

Federal Court



Cour fédérale

**Date: 20150624**

**Docket: IMM-5186-14**

**Citation: 2015 FC 783**

**Ottawa, Ontario, June 24, 2015**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**ONYEBUCHI MARYANN EZEDUNOR  
MICHELLE ODILI (MINOR)  
DAVID EBUBE ODILI (MINOR)**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The decision of the Refugee Appeal Division [RAD] dismissing the applicants' appeal must be set aside.

[2] The panel engages in a lengthy discussion and analysis of the standard of review to be used by the RAD when considering an appeal from the Refugee Protection Division [RPD]

ending with the following statement at paragraph 20: “For these reasons, the RAD concludes that, in considering this appeal, it must apply a standard of correctness.”

[3] Thereafter, the RAD conducts an analysis of the merits of the appeal but clearly does so using the standard of reasonableness. I am unable to agree with the respondent’s submission that the panel’s statement at paragraph 20 of its reasons “is a typographical error.” In my view, a fair reading of the decision prior to this statement, leads to the view that the RAD meant what it stated – it was to conduct the appeal on the standard of correctness. But it did not, as is admitted by all.

[4] This error alone is sufficient to grant the application and send the matter back for a redetermination. However, I wish to offer a few comments on other aspects of the decision that are very troubling.

[5] The applicant, Onyebuchi Ezedunor and her children, the two minor applicants, are citizens of the Republic of Nigeria.

[6] Ms. Ezedunor was sold into slavery at age 11 to a woman named Josephine. While being a slave, she was physically and sexually assaulted by Josephine’s son, Ikoko Odili. He is the father of the minor applicants and of a third child of Ms. Ezedunor who was born in Canada after she arrived here.

[7] Ms. Ezedunor left Nigeria with the minor applicants and fled to Canada fearing that Josephine and her son would locate and kill her in Nigeria in order to gain custody of the minor applicants. Ikoko Odili can only gain custody of his children if he marries Ms. Ezedunor, or if she is dead. Ms. Ezedunor says that Ikoko Odili wanted custody of his children when he learned that she was pregnant with a boy. She also states that he will not marry her as she is a slave. In addition to that risk, she states that the female minor applicant is at risk of female genital mutilation [FGM] if returned to Nigeria because she overheard Josephine stating that she would be circumcised at age 10, as is the custom in the area.

[8] The applicants' application for refugee protection was rejected by the RPD which concluded that there was a viable internal flight alternative [IFA] in Nigeria. The applicants appealed arguing that the RPD had misapprehended or ignored evidence in finding that an IFA was available to them, and had failed or unreasonably applied the *Chairperson's Gender Guidelines* and the *Guideline on Child Refugees*.

[9] I agree with the submission of the applicants that it is critically important when examining the record and evidence, that there was no finding made by either the RPD or the RAD that Ms. Ezedunor was not credible.

[10] Regrettably, the court and the RAD was provided only with a recording of the RPD hearing; however, the written Basis of Claim [BOC] form is in the record and as Ms. Ezedunor was found to be credible, one must assume that the oral evidence corresponded to it.

[11] The court takes issue with the reasonableness of the RAD finding regarding the risk to the minor female of circumcision. It writes at paragraph 32:

The RAD notes that, although the principal Appellant states in her Basis of Claim (BoC) that she feared the minor Appellants would be circumcised by the persecutors when they turned ten years of age, there was no persuasive evidence that this would occur. The principal Appellant seems to have speculated that this would occur in her BoC. Furthermore, when questioned during the hearing, the principal Appellant testified that the minor Appellants were well treated and cared for by her persecutors. The RAD finds that there is no persuasive evidence that the minor Appellants have been or are at risk of being abused. [emphasis added]

[12] There are several problems with this statement.

[13] First, there was only one female minor appellant before the RAD, the girl, Michelle. It was she who was alleged to be at risk of FGM.

[14] Second, the BOC statement referenced by the RAD reads as follows: “I once heard Josephine saying that as soon as my daughter Michelle turns 10 years, she would be circumcised according to our culture. Female children are usually circumcised at that age, and I am really scared that they would do the same to her without my consent.” It is beyond unreasonable to state that Ms. Ezedunor “speculated” that her daughter was at risk of FGM when her evidence was that she heard one of the persecutors say that this would occur and when she also testified that it was the norm in her culture. Moreover, the record reveals that approximately 30% of females in Nigeria suffer FGM.

[15] Third, the RAD appears to be of the view that because the children were well treated and cared for by their persecutors, they were not at risk of being abused. This is confused thinking. I have no doubt that the majority of the parents in Nigeria who had their girls circumcised otherwise treated them well. They undoubtedly do not see circumcision as abuse – the law does. It does not follow that because the persecutors otherwise treated the child well they would not force the young girl to undergo FGM, and thus it does not follow that because she is otherwise treated well she is not at risk of suffering FGM.

[16] The court also takes issue with the reasonableness of the RAD finding regarding the father's wish to obtain custody of the children. At paragraph 35 the RAD notes that the father has taken no legal proceeding to obtain custody; however, that proves nothing. The RAD fails to address the evidence as to how custody was proposed to happen. The evidence of Ms. Ezednuor in her BOC was that she was at risk of death in order that he could obtain custody. She writes:

I decided to run away with my children because I heard Ikoko Odili confiding with his mother that after my deliver [as she was then pregnant with the youngest applicant who was born in Canada], I would be killed and they would tell anyone who asked about me that I died in child birth. That was after they got to know that my unborn baby is a baby boy, and according to custom he must marry me if he and the family are to claim the children as their children. But he does not want to marry me. The mother said he would not marry a slave like me. That was when they decided that they would take the children from me and kill me after I delivered this baby I am carrying now.

[17] The court also takes issue with the RAD's analysis of the availability of an IFA to the applicants. The RAD and the RPD relied on the United Nations Development Fund for Women [UNIFEM] report as evidence "that it would be very difficult for a husband or other family

members to locate a woman who has escaped FGM, a forced marriage or a victim of domestic violence” as support for its finding that Abuja, Nigeria is an IFA. However, the RAD fails to examine whether Abuja would truly be a place of safety for these applicants. Even if it might provide Ms. Ezedunor with a safe haven from her persecutors, one must ask could she reasonably be expected to locate there?

[18] I agree with the applicants that the RAD failed to engage with evidence in the record that strongly suggests that it may not have been a suitable IFA for these applicants. The United Kingdom Country of Origin Report on Nigeria provides:

UNIFEM added that [while seeking to relocate] attractive young, single women, in particular, are very vulnerable to abuse, harassment and trafficking when relocating to another area without economic means or family networks.

It also notes that:

According to UNIFEM ... economic constraints may mean that women wishing to relocate may be required to seek assistance from relatives. In addition, social and cultural constraints may leave women stigmatized in their new communities. “BAOBAB further added that young women and/or single women, in particular, who have relocated within Nigeria, are vulnerable to unscrupulous men that may target these women. Some of them might even end up as commercial sex workers.

[19] Any proposed IFA in Nigeria must be examined in light of the fact that the adult applicant is a young, single woman, who has been a slave since a child and who has no family support network.

[20] Lastly, the court takes issue with the manner in which the RAD dealt with the psychological report tendered for Ms. Ezedunor, which it gave little weight. The report stated that she suffers from depression and anxiety in the “severe range” and the RAD describes this as the psychologist’s “clinical impression.” Contrary to this description, the report states that the finding that she was in the “severe range” was based on two psychological tests taken by her: the Beck Depression Inventory-II and the Beck Anxiety Inventory. In addition, the RAD finds it strange that the report made no recommendation for treatment. Again, and contrary to that finding, the report states that the psychologist “provided a referral to Catholic Family Services of Peel, so that she can begin counseling and support.”

[21] In the court’s view, these additional concerns are such that it cannot be said that the conclusion reached by the RAD was reasonable, even if it had applied the standard of review it found to be appropriate.

[22] Neither party proposed a question for certification, nor is there one on these facts.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is allowed, the decision of the RAD is set aside, the applicants' appeal is to be determined by a different member, and no question is certified.

"Russel W. Zinn"

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Judge



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

**DOCKET:** IMM-5186-14

**STYLE OF CAUSE:** ONYEBUCHI MARYANN EZEDUNOR ET AL v  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 9, 2015

**JUDGMENT AND REASONS:** ZINN J.

**DATED:** JUNE 24, 2015

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