

Federal Court



Cour fédérale

**Date: 20211202**

**Docket: IMM-6190-20**

**Citation: 2021 FC 1344**

**Ottawa, Ontario, December 2, 2021**

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

**BETWEEN:**

**OKOJI EKPE OGBONNAYA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**(Delivered from the Bench at Ottawa, Ontario, on November 23, 2021 and edited for syntax and grammar with added references to the relevant case law)**

**I. Introduction and Background**

[1] Okoji Ekpe Ogbonnaya is a 60-year-old male citizen of Nigeria. He arrived in Canada in 2013 on a temporary resident visa with the declared intention to conduct business in Canada. A month after his arrival, he and his spouse of 30 years divorced or commenced a divorce

proceeding. A few months later, the Applicant married a Canadian citizen. She filed for a spousal sponsorship of the Applicant, which sponsorship was eventually refused because the marriage was deemed not to be genuine.

[2] The Applicant then filed for refugee protection in 2017, approximately four years after his arrival in Canada. The failed sponsorship application led a representative of the Respondent to file a notice of intervention in this matter, based on credibility issues and program integrity concerns.

[3] The essence of the Applicant's claim for refugee protection arises from his fear of men in his natal village in Nigeria. He claimed before the Refugee Protection Division ("RPD") and the Refugee Appeal Division ("RAD") that he has received threats from people in his village because of his refusal to become the next chief priest of the Oracle following his father's death in 2010. While there is some lack of precision with respect to events immediately following the Applicant's father's funeral, it appears he claims to have been approached by three men who demanded that he remain and accept the position of Chief priest. He claims that when he refused, a struggle allegedly ensued. In September 2011, six months after these incidents, the Applicant allegedly noticed the same three men near his home in Togo. He called the police but by the time the police arrived, the men had vanished. The Applicant claims that on June 8, 2012, the men allegedly returned to his home in Togo and asked him to return to their village. The Applicant shut the door and called the police, but the men once again vanished before the police arrived. The Applicant claims the men returned on two more occasions in 2013.

[4] The RPD rejected the Applicant's claim for refugee protection, concluding that he was not credible and that he had a viable IFA in Lagos, Port Harcourt or Ibadan, if he were to return to Nigeria.

[5] On September 16, 2021 the RAD rejected the Applicant's appeal, confirming the RPD's decision to refuse his claim for refugee protection. The RAD found that the evidence regarding critical events leading to the Applicant's alleged fear was not credible; the Applicant's explanation for the approximately four-year delay in making a refugee claim was not credible and unreasonable; the supporting documentary evidence is incapable of explaining the credibility issues that arose in this case; and the IFAs identified in Nigeria are viable.

[6] In the course of reaching its conclusion, the RAD refused to admit new evidence in the form of a newsletter from the autonomous leaders of the Oracle dated December 27, 2017, an affidavit from the Applicant's brother dated February 14, 2018, and a waybill. The Applicant brings this application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act* [IRPA].

## II. Standard of Review

[7] The standard of review against which I must measure the RAD decision is that of reasonableness as set out in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, 441 DLR (4th) 1 [*Vavilov*].

## III. Summary of Decision

[8] After carefully reviewing the submissions of the parties, and the decisions of both the RPD and the RAD, I find there is no need to address the issue of IFA. I am of the view that the credibility findings of the RAD are determinative and meet the test of reasonableness as defined in *Vavilov* and *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*]. Namely, these findings are based on an internally coherent and rational chain of analysis, are justified in relation to the relevant facts and law (*Vavilov* at para 85), and fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir* at para 47).

#### IV. Analysis

[9] Having said that, I do intend in the following analysis to draw upon credibility findings made by both the RPD and the RAD to illustrate my point.

[10] With respect to the issue of identity, I can do no better than quote from the RPD:

[6] “On the issue of the absence of an original passport, the panel notes that the claimant did not have an original Nigerian passport with him at the time of his refugee intake examination. He informed the immigration officer processing his claim that he had misplaced it. All that the panel has is a "copy of a copy" of a Nigerian passport,<sup>6</sup> purported to be the claimant's, another partial copy submitted by the claimant when applying for a work permit in Canada in May 2017,<sup>7</sup> and a duplicate copy of the passport's biographical data page submitted by the claimant for his hearing.

[7] The claimant testified that he misplaced his passport in Canada in April 2017. He provided a document said to prove that he reported his passport as missing to the police.<sup>9</sup> However, the document merely contains what appears to be a report number, handwritten on a blank piece of paper. There is no police service letterhead on the document, nor is the document signed by an officer. There is nothing in the document that refers to the claimant

or a lost passport. The panel assigns little weight to this document.”

I find it incredulous that the panel assigned any weight to that document; assigning it little weight seems to be too much in the circumstances. In Canada, with our highly trained and professional police, one would not expect the production of a document merely containing a report number, with no letterhead, no signature, and nothing to indicate that a passport was lost.

[11] With respect to the Applicant’s original birth certificate, the RPD noted the following at paragraphs 8 and 9 of its decision:

“[T]he document was examined by the Canada Border Services Agency. A document analysis report was subsequently prepared and provided as evidence by the Minister. The author of the document analysis report reached an "inconclusive" finding with respect to the genuineness of the birth certificate but noted concerns with respect to quality of a seal on the document. The panel examined the birth certificate at the hearing and shares the concerns raised by the Minister with respect to the document.

Specifically, the panel noted that the stamp on the lower right portion of the document appears to have been pre-printed on the document, as opposed to being ink stamped and signed at the time of its issuance, as one would expect. The panel further noted that there appears to be a spelling error on the document, specifically with respect to the title "Registration of Birth and Deaths Bye-Laws".”

[12] In my experience in Canada, I have never seen the word “bye-laws” spelled in such a manner.

[13] The RPD further noted at paragraph 9 of its decision:

“In the panel's view, the words "Birth and Deaths" in the title should read "Births and Deaths," as it is properly stated as such elsewhere in the document. The claimant had no explanation for these anomalies. In the panel's view, it is highly unlikely that an official government form relating to the birth of a child would contain such an error or that such a standardized form would have a pre-printed seal on it. The panel therefore finds, on a balance of probabilities, that the birth certificate is fraudulent. In making this finding, the panel notes that fraudulent documents of all sorts are reported in the objective documentary evidence to be widely available in Nigeria.”

[14] The lack of credibility of the Applicant is further evidenced in relation to his departure from Togo and his arrival in Canada. Recall that he entered Canada in July 2013 and made a refugee claim some approximate four years later, in March of 2017. He produced a report allegedly from the local police dated June 8, 2012, which was apparently one day following his last visit by the agents of persecution. While the Applicant said that the incident of June 7 was reported to the police on that date, I find it is of no significance whether the police report says June 8 or June 7. That is not the most serious issue from my perspective. What I find relevant to the reasonableness of the credibility findings is that the police report indicates that the Applicant went to Canada (in the past tense) to seek protection. One again, it is incredulous that a police report would indicate that the Applicant went to Canada approximately one year prior to his arrival in Canada, and according to the record, prior to the issuance of a visa.

[15] The evidence surrounding his arrival in Canada does not get any better from the Applicant's perspective. In explaining the four year delay in claiming protection, he indicated that “he did not realize he could make such a claim”, but in answers to the RPD on questioning, he indicated that “his mind was set toward making a refugee claim and that if he could come to Canada he would make such a claim.” (para. 14 of the RPD decision).

[16] The RAD confirmed all of the credibility findings made by the RPD, except those related to the issue of identity.

[17] With respect to this issue of credibility, the Applicant referred to a psychological report prepared by Dr. J. Pilowsky, which would explain some of the apparent difficulties experienced by him in recounting the events leading to his departure from Togo. Dr. Pilowsky diagnosed the Applicant as having a Major Depressive Episode and symptoms of Post-Traumatic Stress Disorder related to his experiences in Nigeria and Togo. The RPD stated that it was cognizant of Dr. Pilowsky's observations that the claimant had difficulty understanding questions, required questions to be repeated, and generally provided a confusing account. However, at paragraph 33 of its decision, the RPD went on to say:

“[T]he panel is of the view that a medical opinion cannot serve as a cure for all the credibility shortcomings raised by a claimant's testimony, for such an opinion is only valid as the truth of the facts on which it is based. In the case of the claimant, the panel does not believe the underlying allegations declared by the claimant in his BOC and therefore accords the psychological report little weight.”

[18] Clearly, when the RPD was referring to “the truth of the facts on which it is based”, it was referring to the allegations of persecution made by the Applicant. It rejected the facts underlying Dr. Pilowsky's diagnosis.

[19] Before this Court, the Applicant contends that the RAD did not appropriately consider Dr. Pilowsky's report. The Respondent contends that the RAD had no duty to address that report, given that the issue was not raised before it. Regardless, I am satisfied that the RAD's analysis demonstrated that it was aware of the report by referring to the conclusion of the RPD that there

was no struggle or altercation, which of course forms part of the basis of the report. The RAD noted:

[18] “The RPD found that there was no struggle or altercation when the Appellant left his village following his father's funeral. This was based on a contradiction between the Basis of Claim (BOC) and the Appellant’s testimony. In his BOC, the Appellant clearly indicated that he had to struggle to leave the village and that there was an altercation between him and some men. He managed to escape only when some men and women, who were visiting the village to pay their last respects to his father, intervened to stop the altercation. In contrast, when the RPD questioned him, the Appellant testified that he was able to take his bag and leave without any incident or problems.

[19] The RPD noted and the transcript of the RPD’s hearing confirms that it had asked the Appellant a number of times if he had problems leaving the village to which he answered "no, I just left". Only when the RPD drew the Appellant’s attention to what he had declared in his BOC did he change his testimony to say that there was an altercation and that he had to force his way out of the village. Further, the RPD noted that the Appellant was unable to name any of the elders who allegedly tried to keep him from leaving the village.”

Respectfully, the fact that the Applicant may not have known the name of any of the elders or of the men that allegedly kept pursuing him is of little importance to me. He may or may not have known the name of the elders who tried to keep him from leaving the village or of the men that were pursuing him. Regardless, it is the change of version that is troubling to the RAD.

[20] The RAD continued:

[20] “The Appellant did not contest this finding. Based on my independent assessment of the Appellant’s Record, I am not persuaded that there was a struggle or altercation when the Appellant tried to leave the village after his father’s funeral.”



[21] Dr. Pilowsky's report clearly was partly based on that alleged altercation, which both the RPD and the RAD said did not occur. In addition to the assertion made by the Respondent that this matter was not raised before the RAD, I would simply observe that the underlying facts on which the report is based appear to have been rejected on at least two occasions. Similarly, the underlying evidence relied upon by Dr. Pilowsky in relation to incidents that have occurred in Togo were also rejected. The RAD noted:

[21] "The RPD found that the appellant was neither traced Togo nor visited on four occasions by the three men who he alleged had accosted him as he was trying to leave his village Nigeria after his father's funeral. [...]"

[22] The appellant did not contest this finding. Based on my independent assessment of the Appellant's record, I am not persuaded the Appellant was traced to Togo by the three men from Nigeria or that they visited him as alleged."

[22] To summarize, the RAD confirmed the findings of the RPD that the facts on which the psychological report is based on did not occur. I am therefore unable to conclude that the RAD was unaware of, or ignored, the psychological report.

[23] The Applicant also raises concerns with respect to the rejection of new evidence. The test for the admission of new evidence before the RAD is set out in s. 110(4) of the IRPA, which states:

**Evidence that may be presented**

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

**Éléments de preuve admissibles**

110 (4) 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

<p>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 rejection.</p>	<p>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 du rejet.</p>
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[24] The RAD found the new evidence submitted by the Applicant to be inadmissible, because it pre-dated the rejection of the claim by the RPD and the Applicant did not provide any explanation as to why it could not have been reasonably presented to the RPD. On appeal before the RAD, the Applicant submitted that he could not have been reasonably expected to have presented the evidence at the time of the RPD hearing since it came into existence in December 2017, which was after October 2, 2017, the date at which the hearing concluded. The Applicant does not explain why the evidence was not reasonably available, nor why he could not have been reasonably expected to present the evidence before the rejection of his claim by the RPD on March 12, 2018. The Applicant had the burden to establish how the evidence met the requirements of s. 110(4), but failed to do so (*Velashani v. Canada (Citizenship and Immigration)*, 2021 FC 1109 at para 20). I am satisfied that the RAD's assessment of the new evidence is reasonable, in the circumstances, and see no reason to interfere.

## V. Conclusion

[25] Based upon the record before the RAD, which of course includes the RPD's decision, I find the RAD's credibility findings to meet the rest of reasonableness set out in *Vavilov*. A refugee claimant's general lack of credibility is determinative of a refugee claim (*Singh v. Canada (Citizenship and Immigration)*, 2014 FC 414 at para 14). I consequently find there is no need to address the issue of an IFA. I therefore dismiss this application for judicial review.

[26] Neither party proposed a question for certification to be considered by the Federal Court of Appeal, and none arises from the facts or law.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

No question is certified for consideration by the Federal Court of Appeal.

"B. Richard Bell"

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Judge

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

**DOCKET:** IMM-6190-20

**STYLE OF CAUSE:** OKOJI EKPE OGBONNAYA and THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 23, 2021

**JUDGMENT AND REASONS:** BELL J.

**DATED:** DECEMBER 2, 2021

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