Federal Court  Cour fédérale

Date: 20250210

Docket: IMM-3296-24

Citation: 2025 FC 258

Ottawa, Ontario, February 10, 2025

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

EDDIE AIGBE IDIAGBONYA
BECKY EFE IBHARIA
OSAYUWAMEN ZOE AIGBE
OSAKIODUWA JESSE AIGBE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants are members of a family of six. The adult Applicants, Eddie Aigbe Idiagbonya [Principal Applicant] and his spouse, Becky Lee Ibharia [Spouse], are citizens of Nigeria. They have two children who were born in the United States [US] in 2016 and who hold US Citizenship. Those minor children are also applicants in this matter [Minor Applicants,

collectively the Applicants]. Two other children were born in Canada after the family left the US in 2017 and entered Canada. The Canadian minor children are not applicants in this matter.

Background

[2] The Applicants' claim for refugee protection was denied by the Refugee Protection Division [RPD] in January 2019. The Applicants asserted that they had a well-founded fear of persecution by the Principal Applicant's family and, in particular, they feared female genital mutilation [FGM] of the Spouse who had refused to submit to same. The RPD rejected the claim. It found that the Applicants had not established that the Minor Applicants would be persecuted in the US or that they had reason to fear harm that would bring them under either s. 96 or s. 97 of *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. Further, the RPD found that the Applicants had a viable internal flight alternative [IFA] in Port Harcourt. In October 2019, the Refugee Appeal Division [RAD] upheld the RPD's determination. An application for leave and judicial review was denied by this Court in September 2020. The Applicants then sought a Pre-Removal Risk Assessment [PRRA].

Decision Under Review

[3] In a decision dated December 13, 2023, a senior immigration officer [PRRA Officer] denied the PRRA application. The PRRA Officer found that, overall, the submissions provided by the Principal Applicant did not establish any facts that are substantially different from those that were presented to the RPD and RAD. The Principal Applicant had reiterated facts which were materially consistent with those already argued before the RPD and RAD and which were

not capable of overcoming the findings of the RPD and RAD. Namely, the existence of a viable IFA for the Applicants in Port Harcourt. With respect to the Principal Applicant's claim that he and his family could not find safety anywhere in Nigeria due to crime, terrorism and kidnappings that have continued to occur all across the country, the PRRA Officer found that this risk is faced generally by others in Nigeria and is not particular to the Principal Applicant and his family. The Principal Applicant had not provided sufficient objective evidence to demonstrate that, on a balance of probabilities, he and his family face a generalized risk that is not faced by others in Nigeria.

Issues and Standard of Review

[4] The Applicants assert that the PRRA Officer:

i. breached their right to procedural fairness by not providing them with an oral hearing, and

ii. erred in assessing their supporting evidence.

[5] The standard of review for issues of procedural fairness is correctness (see *Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). Functionally, this requires the Court's analysis to focus on whether the procedure followed was fair, having regard to all the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

[6] However, the jurisprudence relied upon by the Applicants does not support that the correctness standard applies to a PRRA Officer's failure to conduct an oral hearing. With respect to the question of whether the granting of an oral hearing is one of procedural fairness, requiring correctness as the standard of review, or one of mixed fact and law, attracting the standard of reasonableness, I have previously held and remain of the view that the standard of reasonableness applies because, as found in *Ikechi v Canada (Citizenship and Immigration)*, 2013 FC 361 at para 26, a PRRA officer decides whether to hold an oral hearing by considering a PRRA application against the requirements in s 113(b) of the IRPA and the factors in s 167 of the *Immigration and Refugee Protection Regulations* SOR/2002-227[IRP Regulations]. Thus, applying s 113(b) is essentially a question of mixed fact and law (see, for example, *Hare v Canada (Citizenship and Immigration)*, 2020 FC 73 at para 11; *Balogh v Canada (Citizenship and Immigration)*, 2022 FC 447 at paras 13 – 14).

[7] The standard of review applicable to the merits of the PRRA Officer's decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 25). On judicial review, 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).

[8] For the foregoing reasons, in my view the sole issue arising in this matter is whether the PRRA Officer's decision was reasonable.

Failure to hold an oral hearing

[9] The Applicants submit that the PRRA Officer did not clearly mention any contradiction, inconsistency, vagueness or other reasons to cast doubt on the truthfulness of the Principal Applicant's sworn affidavit but, instead, found that their evidence was not sufficient to establish a risk. They submit that, in reaching this conclusion, the PRRA Officer essentially disbelieved the Principal Applicant's sworn statement relating to the ongoing risk of persecution and his family members being targeted by the Applicants' persecutors. The Principal Applicant therefore submits that the PRRA Officer made a veiled credibility finding. Accordingly, that Officer's decision not to provide an oral hearing is a breach of procedural fairness because the PA's credibility was at issue.

[10] There is no merit to this assertion. The PRRA Officer's finding at issue addressed the Applicant's submission that they could not find safety anywhere in Nigeria due to crime, terrorism and kidnapping that occur all across the country. In that regard, the PRRA Office found:

> It is noted that this specified risk is faced generally by others in Nigeria and is not particular to the principal applicant and his family. Namely, the threat of harm emanating from criminal gangs and terrorist groups could indiscriminately confront any individual. In this light, I find the principal applicant has not provided sufficient objective evidence to demonstrate that, on a balance of probabilities, he and his family do not face a generalized risk that is faced by others in Nigeria.

[11] The PRRA Officer went on to discuss the documentary evidence provided by the Applicants in support of their submission, which included articles and reports on the current

security situation amid civil unrest in Nigeria from various media and research outlets. Having considered all these documents in the context of assessing country conditions, the PRRA Officer found that they were generalized in nature and did not establish a link directly to the Principal Applicant's personal circumstances. Further, that evidence of general conditions within a country is not in itself sufficient to show that the Principal Applicant and his family are personally at risk of harm.

[12] In my view, the PRRA Officer did not err. It is clear from the reasons that the PRRA Office did not disbelieve the Principal Applicant and did not make a veiled or any credibility finding. Rather, as the Officer explained, the Applicants had not provided sufficient evidence to demonstrate that they personally were at risk. That is, that they faced a generalized risk that is not faced by others in Nigeria.

[13] In the context of a PRRA, s.113(b) of the IRPA provides that "a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required". The prescribed factors are contained in s.167 of the IRP Regulations:

> (a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;
>
> (b) whether the evidence is central to the decision with respect to the application for protection; and
>
> (c) whether the evidence, if accepted, would justify allowing the application for protection.

[14] Thus, a PRRA Officer may hold a hearing if they believe one is required where a serious issue of credibility arises. I agree with the Respondent that in this case, no such finding was

made, and that without a serious issue of credibility, the PRRA Officer had no reason to convoke, or legal basis to justify, an oral hearing (*Jystina v Canada (Citizenship and Immigration)*, 2020 FC 912 at para 28).

Assessment of the evidence

[15] The Applicants submit that the PRRA Officer made no specific reference to any of their evidence submitted in support of the PRRA, including a claim that the Applicants' persecutors recently attacked the Principal Applicant's mother and her brother because of their desire to force the Principal Applicant's spouse and daughters to undergo FGM. The Principal Applicant asserted in his affidavit submitted to the PRRA Officer that the Applicants cannot return to Nigeria because their persecutors constantly harass their family members in order to reach them and are very well-connected throughout Nigeria. Their connections with politicians and police would enable the persecutors to easily locate the Applicants.

[16] The Applicants claim that PRRA Officer failed to assess this new evidence as to their persecutors' ongoing interest in finding and harming them and unreasonably concluded that the new evidence contained substantially the same facts as previously presented.

[17] I note that in their reasons the PRRA Officer states that they have read and carefully considered all of the documentary evidence material presented in and associated with an in support of the PRRA. Further, that a negative refugee determination by the RPD must be respected by a PRRA officer, unless there is new evidence of facts that might have affected the outcome of the RPD hearing if the evidence had been presented to the RPD.

[18] The PRRA Officer acknowledged that the Principal Applicant had submitted an affidavit stating the reasons why that he was forced to flee from Nigeria. The PRRA Officer also states that, in his affidavit, the Principal Applicant explained that his family members are still highly motivated to locate and harm him and his family. Further, that in July 2022, members of his extended family entered his mother's home and inquired as to the whereabouts of the Principal Applicant and his family. The Officer also acknowledges submissions that, upon receiving no information, family members attacked and physically assaulted his mother and uncle who sustained injuries requiring hospitalization, and that the Applicants' persecutors are very well-connected with Nigerian politicians and police and would be able to locate them easily.

[19] The PRRA Officer found that, overall, the submissions provided by the Principal Applicant did not establish any facts that were "substantially different" from those that were presented to the RPD and RAD. Rather, he had reiterated facts which are "materially consistent with" those already argued before the RPD and RAD and were not capable of overcoming their findings. Namely, the existence of a viable IFA for the applicants in Port Harcourt.

[20] In my view, it is important to recall here that the determinative issue for the RPD and the RAD was that the Applicants have a viable IFA in Port Harcourt. I do not agree with the Applicants that it was an error for the PRRA Officer to require them to overcome prior findings of the RPD and the RAD. It is well established that a PRRA application is not an appeal or reconsideration of a negative decision of the RPD or RAD. Rather, it is intended to assess new risk developments between the hearing and the removal date (see, for example, *Raza v Canada (Citizenship and Immigration)* at para 12 [*Raza*]; *Ponniah v Canada (Citizenship and*

Immigration), 2013 FC 386 at para 27; *Kaybaki v Canada (Minister of Citizenship and Immigration)*, 2004 FC 32 at para 11; *Nam v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1298 at para 22). In that regard, the evidence that may be admitted at a PRRA is limited by s. 113(a) of the IRPA. As held by the Federal Court of Appeal in *Raza*, s. 113(a) is "based on the premise that a negative refugee determination by the RPD must be respected by the PRRA officer, unless there is new evidence of facts that might have affected the outcome of the RPD hearing if the evidence has been presented to the RPD" (*Raza* at para 13).

[21] With regards to the IFA, the RPD noted that the Principal Applicant spoke of the fifteen elders who constituted the core members of the agents of persecution as being located in Benin City. He then testified that these elders have large families and that their friends and family members could spot the Applicants in Port Harcourt. The RPD found that the size of the extended family did not adequately answer the question of how the Applicants would be found in Port Harcourt, a large city about a 4.5 hour drive from Benin City where the Applicants' alleged persecution had taken place. The RPD held that it would take a large, organized search effort to track the Applicants down in a populous city so far removed from Benin City. The Applicants' evidence did not explain how such a search could be within the means of the extended family.

[22] The RAD noted that the IFA was determinative. It addressed the Applicants' submissions with respect to the viability of Port Harcourt. It also found that it was speculative that the agents of persecution could find the Applicants in Port Harcourt. The RAD noted that the Principal Applicant had testified that he would have to register his phone and that his withdrawals from

banks could be tracked. The RAD concluded that the Applicants had not provided sufficient evidence to find that the agents of persecution could trace them through those transactions.

[23] In this matter, the Applicants do not point to any evidence that they submitted to the PRRA Officer that would overcome the prior findings of the RPD and RAD that there is a viable IFA in Port Harcourt. As the PRRA Officer acknowledged, in the Principal Applicant's affidavit he stated that the persecutors are very well connected across Nigeria with their and they would be able to easily locate the Applicants given their associations with politicians and the police. This appears to differ from Applicants' submissions to the RPD and RAD, but there is no explanation as to why this argument had not been previously made. That said, the submissions made to the PRRA Officer in support of the PRRA center the persecutors ongoing interest in the Applicants, gender-based violence and worsening country conditions without demonstrating any new risk in light of which the IFA previously identified in Port Harcourt is no longer viable. Nor do the Applicants point to any evidence or country conditions documentation that was before the PRRA Officer to support their claim that the agents of persecution were well connected with police and politicians, or that those entities would and could assist them in pursuing their alleged ongoing interest in the Applicants.

Conclusion

[24] In sum, regardless of whether the Applicants provided evidence of their persecutors ongoing interest in them, doing so could not assist them unless they also established that they did not have a viable IFA. This they failed to do. In this circumstance, the PRRA Officer was not

required to weigh the evidence pertaining to the claimed ongoing risk to, and interest in, the Applicants by their persecutors.

[25] While the PRRA Officer's reasons were succinct, read in whole together with the record – in particular, the RPD and RAD decisions – they were reasonable.

JUDGMENT IN IMM-3296-24

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed;

2. There shall be no order as to costs; and

3. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3296-24
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