Federal Court Cour fédérale

**Date: 20220613**

**Docket: IMM-3420-21**

**Citation: 2022 FC 877**

**Toronto, Ontario, June 13, 2022**

**PRESENT: Madam Justice Go**

**BETWEEN:**

**SAMSON OSHOKE SADO**
**JENNIFER OMONEGHO SADO**
**KING OMO-OGHENA SADO**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

## I. Overview

[1] Mr. Samson Oshoke Sado is considered Nigerian royalty. He married Ms. Jennifer Sado in 2014. The chiefs of Mr. Sado's clan did not approve of the marriage, and pronounced that every female child born to the couple would be circumcised and every male child would be sacrificed to the god of Iseh.

[2] After the marriage, Ms. Sado was kidnapped and forcibly circumcised. A baby she gave birth to in 2015 suffered the same fate and died from excess bleeding. The couple decided to move to Abuja. In October 2016, Ms. Sado became pregnant again. The next month, the Chief Priest [Chief] came to their house in Abuja. They ran away and started their lives over again in Lagos. Their son was born in July 2017.

[3] In September 2017, Mr. Sado's aunt ran into Ms. Sado in a market in Lagos. Mr. Sado then began receiving calls from the Chief threatening that they would all die if they did not come back to the village so that their son could be sacrificed. They decided to leave Nigeria.

[4] Mr. Sado, his wife and son [together the Applicants] arrived in Canada in November 2017 and made a refugee claim against Nigeria under s. 96 and s. 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], on the grounds that members of Mr. Sado's clan disapproved of his marriage with Ms. Sado and threatened their children. The Refugee Protection Division [RPD] found them to be credible and found that they have a nexus to s. 96 as members of a particular social group, but concluded that they had an internal flight alternative [IFA] in Port Harcourt, Nigeria. The Refugee Appeal Division [RAD] dismissed their appeal on the same grounds [the Decision].

[5] The Applicants dispute the RAD's conclusion that their proposed new evidence was not credible, the RAD's application of the test for a viable IFA, and the RAD's treatment of the evidence about Port Harcourt. The Applicants also argue that the RAD has violated their procedural fairness rights.

[6] I find the Decision was reasonable and I dismiss this application.

## II. Issues and Standard of Review

[7] The Applicants argue that the RAD: (1) erred in analyzing the new evidence (2) erred in applying the IFA test, (3) relied on veiled credibility findings, (4) disregarded the evidence, and (5) erred by expecting them to go into hiding in the IFA.

[8] The Respondent argues that the Decision is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[9] Typically, the RAD's decision whether to admit new evidence is reviewable on the reasonableness standard (see *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 [*Singh*] at paras 22-29, as well as more recent post-*Vavilov* jurisprudence of the Federal Court: e.g. *Awonusi v Canada (Citizenship and Immigration)*, 2021 FC 385 at para 10; *Bakare v Canada (Citizenship and Immigration)*, 2021 FC 967 [*Bakare*] at para 8). I will apply the reasonableness standard in my review.

[10] Reasonableness is a deferential, but robust, standard of review: *Vavilov*, at paras 12-13. The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified: *Vavilov*, at para 15. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker: *Vavilov*, at para 85. Whether a decision is reasonable depends on the relevant administrative setting, the record

before the decision-maker, and the impact of the decision on those affected by its consequences: *Vavilov*, at paras 88-90, 94, 133-135.

[11] For a decision to be unreasonable, the applicant must establish that the decision contains flaws that are sufficiently central or significant: *Vavilov*, at para 100. Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances: *Vavilov*, at para 125. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep": *Vavilov*, at para 100.

## III. Analysis

[12] The Applicants raise several arguments in their written submission. At the hearing, they focused on two issues which I will address below.

### A. *Did the RAD err in not admitting the chief's letter?*

[13] As part of their appeal to the RAD, the Applicants sought to submit a letter from the Chief renewing his threat against them. The letter predates the RPD Decision. The RAD found the letter failed to meet any of the requirements of section 110(4) of *IRPA* and refused to admit the document. The RAD went on to address the factors under *Singh* and *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385. After noting some discrepancies in the letter, the RAD found the letter appeared to have been tampered with and thus was not credible.

[14] The Applicants argue that the RAD violated procedural fairness by imputing irregularities to the Chief's letter without providing the Applicants with an opportunity to respond, noting that the decision maker has a duty to put credibility concerns to the claimant: *Maniero v Canada (Citizenship and Immigration)*, 2012 FC 776 at paras 3-4; *Husian v Canada (Citizenship and Immigration)*, 2015 FC 684 at paras 9-10.

[15] At the hearing, the Applicants added a new argument stating that the RAD failed to take into account the pandemic and the lack of evidence that Mr. Sado was in constant contact with his sister, to whom the Chief's letter was sent.

[16] I reject all of the Applicants' arguments. I note first of all that in their submission to the RAD seeking to admit new evidence, the Applicants never raised any difficulties in obtaining the letter due to the pandemic. Nor did they indicate when they received the letter from Mr. Sado's sister. The only reason provided by Mr. Sado to the RAD for not submitting the evidence sooner was that he did not know he could attempt to file the letter with an application asking for post-hearing evidence to be considered.

[17] The RAD found that the letter was reasonably available at the time of the RPD decision given the Applicants had approximately six months to provide this letter to the RPD. It further found the Applicants had not demonstrated that the letter was not reasonably available at the time of the RPD decision. All of these findings were supported by the record, and the Applicants have failed to point to any evidence that would contradict the RAD's findings.

[18] In my view, it was unnecessary for the RAD to engage in a credibility assessment of the new evidence given none of the mandatory criteria in s. 110(4) were met. I agree with the Respondent that any error in the RAD's assessment of the letter's credibility, or its procedure in doing so, is not determinative and does not warrant reconsideration.

B. *Did the RAD make an unreasonable finding with respect to the IFA?*

[19] At the hearing, the Applicants focused on their argument that the RAD failed to consider the evidence, or misapprehended the evidence, when it found that there was a viable IFA in Port Harcourt.

[20] The Applicants submitted that Port Harcourt was much closer to their hometown than the other cities where they have relocated. It was also smaller in size than Lagos. Further, the Applicants argued that they were found twice in the past, which was the best evidence that they would be found in the future. The Applicants took issue with the RAD's finding that them bumping into someone who knows a family member in Port Harcourt was speculative.

[21] I note that the Applicants made similar arguments before the RAD, which were all rejected on the basis that Port Harcourt was located in a different state, that the Applicants have not previously lived or worked in Port Harcourt and hence the circumstances that previously led them to be found in Abuja or Lagos do not apply, and that the Applicants have not established on a balance of probability that their family members would know they are wanted by the Chief and would collude to harm them. Given the evidence before the RAD, I see no reason to interfere with these findings.

[22] In effect, the Applicants are asking this Court to re-weigh the evidence and come to a different conclusion, which is not a role the Court can play.

[23] The Respondent also argues that in a recent decision with substantially similar facts, Justice McHaffie upheld the RAD's finding that the risk of coincidentally running into someone who would recognize them in a large metropolitan city is too speculative to support a "serious possibility" of persecution, even if the applicants were previously found in a different city where they had much closer ties: *Bakare* at paras 4, 22-24.

[24] As Justice McHaffie noted in *Bakare*:

> [24] …While the Bakares rely on the apparently coincidental meeting at the market in Uyo, which resulted in their presence there being relayed to the elders, the RAD reasonably relied on the size of Lagos as rendering the risk of them being located there by a member of the community—particularly one who wanted to assist in returning them to the elders—to be speculative, regardless of whether the elders were motivated to locate them.

[25] I find *Bakare* to be on point and a similar conclusion can be reached in this case regarding the RAD's finding.

[26] As to the other arguments made by the Applicants in their written submission, which they did not pursue during their oral submission, I would simply state that I do not find those arguments persuasive.

## IV. Conclusion

[27] The application for judicial review is dismissed.

[28] There is no question for certification.

**JUDGMENT in IMM-3420-21**

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

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-3420-21 |
| **STYLE OF CAUSE:** | SAMSON OSHOKE SADO, JENNIFER OMONEGHO SADO, KING OMO-OGHENA SADO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | HELD VIA VIDEOCONFERENCE |
| **DATE OF HEARING:** | MAY 3, 2022 |
| **JUDGMENT AND REASONS:** | GO J. |
| **DATED:** | JUNE 13, 2022 |

**APPEARANCES:**

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| Zofia Rogowska | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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