

Federal Court



Cour fédérale

**Date: 20210709**

**Docket: IMM-7539-19**

**Citation: 2021 FC 730**

**Ottawa, Ontario, July 9, 2021**

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

**BETWEEN:**

**CHINELO NJIDEKA EZE  
VICTOR CHUKWUEMERIE SOCHIKAIMA  
EZE EBUBECHUKWU JOSEPH EZE**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Nature of the Matter

[1] The Applicants, Ms. Eze [Principal Applicant] and her children, have applied for judicial review of a November 14, 2019 decision [Decision] of the Refugee Appeal Division [RAD] pursuant to section 72(1) of the *Immigration and Refugee Protection Act* SC 2001, c 27 [IRPA].

The RAD dismissed the Applicants' appeal of a decision by the Refugee Protection Division

[RPD] that found that the Applicants were neither Convention refugees nor persons in need of protection pursuant to sections 96 and 97 of *IRPA*. The Applicants submit that the RAD erred in its refusal to admit new evidence and in its credibility findings.

[2] The application for judicial review is dismissed.

## II. Background

[3] The Principal Applicant fled Nigeria with her children after demands and threats by her husband's family and community members to subject her and her daughter to female genital mutilation [FGM]. The Principal Applicant's husband first supported the move to Canada but he has now withdrawn that support and has asked the Applicants to return to Nigeria and comply with the demands.

## III. The Decision

[4] The RAD upheld the RPD's decision to deny the Applicants' claim for protection. The determinative issue for the RAD was credibility.

[5] The Applicants sought to submit new evidence to address the credibility concerns. The new evidence attempted to clarify and make corrections to earlier materials filed before the RPD.

[6] The RAD denied the Applicants' new evidence on the basis that it was not new. It found that the documents submitted contained either information that did not arise after the RPD hearing, repeated information already before the RPD, or was irrelevant.

[7] The RAD found that the Applicants omitted relevant information and provided no reasonable explanation for its omission. It found that the affidavit evidence was problematic and did not substantiate the Applicants' claim. The RAD also found that the Principal Applicant provided inconsistent evidence concerning her address history, which was relevant to the claim.

#### IV. Issues and Standard of Review

[8] The issue for determination is whether the Decision concerning the new evidence, credibility findings, and an assessment of the evidence is reasonable?

[9] While the Applicants submit that the admittance of new evidence is a procedural issue, reviewable on a standard of correctness, I disagree. The jurisprudence is clear this issue goes to the reasonableness of the decision (*Ifagoh v Canada (Citizenship and Immigration)*, 2020 FC 1139). Therefore, the issue is reviewable on a standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]).

[10] The remaining challenges to the RAD Decision are reviewable on a reasonableness standard. Under the reasonableness standard the Court must focus on the decision, including the reasoning process and the outcome (*Vavilov* at para 83). This does not include a redetermination of the matter but rather a consideration of whether the decision is "one that is based on an

internally coherent and rational chain of analysis that is justified in relation to the facts and law that constrain the decision maker”(Vavilov at para 85).

V. Parties’ Positions

(1) Applicants’ Position

[11] The Applicants submit that the RAD erred by not accepting new evidence. They state that it met the requirements of subsection 110(4) of the *IRPA* and that the RAD misinterpreted and incorrectly applied the test for acceptance as set out in *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 [*Raza*]. They also state that the RAD’s refusal to admit new evidence lacked sufficient reasoning.

[12] The Applicants state that the RAD’s credibility findings focused on superficial errors and that the RAD unreasonably drew negative inferences based on omissions and contradictions. The Applicants take issue with the RAD’s application of the Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution [Guidelines] and its assessment of a psychological report.

[13] Lastly, the Applicants submit that the RAD incorrectly reviewed the RPD’s decision and failed to conduct an independent analysis and assessment of the evidence.

(2) Respondent's Position

[14] The Respondent states that the Applicants have not established a reviewable error on the part of the RAD. They submit that the RAD rejected the new evidence because it did not meet the requirements of subsection 110(4) of the *IRPA* or the jurisprudence. The Respondent submits that the RAD clearly and fully provided reasons for denying the evidence.

[15] The Respondent states that the RAD acted reasonably in making credibility findings considering the numerous inconsistencies and omissions in the Principal Applicant's materials and testimony. As for the Guidelines, the Respondent submits that there is no requirement that the RAD specifically reference them in the Decision, as long as they respect them and treat the Applicants' evidence with sensitivity.

[16] Lastly, the Respondent states that the RAD did not err in its use of the psychological report but rather determined that it did not overcome the credibility issues with the evidence.

VI. Analysis

A. *Is the Decision reasonable?*

(1) Did the RAD err in denying new evidence?

[17] Subsection 110(4) of the *IRPA* allows for the admission of new evidence only in limited situations (*Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at paras 34-35 [*Singh*]). The evidence must have arose after the RPD's decision, was not reasonably available prior to its

decision, or was reasonably available but could not reasonably have been expected to have been previously presented (*Singh* at para 49; *Olabode v Canada (Citizenship and Immigration)*, 2020 FC 1174 at para 8). If the submitted evidence meets either of the factors above the decision maker is to assess the new evidence for credibility, relevance, and materiality (*Raza* at paras 13-15; *Singh* at paras 38-49).

[18] The Applicants provided five items to the RAD, requesting their acceptance as new evidence. Two of the items were from the Principal Applicant's brother and Pastor. The letters from each state that there were spelling errors in their previous affidavits, leading to the RPD's rejection of the affidavits. They corrected the spelling errors and resubmitted their affidavits. The third paragraph of the letter from the Pastor also clarified details about the Applicants' stay in a church from May to August 2018. The RAD concluded that this information did not satisfy the requirements of section 110(4) of the *IRPA* in that they failed to bring anything new to the appeal, and, the information about the Applicants staying in the church could have reasonably have been provided by the Applicants to the RPD.

[19] The Applicants also submitted an affidavit from the Principal Applicant's mother, dated after the RPD's decision. The RAD found that it repeated the information provided by the Principal Applicant before the RPD and did not meet either of the subsection 110(4) requirements.

[20] The Applicants submitted emails from the Principal Applicant's husband, which were illegible as submitted to the RPD. The RAD found that while the evidence was available

previously, the Applicants had no reasonable way to provide new copies prior to becoming aware of their rejection. The RAD found that the emails met the requirements of subsection 110(4) but were not relevant to the appeal, as the RPD never questioned the existence of the husband or any contact through email.

[21] Lastly, the Principal Applicant submitted an affidavit explaining her oral testimony and criticizing the reasoning of the RPD. The RAD determined that this evidence did not meet either of the requirements of the *IRPA*.

[22] As illustrated above, the RAD considered the evidence and the Applicants' submissions concerning the evidence and devoted four pages of its Decision to this issue. I find no error on the part of the RAD in its assessment of the new evidence and in its denial of an oral hearing. The RAD provided a justified, intelligible, and transparent explanation.

(2) Did the RAD conduct a reasonable and independent assessment of the evidence?

[23] My colleague, Justice Gascon, in *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at paras 20-26 [*Lawani*], set out the applicable principles for an administrative tribunal to assess the credibility of refugee applicants. As will be discussed below, I find that the RAD properly applied these principles.

[24] The Applicants submit that the RAD applied a microscopic analysis by focusing on superficial errors not central to the claim, leading to an incorrect credibility finding. The

Applicants cite a portion of paragraph 24 of *Oranye v Canada (Minister of Citizenship and Immigration)*, 2018 FC 390 [*Oranye*] in support:

[I]f a document is suspected to be fraudulent, the decision-maker must make that factual finding and ground it in the evidence; after all, an allegation of fraud is a serious accusation. However, a handful of spelling, grammar and typographical errors cannot suffice. [Moreover, t]he RPD and RAD's approach must be sensitive to the fact that foreign documents may not follow the same customs, traditions, and language conventions that are familiar in Canada. Those contextual differences cannot be the basis upon which to ground a finding of fraud.

[25] The Applicants have not cited the first sentence of that paragraph which states: “I underline these points not to diminish the important task of scrutinizing legal documents for authenticity” (*Oranye* at para 24). The Courts concern at paragraph 24 of *Oranye*, was on the RPD’s and the RAD’s focus on spelling issues in two of four affidavits, with no mention of the other two, and attributing low probative value to all four affidavits solely on spelling and typographical errors. As will be explained below, this is not comparable to the Decision at hand.

[26] Further, the Court in *Akzibekian v Canada (Citizenship and Immigration)*, 2019 FC 278 [*Akzibekian*] addressed *Oranye* and provides more appropriate guidance to the matter here:

24 Regarding the failure to consider the authenticity of supporting documents, the Applicants rely on *Oranye v. Canada (Citizenship and Immigration)*, 2018 FC 390 (F.C.) and *Sitnikova v. Canada (Citizenship and Immigration)*, 2017 FC 1082 (F.C.). However, these cases are distinguishable. In *Oranye*, there were fundamental weaknesses regarding the panel's sweeping dismissal of documentary evidence based on the "easy availability of fraudulent documents" in Nigeria. There, in allowing the judicial review, the Court found that "[f]act finders must have the courage to find facts. They cannot mask authenticity findings by simply deeming evidence to be of 'little probative value'". And in *Sitnikova*, an officer gave email correspondence purportedly from several different individuals little weight on the basis that "an email



address can be created by anyone". The Court found that in choosing to give the documents little weight, the officer was implicitly finding the applicant's sworn statement regarding the provenance of the documents not to be credible.

25 Here, on the other hand, the credibility findings were made on the basis of the male Applicant's own statements, contradictions, and omissions, unlike in *Sitnikova*. And unlike in *Oranye*, the Panel provided a well-articulated analysis of the facts. (Emphasis added)

[27] I find that the RAD's credibility findings were not the result of a microscopic analysis but rather findings based on an accumulative assessment of the Principal Applicant's own materials and testimony as well as contradictions, errors, and omissions (*Lawani* at paras 22, 23 and 24). For instance, the RAD noted the omission of her staying in the church in her Schedule A form in spite of including other short-term accommodations, the mistakes in the affidavits in light of the National Documentation Package [NDP] (discussed below), and the Principal Applicant's testimony about where she lived. The RAD provided reasonable justification and a well-articulated analysis for its determination.

(3) Did the RAD ignore evidence in assessing the affidavits?

[28] The Applicants submit that Item 9.2 of the NDP provides guidance on assessing inconsistencies in regards to the commissioning of the affidavits, which the RAD ignored. In reviewing the Decision, however, the RAD noted numerous concerns and issues with the affidavits in the context of the NDP. Accordingly, I see no evidence that the RAD ignored the NDP. While the RAD points out that the NDP makes no mention of scanned signatures, as found on the Applicants' affidavits, this was not its only concern with the affidavits. The RAD found it unlikely that four different deponents in two different countries would make the same spelling

mistake. In any event, the RAD did engage with the affidavits despite its concerns (RAD Decision, paras 20-22).

(4) Did the RAD fail to apply the Guidelines?

[29] I am persuaded by the Respondent's submissions that there is no requirement to reference the Guidelines as long as they are respected and evidence is treated sensitively. The Respondent points out that the Applicants have not provided any example of unfair treatment or a lack of sensitivity by the RAD. Additionally, the Respondent submits that even a failure to apply the Guidelines does not necessarily equate to an error (*Shinmar v Canada (Minister of Citizenship and Immigration)*, 2012 FC 94).

[30] I find nothing to indicate that the RAD failed to respect the spirit of the Guidelines. I would not fault the RAD's analysis simply because it did not explicitly reference the Guidelines. The Applicants fail to provide any example of any action or determination by the RAD that contravenes the spirit and purpose of the Guidelines that would warrant an explanation. There is no indication that the RAD illustrated a lack of sensitivity for victims of gender-related persecution, which would support a finding that the RAD failed to appreciate the Guidelines.

(5) Did the RAD improperly assess the psychological report?

[31] The Applicants state that the RAD was required to consider the psychological report, which would explain difficulties the Principal Applicant faced in testifying, before making a negative credibility finding.

[32] In reviewing the psychological report, it is clear that there is a diagnosis of a stressor related disorder presenting with dissociative and stress-response symptoms. The report advises that the RPD afford the Principal Applicant ample breaks during her testimony due to her distress, cognitive concerns, and vulnerability. This is the extent of the report's recommendations concerning the Principal Applicant's testimony.

[33] The RAD determined that the RPD did not dispute the diagnosis and found the report to be silent on credibility. It reviewed the audio hearing and noted there was no aggressive questioning and that the RPD allowed ample time for the Principal Applicant to respond, concluding that the RPD was sensitive to the report's suggested accommodation. The RAD found that the report did not explain away evasive or evolving responses and gave the report no weight in establishing the claim of persecution.

[34] Accordingly, I find that the RAD did not ignore or overlook the psychological report nor did it unreasonably weight it. The RAD acknowledged the extent of the recommendations of the assessment, which was limited to conduct during testimony. It was open to the RAD not to give evidentiary weight to the assessment based on underlying elements found not to be credible and it provided a reasonable explanation for its assessment of the report as it relates to evidence of persecution, which the report was silent on (*Lawani* at para 24).

## VII. Conclusion

[35] The Decision meets the test of justification, transparency, and intelligibility and falls within a range of possible, acceptable outcomes that are defensible in respect of the facts and law. The Application for judicial review is dismissed.

**JUDGMENT in IMM-7539-19**

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

1. The application for judicial review is dismissed;
2. There is no question for certification.
3. There is no order as to costs.

"Paul Favel"

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Judge

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

**DOCKET:** IMM-7539-19

**STYLE OF CAUSE:** CHINELO NJIDEKA EZE, VICTOR  
CHUKWUEMERIE SOCHIKAIMA EZE AND  
EBUBECHUKWU JOSEPH EZE v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** FEBRUARY 3, 2021

**JUDGMENT AND REASONS:** FAVEL J.

**DATED:** JULY 9, 2021

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