Federal Court  Cour fédérale

Date: 20201211

Docket: IMM-5952-19

Citation: 2020 FC 1139

Toronto, Ontario, December 11, 2020

PRESENT: Mr. Justice A.D. Little

BETWEEN:

FLORENCE MODUPE IFOGAH
BENJAMIN IFOGAH

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicants are citizens of Nigeria. They requested protection in Canada under sections 96 and 97 of the *Immigration and Refugee Protection Act* (the "IRPA").

[2] In this application for judicial review, the applicants ask the Court to set aside a decision of the Refugee Appeal Division (the "RAD") dated April 12, 2019. In that decision, the RAD

upheld a decision of the Refugee Protection Division (the "RPD") dated November 18, 2018, which denied protection under the IRPA to the applicants.

[3] Both the RAD and the RPD concluded that, based on their permanent residency in South Africa, the applicants were excluded from being recognized as refugees owing to Article 1E of the *United Nations Convention Relating to the Status of Refugees*, 189 UNTS 137 (the *"Convention"*) and s. 98 of the IRPA.

[4] This application concerns whether the RAD's decision was reasonable. In particular, it concerns the RAD's determination that the applicants could not introduce new evidence for the appeal before it.

[5] In my opinion, the RAD's decision was reasonable. The RAD dealt with the proposed new evidence in accordance with the IRPA and the established case law. Therefore, this application will be dismissed.

I. Events Leading to this Application

A. The RPD Decision

[6] The applicants claimed refugee protection in Canada under the IRPA, s. 96 and subs. 97(1). The RPD denied their claims. The RPD concluded that they were not refugees from Nigeria, their home country, or South Africa, where they were permanent residents.

[7] Ms Ifogah was the primary applicant before the RPD. With respect to Nigeria, the RPD considered evidence that Ms Ifogah was the victim of a targeted or random kidnapping for ransom and the general risk of crime in Nigeria. The RPD determined that acts of criminality, such as kidnapping, do not qualify the victim for refugee status under s. 96, so the claim was assessed exclusively under subs. 97(1).

[8] The RPD concluded that the applicants did not face a personalized risk of harm under IRPA subs. 97(1). With respect to South Africa, the RPD concluded that the applicants had not proven their claims for refugee protection based on xenophobia against them as Nigerians or based on high crime rates.

[9] At the hearing before the RPD, the applicants testified that they had permanent resident status in South Africa. The RPD concluded that they were permanent residents of that country. The RPD also concluded that the applicants would not face a serious possibility of persecution under s. 96 nor would they face a personalized risk of harm in South Africa under s. 97 of the IRPA. The RPD concluded that the applicants would be able to avail themselves of the protection offered by South Africa if necessary.

[10] As a result of its conclusion that the applicants were permanent residents of South Africa, the RPD concluded that the applicants were not refugees under Article 1E of the *Convention*. Article 1E provides:

> This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

[11] Given its determination that Article 1E applied to the applicants, the RPD concluded that they were not refugees or persons in need of protection under IRPA s. 98, which provides in part that a person referred to in Article 1E is "not a Convention refugee or a person in need of protection".

B. **The RAD Decision**

[12] The applicants appealed to the RAD. They also requested permission to submit new evidence on the appeal under subs. 110(4) of the IRPA.

[13] In its decision, the RAD first noted that the applicants had not challenged the RPD's finding that they were excluded under Article 1E. They also did not allege that the RPD committed an error in its exclusion analysis. Instead, the applicants' submissions on appeal related to their risk of harm in Nigeria.

[14] The RAD concluded that the determinative issue in the appeal was whether the RPD erred in finding that the applicants were excluded by Article 1E. The RAD stated that it independently reviewed the evidence and it agreed with the RPD. The RAD concluded that the RPD had not erred in its Article 1E analysis or in its conclusion that the applicants were excluded from refugee protection in Canada. The RAD therefore confirmed the decision of the RPD that the applicants were neither Convention refugees nor persons in need of protection under the IRPA.

[15] The applicants requested the admission of four documents as new evidence on appeal. The RAD stated that the new evidence must meet the requirements of subs. 110(4) and the factors set

out in *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 and *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96.

[16] On the proposed new evidence, the RAD concluded that the first three documents were not admissible because they were not relevant to the appeal. A supplementary affidavit of Ms Ifogah, an extract from a police diary, and an information report, all related to kidnappings and alleged risks of harm in Nigeria. The RAD concluded that they were not relevant because they did not relate to the determinative issue on the appeal of whether the RPD erred in its exclusion analysis (which turned on the applicants' status as permanent residents in South Africa). The RAD did not admit the first three documents into evidence.

[17] The fourth document was a sworn affidavit of Ms Ifogah dated in 2017, before the RPD hearing. It recounted the kidnapping of Mr Ifogah's niece from her family home in South Africa. The RPD found that the applicants had not submitted a sufficient explanation as to why the 2017 affidavit was not reasonably available at the time of the RPD hearing. The RAD recognized the applicants' submission that the new evidence was central to the decision on their refugee claim. The RAD also recognized that the burden was on the applicants to show the admissibility of new evidence, and that new evidence on appeal under IRPA subs. 110(4) is not an opportunity to complete a deficient record before the RPD. The RAD concluded that the applicants had not met their onus to demonstrate that the 2017 affidavit was admissible into evidence on appeal.

[18] In its analysis, the RAD stated that both applicants had "testified at the RPD that they have enduring permanent resident status in South Africa". The applicants had "testified that this status

does not need to be renewed and they were not aware of any way that this status would be revoked", with a footnote reference to the testimony during the RPD hearing. The RAD noted that the applicants had not challenged the RPD's finding that their permanent resident status afforded them substantially the same rights as citizens of South Africa. The RAD concluded that the applicants had not presented any arguments of an error in the RPD's analysis concerning the alleged risks they faced in South Africa. The RAD therefore concluded that given their permanent resident status in South Africa, the applicants were correctly excluded from protection under the IRPA.

[19] The RAD therefore dismissed the applicants' appeal.

C. **Application to this Court**

[20] The applicants now ask this Court to set aside the RAD's decision under s. 18.1 of the *Federal Courts Act*, RSC 1985, c F-7.

[21] The applicants contend, in essence, that part of the narrative supporting their claim for protection under the IRPA was missing before both the RAD and the RPD. They submit that their previous legal counsel advised them that facts related to South Africa were irrelevant to their claim before the RPD. On appeal to the RAD with different legal counsel, they requested the admission of new evidence related to South Africa. They further contend that the RAD should have dealt with their application on its merits – it should have asked itself whether the applicants are people in need of protection and then proceeded to analyse and evaluate the new evidence in that context. Because this evidence was not analysed, the decision of the RAD was unreasonable.

[22] The applicants also submitted that they have lost their permanent resident status in South Africa under the applicable South African statute, because they have not lived there for more than three years.

[23] The applicants filed additional evidence on this application. I will first consider whether that evidence is admissible.

II. Preliminary Issue: Admissibility of New Evidence Before the Court

[24] The applicants have referred to two additional affidavits on this application. The applicants filed one affidavit with their application for leave under s. 72 of the IRPA and filed the second just before this application. Both were mentioned during the oral argument of this application.

[25] In the first affidavit dated November 2019, Ms Ifogah described her arrival in Canada on September 21, 2017 from Nigeria after being released from kidnapping with her children. She was hospitalized due to the ill-treatment and torture she endured at the hands of the kidnappers in Nigeria. She was also pregnant at the time and experienced a problematic pregnancy.

[26] Soon after their arrival in Canada, the applicants met with legal counsel. There was an initial meeting to gather facts. When they met later with legal counsel to sign their refugee claim documents, Ms Ifogah realized that part of her narrative was missing in her Basis of Claim form, relating to their time residing in South Africa. She testified in her affidavit that counsel informed her that her "residency in South Africa had nothing to do with [her] refugee claim".

[27] In this first affidavit, Ms Ifogah also:

- described the applicants' attendance with their small children at the RPD hearing, by videoconference and without their legal counsel;
- advised that Mr Ifogah's sister in law was kidnapped in Nigeria in late 2018 and that she had been informed, apparently by Mr Ifogah, that there was a connection between the two kidnapping ordeals and that they were perpetuated by the Omi Erigah cult; and
- testified that she was "fearful of returning to Nigeria and I do not have South African residency anymore". However, she did not provide any supporting documentation, additional information, or a legal basis for her statement about residency.

[28] The second affidavit mentioned during oral argument was dated September 17, 2020. It is short. In it, Ms Ifogah set out some background information to situate this application and explained what she asks this Court to do. She also testified that she knew "for a fact that one loses South African residency after three (3) years absence from the country."

[29] For the admissibility of new evidence on an application for judicial review, the general rule is that the evidentiary record before the reviewing court is restricted to the evidentiary record that was before the administrative decision-maker. Evidence that was not before the decision-maker and that goes to the merits of the matter is not admissible on an application for judicial review in this Court: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22, at para 19; *Delios v Canada (Attorney General)*, 2015

FCA 117, at para 42; *Love v Canada (Privacy Commissioner)*, 2015 FCA 198, at para 17; *Brink's Canada Limitée v Unifor*, 2020 FCA 56, at para 13; *British Columbia (Attorney General) v Provincial Court Judges' Association of British Columbia*, 2020 SCC 20, at para 52.

[30] There are exceptions to the general rule. Stratas JA described them in *Association of Universities,* at paragraph 20. The exceptions exist in situations where the receipt of new evidence by the Court is consistent with the different roles of the judicial review court and the administrative decision-maker and generally support the reviewing court's supervisory role. The administrative decision-maker's role is to determine the facts, ascertain the applicable law, consider issues of policy, apply the law and policy to the facts it has found, make conclusions, and then to consider remedies (where applicable). On judicial review, the Court carries out a supervisory role by determining the reasonableness of that decision.

[31] The exceptions described by Stratas JA in *Association of Universities* were: (i) an affidavit that provides general background in circumstances where that information might assist the court in understanding the issues relevant to the judicial review; (ii) an affidavit that is necessary to bring to the attention of the judicial review court procedural defects that cannot be found in the evidentiary record of the administrative decision-maker, to enable the court to fulfil its role of reviewing the decision for procedural unfairness; and (iii) an affidavit that highlights the complete absence of evidence before the decision-maker when it made a particular finding. There may be additional exceptions, as the list is not closed: *Association of Universities,* at para 20.

[32] While the applicants did not formally apply for the admission of new evidence on this application, in my opinion, some aspects of the two affidavits are admissible. The admissible contents set out the background and information to situate the judicial review application. However, the contents of the affidavits relating to residency in South Africa and the later kidnapping in Nigeria do not fall within the exceptions set out in *Association of Universities* and are not admissible on this application. That evidence is not background information, nor is there an allegation of procedural unfairness in this case or an allegation that either the RAD or the RPD made conclusions on a complete absence of evidence. Rather, this evidence goes to the merits of the applicants' claims under the IRPA.

[33] In particular, the evidence in these two affidavits concerns the applicants' loss of residency or permanent resident status in South Africa. The second affidavit states that Ms Ifogah does not have "South African residency anymore". While this statement could (on its face) refer to where Ms Ifogah currently lives, that is not its intention. It is intended to state her legal status – that she is no longer a permanent resident of South Africa. Thus, the evidence does not merely update the applicants' evidence to account for the passage of time (i.e., that their permanent resident status has been lost due to three years of not living in South Africa). Instead, Ms Ifogah's testimony goes to the merits of the RPD's and the RAD's conclusions on the exclusion of the applicants under Article 1E of the *Convention* and s. 98 of the IRPA, and it contradicts directly the testimony by both applicants at the RPD hearing as summarized at paragraph 10 of the RAD's decision. The general rule in *Association of Universities* applies and the evidence does not fall within any of the exceptions. See also the reasoning in *Delios*, at paragraphs 49-52. I therefore conclude that this evidence is not admissible on this application.

[34] I turn now to the merits of the application.

III. The Standard of Review

[35] The standard of review on this application is reasonableness in accordance with the Supreme Court's recent decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65. Reasonableness is the presumed standard applicable to judicial review of administrative decisions. This presumption of reasonableness review applies to all aspects of the decision: *Vavilov*, at paras 16, 23 and 25. The presumption may be rebutted by legislative intent, or if the rule of law requires a different standard: *Vavilov*, at paras 17, 23 and 69. The presumption is not rebutted in this case.

[36] In conducting a reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale, in order to ensure that the decision as a whole is transparent, intelligible and justified: *Vavilov*, at para 15. The focus of reasonableness review is on the decision made by the decision maker, including both the reasoning process (i.e. the rationale) that led to the decision and the outcome: *Vavilov*, at paras 83 and 86; *Delta Air Lines Inc. v Lukács*, 2018 SCC 2, [2018] 1 SCR 6, at para 12. The starting point is the reasons provided by the decision maker: *Vavilov*, at para 84.

[37] When reviewing for reasonableness, the court asks "whether the decision 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. To intervene, the reviewing court must be satisfied that there are "sufficiently serious

shortcomings" in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep". The problem must be sufficiently central or significant to render the decision unreasonable: *Vavilov*, at para 100.

[38] The court on a judicial review application does not ask how it would have resolved an issue on the evidence, nor does it reassess or reweigh evidence: *Vavilov*, at paras 75, 83 and 125-126.

[39] The onus to demonstrate that the decision is unreasonable is on the applicant: *Vavilov*, at paras 75 and 100.

IV. Analysis

[40] As summarized already, the applicants submitted that the RAD erred because it did not evaluate and analyse new evidence concerning to their circumstances in South Africa. They asked this Court to set aside the RAD's decision and return the matter to the RAD so that their claim can be properly evaluated on its full merits.

[41] The respondent made two points. First, the respondent submitted that the RAD did not err in declining to admit the new evidence. Second, the respondent submitted that the RAD properly conducted its own analysis of whether the applicants were excluded under Article 1E of the *Convention* and were therefore not Convention refugees or persons in need of protection under s. 98 of the IRPA. The applicants do not challenge that finding in this Court and therefore, according to the respondent, the application should be dismissed.

[42] As I explain below, I agree generally with the respondent. In my view, the applicants have not demonstrated that the RAD's decision was unreasonable under *Vavilov* principles. There are four principal reasons.

[43] First, I see no legal error in the RAD's decision not to admit the proposed new evidence. For that evidence to be admitted before the RAD, it must meet both the express statutory requirements of IRPA subs. 110(4), and the *Raza* factors of credibility, relevance, newness and materiality (the materiality criterion slightly adapted for the RAD): see *Raza*, at paras 13–15; *Singh*, at paras 38–49 and 64. Kane, J. recently noted that an applicant must meet the statutory

requirements in subs. 110(4) before the RAD considers how the *Raza f*actors should be applied in the context of the appeal: *Okunowo v. Canada (Citizenship and Immigration)*, 2020 FC 175, at para 41.

[44] In *Dugarte de Lopez v Canada (Citizenship and Immigration)*, 2020 FC 707, Gascon J. explained in detail the requirements for new evidence at the RAD, including each of the *Raza* factors, as follows:

> [17] For new evidence to be admissible on appeal before the RAD, it must first fall into one of the three categories described in subsection 110(4) of the IRPA. This subsection empowers the RAD to collect new evidence that "arose after the rejection of the claim", that "was not reasonably available" or that the person "could not reasonably have been expected in the circumstances to have presented, at the time of the rejection" (*Singh* at para 34). Only new evidence that falls into one of these three categories is admissible (*Singh* at para 35). The Federal Court of Appeal noted that these three conditions had to be met, since they are "inescapable and would leave no room for discretion on the part of the RAD" (*Singh* at paras 34–35). In this case, there is no doubt that the exhibits submitted by Ms. Dugarte de Lopez met the criteria of subsection 110(4). There is no argument on that level.
>
> [18] In addition, in *Singh*, the Federal Court of Appeal determined that the admissibility criteria for new evidence in pre-removal risk assessments are also applicable to the admissibility of new evidence in the context of subsection 110(4) of the IRPA (*Singh* at paras 49, 64). These admissibility criteria were developed in *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 [*Raza*], and include the following elements: credibility, relevance, newness, materiality, and express statutory conditions. Paragraph 13 of *Raza* summarizes them as follows:
>
> . . .
>
> Credibility: Is the evidence credible, considering its source and the circumstances in which it came into existence? If not, the evidence need not be considered.

Relevance: Is the evidence relevant to the PRRA application, in the sense that it is capable of proving or disproving a fact that is relevant to the claim for protection? If not, the evidence need not be considered.

Newness: Is the evidence new in the sense that it is capable of:

> (a) proving the current state of affairs in the country of removal or an event that occurred or a circumstance that arose after the hearing in the RPD, or
>
> (b) proving a fact that was unknown to the refugee claimant at the time of the RPD hearing, or
>
> (c) contradicting a finding of fact by the RPD (including a credibility finding)?

If not, the evidence need not be considered.

4. Materiality: Is the evidence material, in the sense that the refugee claim probably would have succeeded if the evidence had been made available to the RPD? If not, the evidence need not be considered.

5. Express statutory conditions:

> (a) If the evidence is capable of proving only an event that occurred or circumstances that arose prior to the RPD hearing, then has the applicant established either that the evidence was not reasonably available to him or her for presentation at the RPD hearing, or that he or she could not reasonably have been expected in the circumstances to have presented the evidence at the RPD hearing? If not, the evidence need not be considered.
>
> (b) If the evidence is capable of proving an event that occurred or circumstances that arose after the RPD hearing, then the evidence must be considered (unless it is rejected because it is not credible, not relevant, not new or not material).

[19] These criteria from *Raza* do not override but add to the three explicit conditions mentioned in subsection 110(4) of the IRPA, since they are necessarily implied from the purpose of the provision (*Singh* at para 63; *Nteta-Tshamala v Canada (Citizenship and Immigration)*, 2019 FC 1191 [*Nteta-Tshamala*] at para 24). Thus, in deciding whether new evidence is admissible, the RAD must determine whether the criteria of credibility, relevance, newness and materiality set out in *Raza* are met (*Singh* at para 49).

> However, the *Raza* criteria require certain adaptations when applied to subsection 110(4): thus, the newness component is redundant with subsection 110(4), and the materiality component is less strict since, because of its broad mandate, the RAD may accept new evidence which, although not determinative in and of itself, may have impact on the RAD's overall assessment of the RPD's decision (*Singh* at paras 46–47).

See also *Thorne v. Canada (Citizenship and Immigration)*, 2020 FC 790 (Roussel, J), at para 8.

[45] In this case, the RAD recognized that the criteria in subs. 110(4) of the IRPA must be satisfied, and that it was required to apply the factors set out in *Singh* and *Raza* in order to determine whether the proposed new evidence should be admitted.

[46] I am unable to find any error in the RAD's application of these legal principles to the four documents requested to be admitted as new evidence. The RAD concluded that three were not relevant to the determinative issue in the appeal. On the fourth document (the 2017 affidavit), the RAD was not satisfied with the applicants' explanation as to why the affidavit was reasonably available, nor why it could not reasonably have been expected to have been presented, when the RPD issued its decision. The affidavit did not meet the conditions of IRPA subs. 110(4). I note that new evidence must fall into one of the three categories in subs. 110(4) to be admissible. The RAD had no discretion to deviate from the strict criteria in the statute: *Singh*, at paras 34-35 and 63.

[47] I note also that on an appeal to the RAD, an appellant's record must contain a written statement concerning whether the appellant is relying on any new evidence referred to in subs. 110(4) of the IRPA: see Rule 3(3)(d)(i) of the *Refugee Appeal Division Rules*, SOR/2012-257 (the

"RAD Rules"). Rule 3(3)(e) requires the appellant's record to include "any documentary evidence that the appellant wants to rely on in the appeal." Rule 3(3)(g)(iii) requires an applicant to submit a memorandum that includes "full and detailed submissions" regarding "how any documentary evidence referred to in paragraph (*e*) meets the requirements of subsection 110(4) of the Act and how that evidence relates to the appellant".

[48] On their appeal, section III of the applicants' form submitted to the RAD under these Rules stated that the new evidence was "central to the decision with respect to the refugee protection claim": Certified Tribunal Record, p. 23. However, the applicants did not make specific submissions about how their new evidence met each of the criteria prescribed by Parliament in IRPA subs. 110(4), nor how the proposed new evidence satisfied the factors set out in *Singh* and *Raza*. The RAD nonetheless applied the correct legal criteria in assessing the evidence.

[49] Second, on this application, the applicants submitted that the proposed new evidence at the RAD was relevant under the *Raza* factors, but to an issue they believed was not relevant at the time they appeared before the RPD. They pointed to the advice they received from their first legal counsel in relation to the relevance of evidence concerning South Africa. They contended that they received incorrect advice and that if the advice had been to include evidence about South Africa in their narrative, their claims could have been properly considered on the merits. This circumstance also explains why they did not submit Ms Ifogah's 2017 affidavit (concerning the kidnapping of her niece) to the RPD even though it predates the RPD's hearing, something that might allow it to be admitted as evidence under IRPA subs. 110(4).

[50] The applicants unfortunately did not put this explanation to the RAD. The evidence about counsel's advice came later, in Ms Ifogah's affidavit before this Court. In any event, as the Federal Court of Appeal explained in *Singh*, the claim that their counsel failed to advise them correctly is, by itself, not enough to relieve the applicants of any responsibility; an applicant must live with the consequences of the actions of their counsel: *Singh*, at para 66.

[51] At paragraph 67 of *Singh*, the Court of Appeal stated that it is "settled in Federal Court immigration jurisprudence that an allegation of professional incompetence of counsel will not be upheld if there is no evidence that a complaint has been filed with the competent authorities of the bar to which the counsel belongs or without an explanation personally issued by the professionals involved". Neither of those requirements is met in this case. Counsel for the applicants confirmed at the hearing that to his knowledge, the applicants had not filed a complaint. The first lawyer who counselled the applicants did not provide evidence to the RAD or on this application.

[52] Third, the applicants argued that they had lost permanent resident status in South Africa, which would imply that they would no longer rely on protection from South Africa and Article 1E would not apply. To support the affidavit from Ms Ifogah, discussed already, the applicants submitted that in law, s. 28 of the *South Africa Immigration Act, 2002* provided that permanent resident status is lost if the permit holder has been absent from the country for more than three years.

[53] The applicants included section 28 of the *South Africa Immigration Act, 2002* in their Book of Authorities. It reads that the South African Department of Home Affairs "may withdraw a

permanent residence permit" if the holder of that permit (*c*) "has been absent from the Republic for more than three years, provided that …" Then there are several exceptions including the possibility of an extension upon showing good cause and upon prior application.

[54] A Book of Authorities is filed with a memorandum of fact and law under Rule 70(1)(g) of the *Federal Courts Rules*, SOR/98-106. The proper contents of a Book of Authorities is not addressed in the Rule. However, in my view, a party cannot simply file an excerpt from a foreign statute in a Book of Authorities and ask the Court to rely upon it to determine an important substantive issue arising on an application. Apart from what is permitted in a Book of Authorities, a foreign law must be proved as a fact under conflict of laws principles: *Lubrizol Corp. v Imperial Oil Ltd (*1992), 98 D.L.R. (4th) 1 (FCA), at para 20; *Canada (Minister of Citizenship and Immigration) v Saini*, 2001 FCA 311, at para 26; *Asad v. Canada (Citizenship and Immigration)*, 2015 FCA 141, at para 16.

[55] On this application, the applicants offered no formal proof of this foreign law, no independent assistance to interpret it, and no evidence as to how it applies to them. While that may seem impractical or burdensome on this kind of court application, the point is important here due to the contents of the foreign provision. On its face, the provision appears to be permissive ("may withdraw"), not mandatory as the applicants' position would suggest. There are also exceptions to the withdrawal in the provision itself, which may or may not apply on a proper interpretation of the law. In addition, the applicants did not contend on this application that they held a permanent residence permit, nor did they offer evidence (admissible or not) that the Department of Home

Affairs had withdrawn such a permit, nor evidence as to whether they could or did seek an extension of time.

[56] Accordingly, even apart from the admissibility of Ms Ifogah's testimony in her two recent affidavits (considered above as a preliminary issue), the evidence is far from sufficient to draw any conclusions with respect to the termination of the applicants' permanent resident status in South Africa.

[57] Lastly, the applicants submitted that the RAD should have undertaken a fresh analysis of their claims under the IRPA, citing *Kurtzmalaj v Canada (Minister of Citizenship and Immigration)*, 2014 FC 1072. The respondents submitted that *Kurtzmalaj* relied for this point on *Huruglica v Canada (Minister of Citizenship and Immigration)*, 2014 FC 799 and that the Federal Court of Appeal overturned the latter decision in *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93, [2016] 4 FCR 157 (*"Huruglica FCA")*.

[58] In my view, the RAD performed its role in accordance with *Huruglica FCA.* That decision also answers the applicants' legal position in substance. The RAD undertook an independent analysis of the matter and reached its own conclusion (at para 2). It agreed with the RPD and found the RPD did not err, thus applying a standard of correctness as required by *Huruglica FCA* (at paras 78 and 103). The RAD also addressed the applicants' request for new evidence and applied IRPA subs. 110(4) as both *Huruglica FCA* (at para 56) and *Singh* (at paras 34-35 and 63) required. The respondent cited *Huruglica FCA*, at paragraph 103, to argue that an appeal to the RAD is an appeal based on errors identified by the applicants; however, the applicants did not allege an error

in the RPD's exclusion analysis itself, or in the RPD's analysis of the alleged risks in South Africa, so the role of the RAD is not at issue in that respect.

[59] For these reasons, I am unable to conclude that the RAD's decision was unreasonable, applying the guidance provided by the Supreme Court in *Vavilov*. The RAD's decision, while not lengthy, addressed the issues raised by the applicants on the new evidence and performed an independent analysis of the determinative issue in the appeal. It exhibited sufficient justification, transparency and intelligibility, there was no central flaw in its reasoning process and it did not reach an unreasonable outcome.

V. Conclusion

[60] For these reasons, the application must be dismissed. Neither party proposed a question for certification. This is not a case for costs.

JUDGMENT in IMM-5952-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified under paragraph 74(*d*) of the *Immigration and Refugee Protection Act*.
3. There is no order as to costs.

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5952-19
STYLE OF CAUSE:	FLORENCE MODUPE IFOGAH, BENJAMIN IFOGAH v THE MINITER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	NOVEMBER 1, 2020
REASONS FOR JUDGMENT AND JUDGMENT:	A.D. LITTLE J.
DATED:	DECEMBER 11, 2020

APPEARANCES:

Kolade Oladokun	FOR THE APPLICANTS
Silvia Suman	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Kolade Oladokun A.R.E. Law Professional Corporation Regina, Saskatchewan	FOR THE APPLICANTS
Silvia Suman Attorney General of Canada	FOR THE RESPONDENT