

Federal Court



Cour fédérale

**Date: 20200529**

**Docket: IMM-2715-19**

**Citation: 2020 FC 653**

**Ottawa, Ontario, May 29, 2020**

**PRESENT: The Honourable Madam Justice Elliott**

**BETWEEN:**

**RASHEEDAT ORIYOMI OLUFUNMI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] This is an application for judicial review of a decision made on April 9, 2019 by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board [IRB] in which it found that the Applicant was not a Convention refugee or a person in need of protection [Decision].

[2] For the reasons that follow, this application is denied.

## II. **Background Facts**

[3] The Applicant, Rasheedat Oriyomi Olufunmi, is a citizen of Nigeria.

[4] In November 2015, the Applicant learned that she was pregnant. In December 2015, the Applicant's father-in-law and mother-in-law decided that the Applicant should undergo female genital mutilation [FGM] for the benefit of herself and the unborn child. The Applicant sought police protection, but the police refused to intervene in a "family traditional matter" and told the Applicant to obey her husband's family.

[5] On December 26, 2015, the Applicant's father-in-law told the Applicant that he arranged for her to undergo FGM on January 23, 2016. The Applicant's husband did not oppose his parents' decision, but told the Applicant to travel to the United States with her study visa while he "figure[d] out what to do" and tried to raise money for her university tuition.

[6] The Applicant arrived in the United States in January 2016. She was unable to pay the tuition, and a friend told the Applicant that she should seek asylum in Canada.

[7] On May 17, 2016, the Applicant entered Canada using a fraudulent passport. She made a refugee claim two weeks later.

[8] On August 15, 2016, the Refugee Protection Division [RPD] found that the Applicant was not a Convention refugee or a person in need of protection. On December 20, 2016, the RAD referred the matter back to the RPD for redetermination.

### III. **Refugee Protection Division Redetermination Decision**

[9] On March 1, 2018, a new panel of the RPD heard the redetermination of the Applicant's claim. It found that the Applicant was neither a Convention refugee nor a person in need of protection.

[10] The RPD found that the Applicant failed to establish that she had a subjective fear of her father-in-law, and failed to establish that her father-in-law exists as an agent of persecution. The Applicant appealed the decision to the RAD.

[11] The RAD dismissed the appeal and confirmed that the Applicant is neither a Convention refugee nor a person in need of protection.

### IV. **Standard of Review**

[12] The Federal Court of Appeal has established that reasonableness is the standard of review to be applied by this Court to a decision of the RAD: *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 [*Huruglica*] at paragraphs 30 and 35.

[13] A decision is reasonable if the decision-making process is justified, transparent and intelligible resulting in a determination that falls within the range of possible, acceptable

outcomes which are defensible on the facts and law: *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 47 [*Dunsmuir*].

[14] Recently, the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] extensively reviewed the law of judicial review of administrative decisions. The Supreme Court confirmed that judicial review of an administrative decision is presumed to be on the standard of reasonableness subject to certain exceptions that do not apply on these facts: *Vavilov* at paragraph 23.

[15] Citing *Dunsmuir*, the Court confirmed in *Vavilov* that a reasonable decision is one that displays justification, transparency and intelligibility with a focus on the decision actually made, including the justification for it: *Vavilov* at paragraph 15.

[16] As this application was argued on the basis that the standard of review is reasonableness, I find it is not necessary to receive further submissions from the parties. The result in this matter would be the same under the pre-*Vavilov* framework established in *Dunsmuir* and its progeny.

## V. Issues

[17] The Applicant identifies seven issues challenging the reasonableness of the Decision.

[18] Five of the issues involve evidence related to the Applicant's father-in-law whom she alleges made the arrangements for her to undergo FGM, which led her to flee Nigeria. It is not necessary to examine the other two issues as these five are determinative of this application.

VI. **Analysis of the Decision Under Review**

[19] Citing *Huruglica*, the RAD stated that it was required to independently determine whether the RPD was correct in relation to each alleged error of law, fact, or mixed fact and law. The RAD indicated that it may defer to the RPD's credibility assessment of the oral testimony if it finds that the RPD had a meaningful advantage in the circumstances. The RAD stated that it would provide reasons if it found that the RPD had a meaningful advantage.

[20] The RAD found that inconsistencies in the Applicant's testimony concerning her father-in-law were sufficient to rebut the presumption from *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 that the Applicant's sworn testimony was true. It concluded that the Applicant had not established that she had a subjective fear of returning to Nigeria or that her father-in-law was an agent of persecution.

[21] Generically, the Applicant challenged all the credibility findings by the RPD. She submitted to the RAD that the RPD decision was based on "suspicion and speculation" as well as "conjectures and assumptions" all of which led it to a negative decision based on an overly microscopic review of the evidence.

[22] The five separate findings made by the RAD regarding the Applicant's father-in-law are each reviewed in the following pages.

A. *Inconsistent testimony about the father-in-law's profession*

[23] The RAD found that the Applicant's inconsistent testimony about whether her father-in-law was a "real estate person" and a chief, as she testified, or an engineer, as stated in her marriage certificate, negatively affected her credibility.

[24] The RAD noted that Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution warned that in some cultures, women may not have full knowledge of the political or business activities of male family members. The RAD found that this did not resolve the problems with the Applicant's evidence, as the inconsistencies were between the Applicant's testimony and the documents in her possession. The RAD concluded that this evolving testimony undermined her claim that her father-in-law was "linked with people in high places."

[25] In her submissions to the RAD, the Applicant said that she had told the RPD her father-in-law was a civil engineer by profession but that she had described his occupation based on what she had seen him do and not on his qualifications as an engineer. The RAD noted that in fact, the RPD told the Applicant that her father-in-law's occupation was shown as an engineer on her marriage certificate.

[26] The Applicant then stated that 'engineer' was a colloquial term for someone who builds houses. She had initially stated that her father-in-law bought and sold houses. Later she testified that he built houses. The RAD reasonably found the inconsistency was not with respect to the job title but rather the activities that were carried out.

[27] I find that the RAD did not err in its analysis of this issue. A review of the transcript of the RPD hearing shows that when she was questioned by the RPD concerning her father-in-law's occupation or profession, on the first three occasions she said he was "a real estate person" and, that meant "he is into buying and selling of houses and lands". When asked to explain the discrepancy between being an engineer and a "real estate guy", the Applicant's answer was that an engineer builds houses. There was a reasonable basis in the record to support the RAD's conclusion.

B. *Omission of the father-in-law's name from the Basis of Claim [BOC] narrative*

[28] The RAD noted that the RPD drew an adverse inference from the omission of the father-in-law's name from the BOC narrative. It did not accept the Applicant's explanation that she did not understand the RPD questions on this point. She said she thought the RPD was asking about the family section of the BOC form, not the narrative.

[29] The RAD considered the Applicant's argument. It reviewed the transcript from the RPD hearing and found it was clear that the RPD was asking the Applicant about the narrative, not the family section of the BOC form. A review of the record supports this finding.

[30] The RAD stated that the onus was on the Applicant to provide the information required to establish her claim, and that it was "expected that the [Applicant] would provide [the father-in-law's] name and basic information about him in order to establish her subjective fear."

[31] That conclusion was certainly reasonably open to the RAD on the evidence.

[32] The RAD also reasonably found that while this omission on its own was insufficient to undermine the Applicant's credibility, a negative inference was drawn based on the credibility concerns as a whole.

C. *Failure to provide father-in-law's full name*

[33] The RAD noted the RPD's finding that the Applicant was unable to provide her father-in-law's full name. The RPD found that the father-in-law's name on the marriage certificate was "ENGR S.J. Aiyenigba", but that the Applicant said his first name was "Joseph", which does not match the first initial "S".

[34] The Applicant submitted to the RAD that she had only married in 2015 and the marriage certificate was signed the day of the marriage. It was unreasonable to expect her to study the marriage certificate and investigate her father-in-law's other names. She stated it was sufficient to describe her agent of persecution as her father-in-law.

[35] The RAD noted that argument but pointed out that the issue was not whether the Applicant was married. Rather, the issue was whether her father-in-law was the agent of persecution.

[36] The RAD stated that the Applicant bore the onus to provide his name in a manner that was consistent with the documentation, or to provide reasons why she would not have access to information about his other names. The RAD concluded that the Applicant's failure to provide basic information about the main agent of persecution undermined her claim.



[37] While I may not have come to the same conclusion as the RAD, I am unable to find that it was not reasonably open to the RAD on the evidence. In any event, even if the RAD did err in making this finding, it is my view that it would not have altered the outcome. It would not be such a sufficiently serious shortcoming that the Decision would fail to exhibit the required degree of justification, intelligibility and transparency: *Vavilov* at paragraph 100.

D. *Failure to provide the original marriage certificate*

[38] The RAD found the RPD did not err in drawing a negative inference from the Applicant's failure to bring the original marriage certificate to her redetermination hearing.

[39] The RAD noted the Applicant's explanation to the RPD that she thought it was sufficient to bring the original marriage certificate to her first RPD hearing. On further questioning she said "it escaped her mind" to bring it to the redetermination.

[40] The RAD also considered the Applicant's argument that it made no difference whether the marriage certificate was the original or a copy, and that the RPD should have requested the original certificate after the hearing.

[41] The RAD reasonably found that the RPD did not err in making a negative inference on this point. The Applicant's marriage certificate was the only document that contained her father-in-law's name. It linked him to the Applicant and the Applicant bore the onus to establish her claim.

E. *Supporting affidavits*

[42] The Applicant's husband, brother, and friend each swore affidavits attesting that the father-in-law wanted the Applicant to undergo FGM.

[43] The RAD assigned no weight to the affidavits because: 1) the documents did not use the father-in-law's name, 2) the documents contained an identical typographical error that undermined their credibility, and 3) the Applicant's explanation for the typographical error was mere speculation.

[44] The Applicant submits that the RAD unreasonably gave no weight to the affidavits because they all had the same typographical error. However, before the RPD she had no explanation for why the same mistake appeared in all three affidavits.

[45] The Applicant's explanation for the same typographical error appearing in three separate affidavits sworn into different courts was that she believed that each of the affiants had prepared their affidavit using the same template.

[46] The Applicant in her submissions to the RAD acknowledged that she did not know the process the affiants followed after she contacted them and advised that she needed affidavits of support. She acknowledged that she was speculating that they may each have prepared their own affidavit.

[47] The RAD's reason for assigning no weight to the affidavits was reasonable. They provided no useful information in that the name of the father-in-law was not mentioned. As to the typographical error, the RAD cannot base a finding on the strength of speculation by the Applicant.

## VII. Conclusion

[48] The Applicant submitted to the RAD that the RPD decision was "affected by the offense the panel took to the use of the word "father-in-law." She submitted that it was possible the decision would have been different if she had been given the benefit of the doubt that her father-in-law existed.

[49] The RAD addressed that submission by pointing out that the Applicant's main agent of persecution was her father-in-law. It concluded that there was no credible evidence to establish that her father-in-law existed as an agent of persecution as she alleged, since she could not establish his name, occupation, "or any other information about him."

[50] In conducting this reasonableness review I am required to give deference to the RAD provided that there is an internally coherent and rational chain of analysis that is justified in relation to the facts and law: *Vavilov* at paragraph 83.

[51] In finding that the RPD decision should be upheld, the RAD provided reasons throughout the Decision that were based on an internally coherent and rational chain of analysis and were

justified in relation to the facts and law that constrain the decision-maker, as required by *Vavilov* at paragraphs 83 and 85.

[52] For all the foregoing reasons, this application is dismissed.

[53] No serious question of general importance was identified for certification.

[54] No costs are awarded.

[55] The name of the Respondent is changed to The Minister of Citizenship and Immigration, with immediate effect.

**JUDGMENT in IMM-2715-19**

**THIS COURT'S JUDGMENT is that:**

1. The style of cause is changed to name the Respondent as The Minister of Citizenship and Immigration, with immediate effect.
2. The application is dismissed.
3. No question is certified.
4. No costs.

"E. Susan Elliott"  
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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2715-19

**STYLE OF CAUSE:** RASHEEDAT ORİYOMI OLUFUNMI v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** DECEMBER 18, 2019

**JUDGMENT AND REASONS:** ELLIOTT J.

**DATED:** MAY 29, 2020

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