Federal Court  Cour fédérale

Date: 20200122

Docket: IMM-462-19

Citation: 2020 FC 98

Ottawa, Ontario, January 22, 2020

PRESENT: Mr. Justice Russell

BETWEEN:

EMMANUEL ADEDAYO ARABAMBI,
ABIMBOLA AGNES ARABAMBI,
ADEMIDALE PEARL ARABAMBI,
OLUWANIFEMI MICAH ARABAMBI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada [RPD], dated November 14, 2018 [Decision],

denying the Applicants' refugee and person in need of protection claims under ss 96 and 97 of the *IRPA*.

II. BACKGROUND

[2] Emmanuel Adedayo Arabambi and his wife Abimbola Agnes Arabambi are citizens of Nigeria. Their daughter Ademidale Pearl Arabambi, born in 2014, is also a citizen of Nigeria while their son Oluwanifemi Micah Arabambi was born in the United States of America [USA] in November 2017 and is a citizen of the USA.

[3] Ms. Arabambi and her daughter arrived in the USA on November 2, 2017, while Mr. Arabambi arrived in the USA on November 30, 2017. The family stayed with Mr. Arabambi's sister in California while on visitor visas.

[4] The Applicants allege that they came to the USA because of their fear of Mr. Arabambi's family, who have repeatedly threatened to perform female genital mutilation [FGM] on Ms. Arabambi as well as their daughter. The Applicants submit that the family has threatened to sacrifice the female Applicants should they fail to conform to this practice. The Applicants explain that this is because, while they are Christian, Mr. Arabambi's family continues to practise their Yoruba religious beliefs, including FGM, which Mr. Arabambi's family maintains must be performed on females married into the family following childbirth as well as females born into the family before their fifth birthday.

[5] The Applicants submit that they tried to hide from Mr. Arabambi's family by staying with Ms. Arabambi's mother in Lagos, Nigeria. However, they claim that their persecutors soon discovered their location. This fear of being located once again by their persecutors motivated their departure to the USA in November 2017.

[6] On March 16, 2018, the Applicants arrived in Canada and claimed refugee status.

III. DECISION UNDER REVIEW

[7] On November 14, 2018, the RPD dismissed the Applicants' refugee and persons in need of protection claims under ss 96 and 97 of the *IRPA*, finding that: (1) Oluwanifemi Micah Arabambi was a citizen of the USA and therefore did not require protection; (2) serious credibility concerns existed due to the Applicants' failure to make a claim in the USA; and (3) a viable internal flight alternative [IFA] existed within Nigeria, notably in Port Harcourt.

A. *Oluwanifemi Micah Arabambi's American Citizenship*

[8] First, the RPD decided that Oluwanifemi Micah Arabambi, Mr. and Ms. Arabambi's son born in November 2017, was not a refugee or person in need of protection under ss 96 and 97 of the *IRPA* because he is an American citizen. Taking into consideration the Chairperson's Guideline 3: *Child Refugee Claimants—Procedural and Evidentiary Issues*, the RPD found that there was insufficient evidence demonstrating that he would face a serious possibility of persecution in the USA, as it is a democratic country with security forces to protect its citizens.

B. *Failure to Make Claim in the USA*

[9] The RPD found that the remaining Applicants, who hold Nigerian citizenship, are not refugees or persons in need of protection under ss 96 and 97 of the *IRPA* due to, in part, a lack of credible subjective fear of persecution.

[10] The RPD found that the Applicants' failure to make a refugee claim in the USA demonstrates a lack of subjective fear because it is reasonable to expect that they would have sought asylum in the first safe country they entered had a genuine fear for their lives existed.

[11] Though the RPD acknowledges the Applicants' argument that they had no intention of ever claiming refugee status in the USA due to President Trump's comments regarding immigrants from Africa, the RPD did not accept this explanation. The RPD found that there was insufficient credible evidence presented indicating that the Applicants would be deported from the USA for making a refugee claim while on valid visas, as there is a legal process that takes place similar to Canada's.

C. *Viable IFA in Port Harcourt*

[12] Finally, the RPD applied the two prong test set out in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, 140 NR 138 (FCA) to assess whether a viable IFA existed. Having found that (1) it is unlikely that the Applicants would be persecuted or personally subjected to a substantial risk of death or cruel and unusual punishment in

Port Harcourt, and (2) it is reasonable, in all circumstances, for the Applicants to seek refuge in Port Harcourt, the RPD concluded that a viable IFA existed.

[13] The RPD noted that the Applicants are unlikely to be persecuted or subjected to personal risk in Port Harcourt given that it is a large city situated a great distance away from Lagos, Nigeria where the Applicants lived. Moreover, the RPD found that the Applicants were unable to provide sufficient credible evidence demonstrating that the agents of persecution would have the capability or desire to pursue the Applicants in Port Harcourt.

[14] Though the Applicants argued at the hearing that Mr. Arabambi's brother was found by a family member while hiding in Port Harcourt, the RPD did not find this statement to be credible because the Applicants had failed to disclose this in their Basis of Claim or when asked at the beginning of the hearing whether the Basis of Claim was complete, true, and correct. Furthermore, the RPD found the Applicants' argument that Mr. Arabambi's family would be able to locate them in Port Harcourt, just as they had been able to locate them while staying with Ms. Arabambi's mother, was speculative. This is because Ms. Arabambi's mother lived in Lagos, Nigeria while Port Harcourt is a great distance away.

[15] The RPD also found that the Applicants could reasonably relocate to Port Harcourt, a large urban city, as Mr. and Ms. Arabambi are well educated, have experience in the telecommunication/information technology engineering field, and speak English. Although the Applicants note that the roads into the city are dangerous and that there is significant criminal

activity in Port Harcourt, the RPD found that the Applicants could fly into Port Harcourt and that criminality is a generalized risk faced by Port Harcourt's entire population.

IV. ISSUES

[16] The issues to be determined in the present matter solely relate to whether the RPD's decision was unreasonable. More specifically:

1. Did the RPD err in its analysis of the Applicants' credibility?
2. Did the RPD err in its analysis of whether a viable IFA existed in Port Harcourt?

V. STANDARD OF REVIEW

[17] This application was argued prior to the Supreme Court of Canada's recent decisions in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] and *Bell Canada v Canada (Attorney General)*, 2019 SCC 66. This Court's judgment was taken under reserve. The parties' submissions on the standard of review were therefore made under the *Dunsmuir v New Brunswick,* 2008 SCC 9 [*Dunsmuir*] framework. However, given the circumstances in this matter, and the Supreme Court of Canada's instructions in *Vavilov* at para 144, this Court found that it was not necessary to ask the parties to make additional submissions on the standard of review. I have applied the *Vavilov* framework in my consideration of the application and it does not change the applicable standards of review in this case nor my conclusions.

[18] In *Vavilov*, at paras 23-32, the majority sought to simplify how a court selects the standard of review applicable to the issues before it. The majority did away with the contextual and categorical approach taken in *Dunsmuir* in favour of instating a presumption that the reasonableness standard applies. However, the majority noted that this presumption can be set aside on the basis of (1) clear legislative intent to prescribe a different standard of review (*Vavilov*, at paras 33-52), and (2) certain scenarios where the rule of law requires the application of the standard of correctness, such as constitutional questions, general questions of law of central importance to the legal system as a whole and questions regarding the jurisdictional boundaries between two or more administrative bodies (*Vavilov*, at paras 53-64).

[19] There was no disagreement between the parties that the applicable standard of review in this matter was the standard of reasonableness.

[20] There is nothing to rebut the presumption that the standard of reasonableness applies in this case. The application of the standard of reasonableness to these issues is also consistent with the existing jurisprudence prior to the Supreme Court of Canada's decision in *Vavilov*. See *Haastrup v Canada (Citizenship and Immigration)*, 2018 FC 711 at para 9 and *Aissa v Canada (Citizenship and Immigration)*, 2014 FC 1156 at para 56 concerning the review of a decision-maker's credibility findings and *Tagne v Canada (Citizenship and Immigration)*, 2019 FC 273 at para 19 concerning the review of a decision-maker's assessment of an IFA.

[21] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with whether it "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" (*Vavilov*, at para 99). Reasonableness is a single standard of review that varies and "takes its colour from the context" (*Vavilov*, at para 89 citing *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59). These contextual constraints "dictate the limits and contours of the space in which the decision maker may act and the types of solutions it may adopt" (*Vavilov*, at para 90). Put in another way, the Court should intervene only when "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov*, at para 100). The Supreme Court of Canada lists two types of fundamental flaws that make a decision unreasonable: (1) a failure of rationality internal to the decision-maker's reasoning process; and (2) untenability "in light of the relevant factual and legal constraints that bear on it" (*Vavilov*, at para 101).

VI. STATUTORY PROVISIONS

[22] The following statutory provisions of the *IRPA* are relevant to this application for judicial review:

Convention refugee	**Définition de réfugié**
96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	96 A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(a) is outside each of their	a) soit se trouve hors de tout

countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or

pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays ;

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

Personne à protéger

97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

97 (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture ;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

VII. ARGUMENTS

A. *Applicants*

[23] The Applicants argue that the Decision is unreasonable due to the material factual errors in the RPD's assessment of the Applicants' credibility as well as the suitability of the proposed IFA in Port Harcourt.

(1) Credibility Finding

[24] The Applicants argue that the RPD's credibility finding is unreasonable due to several factual errors at the heart of its analysis. They argue that the Decision does not fall within a reasonable outcome given the established facts in this case. The Applicants point to two errors of fact committed by the RPD, which they believe were improperly at the heart of its credibility finding.

[25] First, the Applicants note that the RPD mistakenly stated that the Applicants stayed in the USA for fifteen months before claiming refugee status in Canada, as opposed to the three to four months they did stay. The Applicants suggest that this is a material error since their perceived length of stay in the USA was a key reason why the RPD decided that the Applicants' failure to make a claim in the USA tainted their credibility.

[26] Second, the Applicants submit that the RPD misconstrued their explanation as to why they did not make a claim in the USA because the RPD failed to mention that they also cited President Trump's clear statements that African immigrants were not welcome. They argue that since their explanation as to why they did not make a claim in the USA was based on the widely reported political statements of the President of the USA, it was reasonable for them to believe that the anti-immigration policies of the USA would result in their return to Nigeria should they make a refugee claim. As such, the Applicants believe that the RPD's failure to consider the Applicants' full explanation as to why they did not make a claim in the USA was a material error at the heart of the RPD's credibility finding.

[27] In light of these two critical errors of fact, the Applicants argue that the RPD's credibility finding is unreasonable because it is based on an erroneous understanding of the facts and a distorted representation of the Applicants' testimony. The Applicants note that this Court has held on numerous occasions that a credibility finding is unreasonable if it was made without regard to the evidence. See, for example, *Maruthapillai v Canada (Minister of Citizenship and Immigration)*, [2000] 205 FTR 263 at para 13, FCJ No 761.

(2) Viability of the IFA

[28] The Applicants also argue that Port Harcourt is not a viable IFA. They submit that Mr. Arabambi comes from a large polygamous family that is spread out across Nigeria and that they would therefore be found by their persecutors if they were to relocate to Port Harcourt, just as their persecutors located Mr. Arabambi's brother.

[29] Moreover, they submit that it would be unreasonable for them to relocate to Port Harcourt due to the lack of promising employment prospects, the general insecurity in the area, the high cost of relocation, and the fact they know no one in the area.

B. *Respondent*

[30] The Respondent argues that: (1) any factual errors by the RPD when assessing the Applicants' credibility were immaterial; (2) the RPD accurately summarized the Applicants' testimony and; (3) the Applicants have not sufficiently demonstrated that the RPD's finding that a viable IFA existed in Port Harcourt was unreasonable.

(1) Credibility Finding

[31] The Respondent first submits that credibility findings are the heart of the RPD's jurisdiction, given its expertise and the fact that it is best suited to evaluate an applicant's testimony. As such, deference is owed to the RPD's credibility findings. Credibility findings should only be found unreasonable when they are made in a perverse or capricious manner,

without regard to the evidence (*Ikeme v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 21 at para 15).

[32] The Respondent acknowledges that the RPD erred when it stated that the Applicants had been in the USA for fifteen months instead of four months. However, given that the RPD noted the correct entry and exit dates, the Respondent submits that this was simply an arithmetical error. Moreover, the Respondent submits that the error was not material given that the RPD did not take issue with how long the Applicants were in the USA, but rather their choice not to make a claim in the USA and how this tainted their credibility. The Respondent cites this Court's decision in *Hernandez v Canada (Citizenship and Immigration)*, 2017 FC 659 at para 8.

[33] Secondly, the Respondent argues that the RPD did not misconstrue their testimony but rather summarized the key substantive points at issue: (1) the Applicants' fear of being deported to Nigeria for making refugee claims; and (2) the anti-immigrant comments made by President Trump towards Africans.

[34] Finally, the Respondent notes that the articles cited by the Applicants to justify their explanation as to why they decided not to make a claim in the USA demonstrate the reasonableness of the RPD's Decision. The articles make direct reference to the fact that, despite President Trump's comments, the courts have ensured the continuing operation of the existing immigration scheme.

(2) Viability of the IFA

[35] The Respondent argues that this Court has recognized that applicants bear the high onus of establishing that the proposed IFA was unreasonable (*Iyere v Canada (Citizenship and Immigration)*, 2018 FC 67 at paras 32-35 [*Iyere*]).

[36] With this in mind, the Respondent submits that the Applicants' argument fails to engage specifically with the reasonableness of any of the RPD's findings concerning the possibility of persecution in Port Harcourt, or the reasonableness of their relocation to Port Harcourt. Instead, the Respondent notes that the Applicants are simply asking this Court to re-weigh the evidence before the RPD.

VIII. ANALYSIS

[37] The Applicants raise two grounds for reviewable error:

1. the Decision is based upon factual errors concerning the length of time they lived in the USA and a misconstruction of the Applicants' testimony as to why they did not make refugee claims in the USA; and

2. the RPD's unreasonable IFA analysis.

[38] The Applicants' complaint regarding the RPD's IFA analysis is detailed in their written submissions:

> The claimants testified that although Port Harcourt is a large city with over 1.8 million inhabitants, they could not safely live in Port Harcourt without fear of detection by their persecuting family

> members. The male claimant testified that he comes from a large polygamous family who are scattered all over Nigeria, and that the brother of the male claimant who moved to Port Harcourt out of fear for the life of his family members because they were similarly required to have their children perform FMG had to abandon Port Harcourt in a hurry to an unknown destination because their persecutors managed to find them in Port Harcourt. They also said that they know no one in the city of Port Harcourt, will suffer much financial expense in relocating there. Job and work prospects are also not very promising. The claimants were also afraid of the general insecurity in the Niger Delta part of the country and Port Harcourt in particular. This testimony showed that it will not be reasonable for them to reside in Port Harcourt without detection by their family members and that that city will not be a viable IFA. Sudhahini v M.C.I. (F.C., no IMM-7068-03) 2003 F.C. 1075.

[39] At the oral hearing before me, counsel for the Applicants made additional points to the effect that it was unreasonable to expect information concerning the brother's detection to appear in the Basis of Claim when Mr. Arabambi had only received this information from his sister a week before the hearing. However, my reading of Mr. Arabambi's testimony about how and when the brother's situation was discovered reveals that Mr. Arabambi gave very vague testimony on this important point. Consequently, it was not unreasonable for the RPD to conclude there was no "clear and convincing evidence from [Mr. Arabambi]'s sister that such an event took place." Moreover, Mr. Arabambi was "asked during the introduction if the information in the [Basis of Claim] was complete, true, and correct" and he "replied yes." As stated by the RPD, Mr. Arabambi "had an opportunity at that time to inform the [RPD] of this new information and failed to do so." The RPD's credibility concerns on this matter were thus reasonable and justified.

[40] Counsel for the Applicants also raised some general points at the hearing regarding what the RPD might have considered further when assessing the existence of an IFA in Port Harcourt.

Counsel for the Applicants further states that there was in the record evidence such as Canadian travel advisories, the unstable security situation, difficulties in finding employment outside the oil industry, the kidnapping of children, the lack of state protection, and the prevalence of different language groups.

[41] It must always be borne in mind that, if an IFA is suggested, there is a high onus on an applicant to show it would be unreasonable to expect them to relocate there. See this Court's overview of the jurisprudence on this issue in *Iyere* at paras 32-35. At the hearing before the RPD, counsel for the Applicants' submissions on the IFA were as follows:

> The final issue, internal flight alternative, Madam Member you mentioned two places, in particular or specifically I should say, Port Harcourt and in the Ogun area. Now there is a decision that is considered a jurisprudence guideline that is very persuasive in nature and if you decide not to follow it, which is your prerogative; you must provide reasons as to why you distinguish this case from the case at hand. <inaudible>.
>
> So there are some documents … internal flight alternative, just internal flight alternative in general, it is trite to say but it is a two prong test and you must be satisfied on the balance of probabilities that there is no serious possibility of the claimants being persecuted in either Port Harcourt or in Ogun state and or that they would not be subject to risk to life, risk to cruel and unusual treatment or punishment or danger. So basically that is saying you have to identify a place where an internal flight alternative is identified and go to the second step and the condition in that part which you have identified are considered or would not be unreasonable in the all circumstances, including the circumstances particular to the claimants, to seek refuge there.
>
> Now he mentioned, both claimants mentioned the security situation in those places which would make it even a risk to get there. And the security risk <inaudible> Nigeria. And those are not, my words, Madam Member, having imposed travel advisories and basically saying do not travel to certain areas because of the kidnapping, the violent crime, civil unrest. And the one from Canada actually mentions Port Harcourt. It says, "The Niger Delta States of Abia, Akwa, Ibom [ph] and Abura [ph] Elalici [ph] and

> lmo and <inaudible>, (with the exception of <inaudible> Capital City, Port Harcourt, where we advise against non-essential travel), due to the unstable security situation and the heightened risk of kidnapping." So you have . . . you have that, the civil unrest and the violence that comes with it. But you also have the Zeka virus which is there as well.
>
> But in addition to this if you say that is a proper internal flight alternative then it would also be safe for family members of the husband to travel there. And according to the female claimant she is saying even if there is no security risk, which is only hypothetical, there is in fact a security risk, but even if there was not a security risk they would still . . . she would still be afraid of his family members. And the example that she gave was that they were still able to find out where she was staying even though she never told anybody, when she was staying at her mother's, I believe it was. And they found out. They found out she was pregnant without them telling anybody. So one of the family members may have seen her and reported back to the other family members. So her last sentence was, if they locate me there, which at her mother's house, or a friend's house, then they can locate me everywhere.
>
> When we talk about an internal flight alternative we do not expect claimants to live in a cave; they have to go about their day to day lives and work. So they might be able to get a job in Port Harcourt, but so what, if you have to look over your shoulder every day to see if a family members knows that you are here. And then what do you do? Look at his brother, he stayed in a place for a year and then he had to leave because they found out where he was. It is a similarly situated person. And his brother, unfortunately, was not able to make it out of Nigeria and, but these claimants were and <inaudible> because the female claimant is saying that she had a life there.
>
> That was not their first option was to leave; their first option was to try to resolve this family tradition which is foreign to her, has nothing to do with her family. She wanted to resolve it and stay and raise their family in a safe environment. And so she made it sound like there was an ultimatum.

[42] In their written submission, the Applicants simply tell the Court what was said about the Port Harcourt IFA and assert that it would not be reasonable for them to go there. This does not

even raise, let alone substantiate, a reviewable error by the RPD on this issue. The Applicants are simply asking the Court to re-weigh the evidence and agree with them that Port Harcourt is not a viable IFA. The Court cannot do this. See this Court's decision in *Gutierrez v Canada (Citizenship and Immigration)*, 2015 FC 266 at para 42, as well as the Supreme Court of Canada's decision in *Vavilov*, above, at para 83.

[43] In light of the Applicants' oral submissions, I have reviewed in detail the RPD's IFA analysis against the evidence that was before it and can find no reviewable error. The availability of a viable IFA is dispositive of the Applicants' refugee claim even if the RPD erred in assessing their failure to claim asylum in the USA.

[44] I have also reviewed the Applicants' allegation of mistake with regard to the failure to claim asylum in the USA and can find no reviewable error. As the Respondent points out in their submissions, the RPD's credibility finding was not related to how long the Applicants were in the USA. The concern was the Applicants' choice not to make a claim there along with their explanations for not doing so – *i.e.* because they had valid visitor visas and were afraid of deportation back to Nigeria if they made a claim because of the comments made by President Trump that Africans were not welcome in the USA.

[45] This issue is dealt with by the RPD as follows:

> [23] The two female claimants travelled to the USA on valid tourist visas on November 2, 2017, to flee her husband's/father's family. [Mr. Arabambi] arrived in the USA on November 30, 2017. They travelled to Canada to make a claim for refugee protection on March 16, 2018. They lived in the USA for one year and three months. The claimants testified they never intended to

> make a claim for asylum in the USA. They were also frightened that, since they had valid visitor visas, they could be deported as the President stated that Nigerians were not welcome. The [RPD] does not accept this explanation. There was insufficient credible information presented that indicates that the claimants would be deported because they had valid visas. Furthermore, there is a legal process that takes place, similar as in Canada, to determine if a person is to receive protection. The [RPD] finds that if the claimants have a genuine fear for their lives, it is reasonable to expect them to seek asylum in the first safe country they enter, which is the USA. This failure to claim gives the [RPD] credibility concerns regarding the claimants' allegations and indicates a lack of subjective fear.

[46] I can find nothing that is materially unreasonable about this analysis nor the RPD's conclusions.

[47] Nevertheless, the RPD's findings on the existence of a viable IFA are dispositive, and although it is possible to disagree with those findings as the Applicants have in this application, it is not, in my view, possible to say that the RPD unreasonably erred in its analysis.

[48] The parties agree there is no question for certification and the Court concurs.

JUDGMENT IN IMM-462-19

THIS COURT'S JUDGMENT is that

1. The application is dismissed.

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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