

Federal Court



Cour fédérale

**Date: 20180615**

**Docket: IMM-5050-17**

**Citation: 2018 FC 621**

**Ottawa, Ontario, June 15, 2018**

**PRESENT: The Honourable Mr. Justice Southcott**

**BETWEEN:**

**OLAYOMBO MULIKATLAI KASSIM**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] This is an application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board [RPD], dated November 10, 2017, which found the Applicant to be neither a refugee nor a person in need of protection.

[2] As explained in greater detail below, this application is dismissed, because the determinative issue in the RPD's decision was its assessment of the viability of a proposed internal flight alternative [IFA] within Nigeria to Port Harcourt, including its related credibility assessment, and I have found no reviewable error in those assessments.

## II. Background

[3] The Applicant, Olayombo Mulikatlai Kassim, is a citizen of Nigeria who seeks refugee protection in Canada pursuant to ss 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[4] Ms. Kassim has three brothers and two sisters. One of her brothers made a successful refugee claim in Canada on the basis of his sexual orientation as a bisexual man. Her mother also made a successful refugee claim in Canada. Her claim was based on her religious beliefs, having converted from Islam to Christianity, and her support for her brother. Ms. Kassim's allegations include the following.

[5] Her father is devoutly Muslim and is an assistant Imam for their local mosque in Ibadan, Nigeria. When she was younger, Ms. Kassim was attracted to Christianity but her father punished her for straying from Islam. On one occasion he locked her up for two days without food. Her father is also angry with her for supporting her brother and her mother by writing affidavits for their refugee claims. Her father and other family members in Nigeria speculated that, because she supports her brother, she must be homosexual. Her father told their Imam and

others in the family's local mosque, including one worshipper who is a police officer, about his issues with his daughter.

[6] Ms. Kassim traveled to the United States to attend a wedding in May 2012. She says that she did not claim refugee status at this time because she was hoping the issues with her father would improve. However, following her return to Nigeria, she was threatened by the mosque member who is a police officer. She fled the country for Canada on July 22, 2012. She did not make a refugee claim upon entry, which she says was because she did not know how to do so, but rather filed a claim two days later once she had consulted with her mother and brother. She claims that she fears returning to Nigeria because her father and others, including the police, will persecute her for having supported her brother, as they now perceive her to be homosexual, and for converting to Christianity.

### III. **The RPD Decision**

[7] The RPD found that Ms. Kassim would not face a serious possibility of persecution on a Convention ground, and that, on a balance of probabilities, she would not personally be subjected to a risk to life or a risk of cruel and unusual treatment or punishment or a danger of torture upon return to Nigeria. The RPD's decision focused upon Ms. Kassim's credibility, her delay in leaving Nigeria, and the availability of an IFA in Port Harcourt.

[8] The RPD found that Ms. Kassim's delay in fleeing Nigeria and her alleged lack of knowledge as to how to regularize her status in Canada undermined her credibility. It did not accept her explanation for not claiming immediately upon entry to Canada, given her level of

education and her family's experience with refugee matters. While stating that these findings were not determinative, the RPD concluded that this portion of Ms. Kassim's testimony was not credible.

[9] The RPD noted the two-part test for determining whether an applicant has an IFA, the first part of which requires that the RPD be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the proposed IFA. In response to the proposed IFA of Port Harcourt, Ms. Kassim testified that her father would pursue her there because she had tarnished his image. She was unsure how he would locate her in Port Harcourt but stated that a police officer had come looking for her in Benin City, which is also far away from her home in Ibadan, and that she believed her father must have connections. She was unable to explain these connections or to provide corroborative evidence of them.

[10] The RPD noted that the information surrounding the police in Benin City was not contained in Ms. Kassim's Personal Information Form [PIF]. She explained that she had not included this because she thought she would have the opportunity to speak to the issue at the hearing. The RPD rejected this explanation and drew a negative inference as to her credibility because the omission related to information central to her refugee claim, i.e. that her father would pursue her anywhere in Nigeria and that he has the capacity to do so.

[11] The RPD held that the Applicant's assertion that her father would pursue her in Port Harcourt and could locate her there was speculative and without merit because there was no link between her father and any authority in Port Harcourt and there was no evidence that her father

had the means or connections necessary to initiate a nation-wide search for Ms. Kassim. Further, as Port Harcourt is mostly Christian, the RPD held that she could seek protection of the police in Port Harcourt if her father did manage to locate her there.

[12] The first part of the IFA test having been met, the RPD turned to the second part: whether it was reasonable for the claimant to relocate to the IFA. It held that there was insufficient evidence that the Applicant would be unable to access childcare in Port Harcourt or, given her profile as a sophisticated and well-educated person who speaks English (the language most commonly used in Port Harcourt), that she would be unable to find employment.

[13] The RPD also considered Ms. Kassim's position that relocation to Port Harcourt was unreasonable because she was non-indigenous. It held that, while there is documentary evidence of discrimination against non-indigenes, the evidence did not indicate that the Applicant would be at risk of extreme hardship arising from ethnicity. The RPD also considered the fact that Ms. Kassim is female but concluded that this did not undermine the viability of the IFA.

[14] Having found that there was an IFA for Ms. Kassim in Port Harcourt, the RPD rejected her claim.

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

[15] The Applicant raises the following issues for the Court's consideration:

- A. Did the RPD err in its assessment of the Applicant's credibility?
- B. Did the RPD err in its assessment of the Applicant's subjective fear?

C. Did the RPD err in its analysis of the IFA?

D. Did the RPD err in its assessment of well-founded fear/objective risk?

[16] The parties agree, and I concur, that the RPD's decision is to be reviewed on a standard of reasonableness.

V. Analysis

[17] In my view, the outcome of this application for judicial review must turn on the reasonableness of the RPD's IFA analysis, as that was the determinative issue in the RPD's decision. This includes consideration of the RPD's assessment of Ms. Kassim's credibility to the extent that it influenced that the IFA analysis. I do not consider it necessary to examine the RPD's adverse credibility conclusions surrounding Ms. Kassim's delay in claiming refugee status, as I do not read that those conclusions as influencing the RPD's consideration of the IFA. Indeed, the RPD notes that the credibility findings related to the delay in asserting the claim are not determinative of the outcome of the claim.

[18] However, the RPD did make an adverse credibility finding specific to its analysis of the first prong of the IFA test. This finding significantly influenced its conclusion that this prong of the test had been met. The RPD was required to be satisfied, on a balance of probabilities, that there was no serious possibility of Ms. Kassim being persecuted in the proposed IFA. In responding to the proposed IFA of Port Harcourt and the RPD's inquiry at the hearing as to how her father might locate her there, Ms. Kassim testified that a police officer had twice visited her friend's house in Benin City looking for her. The first visit was alleged to have occurred during

the period she was hiding at that friend's house, and the second was alleged to have occurred after she left Nigeria. She offered this as evidence of her father's connections and his ability to locate her in a city that is far away from her home city of Ibadan. The RPD rejected this evidence because there had been no mention of it in Ms. Kassim's PIF, other than in an addendum which referred to letters received from friends, which letters made no mention of the alleged police visit prior to her departure from Nigeria. The RPD concluded that such an omission seriously undermined the credibility of Ms. Kassim's evidence surrounding the police in Benin City.

[19] Ms. Kassim challenges the reasonableness of this credibility assessment, relying on Justice Campbell's explanation in *Diaz Pentec v Canada (Citizenship and Immigration)*, 2007 FC 1335 that not every detail has to be included in a claimant's PIF. Ms. Kassim argues that the police officer's attendance at her friend's house in Benin City is an elaborative detail and that it was unreasonable for the RPD to treat its omission from her PIF as a basis to impugn her credibility.

[20] Ms. Kassim made the same argument before the RPD, explaining that she thought she would have the opportunity to speak to this event at her hearing. The RPD rejected this argument, because it considered the assertion that the police located her in Benin City to relate to a material aspect of her claim, i.e. that her father would pursue her and that he has connections to do so. I find nothing unreasonable in this analysis, as this Court has held that significant omissions in a claimant's PIF can affect the claimant's credibility (see, e.g. *Lopez Pineda v Canada (Minister of Citizenship and Immigration)*, 2007 FC 889 at paras 14 and 15).

[21] The RPD also considered Ms. Kassim's argument, raised again on judicial review, that it was not necessary to include this information in her PIF because it was contained elsewhere in the evidence, specifically in correspondence from the friend. However, the friend's letter refers only to the second visit. The RPD concluded that this did not assist Ms. Kassim, and I find that conclusion reasonable.

[22] Ms. Kassim relies on the presumption that a claimant's testimony is truthful (see *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 at para 5 (FCA)) and the principle that it is an error to reject a claim because of a lack of corroborative evidence in the absence of a reason to doubt the claimant's credibility (see *Dayebga v Canada (Citizenship and Immigration)*, 2013 FC 842 at para 28). I accept these principles but find them to have little application to the present case. As noted by the RPD, Ms. Kassim testified that she believed her father would pursue her in Port Harcourt because she, her mother, and her brother had tarnished his image. However, she was not sure how her father would locate her, testifying that she believed he had connections without being able to explain them. The RPD found that there was a lack of evidence establishing her father's influence and connections. This does not represent an adverse credibility determination or offend the principle described above surrounding corroborative evidence, as Ms. Kassim's testimony related only to her belief, not to any facts in support of that belief, other than involving the police in Benin City. As explained above, RPD reasonably rejected that evidence because of its omission from the PIF.

[23] Ms. Kassim submits that the RPD ignored evidence corroborative of her position that her father could locate her in Port Harcourt, including affidavits from two of her brothers and one



from a friend. She notes in particular her brother's affidavit sworn in October 2017 which included testimony that the police are still looking for Ms. Kassim and that she is not safe anywhere in Nigeria. However, Ms. Kassim has identified nothing in these documents which I would consider to be evidence of her father's ability to locate her in Port Harcourt. I therefore find nothing in this evidence which undermines the reasonableness of the RPD's IFA analysis.

[24] Ms. Kassim also refers to country condition documentation which notes corruption in the Nigerian police and argues that her father could take advantage of this corruption to use the police to find her. While the RPD makes no specific reference to this evidence, it is trite law that the panel is presumed to have considered all the evidence (see *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 at para 1; *Khosa v Canada (Citizenship and Immigration)*, 2010 FC 83 at para 3), and I do not find this country condition documentation to be sufficiently probative of Ms. Kassim's specific allegations to rebut that presumption.

[25] Ms. Kassim argues that the RPD erred in requiring definitive proof of her father's ability to locate her in the proposed IFA, which she submits represent a higher standard of proof than the required proof on a balance of probabilities. She takes the position that the RPD's application of this higher standard is evident from the question it posed during the hearing, as to her father's ability to locate her, which she submits represent the same error as was identified by Justice Tremblay-Lamer in *Henguva v Canada (Citizenship and Immigration)*, 2013 FC 483 [*Henguva*] at paragraph 16:

[16] I also agree with the applicant that the Board erred by requiring that the applicant show that her uncle and cousin "would be able" to find her in Walvis Bay as part of its analysis, as this

held the applicant to a higher standard than that of a “serious possibility of persecution”.

[26] The RPD’s question to Ms. Kassim was “So how would he find you in Port Harcourt?” I do not consider this question to raise the concern identified by Justice Tremblay-Lamer in *Henguva*. It was entirely legitimate for the RPD, in exploring the viability of the IFA, to ask Ms. Kassim how the agent of persecution might locate her there. In the decision itself, the RPD found on a balance of probabilities that Ms. Kassim’s father would be unable to initiate a nationwide search for her and that there is therefore not more than a mere possibility that the agent of persecution would locate her in Port Harcourt. I find no error in the RPD’s selection or application of the standard of proof applicable to this aspect of its analysis.

[27] Ms. Kassim also argues that the RPD erred in assessing only her risk as a result of her religious conversion and that it failed to assess the risk as a result of her support for her bisexual brother. She refers to persecution of the LGBT community in Nigeria, notes that those who support LGBT family members are themselves perceived to be LGBT, and submits that, in connection with that risk, her agent of persecution would be not only her father but also the police.

[28] I disagree that the RPD’s decision can be read as ignoring Ms. Kassim’s risk as a result of her support for her brother. The RPD expressly accepted that Nigeria is a homophobic society and that others in a family are perceived to be part of the LGBT community if one family member is found to be a part of that community. The RPD also noted that Ms. Kassim’s brother is bisexual and that this became widely known. Having accepted these facts, and that Ms.

Kassim's father would be displeased with her wanting to convert to Christianity, the RPD proceeded to consider the viability of the IFA. I therefore read the IFA analysis as considering whether Ms. Kassim could avoid the serious possibility of persecution, under both categories of risk, if she were to move to Port Harcourt.

[29] Consistent with Ms. Kassim's submission, I do read the IFA's analysis as focusing on whether her father would have the ability to pursue her in Port Harcourt, as opposed to risks she might face from the police independent of her father's intervention. At the hearing of this judicial review, in support of their respective positions on the reasonableness of this analysis, the parties' counsel both relied on the transcript of Ms. Kassim's testimony before the RPD. The Respondent's counsel argued that Ms. Kassim did not testify that she could not relocate to Port Harcourt because the fact that her brother was bisexual would become known there and she could consequently be perceived as homosexual. Ms. Kassim's counsel disagreed, referring to her testimony that she would have to be looking over her shoulder in fear if she were living in Port Harcourt.

[30] I do not consider the testimony about looking over her shoulder in fear to be particularly helpful in assessing this argument, as it could just as easily refer to fear of being located by her father. However, shortly before the testimony to which Ms. Kassim's counsel referred, the transcript records the following evidence:

MEMBER: Now again, why would it be a problem to practice Christianity in – let's say in Port Harcourt?

CLAIMANT: It wouldn't be a problem in Port Harcourt but with a nametag and my name being with the police as a lesbian and in

support of bisexual, I would be in great danger in any part of Nigeria.

MEMBER: But you're not a bisexual and you would be returning with two children. So why would the police seek you out in Port Harcourt because they think you're a lesbian? I don't understand that.

CLAIMANT: Based on the family information and my father as being the head of the Iman, assistant Iman –

MEMBER: The head of?

CLAIMANT: The Muslim community, the Assistant Iman.

MEMBER: But that connection does not extend to Port Harcourt, correct? You said –

CLAIMANT: No.

[31] This evidence demonstrates Ms. Kassim referring to risk from the police as a perceived member of the LGBT community, but she links this risk to her father's influence. Against this backdrop, I do not considered it unreasonable for the RPD to have conducted its analysis under the first prong of the IFA test as it did, focusing on whether her father had influence in Port Harcourt and the means to locate her there.

[32] Finally, still in connection with the first prong of the test, Ms. Kassim refers the Court to *Ogunluya v Canada (Citizenship and Immigration)*, 2009 FC 1203 at para 26, where Justice Russell noted that the RPD had accepted as uncontroverted evidence in that case that, if the Nigerian national police were looking for the claimant, it followed that there was nowhere the claimant could be safe in Nigeria. Justice Russell found the RPD's rejection of the claim in that case to be unreasonable in view of that evidentiary conclusion. This authority does not assist Ms. Kassim, as it was based on the particular evidence and conclusions of the RPD in that case.

[33] I turn to the second prong of the IFA test, that conditions of the proposed IFA be such that it would not be unreasonable, upon consideration of all the circumstances, including consideration of claimant's personal circumstances, for the claimant to seek refuge there. Ms. Kassim submits that the RPD failed to properly consider the evidence before it surrounding the reasonableness of her relocating to Port Harcourt. She refers to evidence as to economic and other challenges faced by women who attempt to relocate in Nigeria, challenges faced by non-indigene Nigerians seeking employment in Port Harcourt, and the high cost of living in that city. However, her submissions represent a disagreement with the RPD's assessment of the documentary evidence. The RPD considered Ms. Kassim's concerns about being unable to find employment, the viability of the proposed IFA given her gender, and evidence of discrimination against non-indigene Nigerians, but it arrived at a reasoned conclusion based upon its review of the documentary evidence that it was not unreasonable for Ms. Kassim to relocate to Port Harcourt. Her submissions raise no basis for the Court to find that the RPD's conclusion is unreasonable.

[34] Having found no reviewable error on the part of the RPD, this application for judicial review must be dismissed. Neither of the parties proposed any question for certification for appeal, and none is stated.

**JUDGMENT IN IMM-5050-17**

**THIS COURT'S JUDGMENT is that** this application for judicial review is dismissed.

No question is certified for appeal.

“Richard F. Southcott”

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Judge

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

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