognized that it is always in the best interests of a refugee claimant whose first language is not English or French to testify in their mother tongue. The Applicants argue that this shows that the Intervener should have obtained an interpreter to ensure that the Principal Applicant could fully explain her case so that the proper details and evidence could be provided.

(2) The Intervener's position

[31] The Intervener disputes the Applicants' allegations and submits that he provided competent representation. He asks the Court to dismiss these claims. The Intervener does not address the merits of the Applicants' judicial review other than to note that he continues to think the arguments advanced before the RAD had merit; he also emphasizes the similarity between those submissions and the arguments put forward by the Applicants' current counsel before this Court.

[32] On the claim that he was incompetent because he did not arrange for an interpreter for the Principal Applicant, the Intervener says that he was able to understand her fully because he has represented many Nigerian claimants whose first language is Edo. He also notes that English is the national language in Nigeria and the Principal Applicant completed 13 years of education in

English, including business studies at a university level. The Intervener states that he never encountered any difficulty communicating with the Principal Applicant during their meetings and telephone conversations between November 2017 and her hearing in January 2019, and she never requested the assistance of an interpreter.

[33] The Intervener also points to the fact that the Principal Applicant interacted in English with CBSA Officers at the border, and she completed several immigration forms in English in her own handwriting while renouncing any need for a translator. He notes that she also attended a medical appointment he arranged at a clinic that serves immigrants and refugees; this consultation was in English and again, the Principal Applicant never requested an interpreter.

[34] The Intervener says that the Principal Application made two false statements in her affidavit relating to this issue. First, she claimed that she only finished primary school (six years) and middle school (three years), and she said that the CBSA made a mistake in her IMM 5669 form by adding years to her education. The Intervener points out that the Principal Applicant completed the form in her own handwriting, including the part setting out her educational history, and she signed it. This form is in the English language.

[35] The Intervener says the Principal Applicant made a second false statement in her affidavit when she said she had only three years of secondary school. He points to the same form (IMM 5669), noting that the Applicant indicated that she had completed six years of secondary education. He also notes that the RPD decision confirms that the Principal Applicant has 13 years of education (citing RPD Decision at para 20), and that her current counsel states that she has completed one year of university-level education.

[36] Finally on this issue, the Intervener points to the Use of a Designated Representative form signed by the Principal Applicant, which states “I declare that I am able to read English and that I fully understand the entire contents of this form…”

[37] On the issue of the adequacy of the documentation submitted in support of the claim, the Intervener advances several arguments. First, he says that the Principal Applicant “drafted her own narrative in the English language, without asking for any help, and she always insisted that the narrative she drafted was complete and there was nothing else to add” (Intervener’s Factum, para 11).

[38] He says that he arranged for a medical examination of the Principal Applicant at the Regional Program for the Settlement and Integration of Asylum Seekers, noting that this program is an intake centre for newly arrived refugees with access to a wide range of support services. The report from the medical examination does not mention any scars, torture marks, burns, or depression and anxiety, in contrast to what the Principal Applicant claims in her affidavit. The Intervener also points out that the Principal Applicant did not seek out any of the psychosocial services available at this program.

[39] Finally, the Intervener submits that the similarity between the arguments he submitted to the RAD and those advanced by the Applicants’ current counsel in this judicial review is further evidence that he provided competent representation. He notes that both sets of arguments refer to the following points: the failure to properly apply the *Gender Guidelines*; the failure to consider that the Principal Applicant’s husband went to his police colleagues to seek assistance in protecting the daughter from FGM, but was told to send them out of the country for their

protection; the absence of any analysis of the adequacy of state protection in the IFA in Nigeria; the failure to consider issues relating to transportation, medical and mental health services in the IFA; and the error in applying the IFA test by imposing an onus on the Applicants to show that the persecutors had the ability to conduct a nationwide search for them.

[40] The Intervener argues that the similarities between the arguments shows that he provided robust representation of the Applicants before the RPD and the RAD, and he asks the Court to dismiss the allegations against him.

(3) The Respondent's Position

[41] The Respondent argues that the Court should not deal with the allegations of incompetent representation because the Applicants do not come before the Court with clean hands, citing *Thanabalasingham v Canada (Citizenship and Immigration)*, 2006 FCA 14 at para 9. In particular, the Respondent points to the serious allegations made against the Principal Applicant by the Intervener and the Consultant, noting that she provided no answer to any of these claims. The Respondent points out the various contradictions between the Principal Applicant's affidavit and the statements of the Intervener and the Consultant, and notes that the Principal Applicant has not denied any of these statements.

(4) Discussion

[42] The legal principles that apply to allegations of incompetent representation were summarized by Justice Diner in *Rendon Segovia v Canada (Citizenship and Immigration)*, 2020 FC 99 [*Rendon Segovia*]:

> [22] This Court has stated that in proceedings under the Act, the incompetence of counsel will only constitute a breach of natural justice in "extraordinary circumstances" (*Memari v Canada (Citizenship and Immigration)*, 2010 FC 1196 at para 36 [*Memari*]). To demonstrate that the incompetence of counsel amounted to a breach of procedural fairness, applicants must establish that each element of a tripartite test is met, namely that (i) prior counsel's acts or omissions constituted incompetence; (ii) a miscarriage of justice resulted in the sense that, but for the alleged conduct, there is a reasonable probability that the result would have been different; and (iii) the representative was given a reasonable opportunity to respond (*Guadron v Canada (Citizenship and Immigration)*, 2014 FC 1092 at para 11 [*Guadron*]). However, one begins with a strong presumption that counsel's conduct fell within the wide range of reasonable professional assistance (*R v GDB*, 2000 SCC 22 at paras 26-27 [*GDB*]).

[43] Addressing the third factor first, in this case, notice was provided to the former counsel, who then sought and was granted leave to intervene and to file materials in response to the allegations of incompetence. Therefore, the third element has been satisfied.

[44] It is not necessary to assess the first factor (the Intervener's level of competence), in great detail, because I am not persuaded that the Applicants have met the second component of the test, which requires a demonstration that they have been prejudiced by the inadequate representation. In such circumstances "it is undesirable for the Court to consider the performance component of the analysis" (*Nagy v Canada (Citizenship and Immigration)*, 2013 FC 640 at para 44).

[45] Despite the Applicants' assertions about what the Intervener did not do when he represented them, they have not provided persuasive evidence about what additional information they would have submitted if given the chance. While the Principal Applicant states that her

body is full of burns and scars and that she suffered from torture in Nigeria, the medical evidence she submitted does not corroborate this and she did not seek to supplement that information after the Intervener pointed that out. In addition, the determinative issue before the RPD and the RAD was the availability of an IFA, and there was no issue raised about her claim to have experienced FGM in Nigeria.

[46] On the IFA issue, discussed in more detail below, the Applicants argue that the Intervener failed to provide sufficient documentary evidence about conditions in Nigeria, but they do not point to specific documents that he failed to bring forward. In addition, the Principal Applicant's affidavit does not add further details about why it was not reasonable for her to seek refuge in Port Harcourt, or to try to explain her testimony that the only reason she did not want to move there was her fear that her in-laws would be able to find her.

[47] In essence, the Applicants argue that the Intervener did not follow the practices of a prudent counsel in documenting his interactions with them, but this is not the test. Instead, paraphrasing the test from *Rendon Segovia*, the analysis begins with a strong presumption that counsel's conduct fell within the range of reasonable professional assistance, and the onus was on the Applicants to demonstrate how counsel's conduct fell within the extraordinary circumstance of amounting to a breach of natural justice. I find that the Applicants did not meet this standard.

[48] Turing to the specific allegations of incompetence, it is true that the Principal Applicant's narrative is brief, but she provides no answer to the Intervener's explanation that she drafted it herself and repeatedly insisted that there was nothing to add to it. The situation here is thus

distinguishable from cases where the Court has found deficiencies in the narrative sufficient to support a claim of incompetent representation. For example, in *Galyas v Canada (Citizenship and Immigration)*, 2013 FC 250 [*Galyas*], the Court found that the claimant was left to write his own narrative and not told that additional details should be added (*Galyas* at para 44). In that case, the claimant explained that if he had been aware that more details were needed he would have provided them as well as further documentary evidence (*Galyas* at paras 48-49). In contrast, here the Intervener says he repeatedly asked the Principal Applicant whether there were other details to add to her narrative, yet none were provided. The Principal Applicant's affidavit does not contradict this statement, nor does it explain what other information she would have added to her claim, and so the Court is not in a position to find that the inadequacy of the narrative was the result of incompetent representation.

[49] On the adequacy of the record before the RAD, the Applicants are mistaken in stating that it was only four and one-half pages long. While the written submission were approximately five and one-half pages, the record submitted to the RAD included other documentation. It should also be noted that the sufficiency of a RAD record – like that of a record before this Court – should not be measured by the kilogram. It is the quality rather than the quantity of the submissions that must be determinative.

[50] As such, I am not persuaded that the failure to provide other documentary evidence to the RAD amounted to incompetent representation that prejudiced the Applicants' right to a fair hearing. Further, as the Intervener properly notes, many of the arguments submitted to this Court by current counsel are similar to those he submitted to the RAD.

[51] I am also not persuaded that the Intervener's failure to arrange for an interpreter to assist the Principal Applicant in her interactions with him amounted to professional incompetence. He provided a detailed explanation about why he was able to understand the Principal Applicant, despite her accent, and he pointed to the various documents she completed in English. The Intervener also pointed to her failure to seek the assistance of an interpreter when she went for her medical consultation, noting the organization serves immigrants and refugees so would be well-acquainted with the need for translation. Once again, the Principal Applicant's evidence provides no answer to this. The fact that current counsel preferred to rely on an interpreter for their interactions with the Principal Applicant is not, in itself, proof that it was negligent for the Intervener to not do so.

[52] The Intervener's advice to the Principal Applicant that she seek the assistance of an interpreter for her oral testimony before the RPD is also not an indication that he was negligent in not arranging one for all of their interactions. The stress associated with providing oral evidence before the RPD may accentuate the need for a translator, in contrast to the regular interactions between counsel and a client. The Principal Applicant has not pointed to a specific instance where she was unable to express herself or understand the Intervener, and I note that she also indicated that she wanted the assistance of an interpreter in her Basis of Claim form, which she completed herself entirely in English. In contrast, there is no indication that she requested an interpreter during her regular communications with the Intervener.

[53] It may have been preferable or more prudent for the Intervener to arrange for an interpreter, in order to assist the Principal Applicant in recounting a difficult personal story, but that is not the test.

[54] In the end, the Applicants must accept the consequences of their chosen representation "subject to certain extraordinary cases where conduct of counsel will manifest such negligence that it will warrant overturning a decision on judicial review" (*Pathinathar v Canada (Citizenship and Immgration)*, 2013 FC 1225 at para 38). In my view, the Applicants' evidence does not demonstrate that the conduct of the Intervener fell so short of the range of professional standards as to deny them a fair hearing. I therefore dismiss this aspect of their claim.

B. *Is the RAD's decision unreasonable because of its flawed IFA analysis?*

(1) The Applicants' submissions

[55] The Applicants challenge to the RAD's IFA analysis focuses on two elements: (i) the RAD's reliance on the Jurisprudential Guide for Nigeria, which was subsequently revoked; and (ii) the RAD's incorrect application of the IFA test, particularly insofar as it required the Applicants to demonstrate that the agents of persecution had the means and ability to locate them in Port Harcourt. The Applicants also submit that the RAD failed to undertake a state protection analysis, thereby ignoring the evidence that the police refused to deal with their complaint.

[56] The Applicants submit that the RPD and RAD both relied heavily on the Jurisprudential Guide for Nigeria (Guide) to determine that Port Harcourt constituted an IFA, and they say that the revocation of that Jurisprudential Guide on April 6, 2020, is sufficient to make the RAD decision unreasonable. They point out that the Immigration and Refugee Board revoked the Guide because "[d]evelopments in [Nigeria], including those in relation to the ability of single women to relocate to various internal flight alternatives proposed in the Nigeria jurisprudential guide, have diminished the value of the decision as a jurisprudential guide." The Applicants

argue that the RPD's and RAD's relied on the Guide to assess the viability of the IFA for her as a single mother, and thus the fact that it was revoked on this very ground is sufficient to make the RAD's decision unreasonable.

[57] In addition, the Applicants submit that the RAD imposed an unreasonable burden on them to establish that their in-laws had the means and ability to conduct a nation-wide search and that they would be able to locate them in Port Harcourt. They say that they have met both prongs of the test set out in *Rasaratnam v Canada*, [1992] 1 FC 706, [1991] FCJ No 1256 (CA), because they have a subjective fear of persecution from the Applicant's family, who have the means and ability to locate them in the proposed IFA, and the RAD unreasonably failed to consider the *Gender Guidelines* when they found that it was reasonable to expect the Principal Applicant, as a single mother to move to Port Harcourt.

[58] Dealing with the first prong of the IFA analysis, the Applicants argue that they were only required to establish on a balance of probabilities that there was a serious risk that they would be persecuted in the proposed IFA, and they were under no obligation to show that the agents of persecution have the means to locate them in Port Harcourt.

[59] In addition, the Applicants point to the RAD's failure to conduct a state protection analysis. The panel did not examine this question because it concluded that there would be no need for state protection if the in-laws could not locate them in Port Harcourt. The Applicants contend that the RAD was required to consider whether state protection would be available to them if it was required. On this point, the Applicants submit that the RAD failed to consider the evidence that the Principal Applicant's husband had gone to his police colleagues to seek

assistance in protecting his daughter from FGM, but they advised him to get his family out of the country because they would not intervene in a family matter.

[60] The final argument on the first prong of the IFA test is that the RAD failed to consider the evidence that FGM was a widespread practice in Nigeria, including in Port Harcourt. Based on the evidence, the Applicant submit that even if the in-laws could not locate them, the risk that the daughter would be subjected to FGM there still existed because the practice is so common.

[61] On the second prong of the IFA test, whether it would be unreasonable to expect them to move to Port Harcourt, the Applicants submit that the RAD's failure to consider all of the reasonableness factors is a serious flaw that makes its decision unreasonable. They point to the failure to consider the *Gender Guidelines*, the fact that the Principal Applicant would be moving to Port Harcourt as a single mother, and the country condition evidence of how difficult it was for someone who speaks English and Edo to live in Port Harcourt because there are so many languages and dialects spoken there. The Principal Applicant points to the evidence showing the difficulty she would face in obtaining employment and education since she was not from the area, as well as the lack of available housing.

[62] In addition, the Applicants argue that the RAD failed to consider the Principal Applicant's medical issues and mental health needs. They rely on the decision in *Haastrup v Canada (Citizenship and Immigration)*, 2020 FC 141, where the failure to consider the cumulative obstacles faced by the claimant made the decision unreasonable (see para 43). The Applicants argue that the RAD's analysis of the second prong of the IFA test suffers from the same flaws, and is therefore unreasonable.

(2) The Respondent's submissions

[63] The Respondent argues that the RAD's decision is reasonable. The RAD's reliance on the now-revoked Jurisprudential Guide is not a fatal error, because the decision is based on an analysis of the Applicants' individual circumstances. The Respondent points out this Court has stated that it "usually declines to intervene where the RAD mentioned a jurisprudential guide that is subsequently revoked, if the RAD made a decision based on the claimants' individual circumstances…" (*Adegbenro v Canada (Citizenship and Immigration)*, 2021 FC 290 at para 3).

[64] The Respondent contends that the RAD's decision shows consideration of the particular circumstances of the Applicants and whether it was reasonable for them to move to Port Harcourt. The Applicants failed to show that the in-laws would be able to track them down there, and the RAD considered the Principal Applicant's language, education and work history, which are all relevant considerations in assessing the reasonableness of an IFA.

[65] In addition, the Respondent challenges the Principal Applicant's claim that she would be moving to Port Harcourt as a single mother. Her evidence shows that her husband was a police officer in Nigeria who tried to get support from his colleagues to help protect his daughter from FGM. In addition, the evidence of the Consultant hired by the Applicants was that he was contacted often by the husband who was still in Nigeria, asking for updates on the status of the case. The Consultant says that the Principal Applicant admitted that she had lied about her husband. The Respondents contend that this uncontradicted evidence demonstrates that the husband would be able to move with the Applicants to Port Harcourt, where the family could live in safety.

(3) Discussion

[66] I am not persuaded that the RAD's IFA analysis is unreasonable. Many of the Applicants' arguments do not take into account the evidence that the Principal Applicant put forward, or the other evidence in the record. Two key points are central to this aspect of the case. First, the Principal Applicant testified before the RPD that the only reason Port Harcourt was not a suitable place of refuge was her fear that her in-laws would find the Applicants there. She did not raise any of the concerns that the Applicants now say the RAD failed to analyze. It was not unreasonable for the RAD to focus on the evidence and arguments before it, and the panel was therefore not required to analyze the other elements that the Applicants now raise.

[67] In addition, the Principal Applicant's arguments rest largely on her assertion that she would be moving to Port Harcourt as a single mother. However, her testimony indicated that her husband was a police officer in Nigeria, that he had tried to get help from his colleagues in the police force to protect his family, and she provided no evidence to support the assertion that her husband was not still present in Nigeria.

[68] Furthermore, the Consultant's evidence is that he was contacted on several occasions by the Principal Applicant's husband, and that she had confessed to him that she had lied about her husband's disappearance. The Principal Applicant did not contradict this evidence.

[69] Based on all of this, there is no basis to find that the RAD relied entirely on the now-revoked Jurisprudential Guide instead of analyzing the Applicants' particular circumstances. Instead, the decision shows that the RAD considered the situation of the Applicants, in light of

the evidence they submitted, and it concluded that it was not unreasonable for them to seek refuge in Port Harcourt. This is what the RAD was required to do, and the fact that they did not consider evidence or arguments that were never submitted by the Applicants is not a basis to find the decision unreasonable.

V. Conclusion

[70] For the reasons set out above, the application for judicial review is dismissed. The Applicants failed to meet the high threshold of demonstrating that their counsel's incompetence denied them a fair hearing, and their arguments about the RAD's IFA analysis do not reflect the evidence that is in the record. In addition, the Principal Applicant's failure to respond to the very serious allegations made against her by the Intervener and the Consultant weakened her case on both issues.

[71] There is no question of general importance for certification.

JUDGMENT in IMM-7451-190

THIS COURT'S JUDGMENT is that:

1. The Applicants' motion for an extension of time to bring their Application for Leave and Judicial Review is granted, *nunc pro tunc*.

2. The application for judicial review is dismissed.

3. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7451-19
STYLE OF CAUSE:	LOVETH ITOHAN OBASUYI, ISREAL TOSAHENRUMEN OBASUYI, ISIAH TOSAYAWMEN OBASUYI, HANNAH UWASOTA OBASUYI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION and MICHAEL DOREY (intervener)
PLACE OF HEARING:	BY VIDEOCONFERENCE
DATE OF HEARING:	JUNE 18, 2021
JUDGMENT AND REASONS:	PENTNEY J.
DATED:	APRIL 11, 2022

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