

Federal Court



Cour fédérale

Date: 20230503

Docket: IMM-6812-21

Citation: 2023 FC 643

Ottawa, Ontario, May 3, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

**OLANIYI OLUWASA ALO
ADEBIMPE FUNMIL ALO
EMMANUELLA TOLU ALO
OBALOLUWA SAMUE ALO**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review of a decision of the Refugee Appeal Division (“RAD”) dated September 10, 2021, confirming the determination of the Refugee Protection Division (“RPD”) that the Applicants are neither Convention refugees nor persons in need of

protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“*IRPA*”). The RAD found the determinative issue to be the Applicants’ credibility.

[2] The Applicants submit that the RAD’s negative credibility findings are based on unreasonable assessments of the evidence, rendering the decision unreasonable as a whole.

[3] For the reasons that follow, I find the RAD’s decision to be reasonable. This application for judicial review is dismissed.

II. Facts

A. *The Applicants*

[4] Olaniyi Oluwasa Alo (the “Principal Applicant”), Adebimpe Funmil Alo (the “Associate Applicant”), and their two children (collectively the “Applicants”) are all citizens of Nigeria.

[5] The Applicants claim that they are at risk of persecution by the Babanla occult group, particularly the Principal Applicant’s father, who is a priest and holds a leadership role in the cult group. The Principal Applicant claims that initiation into the group involves undergoing traditional rituals at nine years old, including female genital mutilation (“FGM”).

[6] The Principal Applicant claims that in 2003, he attempted to renounce his membership in the cult in favour of adherence to Christianity, but his father ordered other relatives to physically attack the Principal Applicant and threatened him with physical violence if he left the cult.

[7] The Principal Applicant married the Associate Applicant, who is a Christian, on August 29, 2009. He claims that this marriage further angered his father. When the Associate Applicant became pregnant in 2010, the Principal Applicant's father threatened to force the unborn child to undergo FGM if born female, as per the cult's tradition. The Principal and Associate Applicants relocated to Lagos for their safety and the safety of their unborn child. When the Principal Applicant's father discovered their new location in Lagos, the Associate Applicant relocated to Abuja to stay with a relative, without the Principal Applicant.

[8] The Principal and Associate Applicants' daughter was born on September 14, 2010. The Principal Applicant's father urged him to disclose his wife's location, but he did not comply. The Principal Applicant joined the Associate Applicant in Abuja in 2012, to keep their young daughter safe from forced FGM. Their second child was born on March 27, 2013.

[9] The Principal Applicant claims that in June 2014, his father and two other members of the Babanla cult arrived at the Applicants' home in Abuja and threatened to kill the Principal Applicant and his daughter if she was not initiated into the cult and did not undergo FGM. The Principal Applicant claims that his family relocated to Nasarawa State that week, for their safety.

[10] In December 2018, the Principal Applicant claims that members of the Babanla cult found his daughter's school in Nasarawa State, where they located her and handed her an envelope containing a letter and a red cloth. They allegedly instructed her to give the envelope to her father. The Principal Applicant claims that this red cloth represents a final warning and a

death threat. The letter accompanying the red cloth reminded the Principal Applicant that his daughter was reaching nine years of age, making her due for her initiation into the cult.

[11] The Principal Applicant claims that he did not report any of the Babanla cult's threats to the police because the Nigerian police is heavily influenced by the cult and many powerful police officers are themselves cult members.

[12] The Applicants fled Nigeria on January 14, 2019. The Principal Applicant claims that they left their jobs, sold their properties, and ensured to leave no trace of their next destination or future plans, so as not to be pursued. The Applicants traveled to New York in the United States, where they arrived at the Canadian border and sought asylum on January 16, 2019.

B. *RPD Decision*

[13] In a decision dated March 3, 2021, the RPD found that the Applicants lacked credibility and had therefore failed to establish a serious possibility of persecution or a risk to their lives pursuant to sections 96 and 97(1) of *IRPA*.

[14] The RPD identified contradictions and inconsistencies in the Applicants' testimony, evidence, and Basis of Claim ("BOC") form that are central to their claim. For instance, concerning the harm suffered by the Applicants at the hands of the Babanla cult, the Principal Applicant initially testified that the reason the Applicants fled Nigeria is because of the threatening letter given to his daughter at her school, but later testified that his father had threatened to kill the Applicants prior to 2018. When questioned, the Principal Applicant

testified that the cult did not threaten the Applicants prior to 2018, any previous threats were not to kill them, and the red cloth was specifically a death threat, signalling to the Applicants that this was the time to leave for their safety. He stated that he destroyed the message because he did not want to bring occult power into his house.

[15] The RPD did not find this explanation for the discrepancies to be reasonable, noting that the Principal Applicant's recounting of his narrative was evolving and went to the heart of the Applicants' claim. The RPD further noted that as described by the Applicants, the death threats prior to 2018 were "consistently serious and terrifying," and no less so than the red cloth given to their daughter at her school. The RPD also drew a negative inference from the Principal Applicant's statement that he destroyed the message, noting that he does not even adhere to the cult's beliefs and is a Christian.

[16] The RPD found that the Associate Applicant embellished the claim in her testimony, stating that the Principal Applicant's father called her in 2010 and threatened her personally. This detail was omitted from the Applicants' BOC form. The Associate Applicant explained that she was pregnant and sick upon arrival to Canada and this personal threat to her life was therefore not included in the BOC form, but the RPD noted that the BOC narrative was not completed until some time after the Applicants' arrival in Canada. The RPD therefore found the Associate Applicant to be an unreliable witness.

[17] The RPD asked the Applicants why they failed to seek refuge in the United Kingdom ("UK"), where they traveled three times for vacation and where they have family. The Principal

Applicant explained that it was too early in his marriage with the Associate Applicant to live with her family and they had only gone to the UK on vacation. The RPD did not accept this explanation as reasonable and drew a negative inference from the Applicants' failure to even consider claiming asylum while safely traveling to the UK on three occasions.

[18] The RPD also drew a negative inference from the lack of corroborative evidence regarding the Babanla cult. The Principal Applicant testified that the Babanla cult is highly secretive and largely unheard of, that it has many adherents and significant influence, that members are motivated by personal gain and acquiring power, that the cult requires members to worship the python snake, and that there is no reference to the cult anywhere on the Internet. The RPD noted that the National Documentation Package ("NDP") contained no mention of the Babanla cult, despite extensive information about a number of cults in Nigeria. The RPD further noted that the Principal Applicant's mother provided a supporting affidavit, which stated that her husband, the Principal Applicant's father, is also a member of the Ogboni Confraternity, which the Principal Applicant omitted in his narrative.

[19] The RPD found that the Applicants failed to credibly establish the identity of the Principal Applicant's father as a prominent founding member of an influential cult in Nigeria. The RPD found that the Principal Applicant failed to explain how his father could be a full-time academic while also being an active leader of a cult and failed to identify his father's network of associates. The RPD characterized the Principal Applicant's testimony about his father's role in the cult as vague and evolving.

[20] The Principal Applicant provided photographs that he claims portray him being beaten, to corroborate his narrative that Babanla cult members beat him in 2003 after he attempted to renounce his membership. The RPD granted these photographs little weight on the basis that the photographs are undated, unverifiable, and could depict injuries resulting from any attack by anyone. The RPD also gave minimal weight to the supporting affidavits of family members, which only reflect a retelling of the events as told by the Applicants and not firsthand knowledge. The RPD also accorded little weight to the supporting letters from a settlement counselor at the Canadian Centre for the Victims of Torture (“CCVT”), stating that the Applicants are members and attend programs at the CCVT, on the basis that the letters simply repeated events provided by the Applicants and did not compensate for the credibility issues in their claim.

[21] The RPD referenced the objective documentary evidence indicating that the decision to have children undergo FGM ultimately rests with the parents, who can object to the practice. When asked about this evidence, the Principal Applicant responded that it is not truly an option to refuse such practices where an occult group is involved. The RPD stated that it preferred the objective evidence over the Principal Applicant’s testimony.

[22] The RPD found that the Applicants’ claim lacked credibility, finding that they are neither Convention refugees nor persons in need of protection.

C. *Decision Under Review*

[23] In a decision dated September 10, 2021, the RAD dismissed the Applicants' appeal and confirmed the RPD's decision that the Applicants' refugee claim lacked credibility.

[24] The RAD found that the RPD correctly assessed the Applicants' testimony and evidence regarding the threats posed by the Principal Applicant's father and the Babanla cult.

Specifically, the RAD found that the RPD correctly identified the discrepancy between the Associate Applicant's testimony that she received a direct threatening phone call from the Principal Applicant's father in 2010 and the BOC form, which did not include this material fact. The RAD noted that the BOC form explicitly asks claimants to provide details regarding the reason for seeking refugee protection in Canada and the Associate Applicant confirmed that her BOC form was complete, true, and correct at the start of the RPD hearing.

[25] The RAD further agreed with the RPD's assessment that the alleged threats made by the Babanla cult against the Applicants were all very serious in nature, contrary to the Applicants' claim that the threats escalated to culminate in the death threat letter in 2018. The RAD noted that the Applicants' testimony surrounding the alleged threats prior to 2018 were also serious.

[26] The RAD confirmed the RPD's finding that the Principal Applicant's explanation for why he destroyed the letter and red cloth in 2018, which was allegedly the catalyst for the Applicants fleeing Nigeria, was not reasonable. The RAD found that as a "highly educated individual," it is not reasonable that the Principal Applicant would destroy a highly relevant

piece of evidence or that he would destroy it because he did not want to bring occult powers into his home, given that he did not believe that the cult had any powers.

[27] On appeal, the Principal Applicant submitted that he did not want to bring anything belonging to the cult into his home because he is Christian. However, the RAD found that it was open to the Principal Applicant or his counsel to seek to clarify this issue before the RPD, which they did not do, and the Principal Applicant produced a photograph that allegedly depicts himself being attacked by cult members, which he allegedly possessed for approximately 17 years.

[28] Although the RAD acknowledged the Applicants' claim that they relocated numerous times in Nigeria, it did not accept the remainder of the Applicants' narrative surrounding these moves: that they moved in order to avoid the Principal Applicant's father and other cult members, and when the 2018 letter and red cloth were given to the daughter, the Applicants knew it was time to flee Nigeria. The RAD noted the Principal Applicant's testimony that he remained in Lagos for two additional years after the Associate Applicant moved to Abuja, despite the alleged threats from his father and the cult being aware of the Applicants' Lagos address. The RAD further noted that, in light of the Applicants' testimony that the cult members arrived unannounced to the Applicants' new residence in Abuja in 2014, the Applicants would have known that relocation in Nigeria was futile as early as 2014. For these reasons, the RAD rejected the Applicants' claim that the threats against them were initially less severe and culminated in the death threat in 2018, which caused them to flee to Canada.

[29] The RAD rejected the Applicants' explanation for failing to seek asylum in the UK, despite their visits to the UK at a time when they were allegedly fearful for their lives and receiving death threats. The RAD agreed with the RPD's finding that this failure undermines the Applicants' subjective fear of the cult. The RAD also rejected the Applicants' submission that their relatives in the UK had precarious immigration status and this would have potentially separated the family. The RAD found that there is no evidence to support this allegation or demonstrate how their family's immigration status would affect the Applicants' ability to seek asylum there. On the Applicants' additional argument that they were unfamiliar with the asylum system in the UK, the RAD found that the Principal Applicants' testimony regarding their reasons for not seeking protection in the UK was consistently changing.

[30] Regarding the objective and supportive documentary evidence, the RAD found that the affidavit from the Principal Applicant's mother warranted little evidentiary weight because it lacked detail about the central events alleged by the Applicants. The RAD also found that, although she claimed that she was also threatened to disclose the Principal Applicants' location to the cult, the affidavit failed to specify who threatened her or how she was threatened. The RAD agreed with the RPD's reliance on objective evidence regarding FGM practices in Nigeria, specifically its finding that the objective evidence points to parents' ability to choose whether their children undergo FGM. The RAD also found that the photograph proffered by the Principal Applicant, which he claimed depicts himself being physically attacked by cult members, warranted minimal weight because it was insufficient to corroborate his claim that he was actually attacked. The RAD agreed with the RPD's treatment of the remaining documentary evidence, including the affidavits of other relatives and the CCVT letter.

[31] The RAD found that the RPD erred in its implausibility finding that the Principal Applicant's father could not reasonably be a cult leader and a full-time academic. However, the RAD found that given the available information about the father's profile, there is only evidence to support that he is a professor and none to demonstrate his ties to a cult.

[32] For these reasons, the RAD found that the Applicants failed to establish that they faced threats from the Babanla cult in Nigeria and therefore, they are neither Convention refugees nor persons in need of protection pursuant to sections 96 or 97 of *IRPA*.

III. Issue and Standard of Review

[33] The sole issue is whether the RAD's decision is reasonable.

[34] The standard of review is not disputed. The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) (“*Vavilov*”). I agree.

[35] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record

before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[36] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

IV. Analysis

[37] The Applicants submit that the RAD’s adverse credibility findings are based on its misunderstanding of, and failure to adequately assess, the Applicants’ evidence. The Applicants submit that the RAD’s credibility assessment was rooted in skepticism and a zeal to find inconsistencies, rather than a reasoned analysis of the testimony and evidence. The Applicants submit that certain additional details provided in their testimony were simply elaborations upon their BOC narrative, only to be unreasonably characterized as inconsistencies by the RAD, and the RAD unreasonably ignored their cogent explanations for other inconsistencies.

[38] The Respondent maintains that the RAD reasonably assessed the Applicants’ evidence and testimony, and provided multiple rational and intelligible grounds upon which to impugn the

Applicants' credibility. The Respondent contends that the RAD is not obligated to accept the Applicants' explanations for these inconsistencies and it is entitled to arrive at its own conclusions about the evidence.

[39] I first note that a bulk of the Applicants' submissions take issue with the RAD's weighing of the evidentiary record and appear to request that this Court reassess this evidence. This is not, however, the Court's role on reasonableness review (*Vavilov* at para 125).

[40] I further note that the Applicants' written submissions on judicial review allege many more errors with the RAD's decision than can be reasonably and holistically addressed here, asserting errors made by the RAD in nearly every paragraph of its reasons, many of which are vague and unsupported. The Applicants' submissions engage in a "line-by-line treasure hunt for error" in the RAD's reasons and request that this Court do the same (*Vavilov* at para 102). Once again, that is not this Court's role on review.

[41] The Applicants appear to impugn the RAD's thorough analysis of the evidence for failing to accept their explanations for inconsistencies or discrepancies in their narrative. However, the RAD's reasons exhibit a detailed consideration of the Applicants' explanations for their inconsistent narrative and evidence and the Applicants' explanations do not lead to an obligation that the RAD accept them as reasonable, particularly in light of the several cumulative credibility concerns (*Ogunmodede v Canada (Citizenship and Immigration)*, 2022 FC 94 at para 18; *Towolawi v Canada (Citizenship and Immigration)*, 2020 FC 245 at para 32).

[42] The RAD's reasons address all aspects of the Applicants' claim, providing clear and rational analyses of the evidence to arrive at each of its credibility findings. The RAD's credibility findings are justified in light of the evidentiary record and it provides intelligible reasons for disbelieving central aspects of the Applicants' claim. The Applicants' testimony reveals clear gaps, unexplained inconsistencies, and unsupported assertions that, when viewed cumulatively, provide a reasonable basis upon which the RAD may find that their claim lacks credibility. I agree with the Respondent that the Applicants have failed to raise a reviewable error in the RAD's credibility assessment.

V. Conclusion

[43] This application for judicial review is dismissed. The RAD's decision bears the hallmarks of reasonableness. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-6812-21

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended to name the Minister of Citizenship and Immigration as the proper Respondent.
2. This application for judicial review is dismissed.
3. There is no question to certify.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6812-21

STYLE OF CAUSE: OLANIYI OLUWASA ALO, ADEBIMPE FUNMIL
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PLACE OF HEARING: TORONTO, ONTARIO

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DATED: MAY 3, 2023

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