Federal Court  Cour fédérale

Date: 20200122

Docket: IMM-3307-19

Citation: 2020 FC 94

Ottawa, Ontario, January 22, 2020

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

DIONETO DE JESUS VUNDA ARMANDO
By his litigation guardian MARIA HELENA NHANGA VUNDA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is an application for judicial review of a decision rendered by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada on May 7, 2019, which ruled that the applicant was neither a Convention refugee nor a person in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27

[IRPA], since he had viable Internal Flight Alternative [IFA] within his country of citizenship, Angola.

[2] For the reasons set out below, the present application for judicial review is dismissed.

II. Facts

[3] The Applicant is now 15 years old from the City of Luanda, Angola, where his parents own and operate a store. The store is located near the Applicant's school.

[4] On May 17, 2017, the store was robbed. The Applicant's parents reported the theft to the police, and, a week later, the police arrested one of the thieves, who was later released from prison.

[5] On October 17, 2017, after leaving school, the Applicant was approached by a gang that included the thief who was arrested, and later released, following the theft at his parents' store. The gang dragged the Applicant away and tried to kidnap him. The thief threatened the Applicant's life as revenge for his earlier arrest. Fortunately, a police officer was passing by the area and scared off the gang. The officer escorted the Applicant home.

[6] The October 2017 incident was a traumatic experience for the Applicant who since then has feared violent reprisals from the thief, and from the gang generally. The Applicant was afraid to leave the family home or go to school. During this period, his father drove him to and from school. He had a difficult time focusing on his studies, as the thief's threats and actions occupied

his thoughts. The Applicant developed symptoms of depression; his parents grew worried for their child.

[7] In an effort to ease the Applicant's fears, his parents sent him to visit with his aunt in Canada; his aunt was visiting Angola and was returning to Canada in November 2017. The Applicant arrived in Canada on a temporary visitor's visa, however, fearing return to Angola at the end of his stay, the Applicant made a claim for refugee protection.

[8] The Applicant filled out the relevant forms, in particular his Basis of Claim [BOC], with the assistance of counsel. The Applicant stated in his BOC that he had nightmares and kept remembering the thief's threats to kill him. The Applicant was afraid of being kidnapped if he were to return to Angola, and feared that the thief and his gang will take revenge against his parents by killing him.

III. RPD Decision

[9] As the Applicant was a minor, his aunt served as his designated representative at the Refugee Protection Division [RPD] hearing at which his counsel [the RPD Counsel] submitted that the Applicant is in fear of returning, and would remain in fear no matter where he was to live in Angola.

[10] On December 21, 2018, the RPD rejected the Applicant's refugee claim. The RPD made no adverse credibility findings, and accepted the veracity of the Applicant's story (i.e., the theft at his parent's store, the subsequent threats, and the threatened kidnapping incident).

[11] As regards his claim under section 96 of the IRPA, the RPD found that the Applicant had not established any nexus to one of the grounds enunciated in the Convention.

[12] As to the claim under section 97 of the IRPA, the RPD rejected it, having found that the Applicant had three viable IFAs in Angola – Huambo, Uige, and Luena. In addition, the RPD found that it would be reasonable to expect that the Applicant's parents would move to join him in one of the IFAs, on the balance of probabilities.

[13] In addition, with no psychological assessment having been tendered as evidence addressing the Applicant's state of mind, the panel was unable to assess how the Applicant's return to one of the IFAs would affect him.

IV. Decision Under Review

[14] On appeal before the RAD, the Applicant did not challenge the ruling that his claim failed under section 96 of IRPA. Rather, the Applicant challenged the RPD on three grounds.

[15] First, the Applicant argued a breach of procedural fairness in that the RPD failed to follow the *Chairperson Guideline 3: Child Refugee Claimants: Procedural and Evidentiary Issues* [Chairperson Guideline 3] and ignored the procedural protections for minor refugee claimants. In particular, the Applicant argued that the RPD raised the issue of IFAs during the hearing rather than at a pre-hearing conference, without consideration for the Applicant's status as a minor.

[16] Second, the Applicant argued that the RPD committed an error in its IFA finding. In particular, the Applicant argued that the RPD's approach to the IFA issue was arbitrary because there was no evidence as to why the RPD chose these specific places as IFAs. In addition, the Applicant argued that the RPD ignored evidence showing that the Applicant's mother is suffering from high blood pressure (hypertension), a condition that (allegedly) requires medical care that is not available outside of Luanda.

[17] Third, and in the alternative, the Applicant argued a breach of natural justice on account of the incompetence of his RPD Counsel, particularly with regard to the IFA issue. In essence, the Applicant argued that his RPD Counsel should have addressed the unreasonableness of any IFA in the BOC form, and should have elaborated upon the mother of the Applicant's medical condition in his written submissions.

[18] At the outset of its decision, the RAD accepted new evidence from the Applicant on the issue of his RPD Counsel's alleged incompetence, as well as evidence relating to his mother's medical condition and his father's restrictions as regards finding employment outside of Luanda and the constraints related to him being able to provide for his extended family outside Luanda.

[19] On the issue of the RPD Counsel's incompetence, the Applicant tendered an affidavit from the Applicant's designated representative, his aunt, which stated that the RPD Counsel did not discuss the possibility of IFAs until the day before the RPD hearing. During this discussion, the Applicant spoke only of the fear that the gang would find him anywhere in Angola. The

reasonableness of possible IFAs in Huambo, Uige and Luena was not raised during that discussion.

[20] According to the Applicant, had he been better prepared to deal with the issue of viable IFAs, he would have obtained evidence from his parents as to why moving anywhere outside Luanda was not reasonable.

[21] The Applicant's RPD Counsel was given an opportunity to respond to the allegations. He did by stating that he had indeed referred to the IFA in his written submissions and maintained that he asked the Applicant and his designated representative if there were any reasons the Applicant could not live somewhere else in Angola.

[22] The RPD counsel also pointed out that he questioned the Applicant about IFAs during the RPD hearing, and claimed that the IFA issue was addressed in the Applicant's BOC form.

[23] In response to the RPD Counsel's submissions, the Applicant's aunt, as his designated representative, submitted a further affidavit in reply stating that it was her understanding that the RPD Counsel only asked for documentation pertaining to dangers and risks associated with moving to the identified IFAs (being the first prong of the IFA test) and not in respect to the reasonableness of the any possible IFAs prior to the RPD hearing.

[24] The aunt also attached a medical statement confirming the applicant's mother's hypertension condition, and a declaration from the Applicant's father explaining that he would not be able to economically provide for his extended family in the event of a relocation.

[25] Before the RAD, the Applicant argued that he would have provided additional documentary evidence as to his mother's health condition, in particular the availability of emergency services in the IFAs, and his family's inability to support his family elsewhere in Angola. To the Applicant, the inability to do so undermined the reasonableness of the RPD decision.

[26] On May 7, 2019, the RAD dismissed the appeal.

[27] Regarding the first ground of appeal, the RAD found that the RPD was aware of the Chairperson Guideline 3 and accommodated the minor Applicant accordingly.

[28] Regarding the IFA analysis, the RAD concluded that the RPD did not commit an error in finding that the Applicant had three IFAs in Angola. In addition, the RAD found that it was reasonable to conclude that the parents would relocate with the Applicant within Angola, taking into consideration the family's situation.

[29] Although the RAD accepted that the RPD Counsel could have been more effective in addressing the IFA issue, Counsel's conduct did not amount to incompetence. In any event, the RAD found that a miscarriage of justice did not take place because even on the strength of the

new evidence submitted by the Applicant, his claim would have been rejected regardless of any shortcomings on the part of the RPD Counsel.

V. Issues

[30] This case raises three issues:

1. Was there a breach of natural justice on account of RPD Counsel's conduct?
2. Was the RAD's decision as to the IFAs reasonable?
3. Was there a lack of procedural fairness on account of a failure to properly apply the *Chairperson Guideline 3: Child Refugee Claimants*?

VI. Standard of Review

[31] Before me, both counsel agreed that the standard of review is one of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). I agree, as I see no reason to overturn the presumption that reasonableness is the applicable standard in this case (*Vavilov* at para 23).

[32] In his submission, however, counsel for the Applicant stressed that *Vavilov* also provides insight on how to assess whether a decision is unreasonable. In particular, the Applicant asked that I keep in mind that reasonableness review:

i. entails a "sensitive and respectful, but robust, evaluation of administrative decisions" (*Vavilov* at para 12);

ii. "focuses on justification" (*Vavilov* at para 74);

iii. focuses on whether the reasons explain the "how and why a decision was made" so as to show "affected parties that their arguments have been considered" (*Vavilov* at para 79);

iv. requires the court to consider whether the decision, including its "rationale" and the "outcome," was unreasonable (*Vavilov* at para 83);

v. requires the court to examine the reasons with "respectful attention" so as to seek to understand the reasoning process of the decision maker (*Vavilov* at para 84);

vi. looks to whether the decision is justified on the basis of the "reasoning process" and analysis (*Vavilov* at paras 86 and 87);

vii. includes an enquiry as to whether there are "serious shortcomings in the decision" which are "sufficiently central or significant" so as to render the decision unreasonable (*Vavilov* at para 100); and

viii. allows a court to be determine whether it is satisfied that there is a "line of analysis" in "the reasons that could reasonably lead" "from the evidence" "to the conclusion" (*Vavilov* at para 102).

[33] In addition, the Applicant submits that reasonableness may be questioned where there has been a fundamental misapprehension of the evidence or where that decision-maker has failed to account for such evidence (*Vavilov* at para 126), or whether there has been a failure by the decision maker to grapple with "key issues or central arguments" of the parties (*Vavilov* at para 128).

[34] Having considered the arguments of the Applicant as to elements of what may constitute an unreasonable decision, I find that the Applicant has not met his burden of convincing me that the RAD decision was unreasonable (*Vavilov* at para 100; *Soultani Kanawati v Canada (Citizenship and Immigration)*, 2020 FC 12 at para 11). For the reasons set out below, the present application is, therefore, dismissed.

VII. Discussion

(1) *Was the RAD's decision as to the IFAs reasonable?*

[35] I will address this issue first, as it is determinative.

[36] The *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 at 710 and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589, cases propounded a two-prong test to be applied in determining whether there is a viable IFA.

[37] The two-prong IFA test requires that: (i) there is no serious possibility of the individual being persecuted in the IFA area (on the balance of probabilities); and (ii) conditions in the proposed IFA must be such that it would not be unreasonable in all the circumstances for an individual to seek refuge there (*Reci v Canada (Citizenship and Immigration)*, 2016 FC 833 at para 19; *Titcombe v Canada (Citizenship and Immigration)*, 2019 FC 1346 at para 15).

[38] Both prongs must be satisfied for a finding that the claimant has an IFA. This two-prong test ensures that Canada complies with international norms regarding IFAs (UNHCR *Guidelines on International Protection: "Internal Flight or Relocation Alternative" within the Context of Article 1A (2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003 at paras 7, 24-30).

[39] In its decision, the RAD confirmed the RPD's finding that the Applicant has safe and reasonable IFAs in both Uige and Huambo.

[40] The Applicant concedes that the first prong of the IFA test is met, but argues that the RAD's analysis of the second prong of the IFA was unreasonable as it committed a reviewable error in failing to address documentary evidence showing that his mother would not receive adequate care for her medical condition outside of Luanda. In addition, the Applicant submits that the RAD did not address evidence showing that his father would not be able to provide for the family in the event of a relocation.

[41] Admittedly, the evidence before the RPD in respect to the reasonableness of the proposed IFAs, and the RPD Counsel's focus on that issue during the RPD hearing, was far from extensive, and I accept that there is an argument to be made that more could have been done to address the issue of an IFA.

[42] However, the Applicant's new counsel was successful in having the RAD admit two new pieces of evidence which, he argued, could have been put before the RPD had the RPD Counsel performed his duties appropriately; the first being a report from a doctor in Luanda confirming that the Applicant's mother was suffering from hypertension, and the second being a statement from the Applicant's father, a practising lawyer, suggesting that he would not be able to practise law outside of Luanda, because "people from other provinces, besides not having the money to pay a lawyer, most of the conflicts there are treated by traditional authorities and there is no positive law."

[43] No other reason is given by the father as to why he would not be able to work outside of Luanda, however, the father does also mention in his statement that he is supporting five siblings and three nephews, in addition to his immediate family.

[44] The Applicant's argument is not that these two new pieces of evidence definitively establish that the IFAs are unreasonable, but rather that the RAD failed to properly assess and take into consideration those documents in its analysis on reasonability of the IFAs, thus rendering its decision unreasonable.

[45] As I stated in *Sbayti* v *Canada (Minister of Immigration, Refugees and Citizenship)*, 2019 FC 1296 at paragraph 60 [*Sbayti*], where "there is a fundamental issue going to the crux of the matter, reference should be made to any credible document that deals with that matter head on." In *Begum v Canada (Citizenship and Immigration)*, 2017 FC 409 [*Begum*], M. Justice Russell, stated the following at paragraph 81:

> According to relevant jurisprudence, this Court may infer that a decision-maker has made an erroneous finding of fact without regard to the evidence from a failure to mention in the reasons evidence that is relevant to the finding and which points to a different conclusion: Cepeda-Guiterrez v Canada (Minister of Citizenship and Immigration), [1998] FCJ No 1425 at para 15. Such errors made without regard to the evidence and which significantly affect the decision justify judicial intervention, even if it is not obvious that those errors were made in a perverse or capricious fashion: Maqsood v Canada (Minister of Citizenship and Immigration), [1999] FCJ No 1699 at para 18. This Court has also found that the IAD cannot overlook key evidence that contradicts its findings without addressing such contradictory evidence; if such evidence is not referred to, it will be assumed to have been ignored: Ivanov v Canada (Minister of Citizenship and Immigration), 2006 FC 1055 at para 23.
>
> [Emphasis added.]

[46] In his written submissions before the RAD, Applicant's counsel argued that the medical report confirms the aunt's testimony before the RPD regarding his mother's hypertension, and suggests that it therefore follows that emergency health care is not available to the mother outside of Luanda.

[47] As to the father's explanation of not being able to provide for his family outside of Luanda, counsel argues that a law practice in the provincial capitals could not provide adequately for the father to continue to support not only his family, but his extended family as well.

[48] Nothing further is said as regards both issues.

[49] In arriving at its decision on the viability of the IFAs, the RAD considered the reasonableness of relocation in the light of the circumstances of the Applicant's parents:

> In relation to reasonableness, the circumstances of the Appellant's parents do need to be taken into account. There is nothing in the Appellant's submissions that addresses the fact that both of the Appellant's parents are educated and thus, although it would be inconvenient to restart their careers, is not sufficient to show undue hardship.
>
> I note the argument also made regarding the Appellant's mother's hypertension, but find that this is not a sufficient reason that the family as a whole cannot relocate, and does not address the father's ability to provide income for the family.

[50] Much like the RPD, the RAD found that the Applicant's parents would not experience undue hardship in the event of a relocation. While relocation may involve an inconvenience or a career change for his parents, the Applicant did not provide evidence that relocation would

provoke an undue hardship that exceeds the threshold of reasonability under the second prong of the IFA test.

[51] I agree with the Applicant that the RAD did not specifically mention the medical report, nor the father's statement. However, unlike the situation in *Sbayti*, this is a case where the Applicant must overcome a strong presumption of reasonableness as to a finding of the RAD. I am not convinced that he has been successful, even with the new evidence.

[52] The RAD assessed the new evidence and submissions on behalf of the Applicant in relation to the reasonableness of IFAs. As stated by the RAD in the context of its determination regarding the competence of the RPD Counsel:

> Furthermore, for reasons I will discuss in the IFA section below, I find that the arguments advanced by the RAD Counsel (in relation to the reasonableness of the IFAs) are also not particularly persuasive, and that if the RPD Counsel advanced these arguments in submissions, the result would have been the same.
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> [Emphasis added.]

[53] As to the mother's medical report, although I agree that it corroborates the aunt's testimony before the RPD that the Applicant's mother is suffering from hypertension, it does not say much else; in particular, it does not address her ongoing medical needs other than saying she must be followed by a cardiologist. By making no specific mention of the available follow-up care in any of the IFAs, the report does not establish that the mother cannot receive care in those areas.

[54] There is also no evidence that the mother requires emergency care, as opposed to a simple plan of action to address her condition and provide for regular follow-up examinations by her physician.

[55] The Applicant's counsel also concedes that there is nothing in the report that suggests that the mother's hypertension may lead to a stroke, or that she needs to be in a location where emergency medical services are available, but asks that the Court make that inference so as to read in the requirement that the mother needs to be in an area where such emergency services are available.

[56] As to the lack of emergency medical treatment outside of Luanda, the Applicant points to a 2018 U.S. Department of State - Overseas Security Advisory Council report suggesting that adequate care for serious medical emergencies in Angola is limited to Luanda. However, without any medical report confirming the mother's need to be close to emergency facilities and that her hypertension cannot be reasonably managed by medication, I do not see how I can leap to the conclusion that the Applicant is asking me to make, even assuming such emergency medical care would not be available in the IFAs.

[57] The evidence does not show that the mother's medical condition requires emergency medical care, and the RAD drew a reasonable conclusion regarding the possibility of undue hardship related to a relocation.

[58] As to the father's statement asserting his inability to make a living outside of Luanda, I must admit I find it quite unconvincing. As I suggested to counsel during the hearing, although the father expresses reasons why he feels it would be more difficult for him to practise law outside of Luanda (without specifically mentioning the IFAs), it does not follow that he would not be able to practise at all, or not be able to find some other form of employment to support his family, siblings and nephews in the event they found it necessary to move from Luanda.

[59] As confirmed by the Applicant's counsel, the father is not saying in his statement that there are no lawyers outside of Luanda, but only that there is less work for lawyers. The Applicant's counsel concedes that this is not enough to justify a finding of unreasonableness as to the IFAs.

[60] He adds, however, that the father is not simply providing for his immediate family, but in addition, as he states, also has five siblings and three nephews under his care and responsibility, and that this is a factor that could lead to a finding that relocating to the IFAs would be unreasonable.

[61] There is no evidence offered as regards to the mother's employment prospects or her ability to open up another boutique in the IFAs.

[62] In *Adebayo v Canada (Minister of Immigration, Refugees and Citizenship)*, 2019 FC 330 [*Adebayo*], Madam Justice Kane cited *Ranganathan* (at para 15) for the proposition that there is a high onus on a refugee claimant to demonstrate that a proposed IFA is unreasonable, requiring

"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" and that such conditions are "in sharp contrast with undue hardship resulting from loss of employment, loss of status, reduction in quality of life […]" (at para 51). Madam Justice Kane made it clear that this high threshold applies to both prongs of the IFA test (*Adebayo* at par. 53).

[63] The Applicant seeks to distinguish *Adebayo*: he submits that the IFA in that case was a large urban city, where the applicant's language was spoken and with large communities that practised the applicant's faith. In contract, the present case goes beyond the simple hardship of finding work in a different city, but includes evidence that the father was supporting a large extended family.

[64] I must say that unless the Applicant is suggesting that I should consider the hardship of the extended family members in determining the reasonableness of the IFA (which I do not believe he is), I cannot see how this distinction is relevant. In the end, it is a matter of economic hardship one way or the other, whether one focuses on the Applicant, the parents, or the extended family.

[65] I conclude that the Applicant has failed to meet the high threshold set out in *Adebayo*, and that the RAD's analysis and conclusions on the viability of IFAs were not unreasonable. Although the analysis of the new evidence was somewhat cursory, there was not much evidence for the RAD to discuss in its review. I can certainly see from the medical report and father's statement evidence supporting the RAD's conclusions, and although I appreciate that *Vavilov* (at

paras 81, 97) cautioned against focusing only on outcomes in the determination of reasonableness, I find that the RAD did follow a process that met the requirements of a proper reasonableness review.

[66] On the whole, I find that the decision of the RAD allows the reader to understand its reasoning process (*Vavilov* at para 84), and that its line of analysis does reasonably lead from the evidence to the conclusion (*Vavilov* at para 102). I do not see anything in the RAD decision to conclude that there were shortcomings that were "sufficiently central or significant" so as to render the decision unreasonable (*Vavilov* at para 100).

[67] Nor do I think that the reasonableness of the decision has been jeopardized because of a fundamental misapprehension of the evidence or because the RAD has failed to account for such evidence (*Vavilov* at para 126), or because the RAD failed to grapple with key issues or central arguments of the parties (*Vavilov* at para 128). Although specific reference to the mother's medical report and the father's statement were not made, it seems to me that the conclusions of the RAD could easily accommodate those documents given their shortcomings – something which was not possible in *Sbayti*.

(2) *Was there a breach of natural justice on account of the RPD Counsel's conduct?*

[68] Given my decision that the RAD's determination of the IFAs was not unreasonable, I need not consider the issue of RPD Counsel's incompetence. In any event, the Applicant made his argument in the alternative.

[69] It is conceded by the Applicant that this would only have been an issue if I had concluded that the new evidence that was put before the RAD could reasonably form the basis of undue hardship and thus the RPD had reached an unreasonable conclusion as to the IFAs.

[70] Consequently, the matter of the conduct of RPD Counsel seems now to be somewhat moot. The RAD reviewed the matter and made its own finding as to the reasonableness of the IFAs based upon the new evidence, evidence which arguably could have been brought forward before the RPD by RPD Counsel.

[71] I would say, however, that this Court holds a high standard in finding a counsel to be incompetent (*Huynh v Canada (Minister of Employment and Immigration)* (1993), 65 FT 11 at 15 (TD); *Pathinathar v Canada (Citizenship and Immigration)*, 2013 FC 1225 at para 38 [*Pathinathar*]).

[72] In *Hamdan v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 643 at paragraphes 36-38, Chief Justice Crampton set forth a two-part test for a finding of counsel incompetence regarding representation before the RPD (citing *R v GDB*, 2000 SCC 22 at paras 26-29.

[73] First, the applicant must establish that the RPD Counsel's acts or omissions constituted incompetence. Second, the acts or omission must result in a miscarriage of justice.

[74] In *Gombos*, Madam Justice Strickland summarized the law concerning counsel competency at the RPD stage and ruled that the applicant had the burden to provide sufficient evidence to satisfy both parts of the test (at para 17).

[75] Having considered the Applicant's submissions, suffice it to say, that I have not been convinced by the Applicant that this case involves the type of exceptional circumstances that warrant a finding of incompetency on the part of the Applicant's former counsel leading to a determination of a breach of natural justice (*Pathinathar* at para 43).

(3) *Was there a lack of procedural fairness on account of the failure to properly apply the* Chairperson Guideline 3: Child Refugee Claimants*?*

[76] Neither party made any oral submissions during the hearing before me on this issue, but relied solely on their written submissions.

[77] The Applicant submits that the RPD failed to adhere to the Chairperson Guideline 3 and thus breached the rules of procedural fairness, by not adhering to mid-hearing conferences given the absence of IFA being addressed in the BOC.

[78] The Respondent insists that the use of conferences is discretionary under the Chairperson Guideline 3. The Respondent argues that the Applicant has not shown how a mid-hearing conference would have affected the outcome of the decision.

[79] Neither party cited cases in support of their arguments on this point.

[80] The Chairperson Guideline 3 provides guiding principles on the protection of child refugee claimants that are consistent with international norms such as United Nations *Convention on the Rights of the Child (Kim v Canada (Citizenship and Immigration),* 2010 FC 149 at paras 7-9 [*Kim*]; *Bukvic v Canada (Citizenship and Immigration),* 2017 FC 638 at para 28; *Andrade v Canada (Public Safety and Emergency Preparedness),* 2015 FC 1007 at para 13).

[81] The Chairperson Guideline 3 requires that decision-makers give due consideration to the applicants' age or best interests and provides special rules for the representation of minors, the processing of refugee protection claims for unaccompanied minors and the elicitation and evaluation of evidence (*Douillard v Canada (Citizenship and Immigration),* 2019 FC 390 at para 27; *Homaire v Canada (Citizenship and Immigration),* 2019 FC 1197 at para 50; *Kim* at paras 7-9, 76; *Henry v Canada (Citizenship and Immigration),* 2013 FC 1084 at para 50 [*Henry*]). Indeed, due consideration to the procedural constraints contained in the Chairperson Guideline 3 is an indicator of reasonability (*Tambadou v Canada (Citizenship and Immigration),* 2016 FC 1042 at paras 25-27; *Henry* at para 50).

[82] However, in this case, any supposed shortcomings on the part of the RPD to convene pre- or mid-hearing conferences on the issue of IFAs were corrected by the RAD having accepted the new evidence which, arguably, should have been put before the RPD. The issue of incompetence on the part of the RPD Counsel is now moot; for the same reasons, so is the issue pertaining to the alleged non-consideration by the RPD of the Chairperson Guideline 3.

VIII. Conclusion

[1] Having found that the decision of the RAD in relation to the availability of viable IFAs is not unreasonable, I dismiss the application for judicial review. The parties did not submit a question for certification, and none arose.

JUDGMENT in IMM-3307-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Peter G. Pamel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3307-19
STYLE OF CAUSE:	DIONETO DE JESUS VUNDA ARMANDO By his litigation guardian MARIA HELENA NHANGA VUNDA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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