

Federal Court



Cour fédérale

**Date: 20241001**

**Docket: IMM-11056-23**

**Citation: 2024 FC 1533**

**Ottawa, Ontario, October 1, 2024**

**PRESENT: Mr. Justice Pentney**

**BETWEEN:**

**UGOCHUKWU GODWILL EGWUEKWE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant, Ugochukwu Godwill Egwuekwe, seeks judicial review of a decision of the Refugee Appeal Division (“RAD”) dismissing his appeal from the decision of the Refugee Protection Division (“RPD”) on the basis that he had not established that he is a refugee or person in need of protection.

[2] The Applicant is a citizen of Nigeria. He came to Canada on a student visa and later claimed refugee status. His refugee claim was based on his fear of persecution by a gang in Nigeria called “the Vikings,” as well as the risks he faced because of his moderate intellectual disability. The RAD upheld the RPD finding that the Applicant’s credibility was diminished by the discrepancies between his oral testimony and the narrative set out in his Basis of Claim (“BoC”) form. In particular, while his BoC stated that his family continued to receive threats from the Vikings after he left Nigeria, he testified during the hearing that there were no ongoing threats. The RAD found that the RPD did not err in concluding that the statements in the BoC form was an embellishment that diminished the Applicant’s credibility. The RAD also upheld the RPD’s conclusion that the Applicant had failed to establish that he faced any ongoing threats from the Vikings in Nigeria.

[3] On the question of the Applicant’s risks based on his moderate intellectual disability, the RAD found that the evidence did not support this claim. The documentary evidence submitted by the Applicant demonstrated generalized discrimination against persons with a disability in Nigeria, but did not connect this to his situation as a person with a moderate intellectual disability. In the absence of evidence demonstrating the risks that someone with moderate intellectual disability might face in Nigeria, the RAD found that the Applicant had failed to establish his claim.

[4] Based on its findings about the Applicant’s credibility and his failure to demonstrate that he faced risks because of his intellectual disability, the RAD dismissed the appeal.

[5] The Applicant seeks judicial review of the RAD decision. He does not take issue with several aspects of the RAD's decision; his argument focuses on two elements. The Applicant argues that the RAD failed to explain its analysis of how his diagnosis of moderate intellectual disability might have affected his evidence, and therefore its credibility finding is unreasonable. He also argues that the RAD failed to grapple with the risks he faces as a person with a moderate intellectual disability, in light of the evidence on the treatment of similarly situated persons in Nigeria. On the second point, the Applicant submits that the RAD unduly narrowed its focus and imposed an impossible burden on him by requiring that he demonstrates persecution of persons with his particular diagnosis.

[6] These questions are to be assessed under the framework for reasonableness review set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], and recently confirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21.

[7] In summary, under the *Vavilov* framework, a reviewing court “is to review the reasons given by the administrative decision-maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints” (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 2). The reviewing court must look for any “fatal flaws” in the core elements of the reasoning set out in the decision (*Vavilov* at paras 100 and 102).

[8] Applying this framework to the issues raised by the Applicant, I am not persuaded that the RAD's credibility finding is unreasonable. However, I find that the RAD's analysis of the

Applicant's risks based on his intellectual disability is unreasonable because it failed to grapple with a key aspect of the evidence about the treatment of similarly situated persons in Nigeria. I agree with the Applicant's argument that the RAD unduly narrowed its focus in assessing the Applicant's risks, and it did not engage with the evidence about the perception and treatment of persons who are similarly situated to him in Nigeria.

[9] The Applicant's challenge to the RAD's credibility finding zeroed in on its conclusion that the RPD did not err in finding that his BoC claim of ongoing risk amounted to an embellishment. The RAD determined that this undermined his overall credibility. The Applicant submits that the RAD needed to explain its credibility assessment in light of the evidence about the specific impacts of his diagnosis on his ability to give evidence.

[10] In particular, the Applicant points to the following key points from the Psychoeducational Evaluation Report: he was diagnosed with a moderate intellectual disability, with an IQ of 53 and he has serious problems processing verbal information, which means that he is "significantly slower than others his age in his ability to come up with accurate answers and takes more time to process information when compared to his other cognitive areas (performs better than 0.1% of same-aged peers)." This evidence is obviously pertinent to the RAD's evaluation of the credibility of his testimony and his capacity to understand questions about ongoing risks – both at the time he completed his BoC form, and three years later when he testified.

[11] The Applicant points to the following passage from the RAD decision, which in his view demonstrates the inadequacy of the analysis of how his intellectual disability affects his capacity to give evidence:

[23] Third, I find that the RPD was correct in making a negative credibility inference concerning the Appellant's omission in his testimony of the continuing interest in him by the Vikings. In his Basis of Claim (BOC) form, the Appellant stated that "When I talk with my mother, she tells me that they still come by to threaten my family." However, the Appellant made no mention of the continuing threats when the Appellant was asked about his communication with his mother and noted he helps out by sending her money. When the omission was put to the Appellant, the Appellant's counsel re-iterated that he stated that "I only say things that I remember."

[24] I agree with the RPD that, in the circumstances of this appeal, the Appellant's explanation is not reasonable. I recognize that the Appellant points to the neuropsychological report that notes that he endures issues arising from his moderate intellectual disability, which he could explain why the Appellant omitted the continuing threats his mother receives. However, I find that the issue is not whether he could or could not remember details of past threats. As I note below, he confirmed a number of times that there have been no direct threats to his family or him since he had been in Canada.

[12] The Applicant argues that while the RAD acknowledged that he has "issues" as a result of his diagnosis, it did not elaborate on what those issues are nor did it explain how it assessed their impact on his ability to give evidence. In light of the extensive discussion of the way, his intellectual disability affects his ability to process verbal information, the Applicant submits that the RAD's credibility findings are unreasonable.

[13] I am not persuaded. My analysis of this question is guided by the *Vavilov* framework, which asks whether the decision is marred by any fundamental flaws in reasoning, in light of the

legal and factual matrix that constrains the decision-maker (*Vavilov* at para 100). In my view, the Applicant has not demonstrated that the RAD's credibility analysis contains any significant errors.

[14] First, the RAD discussed the evidence about the Applicant's intellectual disability, including the expert's report and his brother's affidavit. When the RAD speaks of the "issues" associated with the diagnosis, it is clearly referring back to this summary, and the Applicant has not demonstrated that the RAD's review of this evidence is inaccurate or incomplete. The RAD's analysis of the Applicant's arguments about the RPD's credibility findings stretches over several paragraphs and reflects its understanding of the impact of the diagnosis on the Applicant's capacity.

[15] The RAD's credibility finding is largely based on its review of how the hearing unfolded. The RAD noted the opportunities provided to the Applicant to answer the question about ongoing risk and to explain why his testimony was different than the narrative set out in his BoC form. The transcript shows that the Applicant was asked many questions about this by the RPD member as well as by his Designated Representative and his counsel. The questions were phrased in several different ways and over a period of time, so the Applicant had a full opportunity to understand what he was being asked and to respond. His consistent answer was to the effect that his family had not been threatened since he left Nigeria. The RAD accurately summarized this evidence.

[16] The Applicant takes issue with the RAD's statement that the inconsistency was not about his memory. I am not persuaded. The issue identified by both the RPD and the RAD was the stark inconsistency between the Applicant's testimony and the narrative he set out in his BoC form. As the Respondent points out, the Applicant signed the BoC and he confirmed it was accurate and complete at the outset of the RPD hearing. The credibility finding was not based on his failure to remember every detail of the story set out in his BoC, but rather on the inconsistency between the narrative and his testimony on a central aspect of his claim.

[17] For all of these reasons, I am not persuaded that the RAD's finding on the Applicant's credibility was unreasonable.

[18] Turning to the second issue, the Applicant challenges the RAD's assessment of the risks he would face in Nigeria as a person with a moderate intellectual disability. He claims that the RAD failed to engage with the substance of the evidence he submitted on this subject because it unduly narrowed its focus. The Applicant argues that the evidence shows the mistreatment of people with a variety of intellectual disabilities, in part because of the commonly held view in Nigeria that intellectual disabilities and mental illness is caused by supernatural forces or witchcraft. In his view, this evidence demonstrates the kind of risk he faces because of his intellectual disability and its impact on his social presentation and capacity to interact in social settings. He points to the evidence showing that his problems in the past stemmed from his tendency to react negatively when he is made uncomfortable in social settings because of his inability to process the information. He says this is due to his intellectual disability and this

behaviour will put him at risk if he returns to Nigeria. The RAD's failure to discuss this evidence or consider its application to his case is unreasonable, according to the Applicant.

[19] I agree. On judicial review, my task is not to re-weigh the evidence, and I will not do that. However, *Vavilov* demands that I consider whether the decision-maker grappled with the key evidence and submissions put forward by the parties on crucial points. Indications that a decision-maker failed to engage with the substance of crucial evidence can result in a finding that the decision is unreasonable, and the Court's task in such a case is to send the matter back so that the evidence can be considered and weighed.

[20] In this case, the Applicant submitted evidence about his struggles in Nigeria including his challenges in completing his education due to his fear of attacks by gangs, as well as his limited employment experience. In his appeal to the RAD, the Applicant claimed the RPD had erred by engaging in a selective analysis of the evidence about the situation of persons with mental disabilities. He pointed to the evidence he had provided, including a report indicating that mothers in Nigeria believed that neuro-divergence in their child was caused by evil spirits, witchcraft or diabolical powers of their in-laws. Other evidence demonstrated that aggressive behaviour is displayed by many children with mild intellectual disability due to their inability to use effective verbal communication to express their needs. Additional evidence showed the difficulties faced by persons with disabilities in Nigeria in accessing health care, supportive services, and other measures to assist their integration into the society.



[21] The Applicant submits that the RAD's treatment of this evidence is unreasonable because it demanded evidence about the treatment of persons with his specific diagnosis rather than examining the situation of similarly situated groups. In his RAD submissions, the Applicant argued that he was at risk in Nigeria from gangs and society at large, citing his own experience of being attacked by gangs because he did not understand what they were saying due to his difficulty processing verbal communication. He also referred to his brother's statement that he made himself "a target" of the gangs by refusing to join them and fighting back. Overall, the Applicant claimed that he was at risk in Nigeria not only because the Vikings were looking for him, but also because of how he presented in society as a consequence of his intellectual disability. He submits that the RAD's failure to engage with this evidence is unreasonable.

[22] I agree.

[23] The clearest example of the RAD's error on this point is its treatment of the evidence on the views of Nigerian mothers about children with neuro-divergence. The RAD gave the study "low or no probative value" because it found the Applicant "has not established that he has the profile contemplated within [the article]..." In a similar vein, the RAD found the other evidence had low probative value because it was not possible to determine whether the Applicant's condition fits within the terms of reference of the studies.

[24] There are two major problems with the RAD's analysis on this point. First, several of the reports expressly discuss the situation of persons with mild intellectual disabilities, even if that specific term is not used. The study about the mothers' attitudes discussed their views towards

children with mild intellectual disabilities (although the study uses the antiquated term “mental retardation” to describe the condition). The Applicant had provided other evidence showing that the older usage had been replaced with more modern terms that do not carry the pejorative connotations. The RAD did not deal with this evidence.

[25] Second, the RAD was required to examine the Applicant’s risk of persecution on his return to Nigeria, by examining the evidence about the treatment of similarly situated individuals. The evidence in the record deals with individuals with a variety of comparable conditions – commonly described as persons who are neuro-divergent - including autism. Some of the information dealt specifically with children with a mild intellectual disability. Considered as a whole, the evidence called for an examination of the Applicant’s risks in Nigeria based on widespread social exclusion, apparently fuelled in part by a lack of services and in part by negative attitudes towards individuals with intellectual disabilities because of a belief that their condition was caused by supernatural forces or witchcraft. The RAD did not have to accept all of this evidence, but it did need to engage with it.

[26] The Applicant’s claim centred on his fear of gangs in Nigeria, as well as his fear of persecution because of his mental disability. The RAD found his evidence on the first point to be unpersuasive, and rejected the second aspect of his claim because it found the evidence was not specific enough in relation to his particular diagnosis. In reaching the second conclusion, the RAD’s analysis is unreasonable because it did not engage with the substance of the evidence in the record. Its finding that some of the evidence did not address the Applicant’s specific

diagnosis is true; however, some of the evidence did deal with the situation of children with mild intellectual disabilities, and other evidence dealt with broadly similar conditions.

[27] The RAD needed to analyze how this evidence applied to the Applicant's future risks, from a realistic and real-world perspective. To take but one example, what risks would the Applicant face based on his social presentation and reactions when confronted by others – as described in his narrative, the expert evidence as well as his brother's affidavit? Would he face risks because of the pervasive belief that his social presentation was caused by – or a sign of – the supernatural or witchcraft? It is not my role on judicial review to draw any conclusion on this point, I mention these simply as examples of the type of analysis of future risk the RAD was required to engage in. Its failure to do so is sufficiently serious as to call into question the entire decision.

[28] For the reasons set out above, I find the RAD's decision to be unreasonable. The decision will be quashed and the Applicant's case is sent back for reconsideration by a different panel.

[29] There is no question of general importance for certification.

**JUDGMENT in IMM-11056-23**

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

1. The application for judicial review is granted.
2. The decision of the Refugee Appeal Division dated August 15, 2023, is hereby quashed and set aside. The matter is remitted back to the Refugee Appeal Division for reconsideration by a different Panel.
3. There is no question of general importance for certification.

"William F. Pentney"

Judge

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

**DOCKET:** IMM-11056-23  
**STYLE OF CAUSE:** UGOCHUKWU GODWILL EGWUEKWE v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HALIFAX, NOVA SCOTIA

**DATE OF HEARING:** SEPTEMBER 19, 2024

**JUDGMENT AND REASONS:** PENTNEY J.

**DATED:** OCTOBER 1, 2024

**APPEARANCES:**

Christine Cooper FOR THE APPLICANT

Shauna Hall-Coates FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Halifax Refugee Clinic FOR THE APPLICANT  
Halifax, Nova Scotia

Attorney General of Canada FOR THE RESPONDENT  
Halifax, Nova Scotia