

Federal Court



Cour fédérale

**Date: 20170613**

**Docket: IMM-4559-16**

**Citation: 2017 FC 580**

**Ottawa, Ontario, June 13, 2017**

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

**BETWEEN:**

**HILARY USOMHINE DAKPOKPO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Ms. Dakpokpo asks the Court to set aside the decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board dated October 6, 2016, rejecting her appeal of the decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board which denied her claim for refugee protection. She advanced her claim on the basis of a fear of female genital mutilation at the hands of her uncles and men from her tribe in Nigeria.

[2] Ms. Dakpokpo is an unmarried citizen of Nigeria. She is from Edo State, Nigeria, and belongs to the Agenebode tribe and the Weppa Wanno clan. Since 2005, she has suffered from serious kidney damage and was diagnosed with End-Stage Renal Disease. She received a kidney transplant from her mother in India in 2013.

[3] On July 7, 2015, Ms. Dakpokpo turned 28 years old. She alleges that a few weeks later, her paternal uncles and two tribal men from her clan approached her and explained that she had to undergo circumcision because of her age and the fact that she was unmarried. She also alleges that the men returned in December 2015 to inform her that the procedure would be done in March 2016.

[4] On February 22, 2016, Ms. Dakpokpo left Nigeria for the USA using a tourist visa from a previous trip in December 2014. After entering the USA, she says that she was brought to Canada unknowingly by car, after falling asleep, by a man she did not know. She entered Canada on February 26, 2016, and made a claim for refugee protection on March 31, 2016.

[5] The RPD rejected her claim in a written decision dated June 24, 2016. The RPD member found that Ms. Dakpokpo was not credible with respect to a number of topics and that she had a viable internal flight alternative [IFA] in Lagos, Nigeria. On October 6, 2016, the RAD rejected her appeal on the basis that she has an IFA in Lagos, Nigeria. The RAD did not address the RPD's credibility findings as it found that the findings did not impact the determinative issue of IFA.

[6] Ms. Dakpokpo frames the issues as follows:

1. Did the RAD err in law by finding that she has an IFA in Lagos, Nigeria, without first addressing the RPD's credibility findings or determining whether she was credible?
2. Was the RAD's finding that she has an IFA in Lagos, Nigeria, reasonable?

1. *Must the tribunal make credibility findings before examining whether there is an IFA?*

[7] Ms. Dakpokpo says that the RAD erred by not addressing the RPD's credibility findings or conducting its own credibility assessment. She says that the viability of an IFA is inextricably linked to the credibility of the claimant's allegations.

[8] Ms. Dakpokpo, among other cases, cites the following paragraphs from Justice Shore's decision in *Irigoyen Torres v Canada (Minister of Citizenship and Immigration)*, 2011 FC 581 at paras 1-2 [*Torres*]:

An internal flight alternative (IFA) is only taken into account once the applicant's credibility has been accepted:

[5] After all, state protection and IFA (the subjects she is mostly interested in) only become issues once the Applicant's story is accepted (i.e. his credibility is accepted) and his objective and subjective fear is established....

*(Bokhari v. Canada (Minister of Citizenship & Immigration)*, 2005 FC 574, 139 ACWS (3d) 126).

In identifying IFAs, the Immigration and Refugee Board (Board) must take all of the evidence into account, including the applicant's testimony at the hearing and the documentary evidence. The existence of an IFA may be determinative in itself; however,

consideration of all of the evidence must be reflected in the Board's decision concerning the regions proposed as viable.

[9] In my view, neither *Torres* or the case cited within (*Bokhari v Canada (Minister of Citizenship and Immigration)*, 2005 FC 574) supports the Applicant's position here. In both of the above cases, the Court found that the tribunal, in moving directly to the issue of an IFA, must be seen to have accepted the evidence of the claimant. Where that evidence conflicts with the IFA finding, as it did in those cases, then the tribunal had to first examine the other issues before considering the IFA. They do not stand for the bald proposition that where credibility is at issue, it must be assessed first, before an IFA is considered.

[10] I agree with the Respondent that it is not an error for the RAD to find that the IFA was determinative as the credibility issues raised by the RPD in this case (the Applicant's clan's traditions, her exit from Nigeria, and her entrance into Canada) were not issues that affected the IFA analysis. Moreover, in general, it is not an error to move immediately to an IFA analysis provided that analysis considers a claimant's particular situation, and the testamentary and documentary evidence before the tribunal. That too was done here.

2. *Was the IFA finding reasonable?*

[11] I agree with the Respondent that the submission advanced in the Applicant's written memorandum was not that advanced by counsel at the hearing.

[12] At the hearing, counsel stated that the RAD noted Ms. Dakpokpo's ability to adapt to the cultural issues, norms, and new surroundings in Lagos, her familiarity with the language and

religion, her ability to continue receiving support from her family, her high level of education, her past employment and likely employment prospects, her age, and most importantly her ability to receive medical care for her kidney ailment.

[13] As counsel put it, the largest problem is that the RAD did not deal with the fact that if the Applicant is to relocate to Lagos, she has to do so, obtain accommodation and employment (which then provides for medical care), all within three weeks as the evidence in the record shows that without such care, within that period, the likely result will be death.

[14] At the hearing, counsel asserted that this issue had been raised with the RAD; however, my review of the Certified Tribunal Record does not support that claim. The RAD can hardly be faulted for not considering a submission that was not put to it.

[15] In any event, the record shows that Ms. Dakpokpo had previously received treatment in Lagos and that her siblings assisted with the cost. There is no evidence to support that such assistance, both medical and financial, is not again available to her. The submission of counsel to the contrary is nothing more than speculation. If there is evidence to support any of these allegations, it ought to have been put to the RAD; none was.

[16] I agree with the Respondent that a refugee claimant is supposed to seek out an IFA before fleeing the country of origin, and had that been done in this case, then Ms. Dakpokpo would currently be employed, have health care benefits, and be living with her brother in Lagos.

Notwithstanding this observation, both the RAD and the Court must take the facts of her situation as they now exist.

[17] In this case, I find that the RAD did just that, based on the evidence and submissions made to it and the RPD. Accordingly, I am unable to find that the decision under review is unreasonable.

[18] No question for certification was proposed.

**JUDGMENT**

**THIS COURT'S JUDGMENT IS** that the application is dismissed, and no question is certified.

"Russel W. Zinn"

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Judge

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

**DOCKET:** IMM-4559-16

**STYLE OF CAUSE:** HILARY USOMHINE DAKPOKPO v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 9, 2017

**JUDGMENT AND REASONS:** ZINN J.

**DATED:** JUNE 13, 2017

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