

Federal Court



Cour fédérale

**Date: 20230613**

**Docket: IMM-4216-22**

**Citation: 2023 FC 838**

**Ottawa, Ontario, June 13, 2023**

**PRESENT: The Honourable Madam Justice Elliott**

**BETWEEN:**

**ANTHONIA CHIOMA AZIKE  
GRACE CHIMAMANDA AZIKE**

**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 April 12, 2022 [Decision]. The RAD confirmed the decision of the Refugee Protection Division [RPD], finding the Applicant is not a Convention refugee or person in need of

protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] For the reasons that follow, I am not persuaded that there is a basis to interfere with the RAD's Decision. This application for judicial review will therefore be dismissed.

## II. **Background**

[3] The Principal Applicant (PA) and her daughter, the Minor Applicant, are citizens of Nigeria. The Minor Applicant is also a citizen of the United States.

[4] The PA initiated a claim for refugee protection in Canada alleging that she and her daughter were at risk at the hands of her husband's family. The PA's father-in-law is described as one of the high chiefs in their village of Delta State.

[5] The PA claimed that after her daughter was born in March 2017, her father-in-law summoned her ex-husband to advise him of the plan to have her circumcised and married at a young age.

[6] The RPD refused the Applicants' claim on November 19, 2021, finding that the alleged risks from the PA's family were not credible. Specifically, the RPD cited the Applicants' omission of a relocation from Lagos to Abuja in her original Basis of Claim (BoC) narrative, affidavits considered to be fraudulent, and the absence of evidence indicating that the Applicants face a well-founded fear of harm in Nigeria.

[7] On appeal, the Applicants submitted that the RPD erred when assessing the credibility of the PA's testimony. They then made the following submissions:

- i. The RPD failed to assess the PA's narrative and testimony in light of her psychological condition and failed to give due consideration to the psychological assessment letter.
- ii. The RPD did not apply *Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution* when it rejected the Principal Appellant's explanation for omissions in her written testimony.
- iii. The RPD erroneously rejected key evidence in the form of corroborative affidavits alleging that they are fraudulent. The totality of the evidence was disrespected in making findings critical to the claim.
- iv. The RPD engaged in a selective review of the country conditions evidence.

### III. **Decision under Review**

[8] The RAD accepted some of the new evidence tendered by the Applicants on appeal.

[9] The RAD also found that difficulties the PA had in her testimony before the RPD were well explained by the effects of her documented mental health conditions. While her testimony was found to be credible, the RAD ultimately agreed with the RPD that the alleged relocation from Lagos to Abuja was not credible. This finding was based on the fact that this move and subsequent threats had been omitted entirely from her first narrative.

[10] Overall, the RAD accepted that PA's in-laws requested that the Minor Applicant be subjected to harmful traditional rites, including circumcisions at birth and child marriage.

[11] The RAD found however, that the Applicants failed to establish that they are being sought out or that they will be forced to undergo those rites, on a balance of probabilities. The RAD reviewed the objective evidence and found that the primary decision to have traditional rites lies with the parents, both of whom in this case have refused them.

[12] The RAD concluded that the PA's husband's family has been insistent but has not escalated to threats or attempts to physically harm her or her daughter. It concluded that they do not face risks beyond repeated requests, ostracization, and feelings of anger.

#### IV. **Issues and Standard of Review**

[13] The Applicants submit that the RAD erred in:

- a) Declining to admit new evidence.
- b) Finding the Applicants' fear of persecution is not objectively well founded.
- c) Failing to properly assess the risk to the Minor Applicant.
- d) Finding that material omissions were made and were attributable to a lack of credibility.

[14] The Supreme Court of Canada has established that when conducting judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice and/or the duty of procedural fairness, the presumptive standard of review is reasonableness:

*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*].

While this presumption is rebuttable, none of the exceptions to the presumption are present here.

[15] 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 para 15.

[16] Overall, a reasonable decision is one that is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85.

## V. Analysis

### A. *New Evidence*

[17] The Applicants requested that the RAD admit the following documents as new evidence:

- i. A copy of a notarized certification and attestation from a notary public, dated December 21, 2021.
- ii. A copy of the Principal Applicant's brother's affidavit sworn on December 21, 2021.
- iii. A copy of the affidavit of Chibuzor Nwaoko sworn on December 29, 2021.

[18] The RAD only accepted the first document, an affidavit from a Notary Public attesting to the authenticity of the affidavits which the RPD had rejected as fraudulent.

[19] The RAD rejected the PA's brother's affidavit which was submitted to corroborate her testimony that she had relocated to Abuja. The RAD found it was not clear that the affidavit "contains information that arose after the RPD issued its decision". The RAD noted the Applicants' explanation for not providing this evidence to the RPD was that she did not know the RPD would make the credibility findings it did. The RAD rejected this explanation.

[20] The RAD also refused to admit the affidavit from the PA's husband's cousin, concluding that it spoke to facts already in evidence, namely that the PA would be blamed for events that occurred after her refusal to submit her daughter to traditional rites.

[21] The Applicants submit that the RAD failed to properly consider the PA's explanations in refusing to admit the new evidence, namely, that she could not have anticipated the specific credibility findings made by the RPD. They assert that this evidence is new in that it contradicts findings of fact made by the RPD.

[22] The Respondent counters that it is not the role of the RAD to provide the Applicants with an opportunity to bolster the record in an attempt to address credibility concerns from their own evidence before the RPD.

[23] I agree with the Respondent. The Applicants have simply reiterated their submissions to the RAD that it was impossible to anticipate the RPD would make the credibility findings it did. The burden of proving the events giving rise to a refugee claim rested with the Applicants. As noted by Mr. Justice Mosley in *Hamid v Canada (MCI)*, 2021 FC 100 at paragraph 23, it was not

the role of the RAD to provide the Applicants with an opportunity to bolster the record before the RPD, but rather to allow for errors of fact, errors in law, or mixed fact and law to be corrected.

[24] The Applicants have not persuaded me that there are any flaws in the RAD's analysis of the new evidence. The RAD's conclusion that the Applicants failed to establish that they could not reasonably have been expected to present the evidence to the RPD is transparent, justified, and intelligible. It is reasonable.

B. *Well-founded fear of persecution*

[25] The Applicants submit that the RAD erred in concluding that the consequences they might experience from refusing traditional rites did not rise beyond repeated requests, ostracization and feelings of anger.

[26] More specifically, while the RAD accepted that the PA's husband's family wished for the child to be subjected to traditional rites, the RAD found that the Applicant failed to provide credible evidence that they were at risk of escalating threats or violence.

[27] The Applicants challenge the reasonableness of this finding, asserting that it was an established fact that there is a police officer in the husband's family who is able and willing to ensure that the PA submits her daughter and punishes her for failure to comply.

[28] However, I agree with the Respondent that this fact was not accepted as credible by the RAD. The RAD found that this allegation, which was included in an addendum along with information about an alleged relocation to Abuja, constituted a “major omission” from the PA’s original Basis of Claim (BoC) narrative. The RAD concluded that given the contradiction in her written testimony, the RPD correctly displaced the presumption of truth associated with her testimony.

[29] While the Applicants challenge the RAD’s characterization of her amended BoC narrative as constituting a “major omission”, the RAD provided thorough and cogent reasons for doing so. Contrary to the Applicants’ submissions, the RAD did not ignore or undermine her documented mental health conditions in coming to this conclusion.

[30] The RAD considered the contents of a psychological report indicating that the PA suffered from symptoms associated with trauma, including an inability to retrieve specific details of the past. The RAD reasonably found that these reports did not explain how a period of several weeks could be omitted and ultimately, could not explain an “omission of this magnitude”.

[31] In coming to its conclusion that the Applicants failed to establish a well-founded risk of persecution. The RAD also considered the objective evidence in the record.

[32] The Applicants contend that the RAD erred in preferring the Board’s National Documentation Package (NDP) evidence to her own credible evidence in finding that parents who refuse Female Genital Mutilation (FGM) are usually not subjected to violence.



[33] I am not persuaded by the Applicants' submissions.

[34] The RAD was entitled to rely on the objective country conditions evidence and did so reasonably. The RAD found that the evidence indicated that those who refuse requests to have their children undergo traditional rites can be subject to consequences including family strife, ostracization, social pressure and the withholding of support. Further, the RAD noted that the evidence indicates that generally, a parent can refuse to have their children undergo traditional rites without any significant consequences, but that some families can experience greater harm. This evidence also specified that where parents disagree, if the father supports subjecting his daughter to female genital mutilation/cutting the harm is likely to occur against the mother's wishes.

[35] Given that the evidence was such that both of the Minor Applicant's parents refused the request for her to undergo traditional rites, the RAD reasonably concluded that the objective evidence did not provide an objective basis for the risks alleged.

[36] In sum, the Applicants disagree with how the RAD weighed the evidence and have asked this Court to re-weigh that evidence and reach a different conclusion. That is not the role of a court on judicial review under the reasonableness standard: *Vavilov* at para 83.

C. *Risk to the Minor Applicant*

[37] The Applicants submit that the RAD erred in failing to consider the risk of returning to Nigeria for the Minor Applicant, independently from her mother's risk.

[38] I cannot agree with the Applicants' submissions on this issue.

[39] The RAD very clearly found that the objective evidence and the Applicants' personal evidence failed to establish that the Minor Applicant would be forced to undergo the traditional rites that were alleged, stating:

I accept that the Principal Appellant's refusal to submit to those rites has caused tension and strife within the family and has caused her considerable stress and trauma. However, I do not find that the consequences that she and the Minor Appellant may suffer rise to the level of a well-founded fear in the objective sense.

Because the credibility of the basis of the claim has not been established on a balance of probabilities, I find that the Appellants do not face a serious possibility of persecution, or a danger of torture, a risk to life or a risk of cruel and unusual treatment or punishment, on a balance of probabilities.

[my emphasis]

[40] Based on the above, I am satisfied that the RAD evaluated the risks to both of the Applicants and overall, considered the claim in a manner that was transparent, intelligible, and justified based on the evidence and submissions it received.

## VI. Conclusion

[41] For the foregoing reasons, this application for judicial review is dismissed.

[42] The parties have not proposed a serious question of general importance for certification and I agree that one does not arise on these facts.

**JUDGMENT IN IMM-4216-22**

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

1. This application for leave and judicial review is dismissed.
2. There is no serious question of general importance to certify.

"E. Susan Elliott"

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Judge

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

**DOCKET:** IMM-4216-22

**STYLE OF CAUSE:** ANTHONIA CHIOMA AZIKE, GRACE  
CHIMAMANDA AZIKE v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 31, 2023

**JUDGMENT AND REASONS:** ELLIOTT J.

**DATED:** JUNE 13, 2023

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