Federal Court Cour fédérale

**Date: 20220208**

**Docket: IMM-2276-21**

**Citation: 2022 FC 160**

**Ottawa, Ontario, February 8, 2022**

**PRESENT: The Honourable Madam Justice Aylen**

**BETWEEN:**

**MUNIRU ADEBISI LIADI**
**EJIMOT OLUWAKEMI LIADI**
**MALIK ADEFISAYO LIADI**
**MA'MUN ADEFEMI LIADI**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## JUDGMENT AND REASONS

[1] The Applicants, citizens of Nigeria, seek judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board, dated March 9, 2021, in which the RAD confirmed the decision of the Refugee Protection Division [RPD] that Muniru Adebisi Liadi [the Principal Applicant], Ejimot Oluwakemi Liadi [the Female Applicant] and their minor

children are not *Convention* refugees or persons in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The RAD concluded that the Applicants have a viable internal flight alternative [IFA] in Port Harcourt.

[2] The Applicants assert that the RAD erred: (a) in its analysis of reasonable apprehension of bias; (b) in its assessment of the agent of persecution's profile; and (c) in its determination that a viable IFA exists in Port Harcourt.

[3] For the reasons that follow, the application for judicial review is dismissed.

## I. Background

[4] The Principal Applicant was the regional sales manager for a marketing company in Nigeria. The Principal Applicant states that the daughter of Chief Akinade, a man believed to be a member of the Ogboni confraternity, stole money from the company where he worked. Following police involvement, Chief Akinade agreed to sell a piece of land and pay monthly instalments towards the amount stolen by his daughter. However, Chief Akinade subsequently sought to recover the land document through various acts of violence and threats.

[5] The Applicants subsequently fled Nigeria, spending some time in the United States before seeking refugee protection in Canada on the basis that their lives were being threatened by Chief Akinade and his "thugs" [the agent of persecution].

[6] Following a hearing, the RPD found that the Applicants' claims had no nexus to any Convention grounds, and the claims were therefore assessed under section 97 the *IRPA*. The RPD determined that the Applicants were not persons in need of protection, as there was a viable IFA in Port Harcourt.

[7] The Applicants appealed the RPD's decision to the RAD.

## II. Decision at Issue

[8] The RAD found that the RPD gave confusing reasons about the issue of credibility, corrected the RPD's error on appeal and accepted the Applicants' allegations underlying the claims. The RAD independently assessed the evidence and found that there is a viable IFA in Port Harcourt. The RAD also considered an allegation raised by the Applicants for the first time before the RAD that the RPD's questioning exhibited a reasonable apprehension of bias. The RAD determined that the conduct of the RPD did not give rise to a reasonable apprehension of bias and that no breach of procedural fairness had occurred.

[9] Accordingly, the RAD dismissed the appeal and confirmed the decision of the RPD that the Applicants are neither Convention refugees nor persons in need of protection.

## III. Issue and Standard of Review

[10] The following issues arise on this application:

A. Whether the RAD erred in in its determination that the RPD's conduct did not give rise to a reasonable apprehension of bias; and

B. Whether the RAD erred in finding the existence of a viable IFA in Port Harcourt.

[11] The reasonableness standard applies when the Court is reviewing the RAD's analysis of alleged breaches of natural justice or procedural fairness [see *Ibrahim v Canada (Minister of Citizenship and Immigration)*, 2020 FC 1148 at para 11-17].

[12] The determination of the RAD regarding an IFA analysis is also reviewable on the standard of reasonableness [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65; *Iyere v Canada (Minister of Citizenship and Immigration)*, 2018 FC 67 at para 16].

[13] When the reasonableness standard applies, the burden is on the party challenging the decision to show that it is unreasonable. A court conducting a reasonableness review scrutinizes the decision-maker's decision in search of the hallmarks of reasonableness – justification, transparency, and intelligibility – to determine whether it is justified in relation to the relevant factual and legal constraints. Both the outcome and the reasoning process must be reasonable [see *Vavilov*, *supra* at paras 83, 99, 100].

## IV. Analysis

A. *Did the RAD err in in its determination that the RPD's conduct did not give rise to a reasonable apprehension of bias?*

[14] Before the RAD, the Applicants asserted that the RPD's questioning was hostile, that the RPD used terrifying language that was insensitive to the issues of culture and gender and made the Applicants feel as though the RPD had prejudged their claims. The Applicants relied on the following exchange between the RPD and the Principal Applicant [First Exchange] in support of this assertion:

> Member: Now, Mr. Liadi, do you believe you are being pursued in Nigeria because of your race?
>
> Claimant: No, sir.
>
> Member: Are you being pursued because of your religion?
>
> Claimant: No, sir.
>
> Member: Are you being pursued because of your nationality?
>
> Claimant: No, sir.
>
> Member: Are you being pursued because of your political opinions?
>
> Claimant: No, sir.
>
> Member: And are you being pursued because you belong to a particular social group?
>
> Claimant: No.
>
> Member: So do you think you qualify as a refugee, sir?
>
> Claimant: Yes, sir.
>
> Member: Well those are the parts of the definition of a refugee. In order to be considered a refugee, you have to be persecuted or fear persecution because of one of those grounds: race, religion, nationality, or political opinion. So I'm just wondering on what

> grounds you think you would qualify as a refugee, given the definition.
>
> Claimant: Based on persecution, sir.
>
> Member: Say again?
>
> Claimant: Persecution. Life threatening.
>
> Member: Yeah, but you are not being persecuted because of your race. You are not being persecuted because of your nationality or your religion, or your political opinions. It's not all persecution, sir.
>
> Claimant: Okay. I am persecuted because of an incident that happened to me.
>
> Member: I realize that, but did the incident happen because of your race, or your religion?
>
> Claimant: No.
>
> Member: Or your political opinion?
>
> Claimant: No.
>
> Member: Or your nationality?
>
> Claimant: No.
>
> Member: That's the onus that you have to meet today.

[15] The Applicants also relied on the following exchange between the RPD and the Female Applicant [Second Exchange]:

> Member: Okay. All right. So from July to November –
>
> Claimant: Yes.
>
> Member: – You had the opportunity to claim in the United States, but you didn't. Is there a reason for that?
>
> Claimant: We don't have any money with us.
>
> Member: But is it impossible to claim without money?
>
> Claimant: It's not possible.

Member: How do you know that?

Claimant: Because of Trump administrative.

Member: Because of?

Claimant: Trump. [inaudible]

Member: Ma'am, ma'am.

Claimant: [inaudible]

Member: Ma'am, ma'am, you're spouting nonsense, okay? Mr. Trump has never passed a law that says you have to pay money to claim asylum.

Claimant: Yes.

Member: No.

Claimant: No! But –

Member: Listen. No, no, I'm still speaking, okay? So don't – don't put yourself on the edge here where you're in danger of saying something silly.

Claimant: Okay.

Member: Okay? So just tell me what you know, but don't guess.

Claimant: Okay, okay.

Member: All right? There's no law that says you have to have money to claim asylum in the U.S. You do have to have money to hire a lawyer, that I understand. And I also understand –

Claimant: [inaudible]

Member: No, no. I also understand that your family didn't have the money that a lawyer requested, right?

Claimant: [inaudible]

Member: Am I right so far?

Claimant: [inaudible]

Member: No, no, just answer the question. Am I right so far?

> Claimant: Yes, yes.
>
> Member: Have I said anything wrong just now?
>
> Claimant: No, no, you are not wrong.
>
> Member: Okay. So now the question I need to know is, is there anything else – your husband has given me some reasons – is there anything else you want to say as to reasons why you wouldn't or couldn't claim asylum in the United States?
>
> Claimant: That is what I'm explaining that they said they don't want to stay in... Mr. Charles said that because of we are African, that they didn't give much blacks opportunity.

[16] The RAD set out the applicable legal principles and then went on to consider the exchanges relied upon by the Applicants. In relation to the First Exchange, the RAD found that the RPD's approach was "unfortunate" and believed this was not an effective way to examine the issue of nexus. However, the RAD noted that the Applicants were given other occasions to be heard on the nexus issue, as the Applicants' counsel later questioned the Principal Applicant on the issue of nexus and the RPD also asked the Applicants' counsel to address the issue of nexus in his submissions. The RAD stated that, in its view, the RPD merely attempted to inform the Principal Applicant about the definition of a Convention refugee and the onus to be met, and noted the panel asked at least twice – in an open-ended-manner – why the Principal Applicant believed he qualified as a Convention refugee in a calm and neutral tone. While not a model approach for questioning on the issue of nexus, the RAD found that the questioning would not be perceived by a reasonable person as indicative of a closed mind.

[17] In relation to the Second Exchange, the RAD reviewed the entire audio recording and stated that it did not agree with the Applicants that the Second Exchange was hostile, intimidating and

unwarranted, or that the RPD could be said to be close-minded. The RAD found that although the RPD should have chosen its words more carefully, the RPD's concern was clearly about cautioning the Female Applicant not to give false testimony, based on her unsupported speculation, and the RAD could not see the RPD's statement as being culturally insensitive or as constituting a deviation from the Chairperson's Gender Guideline. The RAD also noted that the RPD had instructed the Applicants at the beginning of the hearing not to simply guess at an answer, not to speculate, and to simply say they did not know the answer to a question if that were the case, but that the Applicants had a tendency to make misleading and unclear statements throughout the hearing that the RPD had to confront. In this context, the RAD found the RPD was not wrong to intervene and warn the Female Applicant that she should not make false assertions based on conjecture.

[18] The RAD recognized that this was not an easy hearing for the Applicants, but that while they may have been intimidated at times, it did not believe an informed person – viewing the matter realistically and practically – would conclude that there was a reasonable apprehension of bias.

[19] The RAD concluded its analysis by noting that the relevant facts about bias were limited to the RPD's conduct during the hearing, and stated that if this conduct was so hostile and intimidating that it resulted in a reasonable apprehension of bias, the Applicants should have raised this issue during the hearing or at least very shortly thereafter. The RAD failed to see why the procedural fairness issue was only argued on appeal, after the rejection of the claim.

[20] On this application, the Applicants assert that the questioning by the RPD was hostile, seriously intimidating, culturally insensitive and entirely unwarranted. The Applicants assert that the RPD attempted to exploit the Principal Applicant's lack of legal knowledge while simultaneously misleading the Applicants as to who can qualify as Convention refugees. Moreover, the Applicants assert that degrading the hearing questioning to a "yes/no test" was improper, as it failed to afford the Applicants their right to natural justice.

[21] The Applicants assert that the RAD's finding that the First Exchange was "unfortunate", without considering what that means and for whom, is insufficient. The Applicants infer that the RAD must have meant that the situation was unfortunate for the Applicants as they should not have been subject to such inappropriate questioning. Moreover, the Applicants assert that this questioning, coupled with RPD's contradictory assessments of the credibility of the Applicants, would cumulatively lead a reasonable person to conclude that the RPD member was biased and that the RAD failed to consider the RPD's contradictory credibility assessments as part of a cumulative assessment of reasonable apprehension of bias.

[22] I find that the RAD applied the correct test for reasonable apprehension of bias – namely, whether an informed person reviewing the matter realistically and practically, and having thought the matter through, would conclude that the decision-maker would not decide fairly [see *Committee for Justice and Liberty et al v National Energy Board et al*, [1978] 1 SCR 369]. As noted by the RAD, the threshold for finding bias or a reasonable apprehension of bias is high, as decision-makers are presumed to be impartial [see *Sagkeeng First Nation v Canada (Attorney General)*, 2015 FC 1113 at para 105].

[23] An allegation of reasonable apprehension of bias must be supported by material evidence demonstrating conduct that derogates from the standard. It cannot rest on mere suspicion, insinuations or mere impressions of a party or their counsel [see *Arthur v Canada (Attorney General)*, 2001 FCA 223 at para 8; *Ramirez v Canada (Minister of Citizenship and Immigration)*, 2012 FC 809 at para 11; *Maxim v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1029 at para 30].

[24] In reviewing the First and Second Exchange relied upon by the Applicants, the role of the RPD and the nature of its proceeding must be kept in mind. As stated by Justice LeBlanc in *Aloulou v Canada (Citizenship and Immigration)*, 2014 FC 1236 at paras 27-28:

> [27]… In that regard, it is important to note that the RPD's work is inquisitorial and that it is at the heart of a process that is non-adversarial, in that no one appears to object to the refugee claim. In that sense, its role differs from that of judges of traditional courts, which is to consider the evidence and arguments that the parties choose to present while refraining from telling the parties how to present their cases. In contrast, the RPD must be actively involved in the hearings before it to make its inquiry process work properly. Furthermore, for that purpose, its members have the same powers as commissioners who are appointed under the *Inquiries Act*, which gives them the power to inquire into anything they consider relevant to establishing whether a claim is well-founded (*Canada (Minister of Citizenship and Immigration) v Nwobi*, 2014 FC 520, at paragraphs 16 and 17; *Velasquez v Canada (Minister of Citizenship and Immigration*), 2013 FC 273, 429 FTR 143, at paragraph 15).
>
> [28] Even if I did not observe any of that in this case, the inquisitorial process could give rise to sometimes extensive and energetic questioning, expressions of momentary impatience or loss of equanimity, even sarcastic or harsh language, without leading to a reasonable apprehension of bias (*Fenanir v Canada (Minister of Citizenship and Immigration)*, 2005 FC 150, at paragraph 14; *Acuna v Canada (Minister of Citizenship and Immigration*), 2006 FC 1222, 303 FTR 40 at paragraph 15; *Ramirez*, above, at paragraph 23).

[25] An ill-chosen and insensitive question will not, without more, lead to a reasonable apprehension of bias [see *Fenanir v Canada (Minister of Citizenship and Immigration)*, 2005 FC 150 at para 14].

[26] Having reviewed the RAD's decision, as well as the entirety of the RPD transcript, I find that it was reasonable for the RAD to conclude that an informed person, viewing the matter realistically and practically, would not conclude that there was a reasonable apprehension of bias on the part of the RPD.

[27] The RAD properly considered all of the arguments advanced by the Applicants before the RAD and now before this Court, as reflected in the RAD's reasons. The RAD considered the nature of the questioning and disagreed with the Applicants' characterization thereof. While the two exchanges exhibited some impatience and arguably harsh language by the RPD and thus were "unfortunate", this alone is insufficient, particularly when considered in light of the balance of the hearing transcript, which demonstrates questioning by the RPD that was methodical, courteous and respectful.

[28] Moreover, the RAD's finding that the RPD's questioning did not result in a denial of the Applicants' ability to give their evidence was reasonable. In that regard, the Applicants have not shown how the RPD's conduct prevented them from presenting their case or the arguments underlying their claim. As noted by the RAD, the evidence demonstrates the exact opposite. The Applicants were provided with many opportunities, both during and after the hearing, to provide further testimony and legal submissions.

[29] Moreover, as properly found by the RAD, the failure of the Applicants (who were represented by legal counsel) to raise their allegation of reasonable apprehension of bias at the hearing before the RPD or in their post-hearing submissions is also fatal to the Applicants' reasonable apprehension of bias argument [see *Aloulou, supra* at para 33].

[30] While the Applicants now assert that the RAD failed to consider the RPD's contradictory credibility assessments as part of a cumulative assessment of reasonable apprehension of bias, this was not an argument that the Applicants advanced before the RAD. The RAD cannot be faulted for not undertaking an analysis of a potential issue in the RPD's decision that the Applicants did not raise.

[31] I find that the Applicants have failed to demonstrate any shortcomings in the RAD's analysis regarding reasonable apprehension of bias that would render the RAD's decision unreasonable.

B. *Did the RAD err in finding the existence of a viable IFA in Port Harcourt?*

[32] The two-prong IFA test was described by Justice McHaffie in *Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 at paras 8-9 as follows:

> [8] To determine if a viable IFA exists, the RAD must be satisfied, on a balance of probabilities, that (1) the claimant will not be subject to persecution (on a "serious possibility" standard), or a section 97 danger or risk (on a "more likely than not" standard) in the proposed IFA; and (2) in all the circumstances, including circumstances particular to the claimant, conditions in the IFA are such that it would not be unreasonable for the claimant to seek refuge there: *Thirunavukkarasu* at pp 595–597; *Hamdan v Canada*

> *(Immigration, Refugees and Citizenship)*, 2017 FC 643 at paras 10–12.
>
> [9] Both of these "prongs" of the test must be satisfied to conclude that a refugee claimant has a viable IFA. The threshold on the second prong of the IFA test is a high one. There must be "actual and concrete evidence" of conditions that would jeopardize the applicants' lives and safety in travelling or temporarily relocating to a safe area: *Ranganathan v. Canada (Minister of Citizenship & Immigration)*, [2001] 2 F.C. 164 (Fed. C.A.) at para 15.

[33] Turning to the first prong of the test, the Applicants assert that the RAD erred in its assessment of the agent of persecution's profile. The Applicants assert that notwithstanding that the RAD accepted the Applicants as credible witnesses, the RAD failed to give the Applicants the presumption of truthfulness by requiring corroborative evidence of Chief Akinade's influence and reach. Having found them to be credible witnesses, the Applicants assert that the RAD could not reject their testimony regarding the agent of persecution's profile, alleging that it had not been established on a balance of probabilities. The Applicants assert that the RAD did not provide a reasonable explanation other than saying "no evidence is provided".

[34] Contrary to the Applicants' assertion, the RAD clearly stated that it found the Applicants' testimony regarding the agent of persecution's profile as a leader of political thugs and an Ogboni confraternity member was based on rumour and conjecture. The RAD emphasized on two occasions the distinction between the credibility of the Applicants as truthful witnesses and the reliability of the Applicants' evidence. The RAD noted that while the Applicants believe that Chief Akinade has the reach that they testified to, the Applicants were not well-positioned to draw this conclusion, but rather relied on hearsay evidence from people in the market and from the mere fact that the Principal Applicant had been in Ibadan.

[35] It cannot be assumed that in cases where the RAD finds that an applicant's evidence does not establish the applicant's claim that the RAD has not believed the applicant. An applicant may have tendered evidence of each essential fact to make out a particular claim, but the applicant may not have met the legal burden because the evidence presented does not prove the facts required on a balance of probabilities [see *Ferguson v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067 at para 23; *Gao v Canada (Minister of Citizenship and Immigration)*, 2014 FC 59 at para 32].

[36] It is apparent from a review of the RAD's reasons that the RAD found the Applicants to be credible witnesses, but also found that the Applicants' evidence regarding the agent of persecution's profile was simply insufficient. As this Court has repeatedly noted, the fact that the RAD found the Applicants' testimony to be credible does not alleviate the need to provide sufficient objective evidence [see *Iyere v Canada (Minister of Citizenship and Immigration)*, 2018 FC 67 at para 37].

[37] To the extent that corroborative evidence was required, the Applicants assert that their testimony was entirely consistent with the objective country condition evidence about the Ogboni confraternity and their influence in all of Nigeria, pointing to NDP Item 13.1 dated October 30, 2019. However, there is no mention of the Ogboni confraternity in this NDP Item. The Respondent noted that the Applicants may have intended to refer to NDP Item 13.13 which addresses the Ogboni confraternity. However, a review of Item 13.13 does not support for the Applicants' position that the Ogboni confraternity would have the means to pursue the Applicants in Port Harcourt. To the contrary, the views of the professors and sociologists quoted in the NDP are that

the Ogboni society's "[p]resent-day membership, presence, and activities are insignificant", the traditional Ogboni is "now almost defunct" (18 Mar. 2019), the traditional Ogboni society today "has no power or influence" and is stigmatized as a "pagan remnant" of the past, the Ogboni society is "not widespread compared to other religious movements" and that "traditional belief systems, such as Ogboni" are giving way to other religions like Christianity and Islam. Moreover, a representative of Nigeria's National Human Rights Commission stated that there is "no evidence" that the Ogboni society has influence on the police in main cities in Nigeria and a Canadian official noted that the Ogboni society "does not have legitimate or legal influence in any federal institutions".

[38] Accordingly, I am not satisfied that the Applicants have demonstrated that the RAD erred in its determination that the Applicants had not shown, on a balance of probabilities, that: (a) their agent of persecution has the means to pursue them in Port Harbour; and (b) there is a danger of torture, a risk to life or a risk of cruel and unusual treatment or punishment for the Applicants in Port Harcourt.

[39] Turning to the second prong of the IFA test, the RAD evaluated three factors in assessing the objective reasonableness of the IFA, namely indigeneship status, employment and religion, and in doing so considered Items 13.13, 2.1, 13.1, 16.13, 16.14, 12.6, 16.9. and 12.1 of the NDP. The RAD found that the evidence concerning non-indigenes and employment was mixed, that there was little to support the suggestion of possible religious persecution and that the evidence before it, considered as a whole, did not rise to the very high threshold of "nothing less than the existence of conditions that would jeopardize their lives and safety". The RAD also found that

although it may take the Applicants some time to find employment that suits their skills and they may need to accept employment they consider undesirable, the difficulties they may face in Port Harcourt did not meet the high threshold under the second prong of the IFA analysis.

[40] The Applicants assert that the RAD failed to properly consider the surrounding factors such as indigeneship, language barrier, previous employment and religion that would make it objectively unreasonable for the Applicants to relocate to Port Harcourt. Moreover, the Applicants assert that while the RAD considered some of the factors, the RAD did not approach the issue of a reasonableness of the IFA in a cumulative manner. The Applicants assert that some problems in each category cumulatively result in the unreasonableness of the IFA location.

[41] I have considered the Applicants' submissions regarding the second prong of the IFA test and I agree with the Respondent that the Applicants' submissions boil down to a request of the Court to reweigh the evidence that was before the RAD. It is well-established that the RAD takes advantage of the specialized knowledge of its members to assess evidence relating to facts that fall within its area of expertise, which includes IFA determinations. In such circumstances, the standard of reasonableness requires the Court to show great deference to the RAD's findings. It is not the task of a reviewing court to reweigh the evidence on the record, or to reassess the RAD's findings of fact and substitute its own [see *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55]. Rather, it must consider the reasons as a whole, together with the record, and limit itself to determining whether the conclusions are reasonable.

[42] I find that the RAD reasonably considered the evidence before it (including the objective NDP evidence), weighed the evidence and found that the Applicants had not met the high threshold of demonstrating "nothing less than the existence of conditions which would jeopardize the life and safety of a claimant … [and] actual and concrete evidence of such conditions". I see no error in the RAD's analysis.

## V. Conclusion

[43] I am satisfied that the RAD considered the evidence and explained its conclusions in light of the evidence, such that the RAD's decision bears the hallmarks of reasonableness in terms of justification, transparency and intelligibility, both in relation to the RAD's determination vis-à-vis reasonable apprehension of bias and the existence of a viable IFA in Port Harcourt. As the Applicants have failed to meet their burden of demonstrating that the RAD's decision was unreasonable, the application for judicial review shall be dismissed.

[44] The parties proposed no question for certification and I agree that none arises.

**JUDGMENT in IMM-2276-21**

**THIS COURT'S JUDGMENT is that**:

1. The application for judicial review is dismissed.

2. The parties proposed no question for certification and none arises.

"Mandy Aylen"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-2276-21 |
| **STYLE OF CAUSE:** | MUNIRU ADEBISI LIADI, EJIMOT OLUWAKEMI LIADI, MALIK ADEFISAYO LIADI, MA'MUN ADEFEMI LIADI v THE MINISTER OF CITIZENSHIPAND IMMIGRATION |
| **PLACE OF HEARING:** | HEARD BY VIDEOCONFERENCE |
| **DATE OF HEARING:** | JANUARY 26, 2022 |
| **JUDGMENT AND REASONS:** | AYLEN J. |
| **DATED:** | FEBRUARY 8, 2022 |

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| | |
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