

Federal Court



Cour fédérale

Date: 20240627

Docket: IMM-7342-23

Citation: 2024 FC 1008

Ottawa, Ontario, June 27, 2024

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

**TORITSEJU BEMIGHO EYEOYIBO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS FOR JUDGMENT**

**I. Overview**

[1] The Applicant seeks judicial review of a decision by the Refugee Appeal Division [RAD] refusing his claim for refugee protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The determinative issue was the availability of an Internal Flight Alternative [IFA] for the Applicant in either Abuja or Enugu, Nigeria.

[2] I am dismissing this application because the RAD did not err in applying the wrong burden of proof in determining that the Applicant had viable IFAs. In addition, I do not find that the RAD erred in drawing adverse inferences based on the Applicant's delay in leaving Nigeria, his failure to make a refugee claim in the United States, and the inconsistent evidence about his family's whereabouts.

## **II. Background**

[3] The Applicant, a citizen of Nigeria, made a claim for refugee protection in 2020 based on his fear of persecution from the Ogboni Society [Ogboni] due to his refusal to join them.

[4] The Applicant alleged that the Ogboni attempted to coerce him into joining them in his hometown of Port Harcourt in 2002, 2016, and 2018. He claimed to have received death threats by phone from members of the Ogboni. The Applicant further alleged that in 2018, he was kidnapped and tortured by Ogboni members, which included soldiers and police officers.

[5] The Applicant fled to the United States in January 2019, and then to Canada in December 2019.

[6] The Refugee Protection Division [RPD] rejected the Applicant's claim on January 11, 2023, finding that he had IFAs in Abuja, Lagos, and Enugu. On May 30, 2023, the RAD upheld the RPD's decision with respect to viable IFAs in Abuja and Enugu, but found that Lagos should not be considered a viable IFA because of incidents that had occurred there.

### **III. Issues and Standard of Review**

[7] The Applicant argues that the RAD erred in: (i) applying the wrong standard of proof in assessing the Applicant's future risk in the proposed IFAs; (ii) drawing adverse inferences; and (iii) finding a viable IFA in Abuja and Enugu.

[8] There is no dispute that the applicable standard of review is reasonableness. 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”: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8 [*Mason*]. A decision should only be set aside if there are “sufficiently serious shortcomings” such that it does not exhibit the requisite attributes of “justification, intelligibility and transparency”: *Vavilov* at para 100; *Mason* at paras 59-61. Furthermore, the reviewing court “must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable”: *Vavilov* at para 100.

### **IV. Analysis**

#### **A. *The RAD did not apply the wrong burden of proof***

[9] I find no merit to the Applicant's argument that the RAD unreasonably concluded that the RPD applied the correct burden of proof in assessing whether he had a viable IFA in Nigeria. I agree with the Respondent that when the RAD's reasons are read in context, it did not require that

the Applicant establish, on a balance of probabilities, that he would be persecuted in the proposed IFAs. Rather, the RAD properly concluded that the Applicant was required to establish that there was a serious possibility of persecution in the IFAs.

[10] In finding that the RPD correctly articulated the appropriate legal test, the RAD thoroughly reviewed and analyzed the RPD's reasons and the Applicant's arguments: RAD Reasons and Decision dated May 30, 2023 at paras 10-20 [RAD Reasons]. The RAD concluded as follows:

[19] In this case, the disputed portion of the RPD's decision merely summarizes the RPD's findings in response to the Appellant's specific allegations. The RPD did not apply an incorrect legal test. **The Appellant failed to establish, on a balance of probabilities, certain factual allegations related to the means and motivation of Ogoni Fraternity members.** Ultimately – after considering the entirety of the evidence – **the RPD determined that the Appellant failed to establish a serious possibility of persecution in the proposed IFA locations.**

[Emphasis in bold added, underline in original]

[11] The jurisprudence is clear that claimants must establish, on a balance of probabilities, that there is a serious possibility of persecution in a proposed IFA: *Rasaratnam v Canada (Minister of Employment and Immigration) (CA)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706 at 710. In that vein, factual allegations related to the means and motivation of the agents of persecution to locate the claimant in the proposed IFA are assessed on a balance of probabilities: *Virk v Canada (Citizenship and Immigration)*, 2024 FC 399 at para 21; *Hayer v Canada (Citizenship and Immigration)*, 2024 FC 190 at para 18; *Razzaque v Canada (Citizenship and Immigration)*, 2023 FC 420 at para 16.

[12] Here, the RAD reasonably found that the RPD's reference to a "balance of probabilities" was with respect to the Applicant's failure to establish factual allegations supporting the Ogboni's means and motivation to pursue him. I find no reviewable error in the RAD's finding that the RPD applied the correct standard of proof to assess the availability of an IFA.

B. *The RAD did not err in drawing adverse inferences*

[13] The Applicant asserts that the RAD erred in drawing adverse inferences based on his delay in departing Nigeria, his failure to make a refugee claim in the United States, and inconsistent evidence about the location of his family. The RAD found that the Applicant's explanations for his conduct and the explanations provided for the inconsistent evidence were unreasonable. As a result, the RAD determined that the credibility of the Applicant's allegations of a forward-facing risk of harm in the proposed IFAs was undermined: RAD Reasons at paras 25, 30, 38.

[14] As set out below, I find no basis upon which to interfere. The Applicant is essentially asking this Court to reassess and reweigh the evidence before the RAD. That is not the proper role of a reviewing court: *Vavilov* at paras 125-126.

[15] While the RAD acknowledged that "an escalation occurred with the kidnapping in November 2018", it also noted that the Applicant had advanced "serious allegations about being approached" by the Ogboni beginning in 2016: RAD Reasons at para 25. Yet, the Applicant only fled Nigeria in January 2019, three years later. In light of the evidence, it was open to the RAD to conclude that the Applicant had failed to adequately explain why he delayed leaving Nigeria after

the 2016 incidents: *Ikponmwonba v Canada (Citizenship and Immigration)*, 2023 FC 154 at para 14.

[16] With respect to the Applicant's failure to make a claim in the United States, the RAD noted that the Applicant had remained in the United States without status for approximately six months in 2019. The jurisprudence is clear that failure to claim refugee protection at the first opportunity may be a factor that undermines an applicant's subjective fear and credibility: *Islam v Canada (Citizenship and Immigration)*, 2015 FC 1246 at para 22. However, it is not determinative and the RAD must still consider the explanations provided by an applicant for this failure: *Kukoyi v Canada (Citizenship and Immigration)*, 2023 FC 1250 at para 21; *DE v Canada (Citizenship and Immigration)*, 2023 FC 489 at paras 19-21.

[17] Here, the RAD considered the Applicant's various explanations for not making a claim in the United States, including his lack of confidence in the previous administration's refugee determination process, the legal advice that he received, and his lack of funds. However, the RAD determined that these reasons did not "sufficiently explain" why he remained in the United States without status and risked being removed to Nigeria: RAD Reasons at para 29. In my view, this is a reasonable finding.

[18] Finally, the RAD made a negative credibility finding based on inconsistent evidence about the location of the Applicant's family: RAD Reasons at paras 31-38. The RAD is entitled to draw negative credibility inferences where there are inconsistencies, contradictions, and omissions in a refugee claimant's evidence regarding central elements of their claim: *Olusesi v Canada*

*(Citizenship and Immigration)*, 2024 FC 774 at para 8, citing *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 22. In this case, the location of the Applicant's family was an important element of his refugee claim.

[19] At the RPD hearing, both the Applicant and his pastor testified that his family had escaped to the Benin Republic [Benin] and was still there. However, the Applicant's Basis of Claim [BOC] and the pastor's letter stated that the family was living in Nigeria. The RPD asked the Applicant and the pastor about the discrepancy in their evidence. The Applicant explained the discrepancy by asserting that he believed that his family would only be in Benin briefly and that he had only learnt later from the pastor that they were not in Nigeria. The pastor explained that while his letter stated that they were "living in the church" in Nigeria, he meant that the family was living under the church's protection.

[20] The RAD rejected these explanations, finding that they were unreasonable. In particular, the RAD found that the Applicant's expectation that his family would return to Nigeria does not reasonably explain why the BOC indicated that they resided in Nigeria. Even if the Applicant had later found out that his family remained in Benin, and did not return to Nigeria, it was still reasonable for the RAD to question why the Applicant did not amend his BOC or correct it at the outset of the RPD hearing.

[21] The RAD noted that the pastor's letter not only mentioned that the family lived "here in the church" but also that they were not brought out at every large service, which is incompatible

with the figurative interpretation suggested by the pastor. Based on the foregoing, I find that the RAD's negative credibility finding is reasonable.

C. *The RAD did not err in finding viable IFAs*

[22] The Applicant further argues that the RAD erred in assessing the means and motivation of the Ogboni to find the Applicant in the proposed IFAs under the first prong of the IFA test.

[23] In assessing the motivation of the Ogboni to pursue the Applicant in the IFAs, the RAD considered the Applicant's experiences and the country condition evidence. The RAD found that there was no evidence that the Ogboni had sought out the Applicant's family after he fled Nigeria in January 2019.

[24] This Court has consistently held that a lack of evidence of efforts by the agent of persecution to locate a claimant by contacting their family members can reasonably support that there is no ongoing motivation to pursue them: *Jamal v Canada (Citizenship and Immigration)*, 2023 FC 1633 at para 27; *Ocampo v Canada (Citizenship and Immigration)*, 2021 FC 1058 at para 28; *Leon v Canada (Citizenship and Immigration)*, 2020 FC 428 at paras 16, 18, 23; *Rodriguez Llanes v Canada (Citizenship and Immigration)*, 2013 FC 492 at para 10.

[25] The Applicant asserts that this finding was made "without regard to the Applicant's evidence and was based on an unreasonable assessment of the evidence" – namely, that his family was not in Nigeria to be sought in the first place: Applicant's Memorandum of Fact and Law at



para 72. However, as set out above, the RAD did not accept the Applicant's evidence that his family had fled Nigeria. Once again, it is not for this Court to reassess and reweigh the evidence.

[26] Furthermore, the RAD noted that the Applicant had "virtually no interaction with the Ogboni between the ages of 12 and 36": RAD Reasons at para 43. This is another relevant factor that reasonably supports a finding of a lack of motivation.

**V. Conclusion**

[27] For these reasons, I find no reviewable errors in the RAD's decision. The application is therefore dismissed.

[28] The parties did not raise a question for certification and I agree that none arises in this case.

**JUDGMENT in IMM-7342-23**

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

1. The application for judicial review is dismissed.
2. No question is certified for appeal.

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"Anne M. Turley"  
Judge

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

**DOCKET:** IMM-7342-23

**STYLE OF CAUSE:** TORITSEJU BEMIGHO EYEOYIBO v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

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**DATE OF HEARING:** JUNE 5, 2024

**JUDGMENT AND REASONS  
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