Federal Court  Cour fédérale

**Date: 20200921**

**Docket: IMM-5367-19**

**Citation: 2020 FC 915**

**Ottawa, Ontario, September 21, 2020**

**PRESENT: The Honourable Mr. Justice Manson**

**BETWEEN:**

**A.B.**
**C.D.**
**E.F.**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Introduction

[1] This is an application for judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board, pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The RAD decision, dated August 13, 2019 [RAD Decision], dismissed the Applicants' claim for refugee protection, due to the existence of internal

flight alternatives [IFAs]. The RAD Decision confirmed the Applicants were not Convention refugees or persons in need of protection under sections 96 and 97 of the *IRPA*.

## II. Background

[2] The Applicants are Nigerian citizens from the city of Ibadan, Oyo State. They consist of a mother, the Principal Applicant [PA], and her three minor children, the Minor Applicants [MAs].

[3] The Applicants fear returning to Nigeria due to the threat of ritualistic practices. They fled to prevent the eldest MA from undergoing "Ite-Isiji", a traditional practice of the Igbo ethnic group. During this ritual of scarification, deep wounds are inflicted on Igbo boys to create distinctive scars across their bodies. The Applicants have described Ite-Isiji as the prerequisite for Igbo boys to participate in community life, including marriage. The Applicants have also noted severe and fatal health consequences associated with this practice, including significant blood loss, infection and death.

[4] Neither the PA nor her husband want their sons to undergo this scarification. The husband is of the Igbo ethnic group. As a boy, he was subject to Ite-Isiji. As a converted Christian, he does not approve of the practice.

[5] Irrespective of the PA and her husband's intentions for their sons, Ite-Isiji remains a prominent practice in the husband's family lineage (Ibe Udunta) and community of origin (Amasiri). The head of the husband's family [the "Chief"], arrived at the Applicants' home on June 30, 2017. The Chief informed the PA that every male child from Amasiri must undergo the

Ite-Isiji rite. Furthermore, the Chief Priest of Amasiri had ordered the eldest MA to undertake the rite on December 15, 2017.

[6] When the PA protested during the June 30, 2017 visit, the Chief threatened her with public humiliation. The husband and his father, on July 2, 2017, travelled to visit the Chief and other family elders to refuse the eldest MA's participation in the rite. During this encounter, the Applicants claim the Chief threatened death to anyone who prevented the eldest MA from undergoing the rite. On July 24, 2017, the family elders organized an ambush for the husband's father, who was beaten by the village youth. The husband's father later died from these injuries.

[7] Following a further visit from the Chief and family elders, on August 17, 2017, the PA and her husband made arrangements to leave Nigeria. They arrived in Canada on September 13, 2017. Out of fear, the husband has pretended to cooperate with his family. The husband has not claimed for protection in Canada. He believes he is not at risk due to his perceived cooperation by pretending to support the Ite-Isiji rite.

[8] Once it was apparent that the Applicants and the husband had fled, the Chief, accompanied by other men, have visited family members of the PA, specifically her mother and two sisters. One of the sisters was located in Port Harcourt, Rivers State, and has since fled, following the Chief's visit. The Chief has visited the mother's home on several occasions between October 2017 and August 2018. At the time of these incidents, the mother was located in Abeokuta, Ogun State.

[9] The Applicants claim the visits resulted in threats against the PA and threats or actual physical violence against the family members in question. The mother's home was invaded and searched for evidence of the Applicants' location on one occasion. The PA's youngest sister lost a pregnancy as a result of the violence against her. The Chief has threatened dire consequences and death to the PA, according to these family members.

## I. Decision Under Review

[10] The RAD dismissed the appeal from the decision of the Refugee Protection Division [RPD], dated September 14, 2018 [RPD Decision], finding that the Applicants are neither Convention refugees nor persons in need of protection due to the existence of IFAs within Nigeria. The existence of viable IFAs was determinative of the claim. Specifically, the RAD agreed with the RPD's findings that Lagos and Abuja are viable IFAs. However, it disagreed with the RPD that Port Harcourt is a viable IFA, finding that the agents of persecution have located the PA's sister living in Port Harcourt and could use this connection to find the Applicants should they return to Nigeria.

[11] The RAD found that:

A. The husband's business profile was not sufficient to make him known throughout the country outside the oil and gas industry;
B. It was unclear how the Igbo network could be leveraged to locate the Applicants;
C. The Applicants had failed to link the agents of persecution to persons of influence; and
D. The husband could operate his company from overseas and there was no evidence that the husband's business associates had been approached by the agents of persecution.

## II. Issue

[12] The issue is whether the decision that Lagos and Abuja are IFAs is unreasonable.

## III. Standard of Review

[13] The Applicants and Respondent agree that the standard of review is reasonableness. The Respondent, however, further specifies a "high" threshold for the IFA test and a less onerous standard of "palpable and overriding error" where the Applicants contest a finding of fact.

[14] I find that the RAD Decision should be reviewed on the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). The presumption of the reasonableness standard has not been rebutted in the current case. Furthermore, this standard of review is consistent with jurisprudence both prior to and following *Vavilov* (see *Ali v Canada* (*Citizenship and Immigration*), 2020 FC 93 [*Ali*]).

## IV. Analysis

[15] As a preliminary point, counsel for the Applicants requested that the names of the Applicants be kept confidential out of fear of persecution if they were to be returned to Nigeria. Counsel for the Respondent agreed and the Court hereby orders that the Applicants' names be kept confidential for the purposes of this decision. The Applicants' names will be amended in the Style of Cause to be "A.B.", "C.D." and "D.E.".

[16] The Applicants argue that the RAD Decision is unreasonable in two respects. First, it premised its IFA findings on the Applicants' ability to live in the IFAs in hiding. Requiring the Applicants to live in such a manner undermines the IFA analysis and renders the decision unreasonable. Second, the Applicants take the position that the RAD relied on unreasonable distinctions between Port Harcourt and Lagos or Abuja, in its reasons, which do not justify why Lagos or Abuja are valid IFAs, while Port Harcourt is not. As such, the RAD Decision is not justified by way of transparent and intelligible reasoning.

[17] The Respondent argues that the RAD found no persuasive, objective evidence showing the agents of persecution had the means to locate the Applicants in the proposed IFAs. The Respondent further disagrees with the Applicants' interpretation that the RAD Decision requires the Applicants to hide in the IFAs.

[18] The Applicants and Respondent are in agreement that the RAD applied the correct test for a proposed IFA. There are two criteria that must be met, on the balance of probabilities, as set out in *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 ("*Thirunavukkarasu*"), before an IFA will be found to be reasonable:

A. There is no serious possibility of the Applicants being persecuted in the part of the country in which the IFA exists; and
B. It is not unreasonable for the Applicants to seek refuge there, given all the circumstances of the individual Applicants.

[19] The burden of proof resides with the Applicants (*Thirunavukkarasu*). The RAD raised no credibility issues with respect to the Applicants' evidence.

[20] This Court has consistently held that a refugee claimant cannot be expected to live in hiding in order for a proposed IFA to be reasonable. Considering that the agents of persecution have made repeated visits to the PA's mother and sisters to solicit the Applicants' whereabouts, it follows that the Applicants cannot disclose their IFA location whereabouts to these family members in Nigeria. The Federal Court in *Ali*, above, has held that it is not reasonable to expect family members to put their own lives in danger by denying knowledge of or misleading the agents of persecution as to a refugee claimant's whereabouts (*Ali* at para 49).

[21] This Court has previously found that not being able to share location information with family or friends is tantamount to "hiding". In *Zamora Huerta v Canada (Citizenship and Immigration*, 2008 FC 586 [*Huerta*], Blanchard J. held that:

> [29] … the Board did qualify its finding by stating that an IFA existed for the Applicant in Mexico, provided she took reasonable precautions and not reveal her new location to relatives and friends. Not to be able to share your whereabouts with family or friends is tantamount to requiring the Applicant to go into hiding. It is also an implicit recognition that even in these large cities, the Applicant is not beyond her common-law spouse's reach. In these particular circumstances, this cannot constitute an IFA for the Applicant.

[22] More recently, in *Ali*, the Federal Court held that:

> [49] The finding here is that Mr. Ali's father and other family members are unlikely to tell anyone that the Applicants have taken up residence in Hyderabad. This raises the issue of how family members will deal with a direct inquiry from the TTP as to the Applicants' whereabouts. In my view, it would not be reasonable

> to expect family members to place their own lives in danger by either denying knowledge of the Applicants' whereabouts or deliberately misleading the TTP…
>
> [50] Given the dangers posed by knowledge of their whereabouts, or even their return to Pakistan, the Applicants would be forced to hide from family members and friends and cut off communications. This is not a reasonable requirement and so cannot be used to obviate risk under the first prong…

[23] That is the situation here. I find that the RAD Decision is unreasonable in that it failed to consider the Applicants' particular fact situation in its assessments of potential IFAs. The reasonableness of a decision may be jeopardized where it fails to account for the relevant evidence before it (*Vavilov* at para 126). The RAD failed to reasonably consider the evidence before it on the agents of persecution's (the Chief) continued pattern of attempting to extract information from the PA's mother and sisters. While the RAD considered the motivation and means of the agents of persecution in its reasons, it failed to reasonably consider the ongoing, persistent search by the Chief for the Applicants. The means to ascertain the Applicants through the family members has been established on the facts here.

[24] The agents of persecution's access to family members and the consistent targeting of them for information on the Applicants' whereabouts is a relevant consideration as it relates to the question of means. The fact that the Chief is willing to use the PA's family members in an effort to locate the Applicants is indicative of the Chief's ongoing intent and ability to locate the Applicants if returned to Nigeria. While the PA's sister in Port Harcourt has fled the city following the Chief's visit, the PA's mother in Abeokuta has been visited by the Chief on several occasions.

[25] Furthermore, consideration of the PA's connection to her family is not applied in a consistent manner. The RAD determined that Port Harcourt is not a viable IFA, as the PA's connection with her sister in Port Harcourt could be leveraged to locate the Applicants. For the other IFA locations of Lagos and Abuja, while the RAD concluded that the agents of persecution are motivated to find the Applicants, nevertheless, the RAD found that the PA failed to advance evidence on how these individuals would locate the family through their connections, or how they would be aware that the family had returned to Nigeria after a multiple year absence.

[26] This analysis ignores the reality that as long as the agents of persecution are able to locate a family member in the circumstances provided here, and on the facts are determined and motivated to do so, they may and probably will attempt to extract information on the Applicants' whereabouts using the family connection, regardless of the IFA location within Nigeria.

[27] The RAD Decision is unreasonable in failing to consider the PA's sisters and mother as a means to locate the Applicants in its consideration of viable IFAs.

[28] I also agree with the Applicants that the RAD was unreasonable in relying on the fact that no evidence was adduced that the husband's business associates have been approached by the agents of persecution or other members of the Igbo community. The husband is not currently being targeted by the Chief, who is under the impression that the PA's husband is cooperating with him to locate the Applicants. The husband is not currently a target and it is not relevant whether or not he or his business associates have been approached by the agents of persecution.

## V. Conclusion

[29] The Application is allowed. The matter will be returned to the RAD for re-determination by a different panel.

[30] There is no question for certification.

**JUDGMENT IN IMM-5367-19**

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

1. The style of cause is amended by removing the names of the Applicants and replacing them with "A.B.", "C.D." and "E.F.";
2. The Application is allowed;
3. The matter is to be returned to the RAD for re-determination by a different panel;
4. There is no question for certification.

"Michael D. Manson"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-5367-19 |
| **STYLE OF CAUSE:** | A.B., C.D., E.F. v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |

**HEARING HELD BY VIDEOCONFERENCE ON SEPTEMBER 17, 2020 FROM VANCOUVER, BRITISH COLUMBIA (COURT) AND TORONTO, ONTARIO (PARTIES)**

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| **DATE OF HEARING:** | SEPTEMBER 17, 2020 |
| **JUDGMENT AND REASONS:** | MANSON J. |
| **DATED:** | SEPTEMBER 21, 2020 |

**APPEARANCES:**

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| Justin Toh | FOR THE APPLICANTS |
| Stephen Jarvis | FOR THE RESPONDENT |

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