

Federal Court



Cour fédérale

**Date: 20210519**

**Docket: IMM-216-20**

**Citation: 2021 FC 463**

**Ottawa, Ontario, May 19, 2021**

**PRESENT: Madam Justice Simpson**

**BETWEEN:**

**BLESSING EDOSEWELE AGHEDO  
BENGTA OSESENAGA AGHEDO  
HARRY EHIOSUN AGHEDO  
HENRY AGHEDO**

**Applicants**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**and**

**BERTRAND DESLAURIERS AVOCATS**

**Intervener**

**JUDGMENT AND REASONS**  
**(Delivered orally from the Bench by videoconference**  
**at Ottawa, Ontario on April 1, 2021)**

[1] This application is for judicial review of a decision of the Refugee Appeal Division [the RAD] of the Immigration and Refugee Board [the Board], dated December 19, 2019, in which the RAD Member dismissed the Applicants' appeal from a decision of the Refugee Protection Division [the RPD] of the Board refusing their refugee claims. The refusal was based on the availability of an Internal Flight Alternative [IFA] in Lagos, Nigeria.

[2] The applicants are a family of four: a man [the Husband], a woman [the Wife] [together the Applicants], and their two minor children, a son and a daughter [the Daughter]. They are citizens of Nigeria.

[3] The Husband holds university degrees in business administration and management. Prior to leaving Nigeria, he had worked in various banks. The Wife holds a university degree in accounting, and has been employed as an accountant.

[4] The Applicants lived in Benin City, in southwestern Nigeria. The Husband's parents lived there as well.

[5] The Applicants are Christian. They speak English and Esan.

[6] The Applicants' underlying claim for refugee protection stems from the pressure they faced from the Husband's parents and tribal elders to subject their Daughter to female genital mutilation [FGM].

[7] The Husband's parents and tribal elders are alleged to have met with the Applicants on two occasions to discuss the practice. In those meetings, the elders threatened the Applicants with harm if they did not comply with the practice of FGM.

[8] The Applicants say these threats, as well as an alleged threatening phone call in February 2017, prompted them to apply for visas to the US. The Applicants left Nigeria in April 2017. The Wife and the two children spent seven months in the United States before they came to Canada in November 2017. The Husband arrived in Canada in February 2018.

[9] The Applicants filed their refugee claims in November 2018, with the assistance of their counsel at the time, Melissa Singer [RPD Counsel]. The Husband relied on his Wife's Basis of Claim [BOC] narrative.

[10] The Applicants originally submitted a handwritten narrative as part of their BOC form [the Initial BOC].

[11] The RPD later requested a typed version of the Initial BOC narrative and this was prepared by the Applicants who included some additional facts and a brief introduction [the Amended BOC]. It was provided to RPD Counsel's assistant on March 4, 2019, but was not provided to the RPD until the opening of hearing on March 18. This delay was apparently due to an oversight in RPD Counsel's office.

[12] The Applicants' claim was heard and a decision was issued on April 8, 2019, dismissing the claim.

[13] The Applicants then retained Bernard Deslauriers Avocats. Two lawyers at the firm handled the appeal. They will be referred to as RAD Counsel, without differentiating them. The Applicants met with RAD Counsel on May 24 and June 5, 2019. During the first meeting, the Husband provided handwritten annotations he had added to a transcript he prepared of the RPD hearing. He also provided his annotated version of the RPD's decision.

[14] There are many annotations on the RPD transcript. Several are more than a page in length. Most reflect the responses the Husband wished his Wife had given to questions asked during the hearing. Only one of the many annotations deals directly with the conduct of RPD Counsel. It is found in three lines at page 240 on the transcript and notes that RPD Counsel did not review the BOC narrative and did not prepare the Applicants for the hearing [the Annotation]. There are no criticisms of the RPD Counsel in the annotations on the RPD decision. I should note that the Annotation was later shown to be inaccurate. The Wife's Affidavit of March 2, 2020, at paras 5, 9, and 16, describes RPD's Counsel's review of the BOC narrative and the meeting held to prepare for the hearing.

[15] The RAD dismissed the appeal on December 19, 2019. The Applicants retained new counsel for this application for judicial review [Current Counsel]. Current Counsel contacted RAD Counsel in February of 2020 to ask why they had not brought allegations of incompetence

against RPD Counsel as part of the appeal. RAD Counsel responded to this inquiry in February 2020.

[16] RAD Counsels' firm was granted intervener status on this judicial review application. RAD Counsel deny that they were incompetent and they ask for costs.

## I. THE RAD DECISION

[17] The RAD dismissed the appeal. The RAD Member found that there were significant problems with the Applicants' credibility, and that even if there had been no such issues, the Applicants had an IFA in the city of Lagos.

[18] The RAD Member overturned a negative inference drawn by the RPD due to the late submission of the Applicants' Amended BOC. However, she upheld a negative inference drawn by the RPD about the Applicants' credibility due to the omission of two events from the Initial BOC.

[19] The RAD Member also found it problematic that testimony was given about an incident which appeared in neither the Initial nor the Amended BOC. The Wife stated before the RPD that her father-in-law called her on February 17, 2017, and threatened to kidnap her Daughter for FGM. The Wife said that she had forgotten to add this threat to the Amended BOC.

[20] The RAD Member drew a negative inference from this omission, saying that it was unlikely that the Applicants would forget an incident that was so central to their refugee claim.

[21] The RAD Member also made a negative credibility finding due to an inconsistency. The Applicants testified that the threatening phone call, described above, prompted them to apply for US visas in order to leave the country. However, the visas were dated and issued before the threatening phone call.

[22] On the issue of the IFA, the Member held that even if there had been no credibility issues, the appeal would nevertheless have been dismissed as the Applicants had a viable IFA in Lagos.

[23] The RAD Member found the Applicants had not shown that the Husband's parents, who are farmers, had the means to pursue the Applicants to Lagos or that they were so well-connected that they could find them. The RAD also found that the Applicants' decision not to let their Daughter undergo FGM meant that she would not be at risk of FGM in Lagos.

[24] The RAD Member upheld the RPD's finding that the Applicants did not prove, on a balance of probabilities, that they would face undue hardship in Lagos. Their fluency in English, university degrees, and high-level work experience all contributed to this finding.

## II. **THE ISSUES**

[25] There were three issues:

- 1) Were RAD Counsel incompetent?
- 2) If so, was there prejudice to the Applicants given the finding of an IFA?
- 3) Are RAD Counsel entitled to costs?

### III. DISCUSSION AND CONCLUSIONS

#### A. *Issue 1*

[26] Since the IFA is determinative, it is not necessary to deal at this point with the allegation of the incompetence of RAD Counsel. I simply note that I found no incompetence.

#### B. *Issue 2*

[27] Turning to the IFA, I have concluded that regardless of whether RAD Counsel were incompetent, the result of the appeal to the RAD would have been the same. The appeal would have been dismissed on the basis of the IFA. Accordingly, even if RAD Counsel had been incompetent, there was no prejudice to the Applicants.

#### C. *Issue 3*

[28] The Applicants allege that RAD Counsel were incompetent because they did not identify, investigate, and raise the incompetence of RPD Counsel on the Applicants' appeal to the RAD. In this regard, Current Counsel makes two allegations.

[29] The first allegation is that the Annotation on the transcript created an obligation on counsel to ask questions about the thoroughness of the representation offered by RPD Counsel.

[30] RAD Counsel acknowledge that they saw the Annotation but decided not to pursue the issue of the competence of RPD Counsel because:

- 1) it is normal for a losing party to criticize counsel;
- 2) the matter was not raised as an issue by the Applicants in either meeting they had with RAD Counsel;
- 3) the Applicants clearly had a credibility problem; and
- 4) the best strategy, in the opinion of RAD Counsel, was to focus on the significant issues which were credibility and the IFA.

[31] In February 2020, Applicants' Counsel learned from emails sent by RAD Counsel that the Applicants never mentioned the Annotation and never raised the competence of RPD Counsel as an appeal issue in their meetings or in correspondence. This was later verified by the Applicants in their affidavits of March 2, 2020. As well, the Wife's affidavit stated that RPD Counsel had reviewed the BOC and had met with the Applicants to prepare for the hearing. This contradicted the Annotation.

[32] In my view, in these circumstances in which Current Counsel knew that the Annotation had not been mentioned in meetings between the Applicants and RAD Counsel, and in which the Annotation had been contradicted, the Annotation was not sufficient to justify an allegation of incompetence against RAD Counsel.

[33] Nevertheless, the next day Current Counsel elected to file his memorandum of argument alleging the incompetence of RAD Counsel based on the Annotation.

[34] The second allegation is that the record before the RPD was in such disarray that it should have caused RAD Counsel to ask questions about the competence of RPD Counsel. Specifically, the Initial BOC was weak. It simply stated that the Applicants left Nigeria because



the Wife's mother-in-law was pushing the Wife to have FGM performed on the Daughter.

However, it is difficult to criticize the BOC for being inadequate when the Husband confirmed that it was complete.

[35] There were also issues of form. The Initial BOC was handwritten when it should have been typed, and the Amended BOC did not show which text had been changed. In my view, these errors in form were not serious enough to justify a conclusion that there should have been an investigation by RAD Counsel into the competence of RPD Counsel.

[36] Current Counsel submits that the BOC Narrative should have indicated why potential IFAs might not be locations where they could safely relocate and the failure to address this topic in the BOC Narrative showed the incompetence of RPD Counsel. Question 2(d) on the BOC form simply asked the Applicants to explain why they had not moved to seek safety elsewhere in Nigeria. In my view, the Applicants were not required by this general question to identify potential IFAs and state why each was unreasonable.

[37] It was also submitted that RPD Counsel should have challenged the reasonableness of the IFA with independent documents. However, in my view, the National Document Package was comprehensive and there was little point in challenging the reasonableness of the IFA given the circumstances of these Applicants.

[38] The next point was the late filing of the Amended BOC due to an error in RPD's Counsel's office. She explained her error to the RPD Member and she apologized. In my view,

this event would not have indicated to RAD Counsel that there was a need to inquire into the competence of RPD Counsel.

[39] Indeed, Current Counsel acknowledged in para 44 of his Memorandum of Argument that none of these facts provide a basis for concluding that RPD Counsel acted incompetently. However, he said that they should have alerted RAD Counsel to the need to investigate the competence of RPD Counsel.

[40] I am not persuaded by this argument. In my view, this allegation is so weak that it should not have been made.

[41] Accordingly, costs payable forthwith by Current Counsel to RAD Counsel in the amount of \$1.00 will be ordered. This is the amount RAD Counsel indicated would be sufficient.

#### IV. **CERTIFICATION**

[42] No question was posed for certification for appeal.

**JUDGMENT IN IMM-216-20**

**THIS COURT'S JUDGMENT is that** the Application for judicial review is hereby dismissed with costs in the amount of \$1.00 payable forthwith by Current Counsel to RAD Counsel.

"Sandra J. Simpson"

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Judge

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

**DOCKET:** IMM-216-20

**STYLE OF CAUSE:** BLESSING EDOSEWELE AGHEDO, BENGTA  
OSESENAGA AGHEDO, HARRY EHIOSUN  
AGHEDO, HENRY AGHEDO v MINISTER OF  
CITIZENSHIP AND IMMIGRATION AND  
BERTRAND DESLAURIERS AVOCATS

**PLACE OF HEARING:** BY VIDEOCONFERENCE USING ZOOM

**DATE OF HEARING:** APRIL 1, 2021

**JUDGMENT AND REASONS** SIMPSON J.

**DATED:** MAY 19, 2021

**APPEARANCES:**

Joel Sandaluk	FOR THE APPLICANTS
Christopher Ezrin	FOR THE RESPONDENT
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