

Federal Court



Cour fédérale

**Date: 20200327**

**Docket: IMM-4326-19**

**Citation: 2020 FC 435**

**Ottawa, Ontario, March 27, 2020**

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

**BETWEEN:**

**GIFT OGOONNA OSSAI**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant claimed asylum in Canada in 2017 based on persecution in Nigeria. Her claim was denied by the Refugee Protection Division [RPD] in 2018, and her appeal was dismissed by the Refugee Appeal Division [RAD] on June 19, 2019. Both the RPD and RAD concluded that the Applicant had a viable internal flight alternative [IFA] in Lagos, Nigeria.

[2] The Applicant submits that the RAD erred by not stating the standard of review it was applying, by not properly applying the Chairperson's Guideline 4, "Women Refugee Claimants Fearing Gender-Related Persecution" [CG4] to her case, and by not considering her personal circumstances when applying a previous decision that had been designated a jurisprudential guide for claims from Nigeria. For those reasons, she says that the RAD decision should be set aside and the matter returned for redetermination.

[3] As discussed below, I find no error is established. I further find the IFA finding of the RAD is reasonable.

### **Background**

[4] The Applicant is a citizen of Nigeria and is married to a Nigerian citizen, with whom she has two Canadian-born children. She was born in 1985 in Delta State, and lived there until she fled Nigeria in 2014. The Applicant was forced into marriage at 13, and her husband [the First Husband] beat her, raped her, and forced her to have abortions. She complained to the police, but they did not assist. When her First Husband died in 2005, she was "given over" to her husband's brother [the Brother] via a customary marriage. He was also very violent. The Applicant tried to escape in 2009 to the nearest large city of Port Harcourt, but the Brother found her and the police were again of no help.

[5] In 2013, the Applicant graduated with a bachelor's degree in business from Delta State University. That year, she began a relationship and she married her second husband [the Second Husband] in December 2013, without the Brother's knowledge. After the Applicant became

pregnant with her Second Husband's child in October 2014, they fled to the United Arab Emirates to plan a new life away from Nigeria. After a short time in Lagos, Nigeria, the Applicant went alone to South Africa, before rejoining her Second Husband in Kenya and then returning to Lagos. Both the Applicant and her Second Husband obtained visitor's visas to Canada, but he could not accompany her because his mother was seriously ill.

[6] The Applicant travelled to Canada in May 2015, and gave birth in July 2015. The Brother froze her bank account and contacted the Applicant's family searching for her. He apparently still considered her his "wife" and knew nothing of her marriage to her Second Husband. Her asylum claim was based on her fear of the Brother.

[7] During a brief visit to Canada by her Second Husband, the Applicant became pregnant and a second Canadian-born child was born in 2017.

[8] The RPD accepted the facts as stated by the Applicant and found her to be credible; however, it found that she had an IFA in Lagos, Nigeria.

[9] The RAD found that the RPD complied with CG4 by providing a procedure that was sensitive to the Applicant's trauma, and by not drawing any inappropriate negative inferences. Indeed the RPD had accepted entirely her evidence about her persecution. The RAD applied the two-pronged IFA test to facts on the record, and agreed with the RPD that Lagos was a viable IFA. In considering the second prong, namely whether it was reasonable in all the circumstances for the Applicant to seek refuge in Lagos, the RAD applied the reasoning in RAD file no. TB7-

19851 [the JG Decision]. The IRB chair had previously designated this case as jurisprudential guidance to tribunal members assessing the viability of southern and central Nigerian cities as IFAs for claimants persecuted by non-state actors.

*Not Stating the Standard of Review the RAD was Applying*

[10] The Applicant submits that the RAD erred by failing to state the standard of review, and appeared to apply an incorrect palpable and overriding error standard. She says this Court is thus unable to assess whether the RAD decision is reasonable because the standard of review it applied is unknown, and the RAD did not conduct its own independent review of the evidence.

[11] I agree with the submission of the Respondent that the decision as a whole shows that the RAD understood that *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 applied and that it conducted a *de novo* review of the RPD decision, except on questions of credibility where the RPD had an advantage because it heard oral evidence.

[12] The RAD accepted the RPD's finding that the Applicant was credible; however, it stated that it would do its "own assessment" of the evidence, and proceeded to do just that in its analysis. The decision as a whole shows the RAD applied the correct standard of review. Accordingly, the Applicant has not shown any reviewable error in this regard.

*The RAD's application of CG4*

[13] The Applicant submits that the RAD applied CG4 in a rote manner, limiting its application of CG4 to the adequacy of the RPD's hearing procedure. She says that the RAD unreasonably failed to consider the severity of her persecution in the IFA analysis, or the principle in para C4 of CG4 that the panel must consider a claimant's ability to travel safely to the IFA.

[14] CG4 is mainly directed at preventing unfair negative inferences by panel members at oral hearings of claimants whose truthful testimony may lack the common signs of credibility and reliability because of the effects of gendered violence they experienced. On this point, the RAD accepted the Applicant's whole account of her persecution just as the RPD had. Accordingly, the CG4 concerns do not arise.

[15] When considering the possibility of harm to the Applicant if she were to seek refuge in Lagos, the RAD agreed with the RPD's conclusion that her oral evidence that the Brother or people he knew would track her there was mere speculation. Importantly, the Applicant was not giving evidence of her experiences, but was making a submission about the likelihood that the Brother would find her in such a large city. It was reasonable for the RAD to find this was speculative because the Applicant provided no concrete evidence of the Brother's connections to Lagos nor did she offer any logical reasons why he might be able to track her there. This is not a misapplication of CG4 or an unfair negative inference about the Applicant's experiences; the Applicant still bears the onus of proving her risk of harm in the IFA.

[16] The RAD also considered the Applicant's ability to travel to Lagos, concluding that she could fly there directly without risking persecution in Delta State. Thus, contrary to the Applicant's contention, the decision followed the principle in para C4 of CG4.

[17] Contrary to the Applicant's contention, CG4 does not allow the severity of her persecution in Delta State to compensate for the relative safety and suitability of Lagos as an IFA. The RAD reasonably applied CG4 and the Applicant has not shown that it erred.

*Lagos as a viable IFA*

[18] The two prongs of the test for a viable IFA are: (1) that there is no serious possibility of the claimant being persecuted in the proposed IFA; and (2) that it would not be unreasonable under all the circumstances for the claimant to seek refuge there: *Thirunavukkarasu v Canada (Employment and Immigration)*, [1994] 1 FC 589 (FCA).

[19] The Applicant contends that consideration of Lagos as an IFA was unreasonable because the facts in the JG Decision were distinguishable, and because the RAD did not consider her personal circumstances when reviewing the factors in the JG Decision for the second prong.

[20] I prefer the submission of the Respondent that the main issue is whether the factors the RAD used when assessing the second prong resulted in a reasonable decision.

[21] Pointing to the RAD's detailed consideration of the possibility of persecution and its consideration of the Applicant's personal circumstances against the JG Decision factors, the

Respondent submits the Applicant fails to show any errors that would make the decision unreasonable. I agree.

[22] The applicant failed to discharge her onus of proving either that she would face a serious possibility of persecution in Lagos, or that it would be unreasonable in the circumstances for her to seek refuge there.

[23] The main issue in the JG Decision is the criteria to be used to assess a city in Nigeria as an IFA from non-state persecution, which is exactly the situation of the Applicant. The facts she advances to distinguish it centre on the prior persecution, not on the issue of the viability of a proposed IFA. The RAD reasonably concluded that the JG Decision was relevant guidance on the issue before it and applied its criteria. As the Respondent notes, contrary to the Applicant's submission, the RAD's consideration of the second prong of the test is made up entirely of a consideration of the Applicant's personal circumstances.

[24] The RAD concluded on the first prong that the Applicant's change of name, the distance of Lagos from Delta State, the Brother's functional illiteracy, and the size of the city meant there was no serious possibility the Applicant would be persecuted there by the Brother. It considered the Applicant's submission before the RPD that the Brother would have ways of tracking her there via his family, friends, or the police, but it provided cogent reasons for rejecting this submission as speculative.

[25] The result is that the Applicant has not discharged the onus of proving she would face a serious possibility of persecution in Lagos. The decision shows a logical chain of analysis and a reasonable result on the first prong.

[26] For its consideration of the second prong, the RAD applied the Applicant's personal circumstances to the factors in the JG Decision. It found that transportation, language, employment prospects, accommodation, religion, ethnicity, and the availability of health care were all either neutral or positive in considering Lagos as a reasonable place of refuge. With the aid of the Nigeria National Documentation Package, the RAD determined that the Applicant could fly to Lagos directly, she spoke its main language of English, she had run a hairstyling business before and could do so again, she could live with her Second Husband, her Christian religion would not attract persecution there and health care was available. Contrary to the Applicant's submissions, this is not a perfunctory recitation, but a detailed application of the Applicant's circumstances to a comprehensive set of forward-looking criteria. Overall, the RAD found that the Second Husband living in Lagos militated in its favour as an IFA, and concluded that the Applicant had not discharged her onus of proving it would be unreasonable for her to take refuge in Lagos.

[27] The Applicant submits the severity of her persecution should weigh in the IFA second-prong analysis. The RAD acknowledged the terrible trauma the Applicant experienced. However, that trauma and its effects will be a consideration wherever the Applicant finds refuge, in Nigeria or elsewhere. The RAD already found that there is not a serious risk of persecution in Lagos; accordingly, it is not logical to include the severity of the Applicant's past persecution as



a factor in whether it is reasonable for the Applicant to seek refuge in Lagos in the future. It was reasonable for the RAD to consider only the factors in the JG Decision, which all related to the forward-looking suitability of Lagos as a refuge. The RAD's analysis of the second IFA prong was reasonable.

### **Conclusion**

[28] For these reasons, this application is dismissed. No question was proposed for certification. I find none on these facts.

**JUDGMENT IN IMM-4326-19**

**THIS COURT'S JUDGMENT is that** the application is dismissed and no question is certified.

"Russel W. Zinn"

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Judge

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

**DOCKET:** IMM-4326-19

**STYLE OF CAUSE:** GIFT OGOONNA OSSAI v MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** FEBRUARY 10, 2020

**JUDGMENT AND REASONS:** ZINN J.

**DATED:** MARCH 27, 2020

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