

Federal Court



Cour fédérale

**Date: 20201230**

**Docket: IMM-977-20**

**Citation: 2020 FC 1194**

**Ottawa, Ontario, December 30, 2020**

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

**BETWEEN:**

**OLUFEMI ABDULKABIR IMAM  
LATEEFAT ADEBIMPE OLATUNDUN HAMMED  
IMAN  
ASIYAH YETUNDE OLUWABUSAYO IMAN  
AHSAN ADESHINA OLUWASUNMIBARE IMAM**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicants seek judicial review of a decision from the Refugee Appeal Division [RAD] dated January 16, 2020, which confirmed the refusal of the refugee claim of the Applicants as they were found to be neither Convention refugees, nor persons in need of

protection pursuant to the *Immigration and Refugee Protection Act*, SC 2001, c 27, sections 96–97(1).

[2] The principal Applicant [PA], his wife and their minor children are citizens of Nigeria and are claiming refugee protection for fear of harm by a family member and fear of gender-based persecution in Nigeria. The PA left Nigeria for the United States [US] in October 2014, later followed by his family in July 2017. Though his wife filed a claim for refugee status there, the PA did not. In January 2018, the Applicants sought asylum in Canada.

[3] The Refugee Protection Division found that the Applicants were not credible and that their conduct was inconsistent with the alleged fear. The RAD confirmed the decision based on credibility, delay and the principal Applicant's failure to seek asylum in the United States.

[4] This judicial review relates to the reasonability of the RAD's findings on the female Applicants' claim of gender-based persecution and the PA's failure to claim asylum in the US. A reasonable decision is internally coherent, rational and justified in light of the factual and legal constraints (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

[5] The Applicants raise a number of issues, namely that the female Applicants' claim should have been considered independently from that of the PA's claim and that the *Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution* was not properly followed. It is also argued that the PA's failure to seek asylum in the US was not inconsistent with subjective fear as a reasonable explanation based on the political climate was provided.

[6] At the outset, credibility findings are sufficient to affect the entirety of the claim. It is not sufficient to point to different outcomes based on the evidence to intervene; rather, the onus requires proof that the finding was made in a perverse or capricious manner or without regard for the evidence (*Zhu v Canada (Citizenship and Immigration)*, 2013 FC 1139 at paras 47, 49).

[7] The RAD found in the present case that the PA made material omissions that were not reasonably explained in regards to his failure to mention fear of harm in Nigeria, either to himself, his wife or children during the CBSA interviews, as well as his failure to list in *Schedule A* his work on the farm where the fear of harm from a family member was initiated.

[8] The Applicants do not contend these findings other than to reiterate their disagreement with the rejection of their explanation that the omissions were as a result of the detention context, the belief that a broad account sufficed, and the PA being sleep-deprived and depressed.

[9] This does not amount to the bar required by case law to intervene on the credibility finding. The determination carries over in considering the PA's explanation for failure to seek asylum at the first opportunity for reasons of political climate.

[10] In this regard, the RAD had – together with articles on political context – considered the PA's failure to inquire or explore any option to resolve his fear of harm, notably during the lapse of time of seven months between the expiry of his visitor visa and his sponsorship from an American citizen, and from the expiry of the latter in January 2017 onwards. In essence, the Court is being asked to reweigh evidence, which it cannot do in judicial review.

[11] With respect to the Applicants' arguments on the female Applicants' claim of gender persecution, it is evident that the claim attests to personal experiences and fears that are independent from the PA's claim, despite the same family unit and similar narratives. The RAD rightly considered the female Applicants' claim separately insofar as it consisted of a distinct analysis within the decision and expressly required the onus to be satisfied independently from the collective Applicants' claims of fear of a family member.

[12] The analysis focused on the Applicants' onus to establish that their membership in a particular social group faces a serious possibility of gender-based persecution in Nigeria. This is in line with the *Guidelines*, considered by the RAD.

[13] Though country documentation pointed to widespread persecution in Nigeria, this alone was insufficient to support the claim. Consistent with the *Guidelines* and the *Country Information and Guidance*, the RAD indicated that the Applicants would need to show that they have a genuine fear of harm, which will depend on their particular circumstances (see also *Alkurd v Canada (Citizenship and Immigration)*, 2019 FC 298 at para 23). It did not require individualized set of facts; the RAD's use of *individual* or *subjective* fear of harm is not contrary to the analysis when read in context.

[14] To this point, the RAD determined that there was no evidence of fear of harm other than stated in the Basis of Claim: the wife's fear of the family member, the men who assaulted her in 2014 and the one that followed her in 2017. It did not take issue on credibility, nor on the narrative of the sexual assault. It was immaterial to reference evidence on this subject matter in

the claim – recognizing the chronology, previous testimony and evidence on record – based on the circumstantial evidence from neighbours, the wife’s testimony and a medical report, further to the Applicants’ previous history on file.

[15] Finally, the RAD indicated that the documentary evidence on the country did not provide any other support for why the Applicants would be at a serious risk of persecution. The wife is a professional, educated and married, and does not live alone in the south of Nigeria.

[16] The RAD thus concluded that the Applicants had not established that their profile would amount to a serious possibility of gender-based persecution in Nigeria.

[17] There is a presumption that the RAD considered the entirety of the evidence unless established otherwise; it is not required to refer to the entire record before it. The RAD’s findings – in regards to the PA’s credibility, his failure to seek asylum in the US, and the female Applicants’ claim of gender-based persecution – are reasonable. For the aforementioned reasons, the judicial review is dismissed.

**JUDGMENT in IMM-977-20**

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

There is no serious question of general importance to be certified.

"Michel M.J. Shore"

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Judge

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

**DOCKET:** IMM-977-20

**STYLE OF CAUSE:** OLUFEMI ABDULKABIR IMAM ET AL v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE IN MONTRÉAL,  
QUEBEC

**DATE OF HEARING:** DECEMBER 17, 2020

**JUDGMENT AND REASONS:** SHORE J.

**DATED:** DECEMBER 30, 2020

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