

Federal Court



Cour fédérale

Date: 20230608

Docket: IMM-9547-21

Citation: 2023 FC 808

Ottawa, Ontario, June 8, 2023

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

**MOTUNRAYO OLATUNDUN OKUYEMI
FEHINTOLA OLADUNNI OKUYEMI
ADEMOLA OLUWATOFUNMI OKUYEMI**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Ms. Motunrayo Olatundun Okuyemi (the “Principal Applicant”), her daughter Fehintola Oladunni Okuyemi and her son Ademola Oluwatofunmi Okuyemi (collectively “the Applicants”) seek judicial review of the decision of the Immigration and Refugee Board, Refugee Appeal Division (the “RAD”). In its decision, the RAD dismissed the Applicants’

appeal from the decision of the Immigration and Refugee Board, Refugee Protection Division (the “RPD”).

[2] The Applicants are citizens of Nigeria. They sought protection in Canada on the basis of fears that the father of the children would forcibly pursue circumcision of the daughter and ritual marks for the son, and persecute the Principal Applicant due to her opposition to the enforcement of these rituals.

[3] The RPD dismissed the claim on the grounds of credibility. The RAD agreed with the negative credibility finding.

[4] The Applicants now argue that the RAD decided their appeal on issues of credibility that were not “put” to them, thereby breaching their rights to procedural fairness.

[5] The Applicants also submit that the credibility findings were unreasonable.

[6] The Minister of Citizenship and Immigration (the “Respondent”) argues that there was no breach of procedural fairness and that the decision of the RAD meets the legal standard of reasonableness.

[7] Issues of procedural fairness are reviewable on the standard of correctness; see the decision in *Canada (Minister of Citizenship and Immigration v. Khosa*, [2009] 1 S.C.R. 339 (S.C.C.).

[8] Following the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.), the merits of the decision are reviewable on the standard of reasonableness.

[9] In considering reasonableness, the Court is to ask if the decision under review “bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision”; see *Vavilov, supra* at paragraph 99.

[10] I agree with the submissions of the Respondent that there is no breach of procedural fairness in this case. His reliance upon the decision in *Sary v. Canada (Citizenship and Immigration)*, 2016 FC 178, is sound.

[11] Credibility was an issue for the RPD, and in this case, it was open for the RAD to identify other elements of the evidence that raised credibility concerns, without giving notice to the appellants.

[12] All proceedings before the RPD and the RAD are fact-specific. It is always open to the RAD to give notice to appellants of elements of the evidence that reflect credibility concerns. In some cases, it may be necessary to give such notice.

[13] This is not such a case.

[14] As for the challenge to the merits of the decision, I am not persuaded that the RAD reached an unreasonable conclusion, in light of the evidence before it.

[15] Assessment of credibility is central to the mandate of the RPD.

[16] In *Canada (Minister of Citizenship and Immigration) v. Huruglica* (2016), 396 D.L.R. (4th) 527, the Federal Court of Appeal said that the RPD enjoys an advantage over the RAD in the assessment of the credibility of oral evidence.

[17] In this case, the RAD agreed with the negative credibility findings of the RPD. That choice lay within the mandate of the RAD. These findings of the RAD are subject to review on the standard of reasonableness, as noted above.

[18] Upon consideration of the contents of the Certified Tribunal Record and the submissions of the parties, I am satisfied that the decision of the RAD meets the applicable standard of review. It is transparent, intelligible and justified.

[19] The Applicants have not shown a reviewable error and this application for judicial review will be dismissed. There is no question for certification.

JUDGMENT in IMM-9547-21

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

There is no question for certification.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9547-21

STYLE OF CAUSE: MOTUNRAYO OLATUNDUN OKUYEMI ET AL. v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 24, 2023

REASONS AND JUDGMENT: HENEGHAN J.

DATED: JUNE 8, 2023

APPEARANCES:

Oluwakemi Oduwole FOR THE APPLICANTS

Brad Gotkin FOR THE RESPONDENT

SOLICITORS OF RECORD:

Topmarké Attorneys LLP FOR THE APPLICANTS
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario