Federal Court  Cour fédérale

Date: 20181211

Docket: IMM-412-18

Citation: 2018 FC 1243

Ottawa, Ontario, December 11, 2018

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

JULIA ONYEBUCHI ONYEME
IFEOMA EMMANUELLA ONYEME
CHUKWUIKE JOSHUA ONYEME
IFEANYI ELIZABETH ONYEME
IFEAKACHUKWU EMELDA-MARY ONYEME

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application made pursuant to s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for judicial review of a decision by a member of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada dated

January 8, 2018 [Decision] which upheld the decision of the Refugee Protection Division [RPD] denying refugee protection to the Applicants.

II. BACKGROUND

[2] Julia Onyebuchi Onyeme [Principal Applicant] and her four children [Minor Applicants] are citizens of Nigeria. The Applicants left Nigeria and travelled to Canada in 2016.

[3] The Principal Applicant claims that she has been accused of witchcraft by her husband's family. As a result, the Principal Applicant alleges that her husband's family demanded that she and her daughters undergo female genital mutilation [FGM] and other cleansing rituals. The Principal Applicant refused to allow herself or her children to be subject to these procedures. Consequently, she alleges that her husband's family wish to kill her and force FGM on her daughters.

[4] The RPD denied the Applicants' refugee claims on May 3, 2017. The RPD determined that a viable internal flight alternative [IFA] existed in Nigeria at Port Harcourt. The RPD acknowledged the crime and militancy affecting Port Harcourt in general, but concluded that there was insufficient evidence that the Applicants would be specifically targeted.

[5] Although the presence of a viable IFA was determinative, the RPD also addressed the claim of the Principal Applicant's son. Because the claim centred on FGM and the Principal Applicant testified that her son would not be harmed in Nigeria, his claim for refugee protection was denied even in the absence of the viable IFA.

III. DECISION UNDER REVIEW

[6] The RAD dismissed the appeal on January 8, 2018 because the presence of a viable IFA was determinative.

[7] The Applicants submitted an affidavit produced by the Principal Applicant's husband as new evidence before the RAD. The affidavit corroborated the Applicants' claims by describing how the police, priests, and the husband's sister have repeatedly attempted to find the Applicants in order to perform cleansing rituals and FGM. Additionally, the affidavit claims that the Principal Applicant's son would be endangered if returned to Nigeria.

[8] The Applicants requested an oral hearing pursuant to s 110(6) of the IRPA. The RAD determined that, although the new evidence was admissible, an oral hearing was not warranted because the evidence was not central to the Applicants' refugee claim. Furthermore, the RAD held that, even if accepted, the new evidence would not justify allowing or rejecting the claim for refugee protection.

[9] The RAD went on to assess the RPD's determination that the Principal Applicant's son did not face persecution in Nigeria. The RAD confirmed the RPD's determination based on the Principal Applicant's testimony that her son would not be in danger in Nigeria. Moreover, the RAD held that the son also has a viable IFA in Port Harcourt with the rest of his family.

[10] Finally, the RAD held that the RPD was correct in finding that a viable IFA exists in Port Harcourt for the Principal Applicant and her daughters. The RAD determined that the Applicants had not met the burden of proving that there is a reasonable chance or serious possibility of persecution in the Port Harcourt area. In arriving at this conclusion, the RAD considered the locations of the individuals accused of targeting the Applicants. The RAD also considered the argument that the nature of the Principal Applicant's line of work in hospitals would expose her to her persecutors. Finally, the RAD considered the fact that one of the alleged persecutors travels throughout the country for business. None of these considerations led the RAD to find, on a balance of probabilities, that there was a serious possibility that the Applicants would face persecution in Port Harcourt.

[11] The RAD agreed with the RPD's finding that it is possible for the Principal Applicant and her husband to refuse to allow their daughters to be subject to FGM. In arriving at this conclusion, the RAD considered documentary evidence about forced FGM as well as the presence of effective state protection. Furthermore, the RAD determined that there was insufficient evidence to find that refusing FGM would lead to the killing of any of the Applicants.

[12] According to the RAD, it would not be unreasonable for the Applicants to relocate to the IFA location. The RAD determined that it would be difficult, but not unreasonable, for the Applicants to establish themselves in Port Harcourt. In arriving at this conclusion, the RAD considered the personal circumstances of the Applicants as well as the security situation in

Port Harcourt. The RAD determined that the presence of a viable IFA was determinative of the appeal.

IV. ISSUES

[13] The issues to be determined in the present matter are the following:

(1) What is the standard of review?

(2) Was an oral hearing necessary?

(3) Was the Decision reasonable?

V. STANDARD OF REVIEW

[14] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*], held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[15] The standard of review applicable to the RAD's decision not to hold an oral hearing is reasonableness (*Tchangoue v Canada (Citizenship and Immigration)*, 2016 FC 334 at para 12).

A standard of reasonableness is also applicable to the RAD's determinations on questions of mixed fact and law such as the presence of a viable IFA (*Olalere v Canada (Citizenship and Immigration)*, 2017 FC 385 at para 19 [*Olalere*]).

[16] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at para 47, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

VI. STATUTORY PROVISIONS

[17] The following statutory provisions of the IRPA are relevant to this application for judicial review:

Evidence that may be presented	**Éléments de preuve admissibles**
110(4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the	Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment

rejection.

Hearing

110(6) The Refugee Appeal Division may hold a hearing if, in its opinion, there is documentary evidence referred to in subsection (3)

(a) that raises a serious issue with respect to the credibility of the person who is the subject of the appeal;

(b) that is central to the decision with respect to the refugee protection claim; and

(c) that, if accepted, would justify allowing or rejecting the refugee protection claim.

Decision

111 (1) After considering the appeal, the Refugee Appeal Division shall make one of the following decisions:

(a) confirm the determination of the Refugee Protection Division;

(b) set aside the determination and substitute a determination that, in its opinion, should have been made; or

(c) refer the matter to the Refugee Protection Division for re-determination, giving the directions to the Refugee Protection Division that it considers appropriate.

du rejet.

Audience

110(6) La section peut tenir une audience si elle estime qu'il existe des éléments de preuve documentaire visés au paragraphe (3) qui, à la fois :

a) soulèvent une question importante en ce qui concerne la crédibilité de la personne en cause;

b) sont essentiels pour la prise de la décision relative à la demande d'asile;

c) à supposer qu'ils soient admis, justifieraient que la demande d'asile soit accordée ou refusée, selon le cas.

Décision

111 (1) La Section d'appel des réfugiés confirme la décision attaquée, casse la décision et y substitue la décision qui aurait dû être rendue ou renvoie, conformément à ses instructions, l'affaire à la Section de la protection des réfugiés.

VII. ARGUMENT

A. *Applicants*

[18] The Applicants say that the RAD committed two major errors which render its Decision unreasonable. Firstly, the RAD erred in refusing to hold an oral hearing. Secondly, the RAD erred in its determination that a viable IFA exists for the Applicants.

[19] The Applicants claim that the new evidence submitted to the RAD was central to their claim for refugee protection. Accordingly, the RAD should have held an oral hearing. The Applicants argue that the RAD's refusal to hold an oral hearing was unreasonable and that the RAD failed to provide a sufficient explanation for this decision.

[20] The Applicants also say that the RAD failed to properly conduct the two-pronged analysis described in *Siddique v Canada (Citizenship and Immigration)*, 2014 FC 992 [*Siddique*] for a viable IFA. Specifically, the Applicants assert that the RAD failed to assess the Applicants' subjective fear of living in Port Harcourt as well as the objective evidence about the militancy in the region. Furthermore, the Applicants say that the RAD failed to properly assess the evidence related to the reasonableness of relocation to the IFA.

[21] The first prong of the test in *Siddique* requires a consideration of the risk posed to the Applicants' lives by the ability of the alleged persecutors to find them in Port Harcourt. The Applicants argue that the RAD failed to properly consider the ability of the alleged persecutors

to track them down. The RAD required definitive proof that the Applicants could be tracked down in Port Harcourt rather than proof on a balance of probabilities.

[22] The Applicants also argue that the RAD failed to properly consider the second prong of the *Siddique* test. From the Applicants' perspective, the expensive housing in Port Harcourt and the lack of social services make the city an unreasonable IFA. The RAD did not properly take these factors into consideration.

[23] The Applicants also argue that the RAD did not consider the Principal Applicant's testimony that Port Harcourt is an unreasonable IFA due to militancy. The Applicants submit that objective evidence demonstrates the prevailing insecurity in the region.

[24] The Applicants say they refuted the RAD's determination that it is possible for parents in Nigeria to refuse to allow their daughters to be subject to FGM. This finding stems from a "western paradigm." According to the Applicants, proper consideration of this issue from the appropriate cultural and social viewpoint leads to the conclusion that parents cannot always simply refuse this procedure. Additionally, the Applicants say that the RAD erred in finding that there is effective state protection in Nigeria against forced FGM.

[25] The RAD also failed to properly consider the objective evidence concerning the risk facing individuals in Nigeria who are accused of witchcraft.

[26] Finally, the Applicants claim that the RAD failed to assess the psychotherapist report that they submitted.

B. *Respondent*

[27] According to the Respondent, the RAD clearly and intelligibly explained that the new evidence did not touch upon the central issue which was the presence of a viable IFA in Port Harcourt.

[28] The Respondent says that the RAD's determination that a viable IFA exists was reasonable and based on all relevant evidence. The RAD did not, in fact, require definitive proof that the Applicants could be tracked down. Instead, the RAD properly undertook this analysis based on a balance of probabilities.

[29] Also, the RAD did not err in concluding that militancy in the region did not render the IFA unreasonable. This conclusion was based on the RAD's analysis of the documentary evidence.

[30] The Respondent argues that the RAD also properly assessed the relevant evidence regarding the ability of parents to refuse to allow their daughters to undergo FGM. The RAD's conclusion on this issue is based on objective evidence rather than a Western worldview. Similarly, the Respondent argues that the RAD's analysis did not unjustifiably ignore the risk facing those accused of witchcraft.

[31] The Respondent says that the RAD did not ignore any material piece of evidence. The specific circumstances of the Applicants and the characteristics of Port Harcourt, for example, were factored into the IFA analysis. Similarly, the Respondent submits that the RAD did consider the psychotherapist's report and explicitly referenced this report in the Decision.

VIII. ANALYSIS

[32] The Applicants raise a plethora of issues and make assertions that are not borne out by a simple reading of the Decision. I will deal with each in turn.

A. *Failure to Hold an Oral Hearing*

[33] The Applicants complain that the RPD "does not provide a rational basis for concluding that the affidavit of Mr. Onyeme was not central to the Applicants' claim." This means, say the Applicants, that the "reasoning and analysis of the [RAD] regarding the new affidavit of Mr. Onyeme is therefore intelligible [*sic*] and unclear." I take the Applicants to mean that it is "unintelligible."

[34] The RAD goes into considerable detail about Mr. Onyeme's affidavit and then clearly and reasonably explains why the affidavit is not central to the "decision with respect to the refugees protection claim and, if accepted would not justify allowing or rejecting the refugee protection claim":

> [12] The affidavit submitted as new evidence is dated post rejection of the claim. It adds that Ms Uwa engaged police to locate the female Appellants and the police assaulted Mr. Onyeme. The explanation statement by Mrs. Onyeme seeks to provide

> additions to submissions and testimony in regard to Joshua's risk and the safety and reasonableness of the IFA, which were or could have been made prior to the RPD's decision, and these are not accepted into evidence.
>
> [13] I have canvassed this new affidavit evidence and find that it is relevant to the fear alleged, the Appellants being sought out for harm by Mr. Onyeme's family. On this basis, I find that it is new with respect to the s. 110(4) criteria and satisfies the *Singh* factors.
>
> **Request for an Oral Hearing**
>
> [14] The RAD may hold a hearing if, in its opinion, there is documentary evidence referred to in section 110(3) that raises a serious issue with respect to the credibility of the person who is the subject of the appeal, is central to the decision with respect to the refugee protection claim, and, if accepted, would justify allowing or rejecting the refugee protection claim.
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> [15] In this case, I find the document above admissible, however, it is not central to the decision with respect to the refugee protection claim, and, if accepted, would not justify allowing or rejecting the refugee protection claim. The RPD accepted the allegations of threats from the Appellants' family members, with notable credibility concerns, but found that they would be safe in Port Harcourt. Therefore, I cannot hold a hearing based on evidence relating to the alleged threat in Lagos and deny the request.
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> [Emphasis added, footnotes omitted.]

[35] The Applicants simply mistake what the Decision clearly says and the basis for the RAD's treatment of the new affidavit. The threats mentioned in the affidavit may, in one sense, be central to the claim, but the RPD accepted these threats. The point is that the affidavit is "not central to the decision" which is based upon a viable IFA in Port Harcourt. There is no reviewable error on this point.

B. *Subjective Fear and IFA Analysis*

[36] The Applicants make the following assertions:

> 20. In the present case, the Panel omitted to conduct a thorough analysis of the subjective fear of the Applicants thereby basing its conclusion that there is an IFA on arbitrary and capricious grounds.
>
> 21. Since the Applicants testified that Port Harcourt was not a reasonable IFA for a number of reasons, the Panel should have considered the Applicants' testimony on the issue and carried out a thorough analysis of the subjective fear of the Applicant[s].

[37] The Applicants appear to be suggesting here that, in an IFA analysis, it is their subjective fear that should carry the day. However, the principles that govern an IFA analysis are set out in *Rasaratnam v Canada (Employment and Immigration)*, [1992] 1 FC 706 at 711 (FCA). The Applicants must demonstrate that there is no serious possibility of persecution in the IFA and that the conditions in the IFA would not make it unreasonable to seek refuge there.

[38] Justice Linden in *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 stated (at para 14) that,

> In conclusion, it is not a matter of a claimant's convenience or the attractiveness of the IFA, but whether one should be expected to make do in that location, before travelling half-way around the world to seek a safe haven, in another country. Thus, the objective standard of reasonableness which I have suggested for an IFA is the one that best conforms to the definition of Convention refugee. That definition requires claimants to be unable or unwilling by reason of fear of persecution to claim the protection of their home country in any part of that country. The prerequisites of that definition can only be met if it is not reasonable for the claimant to seek and obtain safety from persecution elsewhere in the country.

[39] As the Decision makes clear, the RPD does, in fact, carry out a "thorough analysis" based upon the governing jurisprudence. There is nothing "arbitrary" or "capricious" about the grounds used by the RAD to find that the Applicants had a viable IFA available to them in Port Harcourt.

C. *IFA Analysis*

(1) First Prong

[40] With respect to the first prong of the IFA test, the Applicants say that the RAD "failed to properly consider the evidence adduced by the Principal Applicant regarding the risk to her life and the Minor Applicants and the ability of their agent of persecution to detect them at the IFA location of Port Harcourt." When it comes to specifics, the Applicants raise the following points:

(a) *Ibadan*

[41] The Principal Applicant says that when she testified before the IAD about how her sister-in-law could find her "she was referring to the fact that the agent of persecution could easily detect her in Ibadan." However, if this was an error, the Applicants fail to explain how it undermines the Port Harcourt IFA assessment. In my view, it is, in fact, entirely irrelevant to that analysis.

(b) *Requiring Definitive Proof*

[42] The Applicants complain as follows:

> 27. The Panel focused on an alleged limitation of the Applicants' agent of persecution's [*sic*] to detect them because the

> Applicants had not supplied evidence important to the Panel to establish their influence.
>
> 28. It is submitted that in reaching the conclusion, the Panel seems to suggest that the Appellant show definitive proof of the influence of her agent of persecution in reaching her in the IFA location. It the [*sic*] Panel held the Appellant to a higher standard of proof y [*sic*] requiring that they provide proof or evidence of the ability of their agent of persecution to locate them in the IFA location or Port Harcourt, a balance of probabilities.
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> …
>
> 30. The Panel put the Applicants to a higher test by requiring that the Applicants show that he would be able to locate them at the IFA location and it[s] subsequent decision that there was no serious possibility of persecution against the Applicants is an error.

[43] Nowhere in the Decision does the RAD put the Applicants to a "higher test" or require "definitive proof." The RAD makes it quite clear throughout what the burden of proof is. The following are examples of this:

> [22] In order to determine whether a viable IFA exists, I have considered the two-pronged test outlined in the Federal Court of Appeal decisions of *Rasaratnam* and *Thirunavukkarasu*. The criteria for establishing the existence of an IFA were reviewed and the submissions about the ability of the principal Appellant's sister-in-law to locate the Appellants and persecute them there considered. The Appellants bear the burden of proof to show that they face a serious possibility or reasonable chance of persecution in the entire country and specifically in the potential IFA area. The IFA must also be reasonable in the circumstance for the Appellants. For the following reasons, they have not met that burden and Port Harcourt would provide an appropriate IFA for these Appellants.
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> …
>
> [24] The Appellants submit that the RPD erred in not finding that Mrs. Onyeme, working at a hospital, would be easily detected by Ms Owa or a common acquaintance. Ms Owa sells cassava flour in different states. This argument presupposes that being in the same state equates with being detected by the agent of harm

> and I cannot agree, especially as the Appellant must establish that likelihood on a balance of probabilities. Though the Appellant is not restricted to working in a hospital in Port Harcourt, she argues that she would be discovered there by unexplained means and unidentified persons.
>
> [25] No evidence was presented as to the influence of the agents of persecution inside or outside Port Harcourt. Only Ms Owa and an uncle Michael were referred to in the Appellants' narrative. There is no evidence suggesting that the Onyeme family are linked to a group with means and capability of searching for and locating the Appellants, or that they would know of the relocation, and there is no connection whatsoever between her line of work and that of her feared sister in law. The testimony does not refer to any ability of the principal Appellant's family to seek them out. Mr. Onyeme has not felt threatened to the extent that he has felt the need to relocate from Lagos, where he alleges threats from his family have occurred, or reported any incidents of police corruption to higher authorities. All that remains is the credible assertion that because Ms Uwu travels for her cassava selling business, she may find herself in the same state at the same time as the Appellants, and this, without more, cannot be the basis of a finding that the agents of harm will locate the Appellants and that consequently they face a serious possibility of persecution for the alleged reasons.
>
> [26] The RAD must be satisfied, on a balance of probabilities, that there is no serious possibility of the Appellants being persecuted in the part of the country to which it finds an IFA exists. The RAD finds that, the minor female Appellants will not face a serious possibility of being subjected to FGM in Port Harcourt, and Mrs. Onyeme and Emmanuella will not face a serious possibility of being forced to undergo cleansing rituals, as suspected witches, upon relocation there.
>
> [Footnotes omitted.]

(c) *Failure to Consider Militants*

[44] The Applicants say as follows:

> 31. Additionally, the Panel did not consider the Principal Applicant's testimony as to the reason why she could not relocate

> to Port Harcourt which would essentially put her life at risk. The Principal Applicant's response was that she could not relocate to Port Harcourt due to the activities of militants in Port Harcourt.
>
> …
>
> 33. The Panel ignored the Principal Applicant's testimony regarding their inability to relocate to Port Harcourt because of the level [of] insecurity in the Port Harcourt and this is an omission.

[45] As the Decision shows, this issue is fully considered:

> [42] Mrs. Oneyemi also testified that a reason she cannot live in Port Harcourt is the militancy there. The unreasonableness alleged based on militancy in the capital city was found by the RPD to be speculative. Country condition evidence in regard to kidnappings increasing across the country in 2011 by gangs for economic gain, particularly in Lagos, where the Appellants have lived for some time, is the only argument put forward on appeal in this respect.
>
> [43] The Appellants' point to a 2014 Responses to Information Request stating that kidnapping for ransom has become "fluid, diffuse, unpredictable, and widespread in southern Nigeria." Reports describe the crime as "opportunistic" and show that kidnapping is done by criminal organizations for ransom and economic gain. The main targets have been political figures, the wealthy, and foreigners, though targeting of average or "middle class. Nigerians increased in 2013, especially in Lagos. People targeted for ransom kidnapping include: high-profile Nigerians, and their family members; foreign nationals; wealthy families or "perceived high-value targets"; politicians and their family members; government officials; relatives of celebrities; foreign businessmen or staff of "influential" companies; doctors, teachers, foreign residents; and religious leaders. Sources report that in the Niger Delta region, oil and gas workers are the primary targets of such kidnappings, particularly expatriate oil workers. Given that the Appellants would be returning to Port Harcourt, not Lagos, and they do not fit the profile of those most at risk of kidnapping, the RAD finds the Appellants have not established that the IFA is not reasonable in their particular circumstances.
>
> [Footnotes omitted.]

(d) *Failure to Consider Objective Evidence*

[46] The Applicants complain that the RAD failed to consider "objective evidence in support of the Principal Applicant's testimony regarding the activities in the Niger Delta…." However, the RAD analyses at length the report relied upon by the Applicants. See para 43 of the Decision, quoted above. The Applicants do not suggest anything that is deficient or unreasonable in this analysis.

(e) *FGM*

[47] The Applicants say that the RAD overlooked evidence that FGM "could still be possibly carried out where the father's family support it." Such evidence is not overlooked. The RAD specifically (para 28) acknowledges that "Counsel for the Appellants points to evidence [National Documentation Package] and testimony which does not support his contention that FGM is a risk where both parents refuse it."

[48] The RAD then goes on to provide a full analysis of what the documentation reveals on this issue and comes to the following conclusions:

> [33] Recognizing that, depending on the area and cultural practices, cleansing rites can include circumcision, I note that the majority of sources in the documentary evidence indicate that consequences for refusal of traditional FGM would be limited to ostracism and peer pressure. I have not found mention in the documentary evidence available that children are taken by force to undergo FGM in cases where both parents refuse. Further, Mrs. Onyeme describes that she and Emmanuella are wanted to undergo FGM-as a cleansing rite for reason of witchcraft accusations, however, no serious harm has come to Mrs. Onyeme since her accusation in October 1993 or following the deaths of her

> in-laws 2011 and 2016, though she has been accessible to both her uncles and her husband's family in Lagos. She testified that Ms Owa had come to fight her on several occasions over the years, however, she did not feel a risk to her life for this reason and doesn't mention such a fear for her daughter.
>
> [34] Country Information and Guidance from the UK Home Office indicates that in general, effective state protection is available against forced FGM and that laws are more easily enforced in urban areas. In the Rivers state, it is reported in a Demographic and Health Survey that 13% of women have undergone some form of FGM, after the passing of the *Female Circumcision Law* of 2001. The survey also indicates that among Ijaw women in Nigeria, aged 15-49, 11% had undergone the practice. On a balance of probabilities, I find that as both parents are against FGM and given that it is more common than not for Ijaw women and girls and those living in Port Harcourt to not be involved in the procedure, there is less than a mere possibility that it would occur upon the Appellants return. Further, there is no credible evidence that anyone in the family would be murdered as a result of the refusal. I do not find any independent evidence to support this allegation.
>
> [Footnotes omitted.]
>
> (f) *Cultural Perspectives*

[49] The Applicants further complain that the "Panel did not view the Principal Applicant's testimony from her cultural and social perspective" and "viewed her testimony through lenses of western paradigm [*sic*]." In addition, they say that "the Panel similar to the RPD imposed western concepts, logic and experience without regard for the socio political and cultural context based on the specific context of the Applicants."

[50] This bald assertion is not substantiated by the Applicants and a reading of the Decision reveals that the RAD clearly relied upon objective documentary evidence that contradicted the Applicants' stated beliefs and assertions. There is no hint of reliance upon western paradigms.

(g) *Husband's Affidavit*

[51] The Applicants allege that the affidavit of the Principal Applicant's husband (which says that their son's life would be at risk) and the "contents in the affidavit of the Principal Applicant" were taken out of context "in order to find the Applicants unbelievable."

[52] The Decision is based upon the objective evidence of the availability of a viable IFA. It is not based upon credibility issues, and the Applicants fail to explain how any alleged error concerning the affidavit materials could have changed the outcome of their appeal to the RAD.

(h) *Looking to the Past*

[53] The Applicants assert that the RAD erred because "since no serious harm had come to the Applicants in the past, it made an inference that there was no harm to the Applicants [*sic*]." The Applicants' point is that "the question is not whether the claimant had valid reasons to fear persecution in the past, but whether, at the time the claim was being assessed, the claimant has good grounds for fearing persecution in the future." In other words, the Applicants say the RAD focussed unreasonably on the past persecution of the Applicants when its focus should have been the future fear of the Applicants.

[54] In assessing future risk, past family conflict had to be examined together with any other evidence of a future risk. This is clearly apparent in the RAD's reasoning, which deals with future risk in the context of an IFA analysis.

(i) *Accusations of Witchcraft*

[55] The Applicants assert that "the Panel failed to appropriately consider evidence regarding the risk against those accused of being witches which includes death." The Applicants also argue that, in finding that they faced only ostracism for not allowing FGM on their daughter, evidence that they could be killed was ignored.

[56] Once again, these bald assertions are belied by the full discussion on point contained in the Decision:

> [28] Counsel for the Appellants points to evidence and testimony which does not support his contention that FGM is a risk where both parents refuse it. The NDP documents referred to in appeal discuss a situation where only the mother opposes FGM and prevalence statistics. The testimony cited confirms both parents do not agree to FGM for their daughters and vaguely addresses the beliefs of Mrs. Onyeme's family in practicing FGM as a tradition.
>
> [29] When questioned by her counsel at the RPD hearing about the NDP documentation, Mrs. Onyeme clarified that the consequence of both parents not agreeing to FGM for their daughters would be that a curse will be laid on them and future generations by "the deity." She believes this has happened, as evidenced by the downturn in her husband's business activity. I find this and the new evidence from Mr. Onyeme indicating an attempt at removal of the Appellants for forced FGM to be at odds with the alleged fears of being murdered for not undergoing FGM as a cleansing ritual.
>
> [30] The RPD found, and I agree, that it is open to the family to simply refuse FGM for Mrs. Onyeme and their daughters without the severe consequences alleged. The principal Appellant testified

> that both she and her husband are against and have refused the practice of FGM, and that they have been cursed as a result. She has stated variably that because of their families' traditions, their daughters will be forced to undergo FGM and that they will all be killed. Emmanuella testified she understands that the reason she fled Nigeria is because she will be killed for not undergoing FGM. I agree with the RPD in finding this testimony to be speculative and not supported by the objective evidence.
>
> [31] A Response to an Information Request (RIR) on whether parents can refuse FGM for their daughters, notes that several sources indicated that they can, especially where both agree, and that ". . . "nobody will walk into [somebody else's] home" to perform FGM on their daughters and that "parents are free to refuse it." As the parents are the ones responsible for this practice. While this document does indicate that some less educated couples will obey to the authority of the extended family, this is not relevant in the present circumstances, as the adult Appellants are both educated and independent people and refused the practice over time, after also marrying in the context of strong family opposition.
>
> [32] A second NDP document, referring to the consequences for refusing to undergo this procedure, also indicates that if husbands support their wives there is no forcing of a woman to undergo FGM. A third source, a women's rights Nongovernmental Organization (NGO), indicates that while cleansing rituals do occur, especially in rural areas of southern Nigeria, cleansing rites are for women to pass through before marriage and it is "extremely rare" for circumcision to be part of cleansing rituals. Women, especially older widowed women, may, in some ethnic groups, particularly in rural areas, be accused of being witches where unexplained deaths occur. Expulsion from the village and the community, exclusion or forced seclusion, and in extreme cases death might be carried out.
>
> [Footnotes omitted.]

(j) *Contrary Evidence*

[57] The Applicants refer to various objective sources that they say were overlooked when state protection against forced FGM was assessed. However, as the paragraphs quoted above

show, general problems are acknowledged but more specific evidence is preferred. There is no suggestion that contrary evidence was overlooked or that evidence was selectively relied upon.

(2) Second Prong

[58] With regards to the second prong of the IFA test, the Applicants say that the "Panel failed to properly consider the evidence adduced by the Principal Applicant regarding the reasonableness of relocating to the IFA location" and the "Panel did not holistically consider the details in [*sic*] contained in the National Documentation Package for Nigeria regarding Port Harcourt similar to the RPD which the Principal Applicant testified to at the hearing."

[59] The Applicants specifically point to information that "housing is expensive in Port Harcourt" and "there are no social services in place." All in all, the Applicants say that the reasonableness of relocation was not "viewed holistically" and the RAD failed to "appreciate the variables that are working against the Applicants if required to relocate to Port Harcourt…."

[60] The Applicants may disagree with the RAD's conclusions but the Decision reveals that the RAD acknowledged and paid particular attention to factors that the Applicants say were overlooked. For example, the RAD addressed the cost of housing as follows:

> [38] Based on the Appellant's testimony that her husband's business has taken a downturn, she was asked by her counsel if she and Mr. Onyeme were to move to Port Harcourt, if they would be able to afford to rent a house. She simply responded "no." Mrs. Oneyemi clearly testified that among the reasons she cannot live in Port Harcourt is that she doesn't have anybody there to accommodate her and her children, and it is expensive. Taking into account the recent international travel within Africa, Europe and Canada, as well as the decision to send some of her children to

> private school, and the employment prospects of Mrs. Onyeme and her husband discussed above, I do not find that the financial cost of relocation has been shown to be unreasonable in the circumstances.
>
> [39] There is "a very high threshold for the unreasonable test. It requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions." While I am mindful of the fact that relocation is inherently difficult, the Appellants have not provided such evidence.
>
> [Footnotes omitted.]

[61] The Applicants have not shown that this analysis was unreasonable.

(3) Psychotherapist Report

[62] Finally, the Applicants complain that, in assessing the reasonableness of an IFA in Port Harcourt, the RAD "failed to consider the psychotherapist report of the Principal Applicant and this is a great omission."

[63] This "great omission" is, in fact, specifically mentioned by the RAD which acknowledged what the report says:

> [35] Conditions in that part of the country considered to be an IFA must be such that it would not be unreasonable, in all circumstances, including those particular to the Appellants, for them to seek refuge there. The RPD found that an IFA in Port Harcourt was reasonable based on Mrs. Onyeme's personal and familial profile. The reasons provided for it not being reasonable were not accepted. They included the financial cost, being non-indigene, and psychotherapist evidence that Mrs. Onyeme would have difficulty in returning to Nigeria.
>
> [36] I am of the view that there is no evidence that the principal Appellant and her children would be living apart from her

> husband; to the contrary, Mr. Onyeme has been in continuous contact with his children and states recently that he is afraid to lose his family as he loves them very dearly, and so this reunion is assumed, as it was by the RPD, in the analysis to follow.
>
> [Footnotes omitted.]

[64] At the hearing of this application, the Applicants adjusted their position to say that the report had not been adequately considered. The psychotherapist report lists the Principal Applicant's symptoms and then advises that "I believe that returning to Nigeria, where Ms. Onyeme and her children could face danger and significant trauma, will be harmful to them all. It is clearly in their best interests to remain in Canada." The report then goes on to list the "medical and therapeutic care" available to the Applicants in Canada.

[65] The RPD considered the report and addressed it as follows:

> The panel is mindful that there is psychological evidence on the file, but does not find that this makes relocation unreasonable for the principal claimant. The principal claimant saw a registered psychotherapist who found that the claimant exhibited symptoms consistent with post-traumatic stress disorder, general anxiety disorder and major depressive disorder and that her symptoms could increase upon return to Nigeria. The psychotherapist noted that the claimant could work through her symptoms through medical and therapeutic care and while this would be potentially more difficult in Nigeria, the panel does not find this renders relocation unreasonable.
>
> (Certified Tribunal Record at page 400)

[66] The Applicants rely upon my decision in *Olalere*, above, where I said (at para 60):

> In each individual case, it seems to me, it will be necessary to examine what the psychological report says, and whether it raises issues that should be addressed in the second prong of the IFA analysis.

[67] The situation in *Olalere* is distinguishable. In that case, the RAD did not even acknowledge the psychological evidence. Here, the Decision acknowledges the psychotherapist report and discusses its relevance to the second prong of the IFA analysis.

[68] There is no dispute that it would be in the Applicants' "best interests" to remain in Canada as recommended by the report, but that is not the issue here. The report does not say that the Applicants cannot return to Nigeria for medical reasons, and it does not address the impact of the Applicants reuniting with their husband and father. Given the basis of the Decision and the contents of the report, I don't think that the RAD's treatment of it can be said to be unreasonable.

IX. CONCLUSION

[69] The Applicants clearly disagree with the Decision and think it should have been made in their favour. Disagreement is not a ground for judicial review and the Applicants have not substantiated the many allegations of unreasonableness which they raise.

[70] The parties agree there is no question for certification and I concur.

JUDGMENT IN IMM-412-18

THIS COURT'S JUDGMENT is that

1. The proper name of the Respondent under statute is the Minister of Citizenship and Immigration, therefore, the style of cause is amended as such.
2. The application is dismissed.
3. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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PLACE OF HEARING:	TORONTO, ONTARIO
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