Federal Court  Cour fédérale

Date: 20170420

Docket: IMM-3828-16

Citation: 2017 FC 385

Ottawa, Ontario, April 20, 2017

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

MARY OLUWATOBI OLALERE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] for judicial review of a decision by the Refugee Appeal Division [RAD], dated August 26, 2016 [Decision], which dismissed the Applicant's appeal of a decision by the Refugee Protection Division [RPD] that denied her claim for refugee protection.

II. BACKGROUND

[2] The Applicant is a 19-year-old citizen of Nigeria who entered Canada on a student visa on January 24, 2016. She claims a fear of return to Nigeria based on her refusal to undergo female genital mutilation [FGM] and to marry Chief Olusoji Okadapo.

[3] On February 4, 2016, the Applicant filed a claim for refugee protection, which was heard on April 20, 2016. A subsequent decision by the RPD dated May 3, 2016 rejected the Applicant's claim on the basis that she was not credible and that there was an internal flight alternative [IFA] available.

[4] The Applicant then appealed the RPD's decision to the RAD on the basis that the RPD had erred in its credibility findings and its assessment of the IFA. Since new evidence was not submitted by the Applicant, the RAD proceeded without an oral hearing, as required by s 110(3) of the *IRPA*.

III. DECISION UNDER REVIEW

[5] A Decision communicated by the RAD to the Applicant on September 2, 2016 confirmed the RPD's decision and dismissed the Applicant's appeal.

[6] In its analysis of the merits of the appeal, the RAD focused on the determinative issue of the IFA and applied the two-prong test from *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) [*Rasaratnam*].

A. *First Prong*

[7] The RAD began with an assessment of the first prong, which requires the satisfaction, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the part of the country in which an IFA is found to exist and/or the claimant would not be personally subject to a risk to life or a risk of cruel and unusual treatment, punishment, or danger, believed on substantial grounds to exist in the IFA. In this instance, the IFA locations identified were Lagos, Ibadan, Port Harcourt, and Abuja.

[8] The RAD considered the Home Office UK Border Agency Report [UKBA Report] which advised that: Nigerians had the right to travel within the country; internal relocation to escape ill treatment from non-state agents was available and that such relocation would not be unduly harsh; exit and re-entry regulations for Nigerians did not exist; and Nigerians are permitted to travel abroad and apply for asylum without suffering human rights violations upon return. Additionally, there was information that indicated the Nigerian Police Force [NPF] was ineffective, as it suffered from a serious lack of resources, including office space, personnel, training, skilled leadership, vehicles, and communication equipment. This information led the RAD to conclude that it was unlikely that anyone would know the Applicant had returned to Nigeria or be able to track her down unless she notified them.

[9] Next, the RAD evaluated the transcript from the RPD hearing, in which the Applicant stated a fear of being subject to dangerous rituals and undue torture by her father and Chief Okadapo upon her return to Nigeria. However, the RAD noted that the Applicant did not contest

the RPD's findings on the first prong of the IFA test, nor did she provide persuasive evidence to advance the argument that she is not free from persecution aside from a simple statement. Accordingly, the RAD agreed with the RPD's analysis and findings on this issue.

[10] The RAD then considered the possibility that people would search for the Applicant upon her return to Nigeria. In this regard, the RAD noted: the Applicant lacked a high profile in Nigeria; the Applicant had not alleged such a search for her had occurred after her departure from Nigeria; and the lack of evidence that individuals such as her family and Chief Okadapo had the interest or resources for such a search in a country of 177 million people, particularly in the proposed IFA locations, all of which had populations in excess of 1.5 million.

[11] Based upon these considerations, the RAD was not convinced that the Applicant had established, on a balance of probabilities, that she would be tracked down in the IFA locations. The Applicant had not provided persuasive evidence that anyone continued to search for her throughout Nigeria, nor that such a search would be successful, given the NPF's lack of effectiveness and the fact that the Nigerian authorities would not be notified of her return if she did not advise them. Accordingly, the first prong was not satisfied.

B. *Second Prong*

[12] The second prong requires that the conditions in the IFA locations are such that it would not be unreasonable, in all circumstances, for the claimant to seek refuge there.

[13] The RAD looked at the RPD's decision, in which the following were noted: the Applicant had good employment potential and could support herself in the IFA locations; the Applicant could receive continued support from her mother; and the availability of resources for vulnerable women facing forced circumcision. Although the Applicant had argued a lack of due consideration to evidence that indicated women could be stigmatized in their new communities as a result of social and cultural constraints, or face economic constraints, the RAD found that the Applicant faced limited barriers because of her education and ability to speak both English and the national language.

[14] The test of reasonableness required an evaluation of the conditions in the IFA for the Applicant or similarly situated persons. In accordance with *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589, the threshold for unreasonableness is high and hardship associated with dislocation and relocation is not sufficient.

[15] Accordingly, the RAD found, on a balance of probabilities, that there were no serious social, economic, or other barriers to the Applicant relocating to Lagos, Ibadan, Port Harcourt, or Abuja, which confirmed the RPD's decision. As such, the RAD also found, on a balance of probabilities, that the Applicant had an accessible and viable IFA in the aforementioned cities.

[16] Upon this determination, the burden of proof shifted to the Applicant to demonstrate that the IFA option did not exist by showing a serious possibility of being persecuted in the new location or that removal would subject her personally to a risk of life, cruel and unusual treatment or punishment, or a danger of torture. The RAD found that the Applicant had failed to

discharge this onus. As a result, the RAD did not assess the credibility issue raised by the Applicant. The RAD found the Applicant was not a Convention refugee or a person in need of protection and dismissed the appeal.

IV. ISSUES

[17] The Applicant submits that the following are at issue in this application:

1. Whether the RAD erred when it failed to conduct an independent assessment of the claim?

2. Whether the RAD erred in its IFA assessment?

V. STANDARD OF REVIEW

[18] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[19] Decisions of the RAD in the context of an IFA analysis are reviewed under the standard of reasonableness: *Ugbekile v Canada (Citizenship and Immigration)*, 2016 FC 1397 at paras 12-14.

[20] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at para 47, and *Khosa v Canada (Citizenship and Immigration)*, 2009 SCC 12 at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

VI. STATUTORY PROVISIONS

[21] The following provisions from the *IRPA* are relevant in this proceeding:

Decision	**Décision**
111 (1) After considering the appeal, the Refugee Appeal Division shall make one of the following decisions:	111 (1) La Section d'appel des réfugiés confirme la décision attaquée, casse la décision et y substitue la décision qui aurait dû être rendue ou renvoie, conformément à ses instructions, l'affaire à la Section de la protection des réfugiés.
(a) confirm the determination of the Refugee Protection Division;	

VII. ARGUMENTS

A. *Applicant*

[22] The Applicant submits that the Decision is unreasonable because the RPD erred by not conducting a thorough analysis of her subjective fear, thereby basing its conclusion on the availability of an IFA on arbitrary and capricious grounds.

(1) First Prong

[23] The Applicant submits that the RAD failed to properly consider the adduced evidence regarding detection in the IFA locations. In the Decision, the RAD found that the Applicant only provided a statement that she feared persecution, which ignores the evidence such as the *viva voce* testimony, the narrative in the Applicant's basis of claim [BOC], and the affidavits that discussed the influence of the agent of persecution.

[24] In her BOC, the Applicant asserted that her agent of persecution in Nigeria, Chief Okadapo, had ties to the police who could aid in the search of the Applicant if she returned to Nigeria. The affidavits of Toyin Olalere and Hannah Ojo also spoke to Chief Okadapo's connections in Nigeria and his intention to subject the Applicant to FGM. The Decision does not contain any indication that the RAD assessed this evidence, which gives rise to an inference that the evidence was overlooked: *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1425 at para 17 [*Cepeda*].

[25] The Applicant argues that the RAD appeared to require definitive proof of the agents' influence, which is a standard beyond the balance of probabilities and a reason for judicial intervention: *Henguva v Canada (Citizenship and Immigration)*, 2013 FC 483 at para 16.

[26] Additionally, the Applicant contends the RAD selectively preferred evidence in the UKBA Report. In concluding that the NPF would not be able to find the Applicant due to a lack of resources, including communications equipment and vehicles, the RAD ignored the section in the report that discussed the cutting-edge technology provided to the NPF, such as state of the art vehicles equipped with modern technology.

[27] The Applicant also takes issue with the RAD's finding that the Applicant had failed to provide a reasonable explanation as to why she believed she would be discovered in the IFA locations. The Applicant had submitted that the presence of Boko Haram in Abuja as an explanation. The RAD accepted this explanation but said Boko Haram was limited to high-level attacks according to the IRB National Documentary Package [NDP], which conflicts with the evidence from the same NDP that states that Boko Haram attacks schools, airports, and other public places in Lagos and Abuja, two of the IFA locations. The RAD's finding that there was no evidence that Boko Haram would pursue the Applicant also conflicts with the information in the NPD that Boko Haram persecutes members of the Applicant's religion and has committed gross human rights violations with impunity as a result of inadequate government protection. In addition to demonstrating another example of selective use of evidence, this finding is also a fundamental error, as evidence of similarly situated persons at risk is enough to ground a lack of state protection: *Canada (Attorney General) v Ward*, [1993] 2 SCR 689.

[28] The Applicant submits that the RAD clearly failed to engage with the evidence, while stating the Applicant had adduced no evidence of risk in the IFA locations. As a result of the RAD's failure to conduct a thorough analysis of the evidence, the Decision cannot stand.

(2) Second Prong

[29] Similarly, the Applicant takes the position that the RAD failed to properly consider the adduced evidence regarding reasonableness of relocation to the IFA locations in the second prong of the test.

[30] The RAD closed its mind to documentary evidence that speaks to the challenges of relocation for women in Nigeria. The profile of the Applicant should have been taken into consideration, yet the RAD did not acknowledge that the Applicant is a 19-year-old female who has always lived with her parents before coming to Canada and is clearly vulnerable. The Applicant testified that: she did not know the culture, language, and customs of the people in the IFAs; did not have a home or house to go to in the IFAs; and that she had never worked, and did not have employment waiting in the IFAs. Contrary to the jurisprudence, the RAD was not sensitive to the age, gender, level of education, ethnicity, religion, financial circumstances or ability to secure a livelihood, or support network of the Applicant: *Idrees v Canada (Citizenship and Immigration)*, 2014 FC 1194.

[31] In her appeal, the Applicant had adduced objective documentary evidence on discrimination for those who relocate in Nigeria, such as the NDP, UK Country of Origin Information Report on Nigeria, and British-Danish 2008 FFM Report. The RAD ignored

pertinent information such as: settlers were often denied access to the resources, rights, and privileges that locals would have; attractive, young, and single women were vulnerable to abuse, harassment, and trafficking when relocating without economic means or family networks; and the existence of social and humanitarian disadvantages on women who relocate, including a lack of accommodation and job opportunities, as well as the fear of losing their own social network. In stating that the Applicant faced limited barriers in relocation to the IFA locations due to her education and ability to speak the English and national languages, the RAD failed to engage with the evidence on the difficulties that women face in relocation within Nigeria.

[32] Furthermore, the RAD paid no attention to the psychological makeup of the Applicant, which is central to the question of whether the IFA is reasonable and cannot be disregarded: *Okafor v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1002 at paras 13, 11, and 15 [*Okafor*]. Natalie Riback's psychological assessment indicated that the Applicant displayed symptoms of post-traumatic stress disorder, generalized anxiety disorder, and major depressive disorder. In its determination that the Applicant could safely relocate within Nigeria, the RAD did not engage with her psychological condition, which is significant given that the she requires ongoing psychological treatment.

[33] Due to the failure to take into consideration the aforementioned factors in the Decision, the Applicant submits that the RAD did not consider all of the evidence in its entirety with an open mind.

(3) Lack of Independent Assessment

[34] The Applicant further argues that the RAD did not make a reasonable effort to explore the arguments that she presented with an open mind, instead choosing to continuously defer to the RPD's finding without weighing the issues on both sides. The RAD recounted the RPD's arguments and cited the same reasons in its refusal. While the RPD is owed a measure of deference, the RAD must perform its own assessment of all of the evidence in determining whether the RPD relied on a wrong principle of law or failed to assess the facts to the point of making a palpable and overriding error. On questions of fact and mixed fact and law, the RAD should apply a correctness standard: *Huruglica v Canada (Citizenship and Immigration)*, 2014 FC 799 at para 98.

[35] The Applicant submits that there is little evidence in the Decision to demonstrate that the RAD conducted an independent assessment of her claim since there was no reference to the Applicant's testimony or evidence specific to the conclusion that the Applicant had a viable IFA, and there was no identification of the arguments put forth in the Applicant's appeal.

[36] Accordingly, the Applicant requests the Decision be quashed.

B. *Respondent*

[37] The Respondent submits that the Decision is reasonable. The RAD conducted an independent review of the evidence, as stated multiple times throughout the Decision, with specific reference to pieces of evidence. The few references to the RPD's findings demonstrate

an endorsement of the RPD's conclusions on a particular piece of evidence, not that the RAD did not consider the claim independently. The fact that the RAD arrived at the same conclusion as the RPD does not mean the RAD failed to conduct an independent assessment.

[38] Moreover, there is no error in the IFA analysis. The RAD correctly applied the test in *Rasaratnam*, above. The Respondent notes that when the issue of an IFA is raised, the onus is on the Applicant to demonstrate that an IFA is not available; in the present case, the Applicant failed to discharge this onus. The Respondent also notes that the Applicant did not provide new evidence or request an oral hearing before the RAD.

(1) First Prong

[39] With regards to the objective documentary evidence, the RAD noted: internal relocation to escape ill treatment from non-state agents, as in the present case, is almost always an option in Nigeria; in the absence of exceptional circumstances, such a relocation is not unduly harsh; it is not illegal for Nigerians to claim asylum abroad, as the Applicant has done; and there were no reports from Nigerian NGOs that returned failed asylum seekers suffered human rights abuses. Therefore, the Applicant was safe to return.

[40] As to the fear of persecution, the RAD noted that the Applicant did not provide persuasive evidence to support her argument that she would not be free from persecution in the IFA locations. The RAD reasonably found that the Applicant had failed to reasonably explain why she feared persecution in the IFA locations, noting that, in reference to the agents of persecution: the agents did not have the means or motivation to search for the Applicant in the

IFA locations; the agents were not alleged to have searched for the Applicant since her departure; and the agents did not have the resources, will, or capacity to find her in a country of 177 million. The RAD also found the Applicant did not have a high profile and there was no persuasive evidence of the police searching for her throughout Nigeria.

[41] The Respondent disagrees with the Applicant's argument that the RAD failed to consider her evidence on fear of persecution. The RAD specifically considered the possibility that the police would search for her, but reasonably found the evidence was not persuasive. Moreover, the RAD did not sate that the Applicant had not provided any evidence, but rather that the evidence was not persuasive, on a balance of probabilities.

[42] Consequently, the RAD's finding that the Applicant could live in any of the IFA locations without serious possibility of persecution was reasonable, given the lack of persuasive evidence presented by the Applicant to establish she could be tracked down.

(2) Second Prong

[43] In the analysis of the second prong, the RAD was reasonable in concluding that the Applicant could relocate to one of the IFA locations because there were no serious social, economic, or other barriers. There will always be hardship with relocation, but the threshold for unreasonableness is very high and requires conditions that would jeopardize the life and safety of a claimant: *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 at paras 14-15.

[44] Moreover, the guidelines do not change the well-established test for an IFA, but rather provide guidance on the evaluation of the weight and credibility of the evidence: *Syvyryn v Canada (Citizenship and Immigration)*, 2009 FC 1027 [*Syvyryn*]. In *Syvyryn*, the decision-maker failed to take into account relevant factors by solely relying on the fact that the claimant had 20 years of experience in the accounting field, and by ignoring the age, gender, and personal circumstances of the claimant. However, the present case is distinguishable because the RAD has noted the Applicant's level of education and language abilities as well as her familiarity with the cultural practices and norms in the IFA locations, having spent all of her life in Nigeria. Additionally, the RAD also noted the Applicant's good employment potential and financial support from her mother. Furthermore, the RAD noted the RPD's references to the documentary evidence that stated there were resources available for vulnerable women facing FGM who had relocated in Nigeria and required physical protection.

[45] The Respondent contends that the Applicant fails to take into account the high threshold required to challenge the viability of an IFA and her onus to produce evidence specific to her situation. The RAD references the Applicant's experience, language abilities, education, sophistication, and maternal financial support, all of which the Applicant could rely on after relocation.

[46] The Respondent also submits that the facts of this case are similar to *Okechukwu v Canada (Citizenship and Immigration)*, 2016 FC 1142 [*Okechukwu*] and *Odurukwe v Canada (Citizenship and Immigration)*, 2015 FC 613 at paras 44-49, which upheld decisions concerning IFAs for a woman in Nigeria.

[47] Accordingly, the Respondent takes the position that the RAD reasonably reviewed the evidence in its IFA analysis, which finds that there are several cities that provide a safe area for the Applicant's relocation. The Respondent requests that this application for judicial review be dismissed.

(3) Post-Hearing Submissions

[48] The Respondent argues that the Applicant's reliance on *Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 at para 49 [*Kanthasamy*] is misguided and inapplicable to the issue of IFA. That case dealt with an application for permanent residence upon humanitarian and compassionate grounds, which the RAD does not concern itself with. The RAD's obligation is to grant protection to Convention refugees and persons in need of protection and an IFA determination is in itself an assessment that must include country conditions. A psychologist report such as Ms. Riback's is insufficient to counter an IFA determination. The decision in *Okechukwu*, above, at para 39 found that a psychologist report "was of little assistance to the IFA issue because it did not assess the conditions in Nigeria or consider the psychological impact of the applicant's relocation within that country." The Respondent submits that Ms. Riback's report is subject to the same limitations.

VIII. ANALYSIS

[49] The RAD found that "since IFA is a determinative issue…there is no need to assess the credibility issue or other issues raised by the Appellant." So the RAD Decision deals solely with the IFAs.

[50] The Applicant has raised a number of points for review. After reviewing the Decision and the submissions (written and oral) of counsel on both sides, my conclusion is that the only point of substance raised by the Applicant in this application is the allegation that the RAD failed to consider the Applicant's psychological make-up when addressing the second prong of the test for IFAs in *Rasaratnam*, above.

[51] As the Court pointed out in *Okafor*, above:

> [13] The Court finds that the words of Mosley J. in *Cartagena v Canada (Minister of Citizenship and Immigration)*, 2008 FC 289 at para.11 apply to the case at bar:
>
> > [11] … Psychological evidence is central to the question of whether the IFA is reasonable and cannot be disregarded: *Singh v. Canada (Minister of Citizenship and Immigration)*, 97 F.T.R. 139, [1995] F.C.J. No. 1044. The panel failed to thoroughly assess the reasonableness of the locations suggested as viable IFAs in the context of Mr. Cartagena's situation and vulnerable mind-set.

[52] The Respondent relies upon *Okechukwu*, above, but the preponderance of the jurisprudence of this Court is that psychological evidence must be considered in an IFA analysis.

[53] The decision in *Okechukwu* at para 39 found that a psychologist report "was of little assistance to the IFA issue because it did not assess the conditions in Nigeria or consider the psychological impact of the applicant's relocation within that country."

[54] However, in addition to *Okafor*, above, which says that "psychological evidence is central to the question of whether the IFA is reasonable and cannot be disregarded," Justice

Brown found in *Asif v Canada (Citizenship and Immigration)*, 2016 FC 1323 at para 33 [*Asif*] that the determinative issue in the IFA analysis was dependent on the assessment of the psychologist report, indicating that psychologist reports are relevant in an IFA analysis. Justice Brown ultimately dismissed the application because the RAD was reasonable in finding various issues with the report including that it had: crossed the line separating expert opinion from advocacy; made findings of credibility that should have been reserved for the panel; made very serious conclusions regarding the applicant's psychological health after only one interview; and spoke to the lack of available resources in Pakistan without providing any evidence. However, in the present case, the RAD fails to engage the report at all, let alone provide reasonable reasons for its dismissal. *Asif* was also decided after *Okechukwu* and thus also after *Kanthasamy*.

[55] In *Verma v Canada (Citizenship and Immigration)*, 2016 FC 404 at paras 34-36, Justice Strickland reviewed the relevant jurisprudence and found as follows:

> 34 This Court has also held that it is unreasonable to afford little weight to a psychological report solely on the basis that the events it describes were not based on first hand knowledge of the psychologist and that the RPD errs when it rejects expert psychological evidence without basis (*Lainez* at para 42). Other jurisprudence has determined that evidence of third parties who have no means of independently verifying the facts to which they testify is likely to be ascribed little weight, whether it is credible or not (*Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 at para 26). That principle has been applied to decision-makers' assessments of reports from counsellors (*Forde v Canada (Citizenship and Immigration)*, 2012 FC 147 at paras 30-31) and letters from psychiatrists and other mental health professionals (*Nguyen v Canada (Citizenship and Immigration)*, 2015 FC 59 at paras 8-9).
>
> 35 In my view, the jurisprudence suggests that the RAD was entitled to weigh the psychological evidence based on the source of the facts relied on, but that the Reports could not be dismissed solely because they relied on evidence from the female Applicant. However, that is not what the RAD did in this case. Here the RAD

> considered the totality of the evidence, including the Riback and Choi Reports, in determining that a suitable IFA was available to the Applicants. It did not afford the Riback and Choi Reports little weight solely because of the self-reporting, it also found that the analyses were not accompanied by or based on clinical testing. And while the Applicants take issue with the RAD's statement that the issues that caused the female Applicant to seek further medical intervention were not necessarily the direct result of the problems she encountered in India, the Choi Report specifically mentions a number of factors that were attributed to the female Applicant's overall distress. The RAD further found that the Applicants had failed to establish that treatment would be unavailable to the female Applicant in the proposed IFA locations. In my view, given the foregoing, the RAD's weighing of the psychological evidence was not unreasonable in this case, particularly considering the lack of any evidence that the female Applicant followed up on the treatment and medication proposed by the authors of those reports.
>
> 36 Further, as stated in *Momodu* and *Abdalghader*, the onus or burden of proof is on the Applicants to prove that no IFA exists or that the proposed IFA is unsuitable. In the absence of evidence that the female Applicant would be unable to obtain the recommended treatment and medication in the proposed IFA, this aspect of the RAD's decision falls within the possible, acceptable outcomes (see for example, *Alves Dias v Canada (Citizenship and Immigration)*, 2012 FC 722 at para 22; *Gonzalez v Canada (Citizenship and Immigration)*, 2008 FC 1259 at para 12 [*Gonzalez*]).
>
> (emphasis added)

[56] In my view, this suggests in the present case, that Ms. Riback's report should at least have been acknowledged and assessed.

[57] The psychological evidence in the present case came from the assessment completed by Ms. Riback, who is a therapist in Toronto. Ms. Riback made the following points of note:

> Based on my observations and evaluations, it is my clinical impression that Ms. Olalere is exhibiting symptoms consistent with post-traumatic stress disorder. Post-traumatic stress disorder (PTSD) is a condition created by exposure to one or more psychologically distressing events outside the range of usual

> human experience, which would be markedly distressing to almost anyone...
>
> Ms. Olalere is also exhibiting symptoms consistent with generalized anxiety disorder and major depressive disorder. She is very concerned about her state of mind and eager to heal psychologically and emotionally; however, Ms. Olalere cannot begin to work through the past events and trauma she has experiences as long as there is an imminent threat of being sent back to Nigeria. I believe that Ms. Olalere's return to Nigeria will very likely cause her mental and physical stress symptoms to increase considerably, and for her psychological and emotional state to deteriorate. The anxiety and depression that Ms. Olalere is currently experiences [*sic*] is very concerning, especially considering her age. . . . A young woman, such as Ms. Olalere, who has suffered from such fear and trauma, requires appropriate counseling and a strong supportive network in order to rebuild a sense of security.
>
> If Ms. Olalere was to remain in Canada, a plan of medical and therapeutic care could be implemented involving medication, proper counseling, and strategies which could help her work through the depression, anxiety, and trauma she currently feels.

[58] The RAD makes no attempt to engage with this evidence which is central to the issue of whether the IFA is reasonable for the Applicant.

[59] In my view, the RAD's failure to deal with this evidence renders the Decision unreasonable. The evidence contradicts the principal finding that "there are no serious social, economic or other barriers to the Appellant's relocating to the cities of Lagos, Ibadan, Port Harcourt or Abuja." This means that the RAD should have specifically addressed the psychological evidence and its failure to do so means that, on the principles in *Cepeda*, above, the Court finds it was either overlooked or deliberately disregarded.

[60] In each individual case, it seems to me, it will be necessary to examine what the psychological report says, and whether it raises issues that should be addressed in the second prong of the IFA analysis. Here, the report says that "Ms. Olalere's return to Nigeria will very likely cause her mental and physical stress symptoms to increase considerably, and for her psychological and emotional state to deteriorate." It seems to me that this is a consideration that is material to the Applicant's ability to function in one of the suggested IFAs and should have been addressed. The RAD did not need to accept it as decisive, but it is material and was either overlooked or ignored. In any reconsideration the RAD will also need to consider whether there is any evidence presented to show that the psychological help the Applicant needs is not available at one of the IFAs in Nigeria.

[61] Counsel agree there is no question for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is allowed. The Decision is quashed and the matter is returned for reconsideration by a differently constituted RAD.
2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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