

Federal Court



Cour fédérale

Date: 20220407

Docket: IMM-1688-21

Citation: 2022 FC 496

St. John's, Newfoundland and Labrador, April 7, 2022

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

**OGHENOVO AMANDA GBEMRE
AGHOGHOROGHENE GBEMRE (A
MINOR)**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Ms. Oghenovo Amanda Gbemre (the “Principal Applicant”) and her minor daughter Aghoghoroghene Gbemre (collectively “the Applicants”) seek judicial review of the decision of the Immigration and Refugee Board, Refugee Protection Division (the “RPD”), dismissing their claim for protection, as Convention refugees or persons in need of protection, pursuant to section

96 and subsection 97(1), respectively, of the *Immigration and Refugee Protection Act* S.C. 2001, c. 27 (the “Act”).

[2] The Applicants are citizens of Nigeria and based their claims upon a fear of female genital mutilation.

[3] At the beginning of the hearing of the within application for judicial review, Counsel for the Applicants raised a preliminary objection about the sufficiency of the Certified Tribunal Record (the “CTR”). Counsel raised the objection with respect to Further Submissions and Documentary evidence for which the RPD had granted leave to file, at the conclusion of the hearing of the Applicants’ claim on September 9, 2020. According to a notation on the Post-Hearing Disposition form found at page 122 of the CTR, additional submissions and disclosure were to be submitted by September 14, 2020.

[4] In her affidavit filed in support of the within application for judicial review, the Principal Applicant deposed that further materials were forwarded to the RPD and copies of those materials were attached as exhibit B to her affidavit.

[5] According to Counsel for the Applicants, the supplementary documents and submissions are not contained in the CTR. He submits that their absence suggests that the supplementary material was not before the RPD when the negative decision was made upon the Applicants’ claim.

[6] Counsel for the Applicants also argues that the audio tape of the hearing before the RPD is incomplete.

[7] The Applicants submit that these deficiencies lead to a situation where the application for judicial review should be allowed.

[8] The Minister of Citizenship and Immigration (the “Respondent”) counters by saying that the Applicants have not shown how anything in the post-hearing documents and submissions would make the decision of the RPD “unreasonable”. He also refers to the decision of the Supreme Court of Canada in *Mobil Oil Canada Ltd. v. Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 S.C.R. 202 where the Court found that not every breach of procedural fairness gives rise to a remedy.

[9] I refer to the decision in *Parveen v. Canada (Minister of Citizenship and Immigration)* (1999), 168 F.T.R. 103 where the Court found that the preparation of the CTR is the responsibility of the Respondent and he must bear the consequences of its deficiencies.

[10] It is trite law that it is not the role of the Court upon judicial review to weigh the evidence submitted by an applicant; see *Vavilov, supra* at paragraph 125. That is the answer to the first argument advanced by the Respondent.

[11] As for the second argument submitted by the Respondent, I note that the decision at issue in the within proceeding follows a *de novo* hearing before the RPD after the first determination

of the Applicants' claims for protection was set aside in cause number IMM-2995-17, in a decision rendered by this Court on January 15, 2018. The basis for that decision of the Court was the failure of the RPD to take relevant evidence into account.

[12] In the circumstances of the present case, I cannot say that the decision of the Board would have been the same had the supplementary materials been considered. The Respondent has not rebutted the evidence from the Principal Applicant that the supplementary materials had been sent to the RPD.

[13] In the result, the application for judicial review will be allowed, the decision of the RPD will be set aside and the matter will be remitted to a differently constituted panel of the RPD for a new hearing. There is no question for certification proposed.

JUDGMENT in IMM-1688-21

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision of the Refugee Protection Division is set aside and the matter is remitted to a differently constituted panel of the Refugee Protection Division for a new hearing. There is no question for certification proposed.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1688-21

STYLE OF CAUSE: OGHENOVO AMANDA GBEMRE,
AGHOGHOROGHENE GBEMRE (A MINOR) v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE
BETWEEN TORONTO, ONTARIO AND ST. JOHN'S,
NEWFOUNDLAND AND LABRADOR

DATE OF HEARING: MARCH 22, 2022

REASONS AND JUDGMENT: HENEGHAN J.

DATED: APRIL 7, 2022

APPEARANCES:

Kingsley I. Jesuorobo FOR THE APPLICANTS

Stephen Jarvis FOR THE RESPONDENT

SOLICITORS OF RECORD:

Kingsley I. Jesuorobo FOR THE APPLICANTS
Barrister and Solicitor
North York, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario