Federal Court  Cour fédérale

Date: 20220506

Docket: IMM-5305-20

Citation: 2022 FC 675

Toronto, Ontario, May 6, 2022

PRESENT: Madam Justice Go

BETWEEN:

ONOME PRECIOUS OYIBORHORO
DELIGHT PRECIOUS OYIBORHORO
PRAISEGOD EJIROGHENE ONOME
DAVID OGHENEMARO ONOME

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are a mother, father, and two children, all citizens of Nigeria. They made refugee claims under s. 96 and s. 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], on the grounds that they feared influential members of their community after Mr.

Onome Precious Oyiborhoro's conversion to Christianity. The Refugee Protection Division [RPD] dismissed their claim, finding that they had a viable Internal Flight Alternative [IFA], while citing credibility concerns. On appeal, the Applicants sought to introduce new evidence, some of which the Refugee Appeal Division [RAD] rejected. The RAD upheld the RPD's negative credibility finding, concluded that the Applicants did not face prospective risk, and declined to address IFA.

[2] The Applicants argue that the RAD ought to have accepted their new evidence and held an oral hearing. They also argue that the RAD breached procedural fairness by making new credibility findings, made unreasonable credibility findings, and unreasonably assessed prospective risk.

[3] I find the RAD appropriately dealt with all new evidence and had no obligation to hold an oral hearing. I also find the RAD reasonably found Mr. Oyiborhoro to lack credibility. The application is therefore dismissed.

II. Background

A. *Factual Context*

[4] Mr. Oyiborhoro alleged that he served as Chief Priest for 13 years in his community in Okpara Inland, Delta State, Nigeria. He converted to Christianity in 2013. He alleged that his renunciation of the role of Chief Priest angered the influential sons of his community, who

believed they would no longer benefit from the protection of the gods. He further alleged that the king in his community passed a decree that he should be killed.

[5] As a result of these threats, the Applicants relocated to Port Harcourt for safety. Nothing happened between 2013 and January 2017, at which time Mr. Oyiborhoro received a threatening phone call from an unknown individual who said he was mandated to track him down. In March 2017, his home in Port Harcourt was broken into by armed men while he and his family were away visiting family, and a death threat was left for him.

[6] The Applicants then relocated to Imo State, but Mr. Oyiborhoro again received a threatening phone call from an unknown individual alleging she knew where he was and would continue to hunt him.

[7] The Applicants obtained United States [US] visas in June 2017 and traveled to the US on November 22, 2017. They did not claim protection in the US as they were advised they would not be successful. They then crossed by foot into Canada on December 21, 2017 and claimed protection at the border.

B. *The RPD Decision*

[8] The RPD made negative credibility findings based on the following: (1) At the hearing, Mr. Oyiborhoro testified that he was particularly afraid of four influential individuals in Nigeria, but had not mentioned them in his original narrative, and even in his amended narrative had only mentioned being personally threatened by one of the individuals. When asked about why he did

not include the personal threats from these individuals in his narrative, he stated that he did not think it was necessary. The RPD did not find this explanation reasonable because these individuals were the alleged agents of persecution. (2) The RPD found it unreasonable that despite allegations that their home had been broken into and shot at, the Applicants did not ask the police for help, ask their neighbour to make a police report, or ask their neighbour for a letter to support their refugee claim. Mr. Oyiborhoro explained that the neighbour is not educated and could not write a letter, but the RPD found the neighbour could have made a statement to a commissioner for oaths. (3) An affidavit from Mr. Oyiborhoro's mother states that he "escaped almost being killed", which the RPD found was inconsistent with Mr. Oyiborhoro's testimony that he had not been home when the house was attacked.

[9] In light of these credibility findings and the lack of documentary evidence, the RPD was not convinced that the four individuals are looking for Mr. Oyiborhoro or that the Applicants' home was broken into. The RPD concluded that the agents of persecution would not have the means or motivation to locate the Applicants in the proposed IFA, noting that the Applicants' family members in Nigeria had not been approached by the agents of persecution since 2013, and that the agents of persecution took no action to harm the Applicants when they relocated for 8 months in 2017. The RPD concluded that as the Applicants were educated, spoke English, were Christian, and had travelled in the past, they would be able to relocate to the proposed IFA, and dismissed their concerns about not finding a job, limited access to education, and violence from Fulani herdsmen in the IFA.

C. *Decision under Review*

[10] The Applicants submitted three documents as new evidence with their appeal, which the RAD rejected on the grounds that they could have been provided before the RPD decision. The Applicants also sought to file additional new evidence after the perfection of their appeal. The RAD accepted some of these documents only.

[11] The RAD rejected the Applicants' argument that the RPD had breached procedural fairness by not notifying them of the proposed IFA before the hearing. The RAD found that the RPD erred by not making clear credibility findings. It found that the threats from the four individuals named in Mr. Oyiborhoro's testimony was central to the Applicants' claim and drew a negative credibility inference from their omission in the narrative. The RAD also upheld the RPD's conclusion that corroborative evidence of the alleged break-in was lacking, and again drew a negative credibility inference.

[12] The RAD made additional credibility findings based on contradictions in Mr. Oyiborhoro's claim forms, which further undermined his credibility. Finally, the RAD dismissed the Applicants' claim that as Christians, they will be persecuted by Fulani herdsmen. The RAD concluded that there was no prospective risk under s. 96 or s. 97, and found that there was therefore no need to consider IFA.

III. Issues and Standard of Review

[13] The Applicants argue that the RAD: (1) erred in dismissing parts of the new evidence, (2) breached procedural fairness by making new credibility findings, (3) should have held an oral hearing, (4) made unreasonable negative credibility findings, and (5) unreasonably assessed prospective risk from Fulani herdsmen.

[14] The parties both submit that the Decision is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[15] Reasonableness is a deferential, but robust, standard of review: *Vavilov*, at paras 12-13. The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified: *Vavilov*, at para 15. 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. Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences: *Vavilov*, at paras 88-90, 94, 133-135.

[16] For a decision to be unreasonable, the applicant must establish that the decision contains flaws that are sufficiently central or significant: *Vavilov*, at para 100. Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent

exceptional circumstances: *Vavilov*, at para 125. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep": *Vavilov*, at para 100.

IV. Analysis

A. *Did the RAD err in dismissing parts of the new evidence?*

(1) **Pre-perfection new evidence**

[17] Before the RAD, with their initial appeal, the Applicants sought to admit three documents relating to IFA. They conceded that the first two documents predated the RPD's decision and the third document was undated, but argued that this evidence could not reasonably have been expected to be presented because they had no advance notice that IFA would be an issue under consideration before the RPD. The RAD rejected this evidence, finding that it did not meet the requirements of s. 110(4) of *IRPA*.

[18] Citing *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589; *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA), and *Figueroa v Canada (Citizenship and Immigration)*, 2016 FC 521 at paras 26-34, the RAD found that there is no obligation for the RPD to provide notice before the hearing that IFA will be an issue, as long as specific IFA locations are identified at the hearing.

[19] I see no error in the RAD's finding. I agree with the Respondent that the potential existence of an IFA is a well known consideration in refugee claims. I further note that despite

not having advance notice, then counsel for the Applicants made extensive submissions on the IFA at the RPD hearing.

[20] The Respondent further submits the case law is clear that notice of an IFA is sufficient when it is raised at the RPD hearing, and the Applicants would have had the opportunity to submit more documents post-hearing in order to address the IFA raised: *Figueroa v Canada (Citizenship and Immigration),* 2016 FC 521 at paras 26-34.

[21] At the hearing, the Applicants conceded that allowing them to provide submissions post-hearing could cure the unfairness inherent in the RPD's practice of raising IFA at the hearing. However, the Applicants' position is that if they could not provide the materials within the two-week window after the hearing but prior to the RPD decision being issued, then they should be able to submit documentation on appeal to the RAD.

[22] I reject the Applicants' argument. The Applicants did not explain why they could not provide the documents in post-hearing submissions. As such, it was reasonable for the RAD to find that the evidence could have been reasonably presented before the rejection of the Applicants' claim.

(2) **Post-perfection new evidence**

[23] The Applicants also sought to admit additional documents after the perfection of their RAD appeal. The RAD found it must consider, in addition to s. 110(4) of *IRPA*, the factors set out in Rule 29(4) of the *Refugee Appeal Division Rules (SOR/2012-257)* [*RAD Rules*]:

Documents or Written Submissions not Previously Provided **Factors**	**Documents ou observations écrites non transmis au préalable** **Éléments à considérer**
(4) In deciding whether to allow an application, the Division must consider any relevant factors, including	**(4)** Pour décider si elle accueille ou non la demande, la Section prend en considération tout élément pertinent, notamment :
(a) the document's relevance and probative value; **(b)** any new evidence the document brings to the appeal; and **(c)** whether the person who is the subject of the appeal, with reasonable effort, could have provided the document or written submissions with the appellant's record, respondent's record or reply record.	**a)** la pertinence et la valeur probante du document; **b)** toute nouvelle preuve que le document apporte à l'appel; **c)** la possibilité qu'aurait eue la personne en cause, en faisant des efforts raisonnables, de transmettre le document ou les observations écrites avec le dossier de l'appelant, le dossier de l'intimé ou le dossier de réplique.

[24] RAD relied on this framework to consider the following sets of documents submitted by the Applicants.

(a) ***Documents A and B***

[25] Document A was an affidavit of the Applicants' former neighbour, and Document B was a sworn statement of Ms. Oyiborhoro's father. The RAD found that with the exception of paragraphs 11 and 12 in Document B, the evidence was not new as it concerned events predating the RPD decision and could have been provided with the appeal record. The RAD found paragraphs 11 and 12 of Document B (which related to an alleged attack on Mr. Oyiborhoro's mother in 2020, by "unknown hoodlums" looking for the Applicants) to be new, relevant and credible, and admitted them into evidence.

[26] The Applicants argue that there is nothing in the *RAD Rules* stating that the RAD should treat new evidence that post-dates the perfection of the RAD record as being not new, or that it should be rejected merely because some content pre-dates the RPD Decision. In the Applicants' view, the RAD misconstrued the *RAD Rules*, was unreasonable, and breached procedural fairness. Further, the Applicants argue that the RAD ignored whether the documents could be admitted based on their date and content by looking at whether the documents are probative and relevant, citing *Semykina v Canada (Citizenship and Immigration)*, 2019 FC 249 [*Semykina*] at paras 27-28, which states that "the RAD Rules and their interpretation by this Court afford refugee claimants some flexibility in filing additional documents that were not available at the time the appellant's record was perfected."

[27] I am not persuaded by the Applicants. I note first of all, in *Semykina*, the "events described in the Documents all appear to have occurred after the RPD dismissed the Applicants' refugee claims": at para 25, which is not the case here.

[28] While the Respondent did not provide a citation, the Respondent's argument that the date of a document is not the complete test for newness, the substance of the document is also relevant, appears to refer the statement by the Federal Court of Appeal [FCA] that "the newness of documentary evidence cannot be tested solely by the date on which the document was created…What is important is the event or circumstance sought to be proved by the documentary evidence": *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at para 16.

[29] I would further note that Rule 29(3) of the *RAD Rules* states:

Documents — new evidence	**Documents — new evidence**
(3) The person who is the subject of the appeal must include in an application to use a document that was not previously provided an explanation of how the document meets the requirements of subsection 110(4) of the Act and how that evidence relates to the person, unless the document is being presented in response to evidence presented by the Minister.	**(3)** La personne en cause inclut dans la demande pour utiliser un document qui n'avait pas été transmis au préalable une explication des raisons pour lesquelles le document est conforme aux exigences du paragraphe 110(4) de la Loi et des raisons pour lesquelles cette preuve est liée à la personne, à moins que le document ne soit présenté en réponse à un élément de preuve présenté par le ministre.

[30] As per the FCA decision in *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 [*Singh*] at para 49, the implicit criteria identified in *Raza* are also applicable in the context of subsection 110(4).

[31] In this case, there was no explanation as to why these affidavits and sworn statements could not have been provided earlier. One of the sworn statements was from the very same neighbour who, according to Mr. Oyiborhoro at the RPD hearing, was not educated and for that reason was unable to provide a statement in support of his claim. The Applicants did not explain why the neighbour was subsequently able to provide a statement after the RPD hearing.

[32] As the Court in *Khan v Canada (Citizenship and Immigration)*, 2016 FC 855 noted at para 44, "appeals to the RAD are not opportunities to complete a deficient record submitted before the RPD." The RAD's finding that the evidence was not new as it concerned incidents that pre-date the RPD decision was reasonable and consistent with the *RAD Rules* as well as the well-established case law.

(b) ***Documents I and J***

[33] Document I was an article on COVID-19 in Nigeria, and Document J was a United Nations High Commissioner for Refugees [UNHCR] guideline on IFAs in Nigeria. The RAD declined to admit these documents, on the grounds that they were not relevant because they related to IFA, which was not a live issue in the appeal.

[34] The Applicants argue that the RPD's finding that there was an IFA was a key issue they were appealing against, and therefore the RAD's finding that these documents are not relevant does not meet the *Vavilov* requirements of being transparent, intelligible, or justifiable (as applied in *Farrier v Canada (Attorney General)*, 2020 FCA 25 at paras 12-14). In the Applicants' view, the RAD has a responsibility to address the key issues in the appeal, of which IFA was one, and it was procedurally unfair for the RAD to ignore more than half of the Applicants' submissions which were on IFA. The Applicants base this procedural fairness argument on *Ching v Canada (Citizenship and Immigration)*, 2015 FC 725 [*Ching*] at paras 65-76, which states that parties must be given the opportunity to respond to new issues.

[35] At the hearing, the Applicants further argued that some of the rejected documents were relevant to the credibility findings made by the RAD. In their view, the RAD narrowed the scope of what has to be looked at and as such adopted a minimalist approach, as opposed to conducting a proper global assessment of the evidence.

[36] I reject the Applicants' argument. First of all, the Applicants did not explain why these articles on COVID-19 and the UNHCR guide on IFA were relevant to the credibility findings of the RAD. Second, it is unclear what "new issues" the Applicants are referring to in this context.

[37] I find no error in the RAD refusing to admit materials that have no bearing on what it identified as the determinative issue on appeal.

B. *Did the RAD breach procedural fairness in making new credibility findings?*

[38] In making a negative credibility finding against the Applicants, the RAD noted two contradictions in Mr. Oyiborhoro's claim forms: (1) His IMM-5669 form indicated that he moved from Sapele in 2010 to Oyigbo (Port Harcourt) where he stayed until he left Nigeria, which contradicted his written narrative and testimony that he was forced to flee his community in Sapele in November 2013. (2) According to his employment history, he worked in Port Harcourt from 2010 up until they left Nigeria in November 2017, which was inconsistent with his allegation that he fled to Imo State on March 15, 2017 because his life was in danger. The RAD noted that although the RPD had not asked him about the contradictions, they were readily apparent from forms he swore to be true, and he was represented by counsel and had the opportunity to clarify the contradictions. The RAD concluded that these inconsistencies went to the heart of his claim and further undermined his credibility.

[39] The RAD footnotes *Ngongo v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 8885 (FC) [*Ngongo*] at para 17, which found that the decision-maker was not required to confront the claimant with a contradiction that was obvious.

[40] The Applicants argue that the RAD breached procedural fairness by bringing up new credibility issues which were not raised in the RPD decision, without giving claimants the opportunity to respond, contrary to *Dalirani v Canada (Citizenship and Immigration)*, 2020 FC 258 at paras 28-31; and *Ching*.

[41] I am not persuaded by the Applicants. As the Court explained in *Ngongo*, failing to put a contradiction to a claimant is not always an error of law:

> [12] The applicants submit that the Refugee Division erred in law by failing to confront the male applicant over a major contradiction in his testimony.
>
> [13] I note that in its decision, the panel relied on Mr. Justice Gibson"s [*sic*] recent decision in *Ayodele v. Canada (M.C.I.)* .[1] That decision limits the scope of *Gracielome v. Canada (M.E.I.)*[2] and holds that failing to put a contradiction to a claimant is not in itself an error of law:
>
> > I think it is fair to assume that any contradictions in the applicant's testimony would have been as apparent to counsel as to the CRDD members. In such specific circumstances, to have a decision fail, by reason only of the failure on the part of the CRDD members to put the contradictions to a represented applicant goes well beyond what I take to be the position enunciated in Gracielome and places what, in my view, is an unwarranted burden on members of the CRDD. To reiterate, the Applicant was represented. Presumably, counsel was attentive to the testimony. It was open to counsel to examine or reexamine his or her client on any perceived inconsistencies without coaching from the CRDD members.
>
> ….
>
> [16] In my view, regard should be had in each case to the fact situation, the applicable legislation and the nature of the contradictions noted. The following factors may serve as guidelines:
>
> 1. Was the contradiction found after a careful analysis of the transcript or recording of the hearing, or was it obvious?

2. Was it in answer to a direct question from the panel?
3. Was it an actual contradiction or just a slip?
4. Was the applicant represented by counsel, in which case counsel could have questioned him on any contradiction?
5. Was the applicant communicating through an interpreter? Using an interpreter makes misunderstandings due to interpretation (and thus, contradictions) more likely.
6. Is the panel's decision based on a single contradiction or on a number of contradictions or implausibilities?

> [17] Having regard to these factors, I am of the view that in the case at bar, the panel was not required to confront the claimant. This matter is proceeding in the context of the new legislation. The contradiction was obvious and in answer to a direct question from the panel. It did not stem from a careful analysis by a panel seeking to justify an adverse credibility finding. It admittedly escaped the panel's notice such that the applicant was never directly confronted over the contradiction. However, he was represented by counsel. In my view, as in *Ayodele*, the contradiction was as apparent to counsel as to the CRDD members, such that counsel could have reexamined his client on that point.

[42] *Ngongo* was followed recently in *Omirigbe v Canada (Minister of Citizenship and Immigration)*, 2021 FC 787 where Justice Diner noted at paras 40 to 41:

> [40] …. the Applicants presented both pieces of evidence themselves. This was not a case of extrinsic evidence being used to undermine the credibility of the Applicants, which triggers the right to be confronted (*Moïse v Canada (Citizenship and Immigration)*, 2019 FC 93 [*Moïse*] at paras 9-10; *Akanniolu v Canada (Citizenship and Immigration)*, 2019 FC 311 [*Akanniolu*] at paras 45-47).
>
> [41] Here, in my view, the RAD reasonably determined that no breaches of natural justice occurred at the tribunal below. Noting that the RPD's decision did not relate to any contradiction coming out of the text messages or E-mail, the RAD appropriately followed this Court in *Ngongo v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 8885 (FC) which establishes the factors regarding confronting the applicants with evidence and which is still good law (see more recently, for instance, *Abiodun v Canada (Citizenship and Immigration)*, 2021 FC 642 at para 7).

[43] Applying these principles, I find that there was no breach of procedural fairness when the RAD referred to the inconsistencies between the claim forms, the narrative, and the Applicant's testimony as additional support for its credibility findings. The claim forms and narrative were submitted by the Applicants and were not extrinsic evidence. The Applicants were represented by counsel at the RPD and the RAD. Counsel made submissions on credibility findings in their submission on appeal to the RAD. The inconsistencies were obvious. Finally, the RAD's credibility findings were based on a number of additional concerns.

C. *Did the RAD err in not holding an oral hearing?*

[44] The Applicants point out that the RAD found credibility to be the determinative issue, but credibility was not determinative for the RPD. The Applicants argue that the RAD made new credibility findings, which required an oral hearing.

[45] Specifically, the Applicants argue that the RAD made a new credibility finding when it found that the RPD did not make clear credibility findings related to phone calls allegedly from the men who were threatening Mr. Oyiborhoro. The Applicants argue that this required an oral hearing.

[46] I am not convinced that the RAD erred in not holding an oral hearing, as I find that, contrary to the Applicants' argument, the RAD did not make a new credibility finding relating to the phone threats that he alleges he received from the prominent people in question.

[47] I begin my analysis with the RPD decision on this issue. At paras 10 and 11 of its decision, the RPD decision stated:

> [10] The panel noted omissions and inconsistencies between the principal applicant's testimony and his narrative with regards to the alleged threats to his life that he received by phone. The principal claimant testified he was particularly afraid of four influential individuals in Nigeria: Chief Mamos Agofure, Great Ogbaru, Patrick Otujoh and Halims Agoda. The principal applicant did not mention that any of these individuals, other than Chief Agofure, personally threatened him, either in his original narrative or in the amended narrative he submitted shortly before the hearing. However, he testified that they had each called and threatened him numerous times after he renounced the position of Chief Priest, first in 2013 and then again in 2017. The principal claimant also speculated that perhaps these individuals were working together to pursue him.
>
> [11] When asked why he did not include information about these four individuals personally threatening him in his narrative, the claimant said he did not think it was necessary. The panel does not find the explanation reasonable because it concerns the alleged agents of persecution and their threats to his and his family members' lives. The panel notes the principal claimant only mentioned the names of these individuals as persecution in his amended narrative, submitted August 1, 2019; despite being the first time he mentioned their involvement in his claim, he still omitted the allegation that they had personally threatened him. The claimant did mention the threats he received from unknown individuals, so the panel finds it reasonable that the claimant would also include threats he received from unknown and influential individuals, had they been made. The panel finds that the claimant has not established on a balance of probabilities that he received threats from the four listed men.
>
> [emphasis added]

[48] Later on, at para 16, the RPD noted, under the heading "*Credibility not determinative*":

> The panel has considered the adverse credibility findings above as they affect the analysis of a possible internal flight alternative for the claimants in Ibadan and Benin City, specially as they relate to the agents of persecution's means and motivation to pursue the claimants.
>
> [emphasis added]

[49] Thus, on the one hand, the RPD stated in its heading that credibility was “not determinative”, on the other, in the body of its decision, it clearly made “adverse credibility findings” against the Applicants with respect to several aspects of their claim, including but not limited to the allegations relating to the phone threats received by Mr. Oyiborhoro. It was in this context that the RAD agreed with the Applicants that “the RPD did not make clear credibility findings against [Mr. Oyiborhoro]” because “although the RPD identified specific omissions and inconsistencies in the evidence in its reasons, it did not clearly conclude that [Mr. Oyiborhoro] was not credible on this point.”

[50] The RAD then conducted its own analysis of the evidence and stated its agreement with the RPD that there was no mention in Mr. Oyiborhoro’s narrative and in the amended narrative, of the threats allegedly made against him by three of the four individuals he fears. The RAD also addressed the Applicants’ argument that the omission was minor and then provided an explanation for rejecting the argument.

[51] I further note that, in the Applicants’ submissions on appeal to the RAD, they directly addressed the omissions in question and argued that “the failure to mention minor or elaborative details in the narrative is not a basis to draw a negative inference.” In other words, the Applicants addressed the issue of the alleged phone threats as an issue of credibility findings made by the RPD as a part of their appeal to the RAD, and the RAD responded with its own analysis. To now suggest that the RAD made a new credibility finding related to phone calls is to ignore not only the RPD decision, but also the Applicants’ own submissions before the RAD.

[52] Further, as the Respondent points out, the criteria for an oral hearing is set out in s. 110(6) of the *IRPA*:

Appeal to Refugee Appeal Division	**Appel devant la Section d'appel des réfugiés**
Hearing	**Audience**
(6) The Refugee Appeal Division may hold a hearing if, in its opinion, there is documentary evidence referred to in subsection (3)	(6) La section peut tenir une audience si elle estime qu'il existe des éléments de preuve documentaire visés au paragraphe (3) qui, à la fois :
(a) that raises a serious issue with respect to the credibility of the person who is the subject of the appeal;	**a)** soulèvent une question importante en ce qui concerne la crédibilité de la personne en cause;
(b) that is central to the decision with respect to the refugee protection claim; and	**b)** sont essentiels pour la prise de la décision relative à la demande d'asile;
(c) that, if accepted, would justify allowing or rejecting the refugee protection claim.	**c)** à supposer qu'ils soient admis, justifieraient que la demande d'asile soit accordée ou refusée, selon le cas.

[53] The Applicants do not address whether any of the new evidence admitted would have justified an oral hearing under s. 110(6) of *IRPA*.

[54] In conclusion, I find the Decision not to hold an oral hearing reasonable.

D. *Did the RAD make unreasonable credibility findings?*

[55] The Applicants raise issues with several of the RAD's credibility findings. Most of these arguments amount to asking the Court to reweigh evidence which I must decline to do.

[56] As to the Applicants' argument that the omissions in their Basis Of Claim narrative with regard to the agents of persecution are minor and do not go to the heart of claim, I disagree, given the Applicants' claim was based on the fear of these individuals. For the same reason, I also reject the Applicants' argument that the omissions did not go to credibility because it was elaborated by Mr. Oyiborhoro at the hearing. Instead, I find the RAD did not err when it concluded: "It is unreasonable that [Mr. Oyiborhoro] did not think that it was necessary to include such information in his narrative, especially in light of the fact that he was represented by counsel who helped him fill out the asylum documents."

[57] The Applicants further argue that the RAD erred in giving no weight to certain new evidence because of credibility concerns and the prevalence of fraudulent documentation in Nigeria, citing *Chen v Canada (Citizenship and Immigration)*, 2015 FC 1133, at paras 12-13, which found that evidence of widespread forgery in a country is not, by itself, sufficient to reject foreign documents as forgeries.

[58] However, as the Respondent argues, and I agree, the RAD's credibility assessment is not based exclusively on the availability of fraudulent documents—rather, the RAD provides a detailed analysis of the Applicants' credibility. The prevalence of such documents in Nigeria is but one among many reasons noted by the RAD for rejecting the Applicants' claim.

E. *Did the RAD unreasonably assess prospective risk from Fulani herdsmen?*

[59] In response to the Applicants' arguments that as Christians they feared Fulani herdsmen, the RAD noted that there had been a rise in the conflict between the two groups, but concluded that no prospective risk was established based on the country documentation.

[60] The Applicants argue that as no footnote references are provided for this part of the analysis, they are left wondering where in all of the documentation this statement is supported. The Applicants argue that the Court has been critical of decision makers referencing a pile of documentation without referencing what is being specifically relied upon, especially as the RAD does note that there is documentation supporting the fact there is conflict between the herdsmen and Christians. The Applicants cite *Farrier v Canada (Attorney General)*, 2020 FCA 25 at para 12-14 and *Castro Lopez v Canada (Citizenship and Immigration)*, 2020 FC 197 [*Castro Lopez*] at paras 12-13, which highlight *Vavilov*'s concern with the reasoning process and the sufficiency of reasons.

[61] In my view, *Castro Lopez* does not speak to the issue that the Applicants raise and is in any event distinguishable by facts. Notably, contrary to the Applicants' argument, the RAD did refer to an article with respect to the spiralling farmer-herder violence, in a preceding paragraph before addressing the Applicants' submission on prospective risk.

[62] The Applicants further argue that in suggesting they would be safe in the south, the RAD made a veiled IFA finding, despite also stating that IFA is not a live issue for the appeal. I reject this submission. I find the RAD appropriately first assessed whether there was any risk to the Applicants under ss. 96 or 97 of *IRPA*, and only where such a risk is found is there any merit to

conducting an IFA assessment to determine whether that risk can be mitigated by moving to an IFA in an applicant's home country.

V. Conclusion

[63] The application for judicial review is dismissed.

[64] There is no question for certification.

JUDGMENT in IMM-5305-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5305-20
STYLE OF CAUSE:	ONOME PRECIOUS OYIBORHORO, DELIGHT PRECIOUS OYIBORHORO, PRAISEGOD EJIROGHENE ONOME, DAVID OGHENEMARO ONOME v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD VIA VIDEOCONFERENCE
DATE OF HEARING:	MARCH 30, 2022
JUDGMENT AND REASONS:	GO J.
DATED:	MAY 6, 2022

APPEARANCES:

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Judy Michaely	FOR THE RESPONDENT

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