Federal Court Cour fédérale

Date: 20250825

Docket: IMM-5406-24

Citation: 2025 FC 1418

Ottawa, Ontario, August 25, 2025

PRESENT: Madam Justice Pallotta

BETWEEN:

DEBORAH ABOSEDE OGUNGBEMI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] On this application for judicial review, Deborah Abosede Ogungbemi seeks an order setting aside a decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board that determined she is not a Convention refugee or a person in need of protection according to ss 96 or 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

II. Background

[2] Ms. Ogungbemi is a citizen of Nigeria who sought refugee protection based on a fear that she will be harmed or killed by money lenders who operate an illegal (loan shark) business and have connections to corrupt politicians. She borrowed money to study in Canada, and part of the money was to be used for her parents' business. Ms. Ogungbemi returned the money after her study permit was refused but the lenders demanded 40% of the money borrowed as interest and began threatening her and her parents, the guarantors on the loan. Ms. Ogungbemi alleges she lost contact with her parents after they were forced to move to a different state in Nigeria because of the threats.

[3] The Refugee Protection Division (RPD) determined that Ms. Ogungbemi is not a person described in *IRPA* ss 96 or 97 because she has an internal flight alternative (IFA) within Nigeria.

[4] Ms. Ogungbemi appealed the RPD's decision to the RAD and sought to introduce new evidence about recent events contradicting the RPD's finding that she can safely relocate within Nigeria. She sought to admit: (i) letters from three friends or family members (OA, AO, and MO) stating that Ms. Ogungbemi's parents passed away as a consequence of constant threats and harassment from the lenders; (ii) her parents' death certificates; (iii) three online news articles discussing their deaths; and (iv) a psychotherapist's report regarding her mental health.
Ms. Ogungbemi alleged that if she returned to Nigeria, she would face the same threats that led to her parents' deaths.

[5] The RAD admitted the psychotherapist's report on the basis that Ms. Ogungbemi's mental state was relevant to the IFA analysis. The RAD refused to admit the death certificates, letters, or articles because it found they were not credible. The RAD had concerns as to the source of the documents and the circumstances in which they came into existence, and found that they were not trustworthy:

- the death certificates were not consistent with country condition evidence, specifically a sample death certificate shown in the National Documentation Package (NDP) for Nigeria (item 3.8);
- the online news articles were published on the same day by different publishers and the authors and titles were different, but their content was "word-for-word identical"; all three articles relied on information provided by OA, who stated that Ms. Ogungbemi's parents died as a result of constant intimidation and harassment from the loan shark company and described the same events that were detailed in Ms. Ogungbemi's claim for refugee protection; all three also quoted the same financial expert who said that loan sharks abuse people using thugs and harassment when trying to get their money back; the NDP evidence indicated that "brown envelope journalism"—bribing a journalist to create a news story—is common in Nigeria;
- the death certificates and letters relate to the same events described in the articles and their credibility was tainted by the articles.

[6] Ms. Ogungbemi asked the RAD to hold an oral hearing if it had issues with the credibility of the new evidence. The RAD declined the request. Relying on *Tahir v Canada*

(Citizenship and Immigration), 2021 FC 1202 (at para 20) and *AB v Canada (Citizenship and Immigration)*, 2020 FC 61 (at para 17), the RAD held it was not required to hold a hearing to assess the credibility of new evidence. An oral hearing under *IRPA* s 110(6) becomes relevant when otherwise credible and admitted evidence raises a serious issue with an applicant's credibility, and the RAD found that the psychotherapist's report (the only new evidence that was admitted) did not raise a serious issue regarding Ms. Ogungbemi's credibility.

[7] On the merits, the RAD agreed with the RPD that Ms. Ogungbemi has a viable IFA in Nigeria. The RAD found that Ms. Ogungbemi's testimony and evidence were insufficient to demonstrate that the lenders have the means to locate her in the IFA city, and it agreed with the RPD that her belief that she could be found anywhere was speculative. The RAD was not persuaded by Ms. Ogungbemi's submissions that it would be objectively unreasonable for her to relocate to the IFA city. The RAD concluded that Ms. Ogungbemi's profile and circumstances did not rise to the level of jeopardizing her life and safety, and it would not be unduly harsh for her to relocate to the IFA city.

[8] Ms. Ogungbemi alleges that the RAD's decision was unreasonable and procedurally unfair. With respect to the new evidence, Ms. Ogungbemi states that the RAD wrongfully excluded the death certificates, articles, and letters, and it made credibility findings against her without a proper basis and without affording an opportunity to respond. With respect to the IFA, Ms. Ogungbemi alleges that the RAD erred in finding that she would be safe in the IFA city and erred in finding it would not be unreasonable for her to relocate there.

III. Standard of review

[9] Ms. Ogungbemi submits that the reasonableness standard of review applies to the RAD's "assessment of the totality of the evidence and the circumstances of this case" and the correctness standard of review applies to the RAD's "interpretation and application of the law…and adherence to principles of procedural fairness." The respondent submits that all issues raised in this proceeding are subject to reasonableness review, including the RAD's alleged errors regarding the new evidence (as per *Singh v Canada (Citizenship and Immigration),* 2016 FCA 96).

[10] I agree with the respondent that reasonableness is the only standard of review that applies. The RAD did not make a credibility finding against Ms. Ogungbemi. The issues are whether the RAD erred in refusing to admit evidence or hold an oral hearing and whether the RAD erred in its IFA analysis, and the presumptive reasonableness standard of review applies to these issues.

[11] Reasonableness review is a deferential but robust form of review that requires a reviewing court to determine whether the decision—both the outcome and the reasoning process that led to the outcome—is transparent, intelligible, and justified: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 12-15, 82-87. The reviewing court's role is to examine the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent and rational chain of analysis and whether it is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at

para 99. The burden is on the party challenging the decision to prove that it is unreasonable: *Vavilov* at para 100.

IV. Analysis

A. *The RAD's treatment of the new evidence*

[12] Ms. Ogungbemi alleges the RAD did not have a sufficient evidentiary basis to reject the new evidence as untrustworthy. She argues:

- Death certificates: it was unreasonable for the RAD to rely solely on the form and content of an NDP sample death certificate as concrete evidence of fraud—Nigerian standards are not Canadian standards, the NDP indicates there could be regional variations, and documents issued by a foreign government are presumed to be authentic unless there is evidence external to the document itself that shows otherwise or the RAD is able to make a determination based on contradictory evidence that calls the authenticity of the document into question (relying on Liu v Canada (Citizenship and Immigration), 2020 FC 576 at paras 85-87); furthermore, NDP item 3.8 is not in the certified tribunal record (CTR) or publicly available;
- Online news articles: it was unreasonable for the RAD to dismiss the articles based on similarities that were not clearly implausible and its speculation that the similarity was due to brown envelope journalism just because this is a prevalent practice; she has no control over how reporters choose to report their news, and the RAD failed to consider that the articles were culled from the same national newspaper and the events were widely covered by the media;

- Letters: the RAD did not independently assess the content of the letters or provide adequate reasons why they were not trustworthy, as it was required to do.

[13] Ms. Ogungbemi adds that it was unreasonable for the RAD to selectively assess the new evidence by admitting the psychotherapist's report that she is grieving the loss of her parents and rejecting the evidence that her parents died.

[14] According to Ms. Ogungbemi, the RAD unreasonably and unfairly denied an oral hearing or other opportunity to respond to its credibility concerns. She alleges the RAD should have held an oral hearing to assess her credibility before making findings that effectively accused her of lying about her parents' deaths. Also, credibility was a new issue that the RPD did not raise. Relying on *Kwakwa v Canada (Citizenship and Immigration)*, 2016 FC 600 at paras 25-26, she contends the RAD breached procedural fairness by failing to give her an opportunity to address its credibility concerns.

[15] I am not persuaded that the RAD erred as alleged.

(1) The RAD did not err in refusing to admit three of the four documents tendered as new evidence

[16] Ms. Ogungbemi has not established that the RAD unreasonably excluded the death certificates, articles, and letters.

[17] The Federal Court of Appeal explained in *Singh* that the legislative framework for an appeal to the RAD reflects Parliament's clear intention to narrowly define the conditions for introducing new evidence: *Singh* at paras 35, 51. For new evidence to be admitted on appeal, it must meet the express statutory requirements of *IRPA* s 110(4) as well as the implied requirements of credibility, relevance, and materiality: *Singh* at paras 38, 49. To determine whether evidence is credible, the RAD is entitled to consider its source and the circumstances in which it came into existence: *Singh* at para 38, citing *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at paras 13-15.

[18] I agree with the respondent that the RAD applied the principles in *Singh* and gave logical reasons justifying its refusal to admit the death certificates, articles, and letters as new evidence on appeal.

[19] The RAD pointed to material differences between Ms. Ogungbemi's parents' death certificates and the sample death certificate in the NDP for Nigeria, including that they refer to different legislative provisions and have different formatting. There is no merit to Ms. Ogungbemi's argument that NDP item 3.8 with the sample death certificate is not in the CTR or publicly available. A link to NDP item 3.8 is in the CTR, and the title says it relates to birth and death certificates, including their appearance and security features.

[20] The RAD did not speculate that the online news articles were the product of brown envelope journalism. It explained why the articles had the hallmarks of brown envelope journalism—notably their identical content and repetition of the events that were described in

Ms. Ogungbemi's claim for refugee protection. Ms. Ogungbemi asserts that the articles were culled from the same national newspaper and the events were widely covered by the media, but her assertion is not supported by evidence and does not explain why the articles were identical. Moreover, Ms. Ogungbemi acknowledged in her RAD memorandum that the RAD was required to assess the documents' credibility before admitting them, but she did not make submissions to support the credibility of the documents she was asking the RAD to admit.

[21] The RAD reasonably found that the credibility of the death certificates and letters were "significantly tainted" by the three news articles with the hallmarks of brown envelope journalism, which all relate to the same events.

[22] In my view, the principles in *Liu* do not assist Ms. Ogungbemi. The presumption that a document purporting to be issued by a competent foreign public authority can be accepted as evidence of its contents is a rebuttable presumption: *Liu* at paras 85-86. Reasons for concluding that a document is not genuine and therefore should not be accepted as evidence of its contents include formatting flaws or other discrepancies that one would not reasonably expect to find on a validly issued public document, inconsistencies with the standard form for the type of document in question, and doubts about the credibility or trustworthiness of other evidence that says the same thing as the document whose genuineness is in issue: *Liu* at para 87. The RAD's reasons for finding that the presumption was rebutted in Ms. Ogungbemi's case did not offend the principles in *Liu*.

[23] The RAD made no error by admitting the psychotherapist's report alone. The RAD admitted the report because it described Ms. Ogungbemi's mental health status, which was a relevant aspect of her profile for the IFA analysis.

(2) The RAD did not err by denying an oral hearing or by failing to provide an opportunity to respond to credibility concerns.

[24] Applying the principles in *Tahir* and *AB*, the RAD reasonably declined Ms. Ogungbemi's invitation to hold an oral hearing to address the credibility of the tendered evidence. The RAD was not required to hold a hearing to assess whether new evidence was sufficiently credible to admit it on appeal.

[25] I agree with the respondent that the RAD was not obliged to afford Ms. Ogungbemi notice of a new issue and an opportunity to respond. The RAD was making a determination about the admissibility of new evidence under *IRPA* s 110(4), applying the principles in *Singh*. The RAD did not make an adverse credibility determination about Ms. Ogungbemi or her allegations themselves (the events as relayed to the RPD), and *Kwakwa* is distinguishable on this basis.

B. *The RAD's IFA determination*

[26] The two-prong test for an IFA is well established in the jurisprudence. The RAD must be satisfied, on a balance of probabilities, that (i) there is no serious possibility of the claimant being persecuted in the IFA, and (ii) conditions in the proposed IFA are such that it would not be unreasonable, in all the circumstances, including the circumstances particular to the claimant, for

the claimant to seek refuge there: *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA); *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA).

[27] On the first prong, Ms. Ogungbemi submits the RAD unreasonably dismissed evidence that the lenders have the means to locate her and speculated that she would be safe in the IFA city. She argues that the RAD unreasonably: discounted the fact that the lenders threatened her parents after they relocated to Abuja on the basis that the lenders would have had the parents' contact information because they were guarantors on the loan; ignored evidence that her parents relocated to various places in southern Nigeria; speculated that she would not face harm because she did not receive threatening messages while in Canada; and failed to analyze the cumulative nature of the conduct, overlooking a systemic and repeated pattern of behaviour that amounted to persecution (*Canada (Minister of Citizenship and Immigration) v Munderere*, 2008 FCA 84 at para 42; *Maksoudian v Canada (Citizenship and Immigration)*, 2009 FC 285 at paras 54-55).

[28] In my view, Ms. Ogungbemi's arguments are inconsistent with the evidence, or misinterpret the RAD's reasons. She does not point to evidence that her parents relocated to Abuja or to various places in southern Nigeria. The evidence before the RAD was that Ms. Ogungbemi's parents' business was in Abuja, her parents relocated to a small town in Delta state because the lenders were coming to the business, and she lost contact with her parents when they relocated. The RAD (and the RPD) did not rely on the fact that Ms. Ogungbemi received no threatening messages in Canada. The RPD only noted that Ms. Ogungbemi was not using the

SIM card she was using in Nigeria, and therefore she would not have received any messages sent to her Nigerian number.

[29] The RAD's determinative finding was that there was insufficient evidence to show that the lenders have the means to locate Ms. Ogungbemi in the IFA city, and Ms. Ogungbemi has not established that this finding was unreasonable. In view of its determinative finding, the RAD was not required to analyze whether there was a pattern of mistreatment amounting to persecution.

[30] On the second prong, Ms. Ogungbemi alleges that the RAD erred by rejecting multiple factors that would render it unreasonable for her to live in the IFA city, given her personal circumstances: she would have no family or social support network, she would be unable to secure employment or housing or to access medical treatment and social services, and she would face insecurity and a risk of kidnapping. Ms. Ogungbemi submits there was evidence before the RAD of the poor treatment of people with mental illness in Nigeria, and the RAD's finding that she would be able to access outpatient mental health services has no evidentiary basis. She states the RAD did not address country condition evidence about the high cost of housing and high rate of unemployment or evidence that people with mental illness are denied basic necessities like employment and housing.

[31] In my view, Ms. Ogungbemi disagrees with the RAD's assessment, but she has not established a reviewable error that would warrant setting it aside.

[32] There is a high threshold for establishing that an IFA is unreasonable under the second prong of the test, which requires "nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area": *Ranganathan v Canada (Minister of Citizenship and Immigration),* 2000 CanLII 16789 (FCA) at para 15.

[33] The RAD noted the high threshold and the need for concrete evidence of conditions that would render an IFA unreasonable, and it addressed whether the evidence supported Ms. Ogungbemi's position that she could not live in the IFA city. The RAD also noted that the RPD had asked Ms. Ogungbemi if she would have any difficulties relocating to the IFA city if she did not have to fear the agents of harm, and she replied "no."

[34] With respect to the argument that the RAD did not consider documentary evidence on the high cost of housing and high unemployment rate, the RAD is presumed to have considered all of the evidence and is not required to refer to every piece of evidence: *Kanagendren v Canada (Citizenship and Immigration*), 2015 FCA 86 at para 36. In any event, the RAD acknowledged that Ms. Ogungbemi would likely have difficulty finding employment and housing and explained why this did not render it unreasonable for her to relocate to the IFA city (including her education and the fact that she had found housing and employment as a single woman in another large city in Nigeria).

[35] The respondent points out that Ms. Ogungbemi did not argue that the IFA is unreasonable in view of her mental health status. The RAD unilaterally raised and addressed this issue. I agree

that Ms. Ogungbemi cannot complain that the RAD considered and addressed this additional factor that she did not argue. In any event, I find the RAD's assessment of this factor was reasonable.

V. Conclusion

[36] Ms. Ogungbemi has not established that the RAD's decision was unreasonable or procedurally unfair. Accordingly, I must dismiss this application for judicial review.

[37] The parties did not propose a question for certification. I find there is no question for certification.

JUDGMENT in IMM-5406-24

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

" Christine M. Pallotta"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

David Ibeawuchi	FOR THE APPLICANT
Lorne McClenaghan	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Fusion Law Professional Corporation Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT