Federal Court  Cour fédérale

Date: 20240320

Docket: IMM-3260-22

Citation: 2023 FC 308

Ottawa, Ontario, March 20, 2024

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

OSAHENOME EHIGIATOR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

AMENDED JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Osahenome Ehigiator, is a citizen of Nigeria. She fears persecution or harm from her ex-partner due to domestic abuse. In one particular instance, the alleged abuse was a factor in the tragic death of their infant son. The Applicant's alleged fear of persecution is based on membership in a particular social group, namely women subject to domestic abuse as recognized in Chapter 4 - Grounds of persecution - Nexus - Immigration and Refugee Board of

Canada (irb.gc.ca)) (Immigration and Refugee Board of Canada, *Guideline issued by the Chairperson pursuant to paragraph 159(1)(h) of the Immigration and Refugee Protection Act: Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution*, effective November 13, 1996) [Guideline 4].

[2] The Applicant is seeking judicial review of the Refugee Appeal Division [RAD] decision [the Decision] dated March 11, 2022, upholding a decision of the Refugee Protection Division [RPD] dated September 24, 2021, ruling that the Applicant is neither a Convention refugee nor a person in need of protection as defined in sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2011, c 27 [the IRPA]. The RAD agreed with the RPD that the Applicant's claim was not credible.

[3] For the reasons that follow, the application for judicial review is allowed. After consideration of the applicable law and the evidence before the RAD, I am not satisfied that the RAD's decision meets the standard of reasonableness. In my view, the Decision does not explain why no or very little weight was given to the objective evidence suggesting that the Applicant had been subject to domestic abuse. The RAD had to weigh the entire evidence, holistically and contextually, in its decision-making process and explain why the remaining objective evidence could not rehabilitate the Applicant's credibility regarding her alleged fear; and it did not properly do so.

[4] Before the RPD, the Applicant introduced into evidence two medical reports from Nigeria indicating that she had to go to the hospital twice as a result of what she claimed were

distinct incidents of domestic abuse from her ex-partner, one that lead to the death of their infant child who was injured during an alleged spousal attack. The Applicant also introduced evidence of a pastor indicating that she had left her house and sought refuge in a church because of domestic abuse. The church granted refuge and, when the threats from her partner became unbearable, raised repeated offerings to assist her financially to leave for Canada. Finally, the Applicant introduced into evidence a medical report from a Canadian medical doctor who indicated that the Applicant suffered from severe depression, was under medication, and that this could impair her capacity to testify.

[5] The RAD rejected the Applicant's credibility on the basis of two specific contradictions made during her testimony, relating to the evidence found in the two Nigerian medical reports. The RAD was entitled to do so. However, the RAD was not entitled to dismiss without explanation the remaining objective evidence, including the information in those same Nigerian medical reports, suggesting that notwithstanding those contradictions, there could be an objective and consistent narrative of actions taken by the Applicant on the basis of her subjective fear of persecution because of domestic abuse.

[6] Notably, the two medical reports from Nigeria specifically note that the Applicant attended because of alleged domestic abuse. The RAD selectively relied on parts of those two medical reports to reject the Applicant's credibility, but failed to explain why other parts of the same medical reports indicating the reason for both hospital admissions were not credible.

[7] Moreover, un-contradicted evidence indicated that the Applicant did leave her home and sought refuge in a church, because of domestic abuse. The RAD dismissed that evidence as not being first-hand evidence that could rehabilitate the Applicant's credibility on the two noted contradictions regarding the Nigerian medial reports. In doing so, the RAD failed to explain why the first-hand evidence of the pastor relating to the continuing threats of the ex-partner, motivating the church to raise offerings to help her depart for Canada because of those threats, was not relevant or reliable.

[8] Finally, the RAD noted that the Applicant's past "trauma" could not explain the contradictions she made during her testimony. However, the RAD was in possession of a recent medical report from Canada indicating that the Applicant was diagnosed with severe depression and currently under medication. In the circumstances, that recent medical report suggested that the Applicant was a vulnerable person and that she "may have trouble relaying the details of her traumatic past as she complains of distractibility and poor concentration [and that] [d]ifficulties in memory and concentration are common symptoms in persons suffering from depression". While specifically noting the medical report, the RAD does not explain why that recent medical evidence cannot justify the contradictions in the Applicant's testimony – instead only relying on it to decide that she was not a "vulnerable person" in the sense referred to in Guideline 8: (IRB, *Chairperson Guideline 8: Procedures with Respect to Vulnerable Persons Appearing Before the IRB*; Effective date: December 15, 2006; Guideline issued by the Chairperson pursuant to paragraph 159(1)(h) of the *Immigration and Refugee Protection Act*) [Guideline 8].

[9] In my view, the RAD made its decision on a selective examination of the evidence and did not explain why some evidence was given no or little weight. I must therefore send the matter back for redetermination before a different member of the RAD.

II. Background

[10] The Applicant is a citizen of Nigeria. Her ex-partner, Obi Emeka [ex-partner], is a Nigerian police officer. They began cohabiting in September 2015 and the Applicant became pregnant with their child.

[11] On January 3, 2016, the Applicant learned that her ex-partner already had two wives and two sons with one of these wives. After confronting him regarding these marriages, he threatened to beat her and revealed that he was a member of the Aye Confraternity. Item 7.27 of the National Documentation Package [NDP] from Nigeria mentions that the Aye Confraternity is a secret cult created in the 1970s to uphold the core nature of African culture. The cult eventually became an organized criminal group committing violence in Nigeria and abroad.

[12] The ex-partner was a controlling person, forbidding the Applicant from visiting her family and friends, and forbidding her to leave the house while he was at work. During the period in which they were living together, he allegedly sexually, physically and emotionally abused the Applicant.

[13] On or about February 22, 2016, the ex-partner beat the Applicant because he found her talking to neighbours. After this assault, the Applicant, who was pregnant, began to experience

bleeding and fear for the loss of her unborn baby. She therefore went to the hospital at around 7:15 PM.

[14] According to the Nigerian medical report, the Applicant was semi-conscious on admission. She told the doctor that she was 38 weeks pregnant and was “beaten by her husband.” She was given antibiotics, analgesics and hematinic with strict bed rest and was asked to come back for a follow-up visit in the following two weeks. The medical report is not clear as to the date of admission to hospital, other than to state it was at 7:15 PM. The medical report does state that she was discharged on February 22, 2016.

[15] When she returned from the clinic, the Applicant called the police. When the police arrived, the officers saw the ex-partner and allegedly stated it was a domestic issue and that hence, the Applicant ought to be respectful to her partner.

[16] After that incident, the Applicant’s mother tried to take her to the family house to help her with the pregnancy, but the ex-partner refused.

[17] On April 5, 2016, the Applicant’s son was born. A week later, she left the hospital and moved to her parents’ house. However, on April 15, 2016, the ex-partner, accompanied by fellow police colleagues, visited the house of the Applicants’ parents and forced the Applicant to return to his house.

[18] In December 2016, the Applicant decided to return to work as the ex-partner hardly gave her any money to support her and their son. The ex-partner threatened to kill her if she did.

[19] On January 15, 2017, the Applicant still decided to return to her former place of employment, despite the threats she had received from her ex-partner. She arranged for her son to be cared for by her mother while she was working.

[20] On that same day, the ex-partner returned home after work before the Applicant, and as she was entering the house with her son swaddled on her back, he began to beat her.

[21] During the fight, the baby was injured. Both the Applicant and the ex-partner rushed their son to the hospital. According to the medical report, the baby was brought in with "multiple injury [*sic*] due to fall from the mother [*sic*] back during a fight between both parents." The baby was diagnosed with broken ribs.

[22] On January 19, 2017, the baby had complications from his injuries and the Applicant brought him again to the hospital while her ex-partner was at work. The baby died later that day.

[23] After this event, the Applicant moved back to her parents' residence and in mid-February 2017, the ex-partner began to forcefully demand for her to return to their home and threatened to kill her when she refused. The police were called on the scene and spoke with the ex-partner, but he was not arrested.

[24] Following this incident, the Applicant was harassed by an unknown group of men and her parents' house was attacked twice during the night. Following those threats, the Applicant's mother sought help from their pastor, Pastor Osahon.

[25] On March 30, 2017, the Applicant went to live at the church. Pastor Osahon explains in his letter that was introduced into evidence before the RPD that the Applicant came to the church to seek refuge "following repeated beatings from her boyfriend." He then states in his letter that he introduced her to a travelling agent named Mr. Ogbede "when the threat from her husband became unbearable." Pastor Osahon mentioned that the "church had to raise repeated offering to assist [the Applicant] financially for her to travel, so that the boyfriend does not take her life after she lost her baby."

[26] On November 14, 2017, the Applicant entered Canada by way of illegal border crossing, and subsequently made a refugee protection claim.

III. RPD Decision

[27] The RPD found that the Applicant had not satisfied her burden of establishing a serious possibility of persecution on a Convention ground under section 96 of the IRPA. The RPD also found that, on a balance of probabilities, the Applicant would not be subject to a risk to life or a risk of cruel and unusual treatment or punishment or a danger of torture upon her return to Nigeria, under subsection 97(1) of the IRPA.

[28] It is important to note that during the hearing before the RPD, the Applicant expressed various difficulties in testifying. She expressed being extremely stressed and nervous from the beginning to the end, only had a little understanding of English (an interpreter was required), and four breaks were taken to give her the time she needed to collect herself.

[29] The RPD rejected the Applicant's credibility because of inconsistencies between her testimony and her narrative. The RPD found that on a balance of probabilities, the Applicant's confusion about the time she went to the hospital on February 22, 2016 and the discrepancy between the Applicant's testimony regarding her son's injury and the medical report undermined her credibility.

[30] The Applicant testified that she was admitted on February 22, 2016 at about midnight, while the medical report indicated that the time of admission was at about 7:15 PM. Moreover, the Applicant testified that her son was injured by a punch from her ex-partner, while the medical report indicated that the child fell from her back during the fight. The RPD found that the discrepancy undermined her credibility and was not a result of a memory issue.

[31] The RPD relied mainly on these two contradictions during testimony to dismiss the Applicant's entire credibility and claim. The RPD then held that all other corroborating pieces of evidence carried no weight to rehabilitate the Applicant's credibility.

IV. RAD Decision

[32] After an independent review of the record, the RAD found that the RPD's decision was correct in finding that the Applicant is neither a Convention refugee nor a person in need of protection. It concluded that on a balance of probabilities, the Applicant had failed to provide sufficient, credible or trustworthy evidence to establish her claim.

[33] The RAD found that the RPD did not err in its application of Guideline 8. It found that the RPD accommodated the Applicant with breaks to provide her with an opportunity to collect herself and to present her case upon resumption of the hearing. It specified that even though a medical doctor's letter suggested that the Applicant was a vulnerable person, there was no indication that this suggestion was referencing to the Guideline 8 definition of "vulnerable" as this consideration can only be decided by the RPD, or upon request by counsel.

[34] The RAD further found that no application to have the Applicant designated as a vulnerable person had been made to the RPD as required by the RPD rules. It specified that regardless of the fact that Guideline 8 indicates that the RPD "may act on its own initiative" to designate a claimant as vulnerable, this decision is up to the RPD's discretion. In the absence of an application or objection at the outset of the hearing to have the Applicant designated as vulnerable, the RAD concluded that the RPD did not err in exercising its discretion and by proceeding with the hearing without the Applicant being designated as such.

[35] The RAD also drew a negative credibility inference regarding the Applicant's inconsistent and evolving testimony concerning her attendance at the hospital and the cause of her son's death.

[36] The RAD considered the possibility that the Applicant's contradictions during her testimony may be due to "trauma, depression or memory or concentration problems". However, it found that there were too many inconsistencies in the Applicant's testimony on a balance of probabilities.

[37] The RAD first held that it was not credible for the Applicant to fail to recall whether her son was punched or fell from her back during the domestic abuse, on February 15, 2017, until prompted by the RPD. The RAD upheld the RPD's finding that the contradiction in the Applicant's testimony concerning the events leading to her son's death undermined her credibility as "her son's death because her son being struck and the [Applicant] transferring him from her back does not present the same implication as her son being struck, falling and being picked up before being taken to hospital". For that reason, the RAD gave no weight at all to the Applicant's oral testimony concerning the incident alleged to have occurred on January 15, 2017. The RAD found that her difficulty in explaining the inconsistencies could not be explained by her past "trauma."

[38] Second, the RAD rejected the Applicant's credibility because her testimony presented inconsistencies in relation to the time when she was admitted to the hospital for a second alleged domestic abuse while she was pregnant. The Nigerian medical report indicates that she was

admitted in the hospital at 7:15 PM when the Applicant was “semi-conscious.” There is no date on the report as to the admission, but the Applicant was released on February 22, 2016. The RAD found that the Applicant was direct in asserting on multiple occasions that the incident and her admission to the hospital was at about midnight, while the medical report indicated that she had arrived to the hospital at 7:15 PM.

[39] Again, the RAD found that the Applicant’s confusion was not a result of a memory issue or trauma. Her emphatic assertions that she proceeded to the hospital demonstrated, in the RAD’s view, that the Applicant was unable to recount with accuracy a central allegation of her claim.

[40] On the basis of these two contradictions, the RAD held that the Applicant was not credible.

[41] Furthermore, the RAD also found that the RPD erred in assessing the supporting letters.

[42] First, the RAD held that the RPD erred in assigning no weight to the letter from the Applicant’s pastor. However, it did not find this error fatal to the RPD’s decision, since this letter did not present information that resolved the credibility issues the RPD found in relation to the central allegations of the Applicant’s claim. In fact, the RAD assigned little weight to the letter because the pastor did not indicate that he had first-hand knowledge of the domestic abuse and his evidence could not overcome the inconsistencies in the Applicant’s testimony concerning the events of January 22, 2016, and February 15, 2017.

[43] Then, the RAD found that the RPD had erred in assigning no weight to the letters provided by the Applicant's sister and former employer as they contained information that corroborated certain aspects of the Applicant's claim. However, again, the RAD did not find this error fatal to the RPD's decision since neither of the letters overcame the inconsistencies related to the two events of domestic abuse noted above, that were central to the Applicant's claim.

[44] It is worth noting that in its decision, the RAD does not mention having considered Guideline 4 despite it being mentioned by the RPD.

[45] Before this Court, the Applicant submits that the RAD's conclusions are unreasonable. The Applicant submits that the RAD erred in its application of Guideline 8. The Applicant further submits that the RAD erred by making adverse findings of credibility in a perverse and capricious manner, on irrelevant considerations, or without regard to the totality of the evidence before it.

V. Issues and Standard of Review

[46] The overall question is whether the RAD's findings were reasonable.

[47] The parties agree that the issues are reviewable on a reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov,* 2019 SCC 65) [*Vavilov*].

[48] In the case of *Romhaine v Canada (Citizenship and Immigration)*, 2011 FC 534 at paragraph 22, where the application of Guideline 8 was also at stake, Justice Shore held that the standard of reasonableness applied.

[49] As held by the Supreme Court of Canada in *Vavilov*, reasonableness review requires a deferential approach to the decision maker and the reviewing court must read the reasons holistically and contextually (at para 97). The Court must consider the outcome of the decision and its rationale in order to ensure that the decision as a whole is transparent, intelligible and justified (*Vavilov* at paras 15, 95, 136). Judicial review is not a "line-by-line treasure hunt for error" (at para 102). The decision maker does not have to respond to each argument nor refer to all the evidence – indeed, the decision maker is presumed to have considered all of the evidence and the arguments on the record (at paras 127-128).

[50] However, when the decision maker is silent on a critical issue, or when evidence is found in the record that contradicts the decision maker's findings of fact and that evidence is not considered nor assessed, it becomes impossible for the reviewing court to "connect the dots" and reveal a reasonable picture (at paras 97, 128).

[51] In those cases, the 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" (*Gill c. Canada (Citoyenneté et Immigration)*, 2020 FC 934 at para 40; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC), [1998] FCJ No 1425 at para 15; *Barril v Canada*

(Citizenship and Immigration), 2022 FC 400, at para 17). As stated at para 126 of *Vavilov*: "The reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it."

[52] Overturning a decision because the reasons did not discuss critical contradicting evidence is not "disguised correctness" - nor the application of a court established "yardstick" to measure the decision maker's reasons (see *Hiller v Canada (Attorney General)*, 2019 FCA 44 at para 14). Rather, it is a conclusion that the decision maker may not have meaningfully grappled with key issues and evidence and may not have been alert and sensitive to the matters before it (*Vavilov* at paras 83, 125-128). The decision consequently does not bear the hallmarks of reasonableness – justification, transparency and intelligibility – because it either does not justify in a transparent and intelligible manner why an important factor was not assessed, or it demonstrates that the decision maker failed to consider relevant evidence, argument or ground.

[53] When a decision maker has failed to explain how it considered an important factor, the Court should not supplement its own reasons to justify the "fundamental gap" or correct the "unreasonable chain of analysis," because doing so would intrude on the decision maker's powers (*Vavilov* at paras 87, 96). The Court should simply remit the decision back to the tribunal and not "disregard the flawed basis for a decision and substitute its own justification for the outcome" (*Vavilov* at para 96; *Delta Air Lines Inc v Lukács*, 2018 SCC 2 at paras 26–28), and make the conclusion that the Court would have preferred in the tribunal's place.

[54] In this case, I conclude that the RAD failed to consider and properly assess relevant evidence. As explained below, the RAD failed to justify in a transparent and intelligible manner why important evidence was excluded or assigned no weight. I therefore remit the decision back to the RAD for further consideration.

VI. Analysis

A. *Did the RAD err in its application of the Chairperson Guideline 8: Procedures with Respect to Vulnerable Persons appearing before the RAD?*

[55] The Applicant argues that the RPD erred by not properly applying its own Guideline 8. Counsel submits that regardless of the fact that the Applicant's initial counsel failed to make an application to designate the Applicant as a vulnerable person for the RPD hearing, the RPD had the authority to act on its own initiative, and should have done so.

[56] The Respondent submits that the RAD reasonably found that the RPD accommodated the Applicant with breaks to provide her with an opportunity to collect herself. He also argues that the RPD gave due consideration to the letter filed by the Canadian physician indicating that the Applicant was somewhat vulnerable. Notwithstanding the fact that the letter stated that the Applicant should be recognized as a "vulnerable person", the RPD considered the Applicant as such and tried to put her at ease as much as possible and took into consideration the stresses inherent in testifying.

[57] The Respondent further submits that by providing breaks, the RPD therefore respected the Applicant's right to be heard. He also argues that counsel for the Applicant could have asked

for an adjournment of the hearing if it had been necessary. He also submits that there is no mention in the letter that the Applicant is unable to understand the proceedings.

[58] With respect to the conduct of the hearing, I find that the RPD reasonably followed the process set out in Guideline 8 for vulnerable people during the hearing. Pursuant to s.4.2 of Guideline 8, the IRB has a broad discretion to tailor procedures to meet the particular needs of a vulnerable person and, where appropriate and permitted by law, the IRB may accommodate a person's vulnerability by various means, including:

> a. allowing the vulnerable person to provide evidence by videoconference or other means;
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> b. allowing a support person to participate in a hearing;
>
> c. creating a more informal setting for a hearing;
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> d. varying the order of questioning;
>
> e. excluding non-parties from the hearing room;
>
> f. providing a panel and interpreter of a particular gender;
>
> g. explaining IRB processes to the vulnerable person; and
>
> h. allowing any other procedural accommodations that may be reasonable in the circumstances.

[59] The Guideline 8 also provides a clear definition of who can qualify as a vulnerable person:

> 2. Definition of Vulnerable Persons
>
> 2.1 For the purposes of this Guideline, **vulnerable persons** are individuals whose ability to present their cases before the IRB is severely impaired. Such persons may include, but would not be limited to, the mentally ill, minors, the elderly, victims of torture, survivors of genocide and crimes against humanity, and women who have suffered **gender-related** persecution.

> . . .
>
> 2.3 Persons who appear before the IRB frequently find the process difficult for various reasons, including language and cultural barriers and because they may have suffered traumatic experiences which resulted in some degree of vulnerability. IRB proceedings have been designed to recognize the very nature of the IRB's mandate, which inherently involves persons who may have some vulnerabilities. In all cases, the IRB takes steps to ensure the fairness of the proceedings. This Guideline addresses difficulties which go beyond those that are common to most persons appearing before the IRB. It is intended to apply to individuals who face particular difficulty and who require special consideration in the procedural handling of their cases. It applies to the more severe cases of vulnerability.
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> [Emphasis added.]

[60] The Applicant sought refugee status in Canada because she suffered from domestic abuse and lost her child because of it. Her ability to present her case before the RPD may therefore have been impaired by the events she had lived in Nigeria and she could likely have qualified under the definition of a vulnerable person.

[61] Although these guidelines are not binding, the RAD had the obligation to consider them in this case as there were various indications that their application was necessary (*Sebok v Canada (Minister of Citizenship and Immigration),* 2012 FC 1107, at para 14) [*Sebok*]. As stated in *Hilary v M.C.I.*, 2011 FCA 51 [*Hilary*], at para 43, although counsel is "best placed to bring to the Board's attention the special vulnerability of a person who may require some kind of procedural accommodation […] the Board may also act on its own initiative (section 7.4)."

[62] However, as held at para 42 of *Hilary*, "the IAD does not bear primary responsibility for identifying appellants who are especially vulnerable" as provided under subsection 19(1) of the

Immigration Appeal Division Rules, SOR/2002-230 [Rules]. The duty therefore relies on counsel for the applicant, and the Minister also has a duty to advise the IAD "if they believe that a designated representative should be appointed because of the appellant's inability to appreciate the nature of the proceedings."

[63] During the hearing before this Court, counsel for the Applicant gave clear examples of further accommodations that should have been granted to the Applicant before the RPD. For example, she argued that more information could have been provided to the Board member or that a rearrangement of the order of questioning should have been made.

[64] Nevertheless, in my view, because the Applicant's first counsel did not require any specific accommodation before the RDP hearing, and because the RDP did recognize the situation by granting four (4) breaks to the Applicant during the hearing, the RPD reasonably complied with its obligations under Guideline 8.

[65] It is also important to note that the Guidelines are meant to ensure a certain level of sensitivity, empathy and respect to the claimant's reality, but not a perfect hearing. As held by Justice Mosley in *Konecoglu v Canada (Citizenship and Immigration)*, 2021 FC 1370 at para 26, in reference to Guideline 8:

> [26] The purpose of the Guideline is to ensure sensitivity to an applicant's difficulty in testifying in the context of a gender-based claim: *Manege v Canada (Citizenship and Immigration)*, 2014 FC 374 at para 30; citing *Juarez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 890 at paras 17-20. But they do not serve to cure all deficiencies in the applicant's evidence: *Yu v Canada (Citizenship and Immigration)*, 2021 FC 625 at para 22.
>
> […]

> [29] The RPD panel member described the applicant at one point during the hearing as a vulnerable person. However, no application was made in writing in accordance with Rule 50 of the *Refugee Protection Division Rules* (SOR/2012-256) for the applicant to be provided with any of the available accommodations for vulnerable persons, as the RAD noted. Without taking that step in compliance with the Rule, the applicant cannot now argue that the Board did not apply this guideline.
>
> [30] This may seem to be rigid adherence to a technicality. However, the applicant has not pointed to any specific accommodation that she requested at the hearing and was refused. Moreover, the real issue was whether the RPD's questioning was "condescending, demeaning and dismissive of the trauma and domestic violence and sexual violence claims" as the applicant argues. The RAD had the benefit of a complete review of the RPD record and the excerpts of the hearing submitted by the applicant. Based on that, the RAD concluded that the applicant was in fact questioned with sensitivity and respect. I see no basis in the record to interfere with that finding on the reasonableness standard.
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> [Emphasis added.]

[66] In this case, as explained above, no specific accommodation was required by counsel at the time of the hearing before the RPD and the Applicant was treated with sensitivity and respect by the RPD.

B. *Did the RAD make an unreasonable decision by making adverse findings of credibility in a perverse and capricious manner, on irrelevant considerations, or without regard to the totality of the evidence before it?*

[67] The Applicant argues that the RAD unreasonably ignored the evidence. For instance, the Applicant argues that the RAD failed to consider the medical report written by a Canadian physician explaining that she suffered from major depression, was currently under medication, "may have trouble relaying the details of her traumatic past as she complains of distractibility and poor concentration [and that] [d]ifficulties in memory and concentration are common

symptoms in persons suffering from depression", and that her condition could explain her contradictions.

[68] Moreover, the Applicant argues that the RAD's analysis was simply overzealous in trying to find contradictions. Her testimony that her infant son was struck by her ex-partner instead of having fallen from her back, and that she was admitted to the hospital at 7:15 PM (while semi-conscious) and not at about midnight, are not major contradictions that should detract from her consistent narrative that she was a victim of domestic abuse. For the Applicant, the fact remains that several medical reports prove that she and her son had been injured as a result of domestic abuse and the simple errors noted by the RPD should not have undermined her entire testimony and claim.

[69] The Applicant further submits that the RAD should have considered and given probative value to the letter provided by her sister as it corroborated the Applicant's domestic abuse and that her ex-partner intimidated and threatened the entire family. The Applicant submits that the Court has held several times that evidence from family members cannot be rejected simply because of hearsay, since these family members are often in the best position to confirm what occurred to the claimants.

[70] The Respondent submits that the RAD's decision is reasonable. The RAD's reasons explain that the Applicant's credibility was undermined because of several inconsistencies and contradictions in her testimony on issues that were central to her claim. For example, she disputed the time of her admission to the hospital, as indicated in a medical report, during an

alleged incident of domestic abuse. Another time, she testified that her son was punched by her partner, while the medical report stated that the Applicant's son fell from her back. The RAD reasonably held that it was not credible for the Applicant not to recall specifically what occurred during such a tragic event leading to the death of her son. Therefore, "trauma" could not explain her memory loss.

[71] In my view, after consideration of the applicable law and the evidence before the RAD, I am not satisfied that the Decision meets the standard of reasonableness. Given the important interest at stake for the Applicant, the Decision does not explain why significant evidence weighing in favour of the Applicant was rejected or assigned only minimal weight : "[w]here 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).

[72] In this particular case, I am not persuaded that the RAD considered all the evidence before it. As held in *Vavilov* at para 126: "[t]he reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it."

[73] As explained by Justice Aylen in *Barril v Canada (Citizenship and Immigration)*, 2022 FC 400 at para 17:

> [17] A decision-maker is required to address relevant evidence if such evidence goes directly to contradict their findings. The 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 [see *Kaur v Canada (Citizenship and*

> *Immigration)*, 2020 FC 934 at para 40; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC), [1998] FCJ No 1425 at para 15]. […]

[74] That is what happened in this case. While I agree that the RAD is presumed to have weighed all of the evidence and has no obligation to refer to every document, the RAD cannot remain silent or ignore relevant evidence contradicting the decision maker's finding of fact (see *Rajput v Canada (Citizenship and Immigration)*, 2022 FC 65 at para 25) [*Rajput*]. Instead, the RAD had the burden to explain why no or little weight had to be assigned to the contradicting evidence and why it preferred, in light of the contradicting evidence, to dismiss the Applicant's credibility. The Decision therefore lacks justification, transparency and intelligibility, and must be sent back for redetermination.

[75] Specifically, the RAD conducted a selective analysis and ignored relevant contradictory evidence. As stated by Justice Brown in *Aslan v Canada (Citizenship and Immigration)*, 2021 FC 1165 at para 32, a decision maker cannot focus on "one aspect" of a particular piece of evidence "but wholly ignore […] the unchallenged fact". In this case, that "unchallenged fact" is that the Applicant has suffered from domestic abuse, since there is additional objective evidence supporting that conclusion, but that the RAD failed to assess.

[76] First, the RAD relied on two medical reports from Nigeria to ground its conclusion that the Applicant was not credible. It failed, however, to consider those Nigerian medical reports holistically and contextually and put any weight to the remaining parts of the same documents, indicating that the reasons for both visits was as a result of domestic abuse.

[77] Second, the RAD dismissed or assigned little weight to the objective evidence of the Applicant's sister and pastor, both because they were not "first-hand" witnesses to the domestic abuse and because neither could rehabilitate the Applicant on the two credibility issues raised during her testimony (the two contradictions with the Nigerian medical reports on the time of admission and the circumstances leading to the death of her son).

[78] Third, the RAD failed to consider the entirety of the evidence from the sister and pastor, who both presented "first-hand" evidence of the continuing threat as well as the actions taken by the Applicant to protect herself from domestic abuse.

[79] Finally, the RAD failed to explain why a recent letter from a Canadian physician, diagnosing the Applicant with major depression requiring current medication, and indicating that the Applicant "may have trouble relaying the details of her traumatic past as she complains of distractibility and poor concentration [and that] [d]ifficulties in memory and concentration are common symptoms in persons suffering from depression", could not explain her memory lapse. Let me explain.

(1) Nigeria Medical Reports

[80] The first medical report states the following:

> Patient, age 35 years was rushed into the hospital at about 7:15pm with history of bleeding per vagina secondary to assault. On admission, she was semi-conscious.
>
> Vital signs were T.37 C P 80 r 20b/p/n B/P 100/ 60mm Hg. FHR-132, FH-38 weeks palpable, said was beaten by her husband. A diagnosis threatened abortion was made. Patient was managed

> conservatively with i.v, antibiotics, analgesics and hematinic with strict bed rest. Patient stopped bleeding with stable vital signs.
>
> A viable fetus was revealed in abdominal ultra sound scan. Patient was discharged home in satisfactory condition on the 22nd Feb. 2016.
>
> [Emphasis added.]

[81] There is no date on the medical report, only a date for the release, on February 22, 2016.

[82] The second medical report from Nigeria is dated January 15, 2017. The report states the following:

> Baby Jeffrey, Male 9 months old rushed into our facility on the 15/1/2017 with history of multiple injury due to fall from the mother back during a fight between both parents.
>
> On admission, baby had difficulty in breathing, afebrile to touch, not pale but cry on chest exertion, vital signs were T.36.8 C pulse 108 R.38 managed conservatively while chest x-ray revealed a fractured rib.
>
> Intravenous anti-biotics and analgesic were given. On the 17/1/2017 baby was discharged and referred to our medical centre for further evaluation and management.
>
> [Emphasis added.]

[83] The RAD puts weight on one part of the Nigerian medical reports, but ignores the others.

[84] First, the RAD puts great weight on the Applicant's contradiction on the time she went to the hospital on February 22, 2016. The RAD mentions that the Applicant was adamant during her testimony that she was admitted at about midnight and not at 7:15 PM as stated in the

medical report. The RAD concludes that because of her clear testimony on that point, the Applicant's memory did not fail her. However, because of the contradiction, she is not credible.

[85] However, the RAD fails to put any weight on the other statements made in the medical report that mentions the reason for her admission, and that she was semi-conscious on arrival. No explanation is provided by the RAD as to why the Applicant's memory may not be clear on the events – she was semi-conscious at 7:15 PM. No explanation is also offered as to why the doctor's statement that he was told the admission to hospital was as a result of domestic abuse is not relevant. In other words, the RAD does not explain why the timing of the admission to hospital is of such importance, while the reason offered to the medical doctor for admission – domestic abuse – is of no value. In the end, there is no dispute that : (1) the Applicant went to the hospital; and (2) the only evidence before the RAD is that the hospital admission is due to domestic abuse.

[86] Second, the RAD puts weight on the Applicant's contradiction in relation to the events leading to her son's death. The medical report states that the baby "f[e]ll from the mother [*sic*] back during a fight between both parents." During her testimony, the Applicant stated that the baby was punched and that she "quickly bring – brought him out from my back. I carried him in my arms." The RPD questioned the discrepancy between the two statements and the Applicant responded that "when he was hitting and punching me and all that, that was when the impact went to the baby. He blew the baby, and the baby fell from my back, you know." As to why the Applicant did not mention that the baby fell from her back, she responded that "I don't know, I mean, I thought that was going to the same implication of what I said before." The RAD

disagreed and opined that “her son’s death because her son being struck and the [Applicant] transferring him from her back does not present the same implication as her son being struck, falling and being picked-up before being taken to hospital.”

[87] However, again, no reason is provided as to why the Applicant’s credibility is completely dismissed on the basis of a statement in a medical report, while no weight is assigned to the other important part of the same medical report, that the hospital admission was due to a “fight between both parents.” The RAD offers no reason as to why this statement made to the physician is irrelevant. In that particular case, the evidence is that both the Applicant and her ex-partner rushed their son to the hospital together. The ex-partner’s presence may be on its own a reason why, before the physician, both parents were willing to volunteer information that there had been a fight between them, but not that the ex-partner “blew the baby” with a punch that missed its target.

[88] In my view, the RAD conducted a selective review of the Nigerian medical reports, and failed to consider that evidence holistically and contextually. The Nigerian medical reports are in evidence. Both provide a consistent narrative that domestic abuse is in play. Before rejecting the Applicant’s credibility entirely on the basis of inconsistent statements made during testimony, and what the reports explicitly mention (on events that are more than four years before), the RAD had to properly assess that specific contradicting evidence. The RAD had to explain why it preferred to reject the Applicant’s credibility, instead of accepting the contradicting narrative suggesting evidence of domestic abuse.

[89] As stated by Justice Gascon in *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924, at para 23:

> [23] Third, the RPD cannot base a negative credibility finding on minor contradictions that are secondary or peripheral to the refugee protection claim. The decision-maker must not conduct a too granular or overzealous analysis of the evidence. In other words, not all inconsistencies or implausibilities will support a negative finding of credibility; such findings should not be based on a "microscopic" examination of issues irrelevant to the case or peripheral to the claim (*Attakora v Canada (Minister of Employment and Immigration)* (1989), 99 NR 168 (FCA) at para 9; *Cooper v Canada (Citizenship and Immigration)*, 2012 FC 118 [*Cooper*] at para 4).

[90] Moreover, in *Akhtar v Canada (Citizenship and Immigration)*, 2022 FC 989, Justice Elliott held that:

> [60] Although credibility findings are owed significant deference, they are not immune from review: *N'kuly v Canada (Citizenship and Immigration)*, 2016 FC 1121 at para 24. This Court has warned decision-makers to refrain from an overzealous analysis of the evidence, recognizing that not all inconsistencies or implausibilities will support a negative finding of credibility: *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 23.
>
> [61] A determination of refugee status is not a memory test: *Sheikh v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15200 (FC), [2000] FCJ No 568 (QL) at para 28. Such an overzealous analysis of issues irrelevant or peripheral to the claim have been frequently found by this Court to be unreasonable: *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 23; *Olajide v Canada (Citizenship and Immigration)*, 2021 FC 197 at para 13 and the cases cited therein.
>
> [62] In the matter at hand, the contested facts occurred at the height of a traumatic event. According to their testimony, the Applicants' family home was broken into at midnight, Mr. Rafi was beaten and both he and Ms. Akhtar were threatened, forced into a bathroom and robbed at gunpoint by armed intruders. Under such circumstances, I find it unreasonable to hold their recollections, seven years after the attack, to such an exactitude.

[91] Indeed, the Applicant submits that the fact she was confused about the exact time she went to the hospital on February 22, 2016, and the events of January 15, 2017, are not major contradictions considering the trauma she has gone through, and it should not have affected her credibility to the point of dismissing her claim. She had to go to the hospital at least twice because of the alleged domestic abuse she suffered, and the police did not do anything to protect her. This is corroborated by objective evidence in Tab 5.1 of the NDP discussing that domestic abuse is "endemic" in Nigeria (as noted at para 42 of the RPD decision) as well as by the medical reports. The exact timing of when she visited the hospital because of her assault does not really matter here, especially since the medical report indicates that she was semi-conscious when she arrived.

[92] The comments of Justice Rennie in *Venegas Beltran v Canada (Citizenship and Immigration)*, 2011 FC 1475 with regards to credibility findings, are apposite in this case:

> [3] The Board's assessment of the credibility of the applicant was in large measure, based on a one day discrepancy between the date he reported the events underlying his claim to the police and his *viva voce* testimony on the same issue.
>
> [4] This discrepancy was not material to the chain of events. Nothing turned on it, and, to the extent that there may have been a discrepancy, the fact that, under questioning, the applicant held to his memory as to the date he went to the police, as opposed to the date the police report was processed, is, in these circumstances, equally consistent with a finding of credibility and honesty.
>
> [5] An explanation was also provided which would have explained the discrepancy, but it was not addressed by the Board. Nonetheless, based on this discrepancy the Board concluded that the applicant had changed *his* testimony and was not to be believed. It proceeded to discount much of the evidence that followed thereafter, including the reports by the Ombudsman and office of the Attorney General which corroborated his testimony.

> [6] Finders of fact must approach all evidence in the same dispassionate and objective manner. Evidence of a seamless web of diverse events occurring over time and distance, all intersecting propitiously and recalled with clarity and precision, should be viewed with the same caution as testimony which, by reason of multiple inconsistencies on critical issues, does not hold. In sum, the finding of credibility reached in this case based on an immaterial discrepancy, for which a credible explanation was tendered, cannot stand the test of reasonableness.
>
> [Emphasis added.]

[93] In my view, and as stated in *Lawani* and *Akhtar*, the RAD made sweeping conclusions on credibility on the basis of two key inconsistencies that, while perhaps important, were secondary or peripheral to the claim for protection. The RAD's conclusion on credibility is overly microscopic, especially given that the circumstances occurred more than four years ago, and during incredible tragic circumstances.

(2) Letter of Pastor

[94] The letter written by Pastor Osahon is not dated, but is signed. The letter states the following:

> I, Pastor Godstime Osahon was a pastor to Ms. Osahenome Ehigiator.
>
> That on the 30th day of March, 2017, she came to the church to seek refuge, following repeated beatings from her boyfriend. I introduced her to travelling agent, Mr. Ogbede when the threat from the husband became unbearable.
>
> The church had to raise repeated offering to assist her financially for her to travel so that the boyfriend does not take her life after she lost her baby. She travelled out of the country on the 27th of October, 2017.
>
> [Emphasis added.]

[95] The RAD assigned little weight to the pastor's letter because he had no first-hand knowledge of the allegations of domestic abuse and that the letter cannot explain the two key inconsistent statements in relation to the alleged domestic abuse resulting in the two hospital admissions noted above.

[96] However, the RAD does not consider nor put any weight on the pastor's letter, holistically and contextually. The RAD does not explain why no weight had to be assigned to the pastor's first-hand evidence that: (1) he was approached by the Applicant for refuge because of domestic abuse - an extraordinary act on its own right; (2) he thought the situation serious enough to grant refuge; and (3) he worked to raise repeated offering at church to assist the Applicant financially to travel.

[97] Moreover, the RAD does not explain why the first-hand knowledge of the pastor, including that he decided to take action only after "the threat from the husband became unbearable" (he must therefore have been a witness during the time the Applicant took refuge in the church), is of no value in the assessment as to whether the Applicant has a fear of persecution at the hands of her ex-partner. [Emphasis added.]

(3) Letter from the Applicant's Sister

[98] The letter written by the Applicant's sister is signed and dated April 6, 2021. It states the following:

> I, MRS. IMUETIYAN EGUABOR, do bear witness and state that, Ms. Osahenome Ehigiator is my biological sister and Emeka Obi is her boyfriend.

> She had a son for him which Mr. Emeka Obi also assaulted in the cause of beating up his wife-to-be (my sister). The said child died following complications from the assault.
>
> My sister, Ms. Osahenome has suffered so much in the hands of Mr. Emeka Obi and he uses his office as a police officer to intimidate the family every time.
>
> My sister had to run for her dear life in order to stay alive.

[99] The Applicant submits that the RAD erred by assigning little weight to her sister's letter because it contained information corroborating the allegations of domestic violence and that the ex-partner had threatened the family.

[100] On that first point, the Respondent submits that the RAD reasonably found that the letter had little probative value in establishing the central allegations of the Applicant's claim because the content of the letter regarding the death of the Applicant's son was not first-hand knowledge. Moreover, the Respondent argues that this finding was reasonable also because the Applicant provided inconsistent and evolving testimony when confronted with how her son died.

[101] The Respondent also argued during the hearing before this Court that the Applicant could not rely on *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 [*Magonza*] to argue that family members can attest to persecution. In the Respondent's view, *Magonza* can be distinguished on its facts because in that case, the family member had been a direct witness to the alleged incident.

[102] According to *Magonza*, evidence from family members cannot be rejected solely because they are considered hearsay (see also *Bakare c. Canada (Citoyenneté et Immigration)*, 2021 CF

967 at para 25), since family members are often in the best position to confirm what occurred to the claimants:

> [44] Immigration decision-makers have on a number of occasions discounted evidence provided by members of the family of an applicant, for the sole reason that these persons, having an interest in the well-being of the applicant, would have a propensity to make false statements. This Court has repeatedly held that this is unreasonable. In doing so, the Court has shown its awareness of the challenges of obtaining evidence of persecution. In the vast majority of cases, the family and friends of the applicant are the main, if not the only first-hand witnesses of past incidents of persecution. If their evidence is presumed to be unreliable from the outset, many real cases of persecution will be hard, if not impossible to prove. Thus, while decision-makers are allowed to take self-interest into account when assessing such statements, this Court has often held that it is a reviewable error to dismiss entirely such evidence for the sole reason that it is self-interested. In *Cruz Ugalde v Canada (Public Safety and Emergency Preparedness)*, 2011 FC 458 at para 28, Justice Yves de Montigny (now of the Federal Court of Appeal) wrote:
>
> > […] I do not believe it was reasonable for the Officer to award this evidence low probative value simply because it came from the Applicants' family members. Presumably, the Officer would have preferred letters written by individuals who had no ties to the Applicants and who were not invested in the Applicants' well-being. However, it is not reasonable to expect that anyone unconnected to the Applicants would have been able to furnish this kind of evidence regarding what had happened to the Applicants in Mexico. The Applicants' family members were the individuals who observed their alleged persecution, so these family members are the people best positioned to give evidence relating to those events. In addition, since the family members were themselves targeted after the Applicants' departure, it is appropriate that they offer first-hand descriptions of the events that they experienced. Therefore, it was unreasonable of the Officer to distrust this evidence simply because it came from individuals connected to the Applicants.
>
> [Emphasis added.]

[103] In this case, the RAD assigned little or no weight to the evidence provided by the Applicant's sister because the sister had not personally witnessed the domestic abuse. However, and contrary to what is asserted by the Respondent, the sister had first-hand knowledge of the threat. As stated by the RAD, the sister provided evidence that the ex-partner, as a police officer "uses his office as a police officer to intimidate the family every time". As she is a member of the family, she has been the recipient of the threats and can attest to them.

[104] In my view, the RAD did not err in rejecting the first part of the letter. The RAD was entitled to dismiss the letter's statement regarding the events leading to the son's death, as this information was imparted by the Applicant and the sister has no direct knowledge of it (*Magonza*, at para 43).

[105] However, regarding the second part of the letter stating that the ex-partner used his position as a police officer to intimidate the family, the RAD does accept that this is first-hand knowledge evidence and that it corroborates the Applicant's claim of domestic abuse. Nevertheless, the RAD puts no weight on this evidence because it does not refute the Applicant's contradictions during her testimony.

[106] In my view, and as stated above, the RAD was unreasonable in its assessment of the evidence as a whole, regarding the Applicant's contradictions during her testimony. While the RAD was entitled to adduce the weight it decided on the sister's letter, the decision to reject its probative value because it was not responsive to the two key contradictions made by the Applicant during her testimony was unreasonable. Upon reconsideration of the evidence, the

RAD is entitled to review the weight of the sister's evidence. It may then decide, especially the second part of the letter, that it bolsters the Applicant's claim of fear from domestic abuse. On the other hand, it may also decide that the specific evidence of the sister is not sufficiently probative to sustain it.

(4) Letters from Canadian Physician

[107] The letter provided by the Canadian medical doctor, a family physician working at the *Clinique des demandeurs d'asile et réfugiés*, is signed and dated August 12, 2021. In summary, the letter states that the Applicant is "allegedly a victim of spousal abuse" who was "diagnosed with a major depression and was treated with antidepressants and trazodone". She "still requires ongoing antidepressant use", "remains fragile and vulnerable to stress" and it is "difficult to predict how she may respond to the questioning in the evaluation of her case."

[108] The physician also states in her letter that she expects that the Applicant "may have trouble relaying the details of her traumatic past as she complains of distractibility and poor concentration." The physician adds that "difficulties in memory and concentration are common symptoms in persons suffering from depression."

[109] The physician asks that the Applicant be considered as a "vulnerable person and that you do everything possible to put her at ease as much as possible during the evaluation of her case." She also says, "please keep the above information in mind when questioning her."

[110] The physician concludes her letter by stating that the Applicant "suffers from the emotional consequences of the violence she has had to endure in her home country."

[111] As argued by the Applicant, medical evidence is an important element that must be considered. The Applicant further states that the inconsistencies in her testimony were caused by her inability to remember due to stress and trauma. She also argues that the examples of inconsistencies provided by the RAD in the Decision are simply overzealous, as they do not take into consideration the state of mind of the Applicant when she was testifying.

[112] In my view, the RAD failed to assess the medical and psychological evidence demonstrating that the Applicant suffered from a major depression and that she "may have trouble relaying the details of her traumatic past as she complains of distractibility and poor concentration [and that] [d]ifficulties in memory and concentration are common symptoms in persons suffering from depression". The RAD does not explain why that evidence is not relevant, and should not be relied upon, to explain the Applicant's difficulty and confusion and why she was not able to provide a coherent and reliable testimony. As stated above, the RAD only referred to the medical report in deciding that the Applicant was not a "vulnerable person" in the sense referred to in Guideline 8, but not to justify the potential inconsistencies in her testimony.

[113] In dismissing that evidence, the RAD had to provide an explanation (*Cay v Canada (Citizenship and Immigration)*, 2007 FC 759). In particular, the RAD should have addressed a letter that clearly and unequivocally stated that the Applicant's ability to testify was impaired by a significant mental health challenge. If the RAD rejected this evidence, or considered that it was

entitled to only little weight, it was incumbent on the RAD to explain their reasons why (*Rojas Luna v Canada (Citizenship and Immigration)*, 2013 FC 758 at para 20).

[114] Moreover, the medical and psychological evidence adduced and suggesting that it would be difficult for the Applicant to testify due to her mental state, but also due to the alleged domestic abuse, is consistent with Guideline 4 – Gender considerations in Proceedings before the IRB. Case law is replete of examples confirming the difficulty of women to testify in relation to spousal abuse. For example, in *Sebok*, Justice Snider stated that it can be harder for women who suffered domestic violence to talk about it:

> [15] The Gender Guidelines recognize domestic violence as a circumstance that may lead to a fear of persecution in the refugee context. The Guidelines cite *R v Lavallee*, 1990 CanLII 95 (SCC), [1990] 1 SCR 852 at 873, [1990] SCJ No 36 [*Lavallee*] for its discussion of popular mythology and stereotypes about domestic violence that may be erroneously used to evaluate the actions of victims: "Either she was not as badly beaten as she claims or she would have left the man long ago. Or, if she was battered that severely, she must have stayed out of some masochistic enjoyment of it." Justice Wilson stated, as adopted by the Gender Guidelines, that women who experience domestic abuse demonstrate a "reluctance to disclose to others the fact or extent of the beatings" as part of their victimization (*Lavallee*, above at 885). The Gender Guidelines state that the context of social, cultural, traditional and religious norms should be considered. Lastly, there may not always be supporting documentary evidence and claims should be assessed based on the circumstances of the claimant and similarly situated individuals.
>
> [Emphasis added.]

[115] In my view, the RAD was not entitled to completely ignore and remain silent on the greater context of the Applicant's claim, especially because it was in relation to domestic abuse. Guideline 4 and existing case law alone provide that greater scrutiny was required before

dismissing the Applicant's credibility on inconsistencies during testimony. Adding to that the existing evidence of a major depression and that the Applicant "may have trouble relaying the details of her traumatic past as she complains of distractibility and poor concentration [and that] [d]ifficulties in memory and concentration are common symptoms in persons suffering from depression", the RAD had to explain why this evidence carried no weight in its assessment.

[116] The RAD failed to do so. It failed to consider the medical and psychological expertise that explained why the Applicant's memory may have been affected (see *Rajput*). To be intelligible, the reasons had to explain why the RAD disregarded her credibility because of inconsistencies and why the evidence of mental health and psychological issues could not satisfy the RAD as to why the inconsistency existed. In other words, the RAD needed to consider the expert psychological evidence that explained the potential memory issues and explain why it discredited credibility in any event. Because the RAD did not do so, its reasons are therefore not intelligible.

VII. Conclusion

[117] In this case, the RAD made specific findings in relation to the Applicant's credibility, relying on some specific medical reports. However, the RAD failed to assess the evidence holistically and contextually. It failed to assess specific evidence that contradicted its findings and that painted a narrative that the Applicant was subject to serious domestic abuse.

[118] As stated in *Vavilov* at para 133, "[w]here the impact of a decision on an individual's rights and interests is severe, the reasons provided to that individual must reflect the stakes." The

reasons must explain why significant evidence weighing in favour of an applicant is rejected or assigned only minimal weight. Otherwise, the decision is not intelligible because the decision maker has “fundamentally misapprehended or failed to account for the evidence before it” (*Vavilov* at para 126).

[119] For the reasons above, the application for judicial review is granted.

[120] Neither party proposed the certification of a question of general importance, and none arises.

JUDGMENT in IMM-3260-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.

2. No question of general importance is certified.

"Guy Régimbald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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