Federal Court  Cour fédérale

**Date: 20210506**

**Docket: IMM-7805-19**

**Citation: 2021 FC 408**

**Ottawa, Ontario, May 6, 2021**

**PRESENT: Mr. Justice Norris**

**BETWEEN:**

**FADEKE OMOWUNMI MOMOH**
**ANJOLAOLUWA MITCHEL ROBERTS**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## JUDGMENT AND REASONS

[1] The applicants (a mother and her minor daughter) are citizens of Nigeria who sought refugee protection in Canada. The Refugee Protection Division ("RPD") of the Immigration and Refugee Board of Canada ("IRB") denied their claim. The applicants appealed this decision to the Refugee Appeal Division ("RAD") of the IRB. In a decision dated November 18, 2019, the RAD affirmed the conclusion of the RPD. The applicants now apply for judicial review of the RAD's decision under subsection 72(1) of the *Immigration and Refugee Protection Act*,

SC 2001, c 27 ("*IRPA*"). They seek to have the RAD's decision set aside on the basis that it is unreasonable.

[2] For the reasons that follow, I do not agree that the decision is unreasonable. This application must therefore be dismissed.

[3] Ms. Momoh, the principal claimant, was born in May 1984.

[4] The events giving rise to the claims for refugee protection began in March 2003. Ms. Momoh alleges that she was sexually assaulted by an uncle with whom she was living at the time. She became pregnant as a result and returned to live with her mother. She miscarried in July of that year.

[5] In January 2005, Ms. Momoh gave birth to her daughter Anjolaoluwa, the minor claimant. The two moved to Abuja in or around August 2005. Ms. Momoh enrolled in university part-time and also operated a small business. She married in 2012. In January 2013, Ms. Momoh and her daughter joined her husband in South Africa, where he was working. By this point, Ms. Momoh had been living in Abuja for approximately seven and one-half years.

[6] Ms. Momoh alleged that her husband became physically abusive towards her and Anjolaoluwa. The two moved out of the family home and stayed with a Nigerian friend of Ms. Momoh's who was also living in South Africa. In July 2015, Anjolaoluwa returned to Nigeria with her mother's friend. After obtaining a United States visitor's visa in South Africa,

Ms. Momoh returned to Nigeria in November 2015. In February 2016, she took a one-month trip to Atlanta, Georgia.

[7] When she returned from this trip in March 2016, Ms. Momoh was told by her mother that mysterious things had been happening in her father's village, Ikare Akoko. An oracle was consulted. The oracle pronounced that the gods were angered by Ms. Momoh's having committed incest with her uncle in 2003. Both applicants needed to undergo cleansing rituals to appease the gods, including subjecting Anjolaoluwa to female genital mutilation and facial incisions. Ms. Momoh was told that individuals from her father's village were searching for her and her daughter so that these rituals could be carried out before the end of the year.
Ms. Momoh reported this to the police but she was told that it was a family matter and the police would not interfere.

[8] After staying with a friend for a time, in August 2016 the applicants left Nigeria for the United States. (Ms. Momoh had obtained a US visa for her daughter as well.) They lived in the United States for approximately 18 months. Fearing deportation to Nigeria because they were without status, on January 18, 2018, Ms. Momoh and her daughter made their way to an unofficial border crossing near St-Bernard-de-Lacolle, Quebec. They sought protection in Canada under sections 96 and 97 of the *IRPA* on the basis of the threats made by the individuals who want them to undergo the ritual purifications.

[9] In a decision dated January 11, 2019, the RPD rejected the claims because they lacked credibility and, in any event, the applicants had a viable internal flight alternative ("IFA") in Abuja, Nigeria.

[10] The applicants appealed this decision to the RAD. They did not seek to file any new evidence, nor (as a result) did they request a hearing before the RAD. The applicants argued that the RPD erred in drawing a negative inference from their failure to seek asylum in the United States and in finding that they had a viable IFA. The applicants also argued that the RPD had breached the requirements of natural justice in its treatment of the issue of state protection.

[11] The RAD disposed of the appeal solely on the basis of that the applicants had a viable IFA in Abuja. Applying the correctness standard of review and after conducting its own analysis of the record, the RAD found that the applicants had a viable IFA in Abuja. The applicants had "failed to discharge the burden of showing with clear and convincing evidence that the proposed IFA is unreasonable or unduly harsh." The RAD provided detailed reasons for its conclusions. In addition to conducting an analysis of the evidence on the record in this case, the RAD adopted a number of the findings made in the July 2018 Jurisprudential Guide dealing with internal flight alternatives in Nigeria (Decision TB7-19851).

[12] Simply put, an IFA is a place in their country of nationality where a party seeking protection would not be at risk (in the relevant sense and on the applicable standard, depending on whether the claim is made under section 96 or 97 of the *IRPA*) and to which it would not be unreasonable for them to relocate. When there is a viable IFA, a claimant is not entitled to

protection from another country. To rebut the proposition that there is a viable IFA, the party seeking protection has the burden of showing that they would be at risk in the proposed IFA or, even if they would not be at risk, it would be unreasonable in all the circumstances for them to relocate there: see *Aigbe v Canada*, 2020 FC 895 at para 9.

[13] The applicants submit that the RAD committed a reviewable error in finding with respect to the first part of the IFA test that there was insufficient evidence that the agents of persecution had either the ongoing motivation or the means to locate them in Abuja. The applicants also submit that the RAD committed reviewable errors in ignoring evidence relating to Ms. Momoh's psychological condition and to her lack of indigeneity to the proposed IFA. (I note parenthetically that even though the July 2018 Jurisprudential Guide was revoked on April 8, 2020, the applicants did not raise any issues relating to the RAD's reliance on it in their case.)

[14] It is well-established that the substance of the RAD's decision is reviewed on a reasonableness standard (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35). This includes the RAD's determination as to the availability of an IFA (*Tariq v Canada (Citizenship and Immigration)*, 2017 FC 1017 at para 14). That this is the appropriate standard is reinforced by *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65. Reasonableness is now the presumptive standard of review, subject to specific exceptions "only where required by a clear indication of legislative intent or by the rule of law" (*Vavilov* at para 10). There is no basis for derogating from this presumption here.

[15] As discussed in *Vavilov*, the exercise of public power "must be justified, intelligible and transparent, not in the abstract but to the individuals subject to it" (at para 95). For this reason, an administrative decision maker has a responsibility "to justify to the affected party, in a manner that is transparent and intelligible, the basis on which it arrived at a particular conclusion" (*Vavilov* at para 96). A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). A decision that displays these qualities is entitled to deference from the reviewing court (*ibid.*).

[16] The onus is on the applicants to demonstrate that the RAD's decision is unreasonable. Before a decision can be set aside on this basis, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100). Importantly, when applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances (*Vavilov* at para 125).

[17] Applying this standard, the applicants have not persuaded me that the RAD erred in any of the ways they allege. The RAD did not misapprehend the evidence relating to attempts by the agents of persecution to locate the applicants by contacting Ms. Momoh's mother. Those attempts were intermittent at most and had always been rebuffed. The last attempt was sometime shortly before the first hearing date at the RPD (which was on October 5, 2018). The one before that was in December 2016. The RAD explained why this evidence was insufficient to establish

that there was more than a mere possibility that the agents of persecution were still pursuing the applicants. As the RAD also explained, even if they were, the evidence was insufficient to establish that the agents of persecution had the means to locate the applicants in the IFA. The evidence relating to one family member's past connection to that city was reasonably determined to be insufficient. The RAD's analysis of the first part of the IFA test is transparent, intelligible and justified. The applicants simply disagree with the outcome and urge me to assess the evidence differently. This is not a basis upon which I could interfere with the RAD's determination.

[18] The same is true of the RAD's analysis of the second part of the IFA test. Contrary to the applicants' submissions, the RAD did not ignore any relevant evidence. As is reflected in its detailed reasons, the RAD weighed the evidence that was relevant to the reasonableness of the proposed IFA and concluded that the applicants had failed to demonstrate that, in all of the circumstances (including their personal circumstances), it would be unreasonable for them to relocate there. The applicants have not established any basis upon which I could interfere with this determination.

[19] For these reasons, the application for judicial review is dismissed.

[20] The parties have not suggested any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that none arise.

**JUDGMENT IN IMM-7805-19**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is dismissed.

2. No question of general importance is stated.

"John Norris"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-7805-19 |
| **STYLE OF CAUSE:** | FADEKE OMOWUNMI MOMOH ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |

**HEARING HELD BY VIDEOCONFERENCE ON MAY 5, 2021 FROM OTTAWA, ONTARIO (COURT) AND TORONTO, ONTARIO (PARTIES)**

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| **JUDGMENT AND REASONS:** | NORRIS J. |
| **DATED:** | MAY 6, 2021 |

**APPEARANCES:**

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| Peter Lulic | FOR THE APPLICANTS |
| Gordon Lee | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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| Peter Lulic<br>Barrister and Solicitor<br>Toronto, Ontario | FOR THE APPLICANTS |
| Attorney General of Canada<br>Toronto, Ontario | FOR THE RESPONDENT |