

Federal Court



Cour fédérale

Date: 20210526

Docket: IMM-4025-20

Citation: 2021 FC 492

Ottawa, Ontario, May 26, 2021

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

JOE OSAH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Delivered from the Bench on May 12, 2021)

I. Overview

[1] In this specific case, the use of the first name of the Applicant is considered inappropriate, lacking respect in dignity for the Applicant.

[2] Cases are not to be analyzed and considered in decisions, in an inappropriate, cavalier and condescending manner (for example, the purchase of cigarettes as referenced in the decision of the lower tribunal).

[3] In addition, on the very substance of the file, most significantly, in respect of the analysis of the case, it does not become a tribunal to set aside its adjudication role in recognizing, acknowledging and understanding appropriately the framework of all the evidence on record; and, this adjudication role, has not been, whatsoever, accomplished in this case; the decision is not reasonable. It is not appropriately based on the legislation, as interpreted by the jurisprudence, with respect to the evidence on file.

II. Analysis

[4] The Applicant seeks judicial review of a decision from the Refugee Appeal Division (RAD) dated August 6, 2020, which confirmed the refusal of the refugee claim of the Applicant as there was a viable internal flight alternative (IFA).

[5] The Applicant is a citizen of Nigeria and is claiming refugee protection for fear of risk to life or of serious harm from the Eiye confraternity group. The Applicant sought asylum in Canada in November 2017, passing through the United States in January 2017.

[6] The Refugee Protection Division (RPD) dismissed the claim as the Applicant had a viable IFA in Abuja. The RAD confirmed the decision.

[7] This judicial review concerns the RAD's independent assessment, the disregard or misapprehension of the objective evidence and the failure to conduct the matter in good faith. Except in respect of the last issue, the applicable standard of review by this Court is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 77 [*Vavilov*]).

[8] The Applicant argues that the RAD failed to conduct its own independent assessment, as well as failed to consider the national documentation package. Further, the RAD would have failed to exercise its functions impartially and fairly.

[9] The RAD is a "full-based appeal involving a complete review of the questions of fact, law and mixed law and fact raised in the appeal, in order to correct any error made by the RPD, and ... the RAD must make its own independent assessment of the evidence" (*Kayitankore v Canada (Citizenship and Immigration)*, 2016 FC 1030 at para 20, citing *Ajaj v Canada (Citizenship and Immigration)*, 2015 FC 928 at para 28).

[10] In the present case, the RAD addressed in a brief, linear and unorthodox fashion the arguments on appeal followed by its disagreement and respective considerations based on the lower tribunal reasons. Though the RAD indicated it adopted the correctness standard in confirming the RPD's decision finding a viable IFA, there is an absence of defining of the necessary process required by the jurisprudence (see *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (FCA); *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164).

[11] One needs to proceed with the analysis on certain dispositions inherent to legislation and jurisprudence, without which the reviewing court will be unable to understand the underlying rationale or the analysis undertaken (*Vavilov*, above, at paras 102-04).

III. Conclusion

[12] The above issue is manifested in the entirety of the reasons and determinative of the matter. The Court understands that an issue may be determinative of a claim, such as an IFA, but appropriate reasons must be provided to justify the determination. For these reasons, the decision lacks justification, transparency and intelligibility and must be set aside and remitted for consideration. The application for judicial review is granted.

JUDGMENT in IMM-4025-20

THIS COURT'S JUDGMENT is that the judicial review be granted. The entire matter is to be returned to the Refugee Appeal Division to be determined anew by a differently constituted panel.

"Michel M.J. Shore"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4025-20

STYLE OF CAUSE: JOE OSAH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: MAY 12, 2021

JUDGMENT AND REASONS: SHORE J.

DATED: MAY 26, 2021

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