

Federal Court



Cour fédérale

Date: 20250116

Docket: IMM-10765-23

Citation: 2025 FC 90

Toronto, Ontario, January 16, 2025

PRESENT: Mr. Justice Pentney

BETWEEN:

**CHARITY NMASHIE
GERALD NII KLU NMASHIE
ELIANA NAA ADJELEY NMASHIE
JOEL NII ADJETEY NMASHIE**

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Charity Ndashie [the “PA”] and her three children [together, “the Applicants”] are citizens of Ghana. The PA said she faced threats from her mother’s family who accused her and her mother of witchcraft. She said the threats began in 2009, and further threats were made in 2012, which she reported to the police. The police told her that this was a matter to be resolved within the family. The family members demanded that the PA and her mother undergo a

traditional ritual to prove they were not witches, but the PA and her mother refused because they are Christian.

[2] When further threats were made in 2016, the PA and her brother moved their mother to another location. In September 2017, the Applicants came to Canada where the PA's husband (the children's father) was studying for his PhD. The PA says that she received further threats in May 2019, and claimed refugee status in July 2019.

[3] The Applicants' refugee claim was refused by the Refugee Protection Division [RPD] because they did not credibly establish the allegations at the heart of their claims. On the first appeal, the Refugee Appeal Division [RAD] found that the RPD made errors in its credibility assessment, but dismissed the appeal because it found the Applicants did not provide sufficient credible evidence to establish an ongoing risk in Ghana.

[4] The RAD's decision was quashed on judicial review: *Nmashie v Canada (Citizenship and Immigration)*, 2023 FC 437. Justice Go found that the RAD had denied the Applicants procedural fairness by considering a new issue without giving them notice or an opportunity to respond. The RPD had dismissed the claim based on credibility, whereas the RAD found that the Applicants had failed to establish that they faced a serious possibility or likelihood of physical harm in the future. The RAD therefore sent the matter back for reconsideration.

[5] A new panel of the RAD re-considered the Applicants' appeal, and they were provided the opportunity to file further submissions. The Applicants filed an Addendum to their written

submissions, and sought to file new evidence. The RAD rejected their new evidence because it was not credible, and therefore did not meet the legal test in *Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96 [*Singh*]. The RAD dismissed the Applicants' appeal, finding that they had not established a risk of physical harm, nor did they establish a serious possibility of psychological or emotional harm rising to the level of persecution. The Applicants seek judicial review of the RAD's decision.

[6] The Applicants make three claims: (i) that they were denied procedural fairness because the RAD raised new issues and did not give them the opportunity to respond; (ii) that the RAD erred in rejecting their new evidence; and (iii) that the RAD erred by imposing a higher burden than the law requires by focusing solely on their risk of physical harm. They argue that the RAD failed to respect the guidance set out in the earlier decision by Justice Go.

[7] I am not persuaded by the Applicants' arguments.

[8] In their written submissions, the Applicants argued that the RAD denied them procedural fairness by rejecting their claims on new grounds without notice. Although this argument was not advanced in oral argument, I pause here to note that I am not persuaded there was any breach of procedural fairness. The Applicants were aware of the new issue about forward-facing or prospective risk that had been raised in the first RAD decision, and they had an opportunity to make further submissions when their case was reconsidered. They were not taken by surprise, and the RAD did not raise any new issue when it reconsidered their claim. I am satisfied that the RAD met the requirements of procedural fairness in reconsidering the Applicants' appeal:

Canadian Pacific Railway Company v Canada (Attorney General), 2018 FCA 69, [2019] 1 FCR 121.

[9] The RAD's rejection of the new evidence the Applicants sought to bring forward was based on the law as set out in subsection 110(4) of the *Immigration and Refugee Protection Act*, SC 2001 c 27, and in accordance with the decision of the Federal Court of Appeal in *Singh*. The RAD was bound to strictly apply this test when determining whether or not to admit the new evidence presented by the Applicants (*Canada (Citizenship and Immigration) v Davoodabadi*, 2019 FC 350 at para 20, citing *Singh* at paras 34-35). It had no discretion to disregard these criteria (*Singh* at para 63).

[10] The onus was on the Applicants to establish that the new evidence is admissible under section 110(4) of the *IRPA*. The RAD's determination that they failed to do so is altogether reasonable: *Tejuoso v Canada (Citizenship and Immigration)*, 2019 FC 903 at para 29. The RAD carefully explained its credibility findings on the new evidence, and it is not the role of a reviewing Court to reweigh the evidence: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*] at para 125.

[11] The fact that another decision-maker might have assessed the new evidence differently is not a sufficient basis to find that the RAD's ruling is unfair or unreasonable. The concerns about the evidence mentioned by the RAD arose from the documents themselves, and there was no requirement for the RAD to give the Applicants notice of these questions or an opportunity to respond. The Applicants had to put forward their best case before the RAD, and its assessment of

their new evidence is consistent with the legal framework and based on its careful review of the evidence. That is all that the RAD was required to do in the circumstances.

[12] I am not persuaded that the RAD imposed a higher burden than the law requires, or that it unduly focused on the risk of physical harm to the exclusion of psychological harm. That argument is contradicted by a plain reading of the RAD's decision, because it clearly considered both the alleged risks of physical harm at the hands of family members as well as the allegation that the PA would be isolated and ostracized by family members. The RAD found no physical threat and its finding that the evidence of psychological threats did not rise to the level of persecution is exactly what the law required it to consider. I can find no basis to disturb that aspect of the decision. The Applicants' evidence on this point is discussed in detail by the RAD, and they do not point to any key evidence that was ignored, or to any other exceptional circumstance that would cause this Court to interfere with the RAD's factual findings (*Vavilov* at para 125).

[13] Overall, I am not persuaded that the RAD failed to give effect to the guidance set out by Justice Go in the previous judicial review. The Applicants had an opportunity to make further submissions before the RAD reconsidered their case, and they took advantage of that chance. The fact that the RAD found that they had not established their case was neither procedurally unfair nor unreasonable. Rather, it was rooted in the RAD's assessment of the evidence in the record and the Applicants' submissions.

[14] For the reasons set out above, the application for judicial review is dismissed. There is no question of general importance for certification.

JUDGMENT in IMM-10765-23

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question of general importance for certification.

"William F. Pentney"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10765-23

STYLE OF CAUSE: CHARITY NMASHIE, GERALD NII KLU NMASHIE,
ELIANA NAA ADJELEY NMASHIE, JOEL NII
ADJETEY NMASHIE v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 13, 2024

JUDGMENT AND REASONS: PENTNEY J.

DATED: JANUARY 16, 2025

APPEARANCES:

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Gerald Grossi	FOR THE RESPONDENT

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