

Federal Court



Cour fédérale

Date: 20251118

Docket: IMM-23127-24

Citation: 2025 FC 1835

Montreal, Quebec, November 18, 2025

PRESENT: Mr. Justice Gascon

BETWEEN:

CHIOMA BLESSED NWOSU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Chioma Blessed Nwosu, seeks judicial review of a decision dated November 28, 2024 [Decision] whereby the Refugee Appeal Division [RAD] dismissed her appeal and confirmed the Refugee Protection Division's [RPD] decision. Ms. Nwosu's claim for refugee protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*,

SC 2001, c 27 [IRPA] was rejected because both tribunals concluded that she had not established a forward-looking risk of persecution in Nigeria, her country of citizenship.

[2] On judicial review, Ms. Nwosu submits that the RAD breached procedural fairness in two ways. First, by focusing on her forward-facing risk and thus creating a “new issue” on which she was not given the opportunity to make submissions. Second, by declining to remit the matter back to the RPD after finding that the RPD had breached procedural fairness on two fronts. Ms. Nwosu also contends that she is a member of the “family” social group and that as such, it was unreasonable for the RAD to reject her refugee protection claim given that her mother’s was accepted.

[3] For the reasons that follow, Ms. Nwosu’s application for judicial review will be allowed. I am not persuaded that the curative capacity of the appeal before the RAD has ensured that as a whole, the proceedings have reached an acceptable level of fairness with respect to Ms. Nwosu’s claim for refugee protection. Having reached that outcome, I decline to rule on the reasonableness of the RAD’s substantive findings since they were reached upon a flawed record, as will be discussed below.

II. Background

A. *The factual context*

[4] Ms. Nwosu is a Nigerian national. She was granted a multiple-entry visitor visa to visit her brother in Canada and in September 2022, she arrived in the country. At the time, she was a minor. Her mother flew from Nigeria shortly after, in December 2022.

[5] In February 2023, Ms. Nwosu and her mother applied together for refugee protection in Canada. Because Ms. Nwosu was a minor at that time, her mother was designated as the principal claimant, whereas she was designated as a dependent. Ms. Nwosu's refugee claim is based on her mother's narrative, which can be summarized as follows.

[6] After her marriage in 2000, Ms. Nwosu's mother introduced her husband — Ms. Nwosu's father — to Christianity. This conversion caused tension between her mother and the relatives of Ms. Nwosu's father, leading these relatives to harass, accuse, and threaten the mother.

[7] In August 2014, Ms. Nwosu's mother was kidnapped at gunpoint by five or six men in front of her children, including Ms. Nwosu. Her mother was held captive for six days until a ransom was paid. Her mother believes that her husband's family instigated an armed gang to kidnap her. Her mother was taken to the hospital to treat her injuries. She reported the incident to the Nigerian police, but no further action was taken.

[8] In July 2017, Ms. Nwosu's father passed away. His relatives blamed Ms. Nwosu's mother for his death. In January 2018 and November 2022, they directed her to renounce her Christian faith and to engage in various Igbo oath rituals, including physically degrading ones, as proof of her innocence. When Ms. Nwosu's mother refused, she received threat calls, and her house was turned upside down in her absence. Once again, she reported the event to the police, but no action was taken. She flew from Port Harcourt to Abuja, the capital of Nigeria, but her late husband's relatives found her again. She then escaped to Canada in December 2022, a few weeks after Ms. Nwosu.

B. *The RPD's decision*

[9] By the time of the hearing before the RPD, in August 2024, Ms. Nwosu had turned eighteen years of age a few days before. As such, at the onset of the hearing, the RPD informed Ms. Nwosu that the need for a designated representative [DR] was eliminated and that her claim would be assessed separately from her mother's. Counsel for Ms. Nwosu and her mother did not object at the time.

[10] The RPD found that the principal claimant, the mother, was a Convention refugee pursuant to section 96 of the IRPA based on intersecting grounds related to being a woman and Christian. However, the RPD rejected Ms. Nwosu's claim pursuant to both sections 96 and 97 of the IRPA.

[11] The RPD accepted that Ms. Nwosu's mother was kidnapped and assaulted as alleged, due to the "raging animosity" between her and her late husband's family. The RPD also accepted that the mother was approached in January 2018 by the elders from her late husband's community for ritual oath-taking and that she attended it. The RPD further accepted that the mother was approached by the Igbo community in Abuja for a second and more intense ritual oath-taking in November 2022 and that she was threatened and sought for refusing to comply with this demand. The RPD was also satisfied that both the Igbo community and the relatives of the mother's late husband were still seeking her to compel her to perform the ritual oath-taking against her will and her religious belief as a Christian. The RPD observed that there was objective evidence in the National Documentation Package for Nigeria to corroborate the mother's claim.

[12] In addition, the RPD determined that the presumption of state protection was rebutted, and that the mother's agent of persecution had the means and motivation to track her in the identified internal flight alternative [IFA] in Lagos, and everywhere in Nigeria. For all those reasons, the mother's refugee claim was accepted.

[13] With respect to Ms. Nwosu's claim, the RPD noted that she testified she was never invited for oath-taking and was never assaulted by her late father's relatives. Ms. Nwosu also mentioned not having seen anyone from her late father's relatives after his demise. As such, the RPD found that there was no evidence that Ms. Nwosu was being sought for persecution either by the family of her late father or by anyone else. Based on that evidence, the RPD concluded that Ms. Nwosu faced no forward-looking risk and, as such, that the analysis of the first prong of the IFA test was moot. The RPD then determined that it was not unreasonable for Ms. Nwosu to live in the identified IFA in Lagos. The RPD noted that Ms. Nwosu's sister had been studying at a university near Lagos for over four (4) years and never encountered any form of risks, danger, or threat from her late father's relatives or from his community. Ms. Nwosu's refugee claim was thus rejected.

C. *The RAD Decision*

[14] The RAD dismissed the appeal filed by Ms. Nwosu and found that the RPD was correct in finding that she was neither a Convention refugee nor a person in need of protection.

[15] The RAD first agreed with Ms. Nwosu that the RPD breached procedural fairness by failing to follow the Immigration and Refugee Board's Chairperson's Guideline titled

Proceedings Involving Minors at the Immigration and Refugee Board [Guideline] in two respects. First, the RAD found that the RPD did not explain how it came to a determination that Ms. Nwosu was able to appreciate the nature of the proceedings now that her DR had been removed. However, the RAD determined that upon an independent review of the record, there was no evidence to support the assertion that Ms. Nwosu was not able to understand the proceedings.

[16] Second, the RAD determined that the RPD breached procedural fairness by omitting to follow subsection 5.4.2 of the Guideline, which required the RPD to consult with Ms. Nwosu, her mother, and their counsel to ensure that Ms. Nwosu would be able to adequately pursue her case after the DR's appointment ended. However, the RAD declined to remit the matter back to the RPD as, in its view, the outcome of the claim would have been the same regardless of whether such a breach took place or not. The RAD noted that Ms. Nwosu's claim was not denied because of her testimony, but because of the lack of evidence of a forward-facing risk.

[17] Regarding the substance of her own refugee claim, Ms. Nwosu submitted that it was reasonable to infer that the agents of harm would shift their persecution from her mother to her, especially given that the agents continue searching for her mother and that Ms. Nwosu knows her whereabouts. However, the RAD was not convinced and determined that these risks were speculative and unsupported by the evidence. The RAD also found no evidence that her sister living in Lagos had been in hiding from the agents of harm or that they were looking for her. While the RAD accepted that Ms. Nwosu might have a subjective fear, it concluded that there was no evidence to establish an objective basis for this fear.

[18] The RAD declined to consider the viability of the IFA in Lagos given that the absence of a forward-facing risk was determinative of Ms. Nwosu's claim.

D. ***Issues***

[19] Ms. Nwosu's application raises three issues, which I reformulate as follows: (1) was the RAD's analysis of the prospective risk of Ms. Nwosu a new issue on appeal for which the failure to give notice to Ms. Nwosu breached procedural fairness?; (2) did the RAD err in not remitting the matter back to the RPD after it found that the RPD breached procedural fairness?; (3) did the RAD err in finding that Ms. Nwosu was not a member of the family social group and in concluding that she was not a Convention refugee nor a person in need of protection despite the RPD accepting her mother's claim?

[20] Given the result of my analysis on the second issue, there is no need to address the other two questions submitted by Ms. Nwosu.

E. ***Standard of review***

[21] The parties do not agree on the standard of review applicable to the second issue examined in this judicial review. Ms. Nwosu argues it is reviewable on a standard akin to the correctness standard, while the respondent, the Minister of Citizenship and Immigration [Minister], claims it is reviewable on the reasonableness standard.

[22] It is clear that when an applicant challenges a RAD's determination of whether there was a breach of procedural fairness before the RPD, this goes to one aspect of the merits of its

decision and triggers the reasonableness standard (*Patel v Canada (Citizenship and Immigration)*, 2024 FC 912 at para 13; *Aminu v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 233 at paras 24–28; *Onukuba v Canada (Citizenship and Immigration)*, 2023 FC 877 at para 17; *Ahmad v Canada (Citizenship and Immigration)*, 2021 FC 214 at para 13; *Castellanos Penaranda v Canada (Citizenship and Immigration)*,

[23] 2021 FC 608 at paras 6, 9, 24; *Laguerre v Canada (Citizenship and Immigration)*, 2021 FC 701 at paras 26–27; *Larrab v Canada (Citizenship and Immigration)*, 2021 FC 135 at para 8; *Ibrahim v Canada (Citizenship and Immigration)*, 2020 FC 1148 at paras 12–18; *Chaudhry v Canada (Citizenship and Immigration)*, 2019 FC 520 at para 24).

[24] However, in the present case, Ms. Nwosu raises a different argument. She argues that the RAD breached procedural fairness by declining to remit the matter back to the RPD when it found that a breach of procedural fairness had occurred before the first decision maker.

[25] On this question, there is an absence of consensus within the Court. Some decisions have found that such an issue is to be determined on the correctness standard (*Belay v Canada (Citizenship and Immigration)*, 2023 FC 1154 at paras 10–11, 18, 20–21, 24, 26; *Rrukaj v Canada (Citizenship and Immigration)*, 2022 FC 1647 at paras 8–9, 13–14, 25 [*Rrukaj*]; *Ye v Canada (Citizenship and Immigration)*, 2021 FC 1025 at paras 3, 7–9 [*Ye*]; *Abdelrahman v Canada (Citizenship and Immigration)*, 2021 FC 527 at paras 12–14, 18, 20 [*Abdelrahman*]; *Nuriddinova v Canada (Citizenship and Immigration)*, 2019 FC 1093 at paras 24–25, 33

[Nuriddinova]). Others have said that the reasonableness standard applies (*Yang v Canada (Citizenship and Immigration)*, 2024 FC 385 at paras 16–17, 20–22).

[26] With respect, pursuant to the reasoning of the Federal Court of Appeal in *Canada (Attorney General) v McBain*, 2017 FCA 204 [*McBain FCA*], I am of the view that a standard akin to correctness applies in this case.

[27] Despite the presumption of reasonableness, the approach to be taken with respect to issues related to procedural fairness has not changed following the Supreme Court of Canada’s landmark decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] (*Vavilov* at para 23). It has typically been held that correctness is the applicable standard of review for determining whether a decision maker complies with the duty of procedural fairness and the principles of fundamental justice (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43 [*Khosa*]).

[28] However, the Federal Court of Appeal has affirmed that questions of procedural fairness are not truly decided according to any particular standard of review. Rather, it is a legal question to be answered by the reviewing court, and the court must be satisfied that the procedure was fair having regard to all of the circumstances (*Algoma Steel Inc v Canada (Attorney General)*, 2023 FCA 164 at para 22; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35, leave to appeal to the Supreme Court dismissed, no 39522 (August 5, 2021); *Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14; *Canadian Airport Workers Union v International Association of Machinists and*

Aerospace Workers, 2019 FCA 263 at paras 24–25; *Perez v Hull*, 2019 FCA 238 at para 18; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [CPR]).

[29] In other words, the test is whether, given the particular context and circumstances at issue considered as a whole, the overall proceeding — including both the initial proceedings and appellate review — was fair and offered the affected parties a right to be heard as well as a full and fair opportunity to know and respond to the case against them (*McBain v Attorney General of Canada*, 2016 FC 829 at para 45 [McBain FC], aff'd in *McBain FCA*; see also *Higgins v Canada (Attorney General)*, 2018 FCA 49 at para 17; *Schmidt v Canada (Attorney General)*, 2011 FC 356 at paras 13–14 [Schmidt]; *CPR* at para 56; *Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 at paras 51–54). No deference is owed to the decision maker on issues of procedural fairness.

[30] In my view, declining to remit a matter back to a previous decision maker when it was found that a breach of procedural fairness had occurred goes directly to the assessment of whether the procedure — as a whole — was fair having regard to all of the circumstances.

III. Analysis

[31] In the present case, the RAD agreed with Ms. Nwosu and found that the RPD breached procedural fairness on two fronts. Ms. Nwosu submits that having concluded that the RPD erred in law by breaching procedural fairness, the RAD should have remitted the matter back to the

RPD. She argues that the impact of the breaches of procedural fairness was not adequately considered by the RAD and that the RPD's breaches were fatal to its decision.

[32] The Minister responds that Ms. Nwosu failed to raise the breaches of procedural fairness before the RPD. In addition, the Minister says that the RAD rectified the first breach by conducting its own analysis of Ms. Nwosu's ability to appreciate the nature of the RPD proceedings and could reasonably find that the second breach was immaterial to the outcome of her refugee claim.

[33] I agree with Ms. Nwosu that, in the circumstances, the process followed by the RPD and the RAD did not reach the required level of procedural fairness owed to her. The second procedural fairness breach was material and was not remedied on appeal, and it is far from certain that the RPD — and the RAD — would have reached the same result had the breach not occurred.

A. *Applicable legal principles*

[34] It is true that when it becomes aware of a procedural problem, a party must object in the first-instance forum as to give the first-instance decision maker a chance to address the matter before any harm is done, to try to repair any harm, or to explain itself (*Hennessey v Canada*, 2016 FCA 180 at para 21). In the case at hand, the transcript of the hearing before the RPD reveals that counsel for Ms. Nwosu agreed that her client did not need a DR anymore. Moreover, counsel did not ask for an adjournment and did not object to have Ms. Nwosu testify before the RPD in support of her claim. Furthermore, no reference was made to potential breaches of

procedural fairness in Ms. Nwosu's post-hearing submissions to the RPD. As such, and while Ms. Nwosu argues that she was not provided the proper notice to prepare her case separately from her mother's, the procedural fairness argument was never raised before the RPD. The argument was, however, clearly raised on appeal before the RAD and as such, this Court is allowed to entertain it on judicial review.

[35] Breaches of procedural fairness will ordinarily render a decision invalid, and the usual remedy is to order a new hearing (*Cardinal v Director of Kent Institution*, 1985 CanLII 23 (SCC), [1985] 2 SCR 643 at para 23 [*Cardinal*]; *Girouard v Canada (Attorney General)*, 2020 FCA 129 at para 95 [*Girouard*]). However, this is not absolute, and an exception can be made when the error made by an administrative decision maker is not determinative and the outcome would inevitably have been the same without the breach (*Mobil Oil Canada Ltd v Canada-Newfoundland Offshore Petroleum Board*, 1994 CanLII 114 (SCC), [1994] 1 SCR 202 at pp 227–228 [*Mobil Oil*], reiterated in *Vavilov* at para 142 and *Entertainment Software Association v Society Composers*, 2020 FCA 100 at para 99; *Shull v Canada*, 2025 FCA 25 at para 32 [*Shull*]; *Girouard* at para 95; *McBain FCA* at para 10; *Carola v Canada (Attorney General)*, 2021 FC 1347 at para 65 [*Carola*]; *Abdelrahman* at paras 23–25). Another exception exists where the breach of procedural fairness was cured in the appellate proceeding (*McBain FCA* at para 10; *Carola* at para 67; *Ye* at paras 17, 33; *Abdelrahman* at para 25; see also *Taiga Works Wilderness Equipment Ltd v British Columbia (Director of Employment Standards)*, 2010 BCCA 97 at para 38 [*Taiga*]).

[36] With respect to the first exception, declining to remit a matter to the decision maker may be appropriate where it becomes evident to the court, during its review, that a particular outcome

is inevitable, that there is no doubt about the result, and that remitting the case would therefore serve no useful purpose (*Mobil Oil* at p 228). A court may also withhold relief when a procedural error is purely technical and creates no substantial wrong or miscarriage of justice (*Khosa* at para 43). The question is therefore whether the errors highlighted by Ms. Nwosu would definitively result in the same outcome should her case be sent back to the RPD for redetermination (*Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283 at para 41).

[37] Turning to the second exception, there are five factors to take into account in determining whether an appellate proceeding has cured earlier procedural defects. They are: (i) the gravity of the error committed at first instance; (ii) the likelihood that the prejudicial effects of the error may also have permeated the rehearing; (iii) the seriousness of the consequences for the individual; (iv) the width of the powers of the appellate body; and (v) whether the appellate decision is reached only on the basis of the material before the original tribunal or by way of rehearing *de novo* (*McBain FCA* at para 13; *Carola* at para 68; *Ye* at para 33; *Schmidt* at para 17; see also *Taiga* at para 38).

[38] While it is established that the RAD is not compelled to remit a matter back to the RPD for redetermination when it identifies an error (*Ye* at para 39), the real question in this matter is whether the RPD's breach of procedural fairness had a material effect (*Ye* at para 20). A breach of procedural fairness may be overlooked if it is beyond doubt that it had no material effect on the decision (*Haile v Canada (Citizenship and Immigration)*, 2019 FC 538 at para 66; *Han v Canada (Citizenship and Immigration)*, 2019 FC 449 at para 24; *Nagulesan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1382 at para 17). It is only where an outcome is

characterized as inevitable or when the defect was remedied on appeal that a breach of procedural fairness can be considered immaterial.

B. *The first breach committed by the RPD was immaterial and remedied on appeal by the RAD*

[39] With respect to the first breach, the RAD found that the RPD did not explain how it came to a determination that Ms. Nwosu was able to appreciate the nature of the proceedings. The RAD thus conducted its own analysis based on the record and found no evidence that Ms. Nwosu was not able to do so. The RAD reviewed the evidence and found that her testimony was coherent and responsive to the RPD's questions.

[40] In my view, this breach was immaterial as it is clear from the RPD's decision that despite not explicitly ruling on Ms. Nwosu's ability to understand the nature of the proceeding, it was implicitly ruled on when the RPD duly considered and assessed her testimony. Turning to the factors outlined in *McBain FCA*, I further find that in any case, this breach of procedural fairness was remedied on appeal by the RAD's own assessment of Ms. Nwosu's ability to appreciate the nature of the proceeding.

[41] As such, the RAD did not need to remit the matter back to the RPD because of this first breach.

C. *The RAD erred in finding that the outcome was inevitable*

[42] Regarding the second breach, the RPD did not follow subsection 5.4.2 of the Guideline and failed to inform Ms. Nwosu prior to the hearing that her claim would be assessed

independently of that of her mother's. Relying on *Mobil Oil*, the RAD decided not to remit the matter back to the RPD given that "the outcome of the claim would have been the same regardless of whether the breach took place or not, given the totality of the evidence".

[43] I do not agree and instead find that the RAD breached procedural fairness by declining to remit the matter to the RPD. In my view, it cannot be said that the outcome of Ms. Nwosu's refugee claim was inevitable or that the proceedings on appeal cured this RPD's breach of procedural fairness.

[44] The Minister pleads that the outcome was inevitable, as Ms. Nwosu's claim is entirely based on her mother's. The Minister argues that Ms. Nwosu does not provide any concrete explanation as to how a proper notice of the separation of her claim from her mother's would have enabled her to better prepare her case. As noted by the RAD, in her post-hearing submissions before the RPD and in her written material on appeal before the RAD, Ms. Nwosu made no further argument related to her personal forward-looking risk of persecution or harm other than what she testified about before the RPD.

[45] With respect, I am not convinced by the Minister's arguments. The exception set out in *Mobil Oil* is admittedly narrow (*Shull* at para 33). In order to decline remitting a matter to the first decision maker, it is not even sufficient that a new hearing is unlikely to lead to a different result (*Shull* at para 33). The threshold is higher: the result must be inevitable. Ms. Nwosu did not have to show actual prejudice before the RAD; it was sufficient for her to demonstrate that she might have suffered prejudice from the failure of the RPD to provide her a proper notice in accordance with the Guideline that, she claims, prevented her from being able to dutifully

prepare her case (*Carola* at para 63, citing *Kane v Board of Governors of the University of British Columbia*, 1980 CanLII 10 (SCC), [1980] 1 SCR 1105 at p 1116).

[46] I find that this RPD's breach of procedural fairness — which was acknowledged by the RAD — goes to the core of Ms. Nwosu's ability to present her case for refugee protection. In sum, because of the RPD's breach, Ms. Nwosu was not given the opportunity to fully present her case in support of her refugee claim. It does not mean that Ms. Nwosu's claim would have been accepted. Since the Court does not know what evidence would have been presented, it is not possible to tell what the outcome would have been. But Ms. Nwosu certainly deserved to have the possibility to be fully heard.

[47] The Court should not deny that right and sense of justice on the basis of speculation as to what Ms. Nwosu might have presented as evidence or as to what would have been the result had she been aware in advance — in accordance with the Guideline — that her case would be assessed separately from her mother's (*Cardinal* at para 23; *Shull* at para 33). To apply the *Mobil Oil* exception, the record must make it clear that the factual and legal context can only and inevitably lead to a single outcome, such that remitting the matter for redetermination would serve no useful purpose. I am not persuaded that this is one of those rare cases, and I find that, in the circumstances, the RAD erred in declining to remit the matter back to the RPD.

D. *The second breach was not remedied on appeal as Ms. Nwosu did not provide new evidence to the RAD*

[48] I now turn to the assessment of the factors set out in *McBain FCA* to determine whether the appellate proceeding before the RAD cured the procedural defect of the RPD.

[49] Looking at the first factor, the gravity of the error committed by the RPD was recognized by the RAD and in my view, it goes to the core of Ms. Nwosu's ability to duly present her case for refugee protection. Similarly, with respect to the third factor, the seriousness of the consequences for Ms. Nwosu is also established as a RPD decision is highly adjudicative and of great importance to the affected individual.

[50] A cumulative analysis of the second, fourth, and fifth factors set out in *McBain FCA* also leads to a conclusion favourable to Ms. Nwosu. It is not disputed that the RAD does not conduct a true *de novo* proceeding (*Huruglica v Canada (Citizenship and Immigration)*, 2016 FCA 93 at para 79; *Rozas Del Solar v Canada (Citizenship and Immigration)*, 2018 FC 1145 at para 99 [*Rozas Del Solar*]). The RAD is constrained by the record before it and its appellate function and is tethered to the RPD's decision (*Rozas Del Solar* at para 99). While the parties can file submissions on appeal, the RAD must proceed on the basis of the record before the RPD and generally cannot receive new evidence unless the conditions set out in subsection 110(4) of the IRPA are met. The scope for the introduction of new evidence before the RAD is narrow (*Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96, at para 51). I also note that generally, in cases where the appeal was not *de novo*, courts have found that the appellate review did not cure procedural unfairness at the initial level (*Carola* at paras 67–73; *McBain FC* at paras 60–64, aff'd in *McBain FCA*; *Beauregard v Canada (Attorney General)*, 2015 FC 1383 at para 55).

[51] Here, and as is generally the case, the RAD decision was reached on the basis of the material filed before the RPD. But, as argued by Ms. Nwosu, this record was necessarily deficient as the RPD breached procedural fairness by not providing her a notice in accordance with the Guideline. In other words, the RAD record was tainted by an earlier breach of

procedural fairness by the RPD, and that breach permeated the RAD's assessment of Ms. Nwosu's claim.

[52] I pause to observe that, even though I accept that the RAD's record was deficient due to the RPD's breach, this was partly caused by Ms. Nwosu's own failure to submit new evidence on appeal, something she could have done pursuant to subsection 110(4) of the IRPA. This Court has consistently held that where the RAD determines that the RPD reached a conclusion on an unanticipated issue without evidence from the appellant, subsection 110(4) of the IRPA would permit the admission of new evidence as the appellant could not reasonably have been expected in the circumstances to have presented the evidence to the RPD (*Rrukaj* at paras 20–21; *Karim v Canada (Citizenship and Immigration)*, 2020 FC 566 at paras 3, 21–22; *Nuriddinova* at para 41).

[53] The RAD has considerable error-correction powers on an appeal from the RPD. This Court has rejected the proposition that there are some kinds of RPD errors that the RAD cannot correct and for which the RAD cannot substitute its opinion (*Alvarenga Torres v Canada (Citizenship and Immigration)*, 2021 FC 549 at paras 37–38). In my view, the RAD's procedures would have provided it with the ability to cure the breach of procedural fairness in the present circumstances, by admitting new evidence to fill the evidentiary gap left by the RPD's failure to follow the Guideline and give Ms. Nwosu a proper notice.

[54] However, this opportunity was not taken by Ms. Nwosu, as she did not submit evidence to contradict the RPD's findings that she was not a Convention refugee nor a person in need of protection. She instead relied entirely on her mother's claim in her appeal before the RAD, while also raising procedural fairness arguments. This was not, to say the least, a prudent approach.

[55] In any event, I note that the RAD did not conduct an analysis of whether its proceeding cured the defect, limiting its assessment to whether the defect was material or not. Had the RAD conducted the analysis prescribed by *McBain FCA*, it would have realized that it was reaching a decision based on a flawed record, either because of the RPD's breach or because of the absence of new evidence filed on appeal by Ms. Nwosu.

[56] As such, I am satisfied that, in the circumstances of this case, the RAD was compelled to make sure its Decision was not based on a flawed record, either by inviting Ms. Nwosu to submit new evidence once it found that a breach of procedural fairness occurred before the RPD or by remitting the matter back to the RPD. In other words, the appeal process did not cure the procedural fairness defect.

IV. Conclusion

[57] For all these reasons, this application for judicial review is allowed. I am not persuaded that as a whole, the proceedings regarding Ms. Nwosu's claim for refugee protection satisfy the requirements of procedural fairness. The RAD Decision is therefore set aside. I further note that the RPD's decision with respect to Ms. Nwosu is equally flawed. The matter is remitted to the RAD for redetermination, and the RAD is in turn entailed to return the matter to the RPD for redetermination in light of the breach of procedural fairness by this decision maker.

[58] There are no questions of general importance to be certified.

JUDGMENT in IMM-23127-24

THIS COURT’S JUDGMENT is that:

1. This application for judicial review is allowed, without costs.
2. The November 28, 2024 decision of the Refugee Appeal Division [RAD] dismissing the Applicant’s claim for refugee protection is set aside.
3. The matter is referred back to the RAD for redetermination by a different panel, in accordance with the terms of this judgment.
4. There is no question of general importance to be certified.

“Denis Gascon”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-23127-24

STYLE OF CAUSE: CHIOMA BLESSED NWOSU v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE

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JUDGMENT AND REASONS: GASCON J.

DATED: NOVEMBER 18, 2025

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