Federal Court  Cour fédérale

Date: 20250829

Docket: IMM-11780-24

Citation: 2025 FC 1441

Toronto, Ontario, August 29, 2025

PRESENT: Mr. Justice Brouwer

BETWEEN:

OKHUMEODE EUGENE OMOMIA
OSHORIAME TREVOR OMOMIA
SINEAD OMOMIA
SALCIA SHAMMAR OMOMIA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants seek judicial review of the decision of the Refugee Appeal Division [RAD] rejecting their appeal and finding that they have failed to rebut the presumption of state protection in Ireland. For the reasons that follow, I find that the decision was unreasonable and must be set aside.

I. BACKGROUND

[2] The Applicants are survivors, with their mother and older brother, of years of horrific domestic violence at the hands of their father – a summary of which, as a previous decision maker observed, "makes for disturbing reading." Born in Ireland to Nigerian immigrant parents, they fled to Canada with their mother and elder brother in 2013 to seek refugee protection. The two eldest siblings, who are twins, were ten years old when they first came; the younger siblings were six and five respectively.

[3] The Refugee Protection Division [RPD] rejected the family's refugee claims three years later, on May 17, 2016. The RPD accepted as fact their long history of brutal beatings and abuse, and the countless assaults and rapes of their mother. Likewise accepted as fact was the evidence about their mother's repeated attempts to seek protection for herself and her children from Irish authorities, and the Irish authorities' deficient responses to these attempts, including not responding to the mother's calls about assaults, arriving after their father had left stating that they were unable to do anything after the fact, and declining to lay charges after their father's assaults on three occasions. However, despite uncontradicted evidence that their father continued showing up to their home and inflicting violence against them over several years even when barring orders were in place, the RPD found that they had failed to rebut the presumption that the Irish authorities were willing and able to provide adequate protection.

[4] The Applicants appealed. The Refugee Appeal Division [RAD] allowed their appeal on September 28, 2016, and remitted their claim back to the RPD for redetermination. On June 27,

2017, the Applicants' mother withdrew their claims for refugee protection, but then successfully applied to have them reopened. Shortly after the October 10, 2017, reopening decision, the Applicants' mother again withdrew her claim and took her children back to Ireland to resume living with their father. The family relocated to England, but the domestic violence resumed. The Applicant's mother therefore brought her children back to Canada again to pursue their refugee claims. The Applicants' mother applied to reopen her own claim again but her application was dismissed. Following an oral hearing the Applicants' claim was again refused on January 30, 2020, on the ground that they had failed to rebut the presumption of state protection. The Applicants once again appealed to the RAD. This time, by decision dated February 17, 2021, the RAD upheld the RPD's decision and dismissed the appeal; however, the Applicants successfully sought judicial review of the RAD's decision and their appeal was therefore remitted back to the RAD for yet another decision (Court file no. IMM-2374-21).

[5] On June 21, 2024, the RAD once again refused the Applicants' appeal on grounds of state protection. It is this decision – the third by the RAD - that is before the Court for judicial review.

II. ISSUES

[6] The Applicants assert that the RAD erred in its analysis of state protection, this time by:

A. Relying on speculation and unsubstantiated assumptions;

B. Making perverse findings about the Applicants' experiences with law enforcement in Ireland; and

C. Misconstruing and/or failing to address the contradictory evidence.

[7] The issues raised by the Applicant are reviewable on the standard of reasonableness: the central question to be addressed by the Court is whether the decision of the RAD was reasonable. 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 bearing upon it (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]).

[8] The hallmarks of reasonableness are justification, intelligibility and transparency (*Vavilov* at paras 15, 100), and the principle at the heart of this standard is "responsive justification" (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 10, 76). As the Supreme Court of Canada explained in *Vavilov*, "Where the impact of a decision on an individual's rights and interests is severe, the reasons provided to that individual must reflect the stakes" (*Vavilov* at para 133). When it comes to RAD decisions, the stakes are very high (*Shanmugam v Canada (Citizenship and Immigration)*, 2025 FC 911 at para 14).

III. ANALYSIS

[9] The RAD accepted the Applicants' long history of brutal domestic violence at the hands of their father and found that their experience with state authorities – which took place over the course of 12 years between 2001 and 2013 – "was at a time when domestic violence was thought to be a private matter which was best dealt within the private home and when the police did not have the expanded powers of arrest they now have." It acknowledged that prior to 2019 there were "probably valid reasons for criticism of the way the police responded to incidents of

domestic violence", but that the situation in Ireland changed with the introduction of the Domestic Violence Act 2018 [DVA 2018]. According to the RAD, the DVA 2018 "allows the police to arrest the offender, in domestic violence cases, even when the police are not witness to the violence when the police suspect that actual bodily harm or grievous bodily harm is being or has been committed," and provides for new measures, called "emergency barring orders" that prohibit respondents from entering the homes of complainants.

[10] After noting a number of policy and procedural changes made in Ireland to reflect the new legislation, the RAD turned to consider whether the changes were showing positive results. It found that "the objectives of the policy are largely being achieved," based on unsourced "recent statistics" indicating that "the police responded to over 48,000 domestic abuse incidents in 2021 and there were over 4000 criminal charges for breach of domestic violence orders and there were 8600 criminal charges for crimes involving an element of domestic abuse in the same year."

[11] Although the RAD acknowledged that "at first glance these statistics appear to be low," this can be explained: "[T]here could be a number of factors which may contribute the low response including cooperation of the victim, insufficient evidence, or the manner in which the police report the incidents."

[12] The RAD then proceeded to find:

> [45] Based on the country condition evidence as it relates to the police's response to domestic violence, I find the changes made as a result of the DVA 2018 have been effectively implemented and

> the state authorities including the police are adequately responding to incidents of domestic violence.

[13] As the Applicants point out, the RAD did not identify a single source for its findings of fact. While the Applicants were able to track down the RAD's likely source for the statistics in the record - a 2023 article from the University of Limerick's International Journal of Law – this source does not discuss possible factors that might have contributed to low response rates borne out by the statistics and thus provides no support the RAD's finding on that point. The Respondent did not point the Court to any other evidence in the record that might have supported the RAD's determination either. It appears to be pure speculation.

[14] Nor is there any rational chain of analysis leading from the RAD's finding that the statistics regarding state responses to domestic violence are low, through the RAD's speculation as to the reasons for that low rate, to the conclusion that the DVA 2018 has been effectively implemented or that state authorities including the police are adequately responding to incidents of domestic violence in Ireland.

[15] The very journal article from which the RAD appears to have drawn its statistics proceeds in the very next section to identify a range of "outstanding concerns" regarding the effectiveness of the state response to domestic violence in Ireland, including inconsistent implementation of the DVA 2018 and "a significant number of emergency calls relating to domestic abuse [being] inappropriately 'cancelled' or closed." Neither this evidence, nor any of the other recent objective reports detailing current concerns and issues around the state response to domestic violence, were identified or discussed by the RAD, apart from a general and

inaccurate apparent dismissal of this evidence as referring to circumstances that predated the implementation of the DVA 2018.

[16] The Respondent concedes that "it would have been preferable, if not desirable, for the RAD's decision to have addressed each piece of documentary evidence" before it, but maintains that this is not fatal because "a review of the record reveals the reasonableness of the conclusion reached by the RAD."

[17] I cannot agree. While it was certainly open to the RAD to find that the Applicants had failed to rebut the presumption of state protection, such a finding had to be based upon the evidence. Especially given the interests at stake, the RAD Member was obliged to provide a coherent and rational chain of analysis, one that was justified in relation to the facts and law and that engages with the important evidence (*Vavilov* at paras 85, 126). For the reasons set out above, the decision under review falls short of these standards and is unreasonable.

[18] The Applicants also argue that the RAD's assessment regarding the police responses to their multiple complaints of domestic violence over the years was misleading and perverse. While the Applicants' concern may be justified, I need not make a finding on the issue as I have already determined that the decision under review was unreasonable and must be set aside for other reasons.

IV. CONCLUSION AND REMEDY

[19] As the decision of the RAD is unreasonable, it must be set aside and the appeal must be remitted to the RAD for redetermination by a different panel. No serious question of general importance has been proposed by the parties and I agree that none arises.

[20] I note that this will be the fourth time that the RAD considers the Applicants' appeal. The circumstances that brought the Applicants to this Court are harrowing, and their repeated attempts to secure protection from further harm have been arduous. While the only issue to resolve on this judicial review is whether the RAD reasonably determined that the family could safely return home and be protected by their state authorities, I am very concerned that the Applicants appear to be on the "endless merry-go-round of judicial reviews and subsequent reconsiderations" warned about by the Supreme Court of Canada in *Vavilov* at paragraph 142. Although the outcome of the RAD's redetermination is by no means inevitable such that remitting it serves no useful purpose, the circumstances of this case raise a different question: whether, quite apart from their refugee appeal, compassion, justice and fairness require that this traumatized family now simply be permitted to remain in Canada permanently. That, however, is a question that Parliament has authorized the Minister, not this Court, to answer (*Immigration and Refugee Protection Act*, SC 2001 c 27, s. 25).

JUDGMENT in IMM-11780-24

THIS COURT'S JUDGMENT is that:

1. The Application is granted.

2. The Decision of the Refugee Appeal Division dated June 21, 2024, is set aside and the matter is remitted to the RAD for redetermination by a different panel in accordance with these reasons.

3. No question is certified.

"Andrew J. Brouwer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-11780-24
STYLE OF CAUSE:	OKHUMEODE EUGENE OMOMIA, OSHORIAME TREVOR OMOMIA, SINEAD OMOMIA, SALCIA SHAMMAR OMOMIA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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