

Federal Court



Cour fédérale

Date: 20211116

Docket: IMM-1441-20

Citation: 2021 FC 1240

St. John's, Newfoundland and Labrador, November 16, 2021

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

**OLADAPO FUNSO ONUNGBOGBO
OLUWATOBILOBA MOJISOLA OLUMIDE
OREOLUWA OLUWAFIFEHANMI ONUNGBOGBO
OBALOLUWA DANIEL ONUNGBOGBO**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Mr. Oladapo Funso Onungbogbo (the “Principal Applicant”), his wife Oluwatobiloba Mojisola Olumide and their children Oreoluwa Oluwafifehanmi Onungbogbo and Obaloluwa Daniel Onungbogbo (collectively the “Applicants”) seek judicial review of the decision of the Immigration and Refugee Board, Refugee Appeal Division (the “RAD”). In that decision, the

RAD dismissed their appeal from a decision of the Immigration and Refugee Board, Refugee Protection Division (the “RPD”), by which their claims for refugee protection were dismissed.

[2] The Principal Applicant, his wife and eldest child are citizens of Nigeria; the younger child is a citizen of the United States of America. The RAD found that the claim of the younger child failed because he is an American citizen and no allegations of fear were advanced on his behalf.

[3] The substantive basis of the Applicants’ claim for protection was their fear of a Muslim community leader, Alhaji Yusuf Idris and the Fulani herdsmen who support him.

[4] The RAD dismissed the appeal of the Principal Applicant, his wife and elder child on the grounds that an Internal Flight Alternative (“IFA”) was available to them in two locations in Nigeria, that is Port Harcourt and UYO.

[5] The Applicants challenge the decision on several grounds, including a breach of procedural fairness and the failure of the RAD to address contradictory evidence about the proposed IFAs.

[6] The Minister of Citizenship and Immigration (the “Respondent”) submits that the RAD committed no breach of procedural fairness or any other reviewable error.

[7] Any issue of procedural fairness is reviewable on the standard of correctness; see the decision in *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339 at paragraph 43.

[8] The substance of the decision is reviewable on the standard of reasonableness, following the direction of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov* (2019), 441 D.L.R. (4th) 1 (S.C.C.).

[9] In considering reasonableness, the Court is to ask if the decision under review “bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on that decision”; see *Vavilov, supra* at paragraph 99.

[10] It is not necessary for me to address all the submissions made by the Applicants since I am satisfied that the RAD failed to address contradictory evidence in the National Documentation Package (the “NDP”) about the motivation behind Fulani herdsmen attacks.

[11] The RAD found that the evidence provided by the Applicants was insufficient to show that they would be of ongoing interest to the Fulani herdsmen because “attacks generally focus on clearing land.” The RAD cited document 7.31 in the NDP in support of this finding.

[12] However, the RAD failed to mention that the same document also says that some of the Fulani herdsmen attacks are motivated by retribution or revenge.

[13] I refer to the decision in *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), [1999] 1 F.C. 53. In that decision, the Court found that where a decision maker fails to address contradictory evidence, an inference can be drawn that the contradictory evidence was not considered.

[14] In my opinion, the RAD unreasonably made a conclusion about the Fulani herdsmen on the basis of evidence in the NDP, without referring to contradictory evidence found in the same document.

[15] In the result, the application for judicial review will be allowed, the decision of the Officer will be set aside and the matter remitted to a different officer for redetermination. There is no question for certification arising.

JUDGMENT in IMM-1441-20

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the decision of the Officer is set aside and the matter remitted to a different officer for redetermination. There is no question for certification arising.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1441-20

STYLE OF CAUSE: OLADAPO FUNSO ONUNGBOGBO,
OLUWATOBILOBA MOJISOLA OLUMIDE,
OREOLUWA OLUWAFIFEHANMI ONUNGBOGBO,
OBALOLUWA DANIEL ONUNGBOGBO v. THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE
BETWEEN TORONTO, ONTARIO AND ST. JOHN'S,
NEWFOUNDLAND AND LABRADOR

DATE OF HEARING: NOVEMBER 10, 2021

REASONS AND JUDGMENT: HENEGHAN J.

DATED: NOVEMBER 16, 2021

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