

Federal Court



Cour fédérale

**Date: 20200824**

**Docket: IMM-5592-19**

**Citation: 2020 FC 849**

**Ottawa, Ontario, August 24, 2020**

**PRESENT: The Honourable Madam Justice Roussel**

**BETWEEN:**

**UFUOMA UWEJEYAH  
ODUWA DORAH AKENUWA  
AISOSA FREIDA AKENUWA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicants seek judicial review of a decision by the Refugee Appeal Division [RAD] dated August 15, 2019, dismissing their appeal and confirming the decision rendered by the Refugee Protection Division [RPD] under subsection 111(1) of the *Immigration and Refugee*

*Protection Act*, SC 2001, c 27, that they are neither Convention refugees nor persons in need of protection.

[2] The Principal Applicant, Ufuoma Uwejyah, and her two (2) minor daughters are citizens of Nigeria. They came to Canada in December 2014 and sought refugee protection. The basis of their claims for protection is the Principal Applicant's fear that her daughters will be forced to undergo female genital mutilation [FGM]. She alleges that her eldest daughter died after her husband's family forced her to undergo FGM.

[3] On March 17, 2015, the RPD dismissed the claims, but the decision was later set aside by the RAD and returned to the RPD with instructions. The Applicants' claims were rejected a second time on April 26, 2018 by the RPD. The determinative issue for the RPD was the Principal Applicant's credibility.

[4] The Applicants appealed the decision to the RAD. Like the RPD, the RAD found that the Principal Applicant was not a credible witness and that she had failed to provide adequate trustworthy evidence to establish her allegations.

[5] In their application for judicial review, the Applicants submit that the RAD erred in its assessment of the Principal Applicant's credibility. They also submit that the RAD failed to conduct an independent analysis of their claims.

## II. Analysis

[6] The standard of review applicable to RAD decisions on credibility and the assessment of evidence is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 143 [*Vavilov*]; *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35; *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (QL) at para 4 (CA)).

[7] When the reasonableness standard applies, “[t]he burden is on the party challenging the decision to show that it is unreasonable” (*Vavilov* at para 100). The reviewing court must consider “the decision actually made by the decision maker, including both the decision maker’s reasoning process and the outcome” (*Vavilov* at para 83) to determine whether the decision 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). Close attention must be paid to a decision maker’s written reasons and they must be read holistically and contextually (*Vavilov* at para 97). It is not a “line-by-line treasure hunt for error” (*Vavilov* at para 102). If “the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and [if] it is justified in relation to the relevant factual and legal constraints that bear on the decision”, it is not for the reviewing court to substitute the outcome it would prefer (*Vavilov* at para 99).

A. *Issue 1: The Principal Applicant's Credibility*

[8] The Applicants contend that the RAD committed a reviewable error in concluding that the Principal Applicant's credibility was impugned by her failure to mention in her Basis of Claim [BOC] narrative the death threat received from her husband's uncle and the date of her eldest daughter's death. The Applicants also argue that the RAD's conclusion regarding the affidavit from the Principal Applicant's husband is based on suspicion and therefore speculative.

(1) Omission of Death Threat in the BOC Narrative

[9] The Principal Applicant states in her BOC narrative that on September 28, 2014, after fleeing to another town, she saw her husband's uncle who asked her if she lived there. She writes that he started to insult her and indicated that he would expose her whereabouts. However, in her testimony before the RPD, she added that the uncle also threatened to kill her if she did not tell him where she was staying with the children. When asked why she had omitted to mention the direct death threat and the name of the uncle in her BOC narrative, the Principal Applicant indicated she did not know she should include details of threats or important events relating to her allegations.

[10] The RAD agreed with the RPD that the Principal Applicant's explanation for omitting this information was not credible. The RAD noted that the BOC form clearly instructs claimants to include everything that is important to their claims, including dates, names and places. The Principal Applicant signed Declaration A of the BOC form indicating that the BOC form was complete, true and correct, that she was able to read English and that she had fully read and

understood the content of the form and attached narrative. Given the seriousness of the threat, the RAD was of the view that a person facing the persecution alleged by the Principal Applicant would have mentioned the direct death threat in her BOC narrative.

[11] The Applicants submit that it was unreasonable for the RAD to conclude that the omission to mention the death threat in the BOC narrative affected the Principal Applicant's credibility. They argue the omission was neither significant nor central to their claims, which were based on the threat of FGM.

[12] I disagree.

[13] The alleged threat is a significant and central part of their claims because it demonstrates the determination of the Principal Applicant's husband's family to have the girls undergo FGM and how far they would go to do so. It also establishes a basis for the Principal Applicant's fear. The Applicants have failed to persuade me that the RAD's analysis and conclusion are unreasonable.

## (2) The Date of the First Daughter's Death

[14] The Applicants submit that the RAD erred in noting that the Principal Applicant did not include the date of her first daughter's death in her BOC narrative and in finding that the daughter did not die from FGM. They argue that the details concerning the first daughter's death were included in section 5 of the BOC, where claimants must list all family members, living or dead. The daughter's date of birth and death were clearly indicated, thus contradicting the

findings of the RAD. In addition, the BOC narrative and the daughter's death certificate provide details on the circumstances surrounding her death, including the place of death, her age and the date of her death.

[15] I agree that the date of the daughter's death is found elsewhere in the Principal Applicant's BOC and in the evidence submitted by the Applicants. However, the RAD's statement must be considered in its proper context.

[16] In its decision, the RPD found that the Principal Applicant's narrative lacked details on important matters at the heart of the claim. It noted a few examples, including the fact that the Principal Applicant had provided very few dates in her narrative such as the date of her daughter's death and the dates she relocated. When asked why this was so, the Applicant indicated she did not know there was such a need for detail. The RPD rejected the Principal Applicant's explanation, noting that question 2(a) of the BOC specifically required that detailed explanations be provided, including dates, names and places. The RPD also noted that competent and seasoned counsel represented the Principal Applicant.

[17] On appeal, the RAD considered the Principal Applicant's argument that counsel had failed to advise her of the need for this information and that the RPD had erred in holding her responsible for her counsel's negligence. The RAD found the Principal Applicant's explanation for the lack of details in the narrative not credible, noting that she had signed her BOC form indicating she understood English and its instructions. The RAD also found that the Principal Applicant provided extremely vague and evolving testimony regarding the alleged death of her

daughter. After addressing discrepancies arising from the information in the daughter's death certificate, the RAD concluded that the testimony of the Principal Applicant regarding the daughter's death lacked credibility and found, as a result, that the Principal Applicant had not established on a balance of probabilities that her eldest daughter had died from FGM, as alleged by the Applicants.

[18] Upon review of the record, I am satisfied that neither the RAD nor the RPD committed a reviewable error in stating that the date of the daughter's death was not included in the Principal Applicant's narrative. When read as a whole, the reasons of the RPD and the RAD clearly demonstrate that the issue relates to the lack of details in the narrative. The explanation of the Principal Applicant for the lack of details did not convince the RAD and it was reasonably open to the RAD to have doubts concerning the cause of death of the eldest daughter. The Applicants have failed to persuade me that the RAD's analysis and conclusion are unreasonable.

(3) The Husband's Affidavit

[19] The RPD found that the similarities between the Principal Applicant's BOC narrative and her husband's affidavit were such that they were likely written by the same individual. The RAD reviewed and compared both documents and noted that several paragraphs of the BOC narrative and the affidavit contained extremely similar paraphrased text. The RAD then noted the Principal Applicant's testimony that : (1) she never gave her husband any instructions as to what to include in his affidavit; (2) she did not provide a copy of her written BOC narrative to her husband; (3) she wrote the narrative before her husband's affidavit; and (4) the husband's affidavit was drafted independently. Based on the extensive similarities between the two (2) documents, the

RAD concluded that, on a balance of probabilities, the Principal Applicant's claim that the documents were drafted independently was not credible. Then, in responding to an argument raised by the Applicants in their appeal memorandum, the RAD found that the RPD was not biased when it considered the availability of fraudulent documents in Nigeria since the potential availability of fraudulent documents in Nigeria was a relevant consideration when assessing the likelihood that the affidavit was not genuine.

[20] I have reviewed the BOC narrative and the affidavit from the Principal Applicant's husband. I agree that both documents contain extensive similar paraphrased text and follow the same sequence. Given the testimony of the Principal Applicant that both documents were drafted independently, I am satisfied that it was reasonably open to the RAD to find that the Principal Applicant's testimony that the documents were drafted independently was not credible. The Applicants have failed to persuade me that the RAD's analysis and conclusion on this issue are unreasonable.

B. *Issue 2: Independent Assessment by the RAD*

[21] The second issue raised by the Applicants in their judicial review application is equally unfounded. They submit that the RAD erred by relying on the RPD's credibility findings without conducting an independent assessment of their claims. The RAD's reasons clearly demonstrate otherwise. I am satisfied that the RAD conducted an independent assessment as required and that it came to its own conclusions regarding the Applicants' evidence and the Principal Applicant's credibility. The Applicants have failed to identify a reviewable error by the RAD.



III. Conclusion

[22] To conclude, I am satisfied that, when read holistically and contextually, the RAD's decision meets the reasonableness standard set out in *Vavilov*. The decision is based on internally coherent reasons, and it is justified in light of the relevant facts and the law. The reasons are also transparent and intelligible. The Applicants are essentially asking this Court to reweigh the evidence to reach a different conclusion. That is not the role of this Court on judicial review (*Vavilov* at para 125).

[23] Accordingly, the application for judicial review is dismissed. No questions of general importance were proposed for certification, and I agree that none arise.

**JUDGMENT in IMM-5592-19**

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

1. The application for judicial review is dismissed;
2. No question of general importance is certified.

“Sylvie E. Roussel”

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Judge

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

**DOCKET:** IMM-5592-19

**STYLE OF CAUSE:** UFUOMA UWEJEYAH ET AL v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE BETWEEN  
TORONTO, ONTARIO AND OTTAWA, ONTARIO

**DATE OF HEARING:** AUGUST 18, 2020

**JUDGMENT AND REASONS:** ROUSSEL J.

**DATED:** AUGUST 24, 2020

**APPEARANCES:**

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