

Federal Court



Cour fédérale

Date: 20190111

Docket: IMM-1631-18

Citation: 2019 FC 38

Ottawa, Ontario, January 11, 2019

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

**VANESSA ONAIWU IDUOZEE,
OSAYUWAMEN HAVANA IDUOZEE,
AIZEYOSABOR HARRY IDUOZEE,
OSAHENRUNMWN HAWARD IDUOZEE**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Principal Applicant and her three minor children (collectively, the “Applicants”) are citizens of Nigeria. The Principal Applicant filed a refugee claim in Canada because she does not want her children to undergo traditional rituals. In particular, she does not want her daughter to

have to undergo female genital mutilation, or for her two sons to be cut at least 14 times (which takes place using a dirty knife in unsanitary conditions).

[2] On May 19, 2017, the Refugee Protection Division of the Immigration and Refugee Board of Canada (the “RPD”) rejected the claim. The RPD found that the Principal Applicant is not credible and that parents can refuse to allow their children to undergo traditional rituals.

[3] The Applicants appealed the decision to the Refugee Appeal Division (the “RAD”) arguing, among other things, that she did not have a chance to respond to credibility concerns. On March 15, 2018, the RAD upheld the RPD’s decision. On April 9, 2018, the Applicants applied to this Court for judicial review.

[4] For the reasons below, I am setting aside the RAD decision.

II. **Facts**

[5] The Principal Applicant, Vanessa Onaiwu Iduozee, is a 33 year old citizen of Nigeria. She is married to Sunny Aiyeki Iduozee who is allegedly the son of a traditional king in Benin, Edo State, Nigeria. In 2006, both the Principal Applicant and her husband converted to Christianity. This upset their extended family to the point that they became hostile towards the Iduozees. In 2013, due to the hostilities, the Iduozee family moved from Benin to Lagos.

[6] The Iduozees have three Nigerian children (9 year old son Aizeyosabor Harry Iduozee; 8 year old daughter Osayuwamen Havana Iduozee; and 5 year old son Osahenrunmwun Haward Iduozee). These three children are the minor Applicants in this judicial review. The Iduozees also

have one Canadian son (1 year old David Osama Iduozee) who was born in Toronto after the refugee claim was filed.

[7] The Principal Applicant and her three children arrived in Canada on November 19, 2016. Mr. Iduozee remained in Lagos. On November 26, 2016, his elder brother, Chief Festus Iduozee (traditional King), sent people to the Iduozee's home to make sure their children undergo the traditional rituals (female circumcision for the daughter and cutting for the sons) to initiate them to the family shrine.

[8] Upon learning that the children were in Canada, these people assaulted Mr. Iduozee for disobeying the King and the custom of the land. The King gave the Iduozee family until December 7, 2016 to produce their children. If they did not, the King would have the children apprehended to carry out the rituals. Due to the assault, Mr. Iduozee was hospitalized at the Olive Medicare Hospital.

[9] The Principal Applicant and her husband do not want their children to undergo the traditional rituals. She alleges that on November 29, 2016, Mr. Iduozee made a police report, but the police told him to settle it from the palace.

A. *The RPD Decision*

[10] The Principal Applicant made a refugee claim for herself and her three children. She fears that her husband's family will perform the rituals on their minor children against their wishes if they were to return to Nigeria. The evidence she submitted in support of her claim included an affidavit from her sister, two affidavits from Mr. Iduozee, a Crime Diary Extract

regarding the November assault, a document from Olive Medicare Hospital, undated photos of her husband's injuries, a Canadian medical report confirming the Principal Applicant is circumcised and her daughter is not, pictures of the Chiefs, and a list of the Chief's names.

[11] After a two day hearing (March 9 and March 15, 2017) the RPD rejected the claim in a decision dated May 19, 2017. The RPD found there is no prospective risk because, according to the documentary evidence, parents can refuse the rituals. The RPD also decided the Principal Applicant is not credible because her testimony was vague and inconsistent. For instance, although the Principal Applicant alleges that she grew up with the traditions and married into the royal family, she knew little about the tradition. In addition, she provided inconsistent testimony about whether her husband's family had been violent in the past.

[12] The documentary evidence also led the RPD to draw a negative inference. For example, the sister's affidavit is dated February 8, 2017 but contains information about events that occurred on February 10, 2017. And while the sister's affidavit said five men came to her home to look for the Principal Applicant, the Principal Applicant testified that her sister told her three men had come to the home. The RPD rejected the Principal Applicant's subsequent clarification that three men were inside the home and two were outside the home.

[13] The RPD also took issue with the Crime Diary Extract dated November 28, 2016. The RPD noticed that it is an original, and did not believe that the police would provide an original document rather than a copy. The RPD was further critical because the Principal Applicant provided inconsistent information about when her husband received the Crime Diary Extract from the police.

[14] Although Mr. Iduozee provided affidavits, the RPD gave them less weight. It noted that fraudulent documents are widespread in Nigeria, and neither affidavit came with an identity document. Furthermore, the RPD noted that Mr. Iduozee's first affidavit, dated December 6, 2016, has identical wording to the Crime Diary Extract, yet supposedly these two documents are written by different people.

[15] The RPD gave the Olive Medicare Hospital document no weight because the document's header contains a different address than the address on the Doctor's stamp. And although a Canadian doctor filed a report to confirm the daughter is not circumcised, the doctor does not speak to possible harm towards the daughter.

[16] The RPD also considered the National Documentation Package ("NDP"). Evidence cited in that package includes evidence that female genital mutilation is now against the law in Nigeria. The RPD also noted there is evidence that the Iduozee's ethnic group embrace female genital mutilation, and that parents from this group may be pressured to agree to circumcision. However, based on documents indicating that parents are free to oppose the rituals, the RPD found that, going forward, the Principal Applicant and her husband can refuse the ritual. Accordingly, on May 19, 2017 the RPD rejected the refugee claim.

B. *The RAD Decision*

[17] The Applicants appealed the RPD decision to the RAD and submitted further evidence. The new evidence included two new affidavits from Mr. Iduozee (one is unsigned), a palace notification letter threatening compulsory circumcision (that is not addressed to anyone in particular), an affidavit from the Principal Applicant's mother (who says she encouraged her

daughter to travel to Canada to avoid the circumcision and initiation rituals), a new affidavit from the Principal Applicant's sister, a police report made by the Principal Applicant's sister, and three undated photos of an apartment (described by the Applicants as destroyed, and described by the RAD as renovations).

[18] The RAD first reviews the new evidence, and finds that all of it postdates the RPD decision. However, the RAD found credibility issues with each piece of evidence. For example, the mother's affidavit says the family came to Canada to avoid the ritual, but the Principal Applicant's refugee claim says the threats occurred *after* arriving in Canada. Although the RAD rejected this affidavit on credibility concerns, this contradictory information still added to its overall credibility concerns of the Principal Applicant and the allegation of persecution.

[19] In addition, the RAD points out that the new affidavits are from the same people who the RPD determined had submitted non-credible affidavits at the RPD hearing. On this basis, the RAD rejected the affidavits for not satisfying the new evidence requirements. The undated pictures were also rejected as the RAD finds they do not have probative value.

[20] The Applicants argued that the RPD failed to put credibility concerns to them. However, the RAD disagreed, finding that the RPD asked "the [Principal Applicant] many questions (and follow up questions) asking her to explain and elaborate upon the allegations of persecution, as well as asking her to explain the inconsistencies in her testimony (internally) and in the other evidence, such as omissions in her Basis of Claim (BOC) form." The RAD points out that the appeal is not *de novo*, and the RPD tested the credibility of her testimony and documents at the hearing.

[21] The Applicants also argued that, since Mr. Iduozee made the report to the police, it makes sense that he would use the same words in his own affidavit. But like the RPD, the RAD points out that Mr. Iduozee's affidavit and the Crime Diary Extract contain similar wording. The RAD reviewed the audio, and finds that the RPD asked detailed and thorough questions about these two documents.

[22] The RAD also reviewed the negative inference drawn from the Principal Applicant's lack of knowledge about traditional belief. On this issue, the RAD defers to the RPD's meaningful advantage in assessing the oral testimony, and finds that it is based on the evidence. The RAD decision points out that the Applicants have previously traveled internationally and never received any threats in the past. The RAD then notes that Mr. Iduozee remains in Lagos despite having a visa, a newborn child in Canada, and undergoing an assault.

[23] Finally, the RAD also reviews the RPD's findings about prospective risk. Although the Applicants argued that the RPD's consideration of the country documents is selective, the RAD upholds the RPD's analysis. The RAD notes that the RPD considered the most recent research paper on female genital mutilation in Lagos, evidence that the practice is against the law in Nigeria, and evidence that parents are free to oppose female genital mutilation.

[24] In a decision dated March 15, 2018 the RAD rejected all the newly submitted evidence due to their own credibility concerns and upheld the RPD's decision.

III. **Issue**

[25] The only issue on this application for judicial review is whether the RAD's decision is reasonable.

IV. **Standard of Review**

[26] The reasonableness standard of review is applied by this Court to the RAD's review of the RPD's decision (*Canada (Minister of Citizenship and Immigration) v Singh*, 2016 FCA 96 at para 29).

V. **Analysis**

A. *Is the RAD's decision reasonable?*

[27] The Applicants argue that the RAD did not address the RPD's failure to assess the contrary evidence about prospective risk. More specifically, the Applicants state that the RPD relied on an article to say that parents are free to oppose the rituals but does not mention that this same article goes on to explain that refusals come with consequences such as "ostracism, stigmatisation and blackmailing, denial of intracultural benefits and physical abuse". The Applicants also submit that the RAD did not address the RPD's failure to put credibility concerns to the Applicant.

[28] The Respondent submits that the RAD is not required to specifically deal with each of the Applicant's issues (*Asif v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1323 at para 30, citing *Construction Labour Relations v Driver Iron Inc*, 2012 SCC 65 at para 3; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*,

2011 SCC 62 at para 16). Furthermore, the Respondent points out that unless contradictory evidence relating to a central issue is not mentioned, a decision maker is presumed to have reviewed the evidence (*Cepeda-Gutierrez v Canada (Citizenship and Immigration)* (1998), 157 FTR 35 (FCTD) at para 16). In addition, the Respondent submits the RAD conducted its own review of the record, including listening to the audio recording, which it is entitled to do (*Mohamed v Canada (Citizenship and Immigration)*, 2016 FC 1419 at para 16).

[29] I agree with the Respondent that there is a presumption the decision maker considered the evidence. But as the Respondent goes on to point out, when the decision maker's reasons ignore contradictory evidence relating to a central issue, that presumption may be rebutted. On these facts, I find that the presumption is rebutted. The RAD decides that the Iduozees do not face prospective risk because they can oppose the rituals, but makes this finding in the face of evidence that refusals may lead to physical abuse and ostracism. In its reasons, the RAD does briefly say that there may be "consequences" if parents oppose the rituals. Yet it does not explain these consequences, it does not undergo any analysis about the Applicant's prospective risk in regards to these consequences, nor does it make any determination in respect of these consequences. Simply announcing that there are consequences does not discharge the duty to determine the Applicants' prospective risk.

[30] There was also evidence before the RPD that the Iduozees faced these consequences. In particular, the Principal Applicant testified that Mr. Iduozee was assaulted because of the belief that the family had refused to let their children undergo the traditional rituals:

PRINCIPAL CLAIMANT: Sorry, on the 26th of November I got a text message from a neighbor Kayode Bello that I should call home there is crisis so I called immediately, what is happening, he

said some people came to the house to beat up my husband that they took my husband to the hospital. I now requested who were the people that came to beat my husband up, he said he doesn't know but they speak Edo dialect which is my dialect so I was trying to call my husband I was not able to get through to him, he told me...I asked him who were the people that came to beat you up, he said Enogie sent people to the house to take the children but he refused he told them that we're not around we traveled, that they said that he did it deliberately, they started beating him because he said...they feel that he's going against what the Enogie...the Enogie...the rule of the Enogie which is the chief so they beat him up.

[Emphasis added.]

[31] Indeed, this assault is what led the Applicants to make a refugee claim while visiting friends in Canada. The Principal Applicant's testimony went on to say that her family cannot refuse the ritual because they are part of the traditional royal family. Although it is open for the RPD to rely on the documentary evidence for its finding that the family can refuse ritual cuttings, the ability to refuse is only a partial analysis of the prospective risk faced by this family. To say that the minor Applicant and her parents have a choice to refuse female genital mutilation is unreasonable when there is evidence that such refusals are accompanied by consequences including ostracism and abuse. As the RAD's decision is silent about these consequences, I infer that the RAD overlooked this vital evidence.

[32] The Applicants also argued that the RAD did not address their argument that they had no opportunity to respond to the RPD's credibility concerns. In their submissions to the RAD, they also addressed the RPD's credibility finding, asserting that it makes sense for Mr. Iduozee's affidavit and the police report to be similarly written because Mr. Iduozee himself made the police report. However, the RAD's reasons state that it reviewed the audio from the refugee

hearing and determined that the RPD had brought up its credibility concerns at the hearing with detailed and thorough questions:

[42] Upon its own review of all the documents, the RAD finds no error in the RPD's analysis and findings. Having listened to the audio recording of the hearing, the RAD find the RPD's questions (and follow-up questions) about the documents to be very detailed and thorough, including concerns about the credibility of the affidavits and a police extract...

[33] At first, this finding makes the RAD's decision seem reasonable in this respect—after all, the RAD explicitly says that the Applicants had their opportunity to respond to credibility concerns at the RPD hearing. But on my review of the CTR, the RAD's finding is inaccurate. In fact, the transcripts are devoid of any line of questioning about the affidavits and Crime Diary Extract. At most, the RPD asked when the Principal Applicant's husband obtained the Crime Diary Extract:

PRESIDING MEMBER: So the Crime Diary Extract can you tell me how your husband obtained a copy of it

PRINCIPAL CLAIMANT: Okay, when...

PRESIDING MEMBER: If you know

PRINCIPAL CLAIMANT: He le...when he left the hospital he went to report...lay report on what happened to him that's how he get...got the police report.

PRESIDING MEMBER: So they gave him this one when he left

PRINCIPAL CLAIMANT: Yes

PRESIDING MEMBER: And when did he...I assume he sent this to you your husband

PRINCIPAL CLAIMANT: Yeah he sent it to me

PRESIDING MEMBER: When did he send it to you

PRINCIPAL CLAIMANT: He sent it to me last week

PRESIDING MEMBER: If he had it from November why didn't he send it earlier

PRINCIPAL CLAIMANT: He...he went to lay a complaint November so they didn't give him that November because they said they needed to...the commissioner of police also needs to go through it

PRESIDING MEMBER: So do you know when he was given this copy

PRINCIPAL CLAIMANT: He just sent it last week or so I don't know

PRESIDING MEMBER: Last week?

PRINCIPAL CLAIMANT: He sent it to me last week

PRESIDING MEMBER: do you know when he was given this copy

PRINCIPAL APPLICANT: No

PRESIDING MEMBER: So when I asked you just before you said he left the police station with that, that is not correct

PRINCIPAL APPLICANT: When he left police station...when he left the hospital

[34] As it is demonstrated above, I can find nothing in the transcript to support the RAD's finding. This is troubling considering the RAD's role was to review the RPD's dismissal of a refugee claim involving three very minor Applicants. One of these minor Applicants alleges that she will be forced to undergo female genital mutilation and the two other minor Applicants allege they will have to undergo initiation cutting in unsanitary conditions. These minor Applicants' claims must be properly considered and it is unreasonable for the RAD to uphold the RPD's decision on an inaccurate basis that it asked detailed and thorough questions. Quite simply, this questioning did not occur. In sum, the determination about prospective risk failed to analyse evidence that refusing the traditional rituals comes along with consequences such as

physical abuse. In addition, the RAD wrongly determined that the RPD raised its credibility concerns about the affidavit and police report at the refugee hearing. Accordingly, this decision is unreasonable and I will set it aside.

VI. **Certification**

[35] Counsel for both parties was asked if there were questions requiring certification. They each stated that there were no questions arising for certification and I concur.

VII. **Conclusion**

[36] This application for judicial review is allowed.

JUDGMENT in IMM-1631-18

THIS COURT'S JUDGMENT is that:

1. The decision is set aside and the matter referred back for redetermination by a different decision-maker.
2. There is no question to certify.

"Shirzad A."

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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