Federal Court  Cour fédérale

**Date: 20200325**

**Docket: IMM-3329-19**

**Citation: 2020 FC 417**

**Ottawa, Ontario, March 25, 2020**

**PRESENT: Mr. Justice Russell**

**BETWEEN:**

**OWEN RUKORO, ELDA UANDARA AND TJITJAORO RUKORO**

**Applicants**

**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 the decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada [RPD], dated May 9, 2019 [Decision], denying the Applicants' refugee and persons in need of protection claims under ss 96 and 97 of the *IRPA*.

## II. BACKGROUND

[2] The Applicants, Mr. Owen Rukoro, Ms. Elda Uandara, and their daughter, Ms. Tjitjaoro Rukoro, are citizens of Namibia. Mr. Rukoro and Ms. Uandara have been in a relationship for approximately 15 years and have had two more children together in Canada.

[3] The Applicants arrived in Canada from Namibia in 2011. Shortly after their arrival, the Applicants submitted refugee and persons in need of protection claims pursuant to ss 96 and 97 of the *IRPA*.

### A. *Mr. Owen Rukoro*

[4] Mr. Rukoro alleges that he left Namibia because he was persecuted as a bisexual man. He states that he was forced to hide his sexuality from his family and other members of his community and live a secret life. Mr. Rukoro testified that he particularly feared his father, whom he believed would violently attack him if he were to find out about his bisexuality.

[5] Mr. Rukoro notes that he first entered into a relationship with a man in Namibia when he was approximately 17, which lasted until his departure. While in Canada, he was also involved with a man named Laurens Kahuure, a citizen of Namibia, for approximately two years. He states that he has faced considerable persecution in Canada from members of the Namibian community due to his relationship with Mr. Kahuure and notes that his father called him in Canada after hearing rumours of his sexuality and consequently threatened him. Furthermore, while in Namibia, Mr. Rukoro states that he was spit on and attacked because of his sexuality.

B. *Ms. Elda Uandara and Ms. Tjitjaoro Rukoro*

[6] Ms. Uandara alleges that she left Namibia because she feared that her aunt would force her and her daughter into prostitution.

[7] Ms. Uandara claims that, following the death of her mother in 2000, she went to live with her aunt in Windhoek, who forced her to work as a prostitute. She testified that she went to the police for help in 2002 but was rebuffed. Eventually, she fled her aunt's home in 2003 and went to live with Mr. Rukoro in Aminuis. However, Ms. Uandara testified that her aunt continued to harass her in order to force her to, once again, work as a prostitute. She states that she has not had contact with her aunt since 2015 and that her aunt remains in Windhoek.

## III. DECISION UNDER REVIEW

[8] On May 9, 2019, the RPD found that the Applicants were not refugees in accordance with s 96 of the *IRPA* nor persons in need of protection in accordance with s 97(1) of the *IRPA*.

[9] In essence, the RPD found that, although the Applicants' claims were credible, the evidence did not demonstrate a well-founded fear of persecution and that, in any case, a viable internal flight alternative [IFA] existed both in Windhoek and/or in Walvis Bay.

A. *Credibility*

[10] The RPD found that the Applicants' claims were credible.

[11] Regarding Mr. Rukoro's claim, the RPD noted that the evidence and testimony supported the fact that he is bisexual. The RPD grounded this finding in the sworn testimony of both adult Applicants, the multiple witnesses who testified at the hearing on this point, the statutory declaration from Mr. Kahuure, and the psychological counselling report.

[12] As for Ms. Uandara's claim, the RPD concluded that the testimony and the evidence demonstrated that she had indeed been forced into prostitution by her aunt from 2000 to 2003. The RPD grounded this finding in her statutory declaration, the letter from her sister, and the psychological counselling report submitted.

B. *Well-Founded Fear of Persecution*

[13] Although the RPD found the Applicants to be credible and believed they had a subjective fear of persecution, the RPD concluded that the evidence did not establish a well-founded fear of persecution. In essence, the RPD found that: (1) any discrimination or harassment Mr. Rukoro would face in Namibia would not rise to the level of persecution; and (2) there was insufficient persuasive evidence that Ms. Uandara's aunt would be any more successful at forcing her back into prostitution than she was during the eight-year period in Namibia following her departure from her aunt's house in 2003.

(1) Mr. Rukoro's Claim

[14] Following a review of the documentary evidence, the RPD acknowledged that LGBTQ individuals face discrimination and harassment in Namibia, notably in the north where Mr. Rukoro is from. However, the RPD found that LGBTQ individuals are protected under the Namibian constitution as well as in international agreements to which Namibia is a signatory and that there is tolerance and acceptance in some communities. The RPD also noted that there have been some governmental efforts to abolish the offence of "sodomy" and that annual pride parades are considered constitutionally protected peaceful assembly and have not been met with violence. As such, the RPD found that Mr. Rukoro may face discrimination and harassment in Namibia but it would not rise to the level of persecution.

(2) Ms. Uandara

[15] Although the RPD found that Ms. Uandara was forced into prostitution by her aunt from 2000 until 2003, and that she had a subjective fear of persecution, the RPD found that it was unlikely that her aunt would be able to force her, or her daughter, into prostitution if they return to Namibia. The RPD noted that Ms. Uandara had no problem rebuffing her aunt's attempts to force her back into prostitution from 2003 until her departure to Canada in 2011. Moreover, the RPD found that Ms. Uandara is now 35 years old and has not had any contact with her aunt since 2015.

C. *Internal Flight Alternative*

[16] Finally, the RPD noted that, notwithstanding the finding that the Applicants do not have an objective well-founded fear of persecution, a viable exists in Windhoek or Walvis Bay.

[17] The RPD found that Mr. Rukoro would not face the same difficulties in large Namibian cosmopolitan centres that he faced years ago in a small parochial centre such as Aminuis, which is located in the north of the country. Although the Applicants argued that Namibia is a small country and that Mr. Rukoro's father could easily locate him because he has the financial means to do so, the RPD noted that there was no evidence that his father has the interest or resources to locate Mr. Rukoro in the proposed IFAs. The RPD found that there was also a lack of evidence demonstrating that Mr. Rukoro's father would try to kill him, as it appears his father might have already been aware of the rumours of his son's sexual orientation before Mr. Rukoro left for Canada, yet he did not attempt to harm him then.

[18] Regarding Ms. Uandara, the RPD acknowledged that Ms. Uandara's aunt lives in Windhoek but found that the Applicants could still relocate there. This is because from 2003 to 2011, Ms. Uandara's aunt was aware of her whereabouts but was still unable to force her back into prostitution. The RPD, nevertheless, stated that if the Applicants remained concerned about living in the same city as Ms. Uandara's aunt, Walvis Bay is also available to them as an IFA.

[19] Finally, the RPD noted that, in either city, there are more employment opportunities, housing options, and medical resources available to them than in Aminuis, given that these cities are larger and more populous.

## IV. ISSUES

[20] The issues raised in the present application are as follows:

1. Did the RPD err in joining these claims?
2. Did the RPD err in failing to consider the Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution [*Gender Guidelines*]?
3. Did the RPD err in failing to consider the Chairperson's Guideline 9: Sexual Orientation and Gender Identity and Expression [*SOGIE Guidelines*]?
4. Did the RPD err in finding that the Applicants lacked a well-founded fear of persecution?
5. Did the RPD err by failing to take into account the lack of state protection available to the Applicants in Namibia?
6. Did the RPD err in finding that a viable IFA existed in Windhoek or Walvis Bay?

## V. STANDARD OF REVIEW

[21] In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at paras 23-32 [*Vavilov*], the majority sought to simplify how a court selects the standard of review applicable to the issues before it. The majority did away with the contextual and categorical

approach taken in *Dunsmuir* in favour of instating a presumption that the reasonableness standard applies. However, the majority noted that this presumption can be set aside on the basis of (1) clear legislative intent to prescribe a different standard of review (*Vavilov*, at paras 33-52), and (2) certain scenarios where the rule of law requires the application of the standard of correctness, such as constitutional questions, general questions of law of central importance to the legal system as a whole and questions regarding the jurisdictional boundaries between two or more administrative bodies (*Vavilov*, at paras 53-64).

[22] In their memorandum, the Applicants do not explicitly make any submissions on the applicable standard of review in this case. However, they do appear to apply the standard of reasonableness throughout and make submissions to this Court on how to conduct a review of this Decision according to this standard. Meanwhile, the Respondent submits in their memoranda that the applicable standard of review is that of reasonableness. I agree, except for the issue of the joinder of proceedings, which amounts to an issue of procedural fairness. As for the other issues raised in this application, there is nothing to rebut the presumption that the standard of reasonableness applies in this case.

[23] Some courts have held that the standard of review for an allegation of procedural unfairness is "correctness" (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59 and 61 [*Khosa*]). The Supreme Court of Canada's decision in *Vavilov* does not address the standard of review applicable to issues of procedural fairness (*Vavilov*, at para 23). However, a more doctrinally sound approach is that no standard of review at all is applicable to the question of procedural fairness. The

Supreme Court of Canada in *Moreau-Bérubé v New Brunswick (Judicial Council)*, 2002 SCC 11 stated that the issue of procedural fairness:

> requires no assessment of the appropriate standard of judicial review. Evaluating whether procedural fairness, or the duty of fairness, has been adhered to by a tribunal requires an assessment of the procedures and safeguards required in a particular situation (*Moreau-Bérubé*, para 74).

[24] Moreover, when reviewing a decision on the standard of reasonableness, the analysis will be concerned with whether it "bears the hallmarks of reasonableness—justification, transparency and intelligibility—and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para 99). Reasonableness is a single standard of review that varies and "takes its colour from the context" (*Vavilov*, at para 89 citing *Khosa*, at para 59). These contextual constraints "dictate the limits and contours of the space in which the decision maker may act and the types of solutions it may adopt" (*Vavilov*, at para 90). Put in another way, the Court should intervene only when "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov*, at para 100). The Supreme Court of Canada lists two types of fundamental flaws that make a decision unreasonable: (1) a failure of rationality internal to the decision-maker's reasoning process; and (2) untenability "in light of the relevant factual and legal constraints that bear on it" (*Vavilov*, at para 101).

## VI. STATUTORY PROVISIONS

[25] The following statutory provisions of the *IRPA* are relevant to this application for judicial review:

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| **Convention refugee** | **Définition de réfugié** |
| 96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion, | 96 A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques : |
| (a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or | a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays ; |
| (b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country. | b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner. |
| **Person in need of protection** | **Personne à protéger** |
| 97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former | 97 (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel |

| | |
|---|---|
| habitual residence, would subject them personally | elle avait sa résidence habituelle, exposée : |
| (a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or | a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture ; |
| (b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if | b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant : |
| (i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country, | (i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays, |
| (ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country, | (ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas, |
| (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and | (iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles, |
| (iv) the risk is not caused by the inability of that country to provide adequate health or medical care | (iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats. |

## VII. ARGUMENTS

### A. *Applicants*

[26] The Applicants argue that the RPD erred by: (1) joining their claims despite the substantial differences; (2) failing to consider the *Gender Guidelines* when assessing Ms. Uandara's claim; (3) failing to consider the *SOGIE Guidelines* when assessing Mr. Rukoro's claim; (4) failing to find a well-founded fear of persecution following a positive credibility finding; (5) failing to assess the lack of state protection available to the Applicants in Namibia; and (6) erroneously finding that a viable IFA existed in Windhoek or Walvis Bay. For these reasons, the Applicants argue that this application should be allowed.

(1) Joinder of Claims

[27] The Applicants argue that the RPD erred by joining their claims, despite counsel's request to separate the claims because of the substantial differences. The Applicants state that the RPD did not properly interpret ss 2(c), 2(d), and 2(e) of the *IRPA* and, as such, they did not receive a fair process.

(2) Application of the *Gender Guidelines*

[28] The Applicants say that the RPD failed to apply the *Gender Guidelines* when assessing Ms. Uandara's claim. They state that the RPD's Decision suggests that it thoroughly examined the positive aspects of the documentary evidence while almost completely ignoring the substantial evidence demonstrating the negative situation women face in Namibia and the lack of state protection available to them. In fact, the Applicants note that the RPD only cited two instances of negative treatment of women in its entire Decision. The Applicants submit that this

failure to consider this critical evidence is also inconsistent with *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] 175 FTR 35 at para 17.

(3) Application of the *SOGIE Guidelines*

[29] The Applicants argue that the RPD erred by failing to apply the *SOGIE Guidelines* when assessing Mr. Rukoro's claim despite recognizing that he was bisexual.

[30] The Applicants note that the evidence demonstrates that Mr. Rukoro has suffered persecution in the past due to his sexual orientation. This forced him to hide his sexuality in Namibia and later hide his sexuality from the Namibian community in Canada after he and Mr. Kahuure were harassed. The Applicants say that if Mr. Rukoro was forced to return to Namibia, the documentary evidence demonstrates that he would have to once again conceal his sexual orientation. As such, they argue that the RPD erred in finding that Mr. Rukoro did not have a well-founded fear of persecution in Namibia as both the *SOGIE Guidelines* and the jurisprudence recognize forced concealment of sexual orientation as persecution. See s 8.5.1 of the *SOGIE Guidelines* as well as this Court's decisions in *Sadeghi-Pari v Canada (Minister of Citizenship and Immigration)*, 2004 FC 282 at para 29; *VS v Canada (Citizenship and Immigration)*, 2015 FC 1150 at para 12; and *Wafa v Canada (Citizenship and Immigration)*, 2015 FC 1153 at para 22.

[31] The Applicants also take issue with the RPD's failure to assess the criminalization of sodomy and other sexual acts in Namibia according to the *SOGIE Guidelines*. The Applicants note that s 8.5.6 of the *SOGIE Guidelines* states that the criminalization of nonconforming sexual

orientations, sexual behaviours, or gender identities or expressions may be indicative of a well-founded fear of persecution, even if they are largely unenforced. The Applicants cite this Court's decision in *Peiris v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1251 at para 21. Moreover, the Applicants state that had the evidence been assessed according to the *SOGIE Guidelines*, the RPD would have found that the lack of evidence of enforcement of these laws, despite the evidence of harassment and discrimination against members of the LGBTQ community, results from the fact that no one is open about same-sex encounters. See *AB v Canada (Citizenship and Immigration*), 2009 FC 640 at paras 19-23.

[32] By this same token, the Applicants also state that a lack of information does not amount to a lack of persecution as many cases of human rights violations against LGBTQ persons go unrecorded. The Applicants say that the RPD failed to consider this point when assessing the evidence in this case despite the fact that the *SOGIE Guidelines* explicitly mention this issue at s 8.5.10. Instead, they insist that a cumulative assessment of the evidence of harassment and discrimination, as required by s 8.5.9 of the *SOGIE Guidelines*, clearly demonstrates that Mr. Rukoro would face persecution in Namibia.

[33] The Applicants say that the RPD erred by failing to assess whether a "sur place" claim has arisen in this case, pursuant to s 8.5.12 of the *SOGIE Guidelines*, seeing as Mr. Rukoro has made his sexuality known to members of the Namibian community in Canada, which maintains strong links to Namibia.

(4) Assessment of Well-Founded Fear of Persecution

[34] The Applicants argue that the RPD erred in finding that a well-founded fear of persecution did not exist despite finding that their claims were credible. The Applicants note that with a positive credibility finding, the RPD ought to have provided a positive decision under ss 96 and 97 of the *IRPA*.

(5) Assessment of State Protection

[35] The Applicants argue that the RPD erred by failing to fully examine the lack of state protection available to members of the LGBTQ community in Namibia and to women in accordance with the jurisprudence on this issue. Indeed, the Applicants note that the RPD did not conduct a contextual individualized analysis of the adequacy of state protection available to the Applicants. They state that, had the RPD done so, it would have found that Mr. Rukoro is unable to receive state protection in Namibia due to his sexual orientation, as indicated in the numerous examples in the documentary evidence submitted, and is "unwilling" to because availing himself of state protection would require him to admit breaking laws by engaging in sexual acts with same-sex partners. Moreover, regarding Ms. Uandara, the Applicants state that the RPD failed to assess the lack of state protection available to women, notably against acts of sexual violence.

(6) Internal Flight Alternative

[36] The Applicants argue that the RPD erred by failing to state and apply the correct legal test for assessing whether a viable IFA existed. Indeed, the Applicants note that this Court's jurisprudence is clear that a decision-maker must assess (1) whether a serious possibility of persecution or risk of harm exists in the proposed IFA, and (2) whether it is reasonable in the

circumstances for a claimant to seek refuge there. See *Kamburona v Canada (Citizenship and Immigration)*, 2013 FC 1052 at para 30 citing *Estrada Lugo v Canada (Citizenship and Immigration)*, 2010 FC 170 at paras 35-38.

[37] The Applicants state that the RPD erred by failing to assess whether Mr. Rukoro would be forced to hide his sexual orientation in order to live in the proposed IFAs. The Applicants note that this is inconsistent with the *SOGIE Guidelines*, which state at s 8.7.1 that it is "well-established in law that an IFA is not viable if an individual with diverse SOGIE must conceal their SOGIE in order live in that location." The Applicants note that this is also consistent with this Court's decision in *Okoli v Canada (Citizenship and Immigration)*, 2009 FC 332 at paras 35-37.

[38] The Applicants also state that the RPD erred in its assessment of the reasonableness of the IFA. The Applicants say that the RPD failed to note the high unemployment situation in the proposed IFAs and how Mr. Rukoro's bisexuality would aggravate this issue. Moreover, the Applicants note that the RPD failed to consider the integration issues they would have due to tribal and linguistic differences.

B. *Respondent*

[39] The Respondent submits that the RPD's Decision was both fair and reasonable. The Respondent refutes the Applicants' arguments and states that: (1) fairness did not require separate hearings in this case; (2) the RPD applied the spirit of the *Gender Guidelines* and the *SOGIE Guidelines* throughout the hearing and its Decision; (3) a finding of credibility does not

necessarily guarantee a finding of a well-founded fear of persecution; (4) the Applicants did not demonstrate inadequate state protection; and (5) the RPD applied the correct legal test when assessing the existence of a viable IFA and came to a reasonable conclusion based on the evidence. The Respondent therefore submits that this application for judicial review should be dismissed.

(1) Joinder of Claims

[40] The Respondent argues that fairness does not require separate hearings and that the Applicants have not pointed to any authority to support their argument. Instead, the Respondent notes that Rule 55 of the *Refugee Protection Division Rules*, SOR/2012-256 requires that claims of family members be joined unless "it is not practicable to do so." The Respondent states that this Court has found on multiple occasions that the RPD can and must deal with multiple family claimants in a single decision, provided it addresses the distinct issues raised by the different claimants. See *Kocacinar v Canada (Citizenship and Immigration)*, 2017 FC 329 at para 22; and *Murrizi v Canada (Citizenship and Immigration)*, 2016 FC 802 at para 7. That occurred in this case.

(2) Application of the *Gender Guidelines* and *SOGIE Guidelines*

[41] The Respondent says that the RPD applied the spirit of these guidelines throughout its Decision and that this Court has held that it is not necessary for the RPD to make specific reference to guidelines so long as they are applied. See *Shinmar v Canada (Citizenship and Immigration)*, 2012 FC 94 at para 19.

[42] The Respondent notes that the RPD applied the spirit of the *Gender Guidelines* when it made arrangements for Ms. Uandara to leave the hearing while Mr. Rukoro testified about his previous sexual relationships with men.

[43] Moreover, the Respondent states that the RPD applied the spirit of the *SOGIE Guidelines* when assessing Mr. Rukoro's claim. Notably, the Respondent states that Mr. Rukoro's sexuality was explicitly considered when determining whether a viable IFA existed. In doing so, the RPD found that he could live in a larger cosmopolitan centre "as he would not stand out in the same way he might have in a smaller, more parochial town." The Respondent submits that the application of the *SOGIE Guidelines* does not necessarily result in a positive determination.

(3) Assessment of Well-Founded Fear of Persecution

[44] The Respondent submits that credible testimony is not, on its own, determinative of every refugee claim as an objective well-founded fear of persecution must also be established. See *Veloz Gudino v Canada (Citizenship and Immigration)*, 2009 FC 457 at para 17. The Respondent argues that it was open for the RPD to decide, following an assessment of the evidence, that any potential harassment or discrimination would not rise to the level of persecution in this case.

(4) Assessment of State Protection

[45] The Respondent argues that there is a presumption of state protection and that the onus was on the Applicants to rebut this presumption. Indeed, the Applicants had to demonstrate, on

the balance of probabilities, that their home country provides inadequate state protection. See notably, *Nagy v Canada (Citizenship and Immigration)*, 2013 FC 299 at para 28.

[46] The Respondent notes that, in this case, Namibia is a democratic country with a functioning government, judiciary, and police force. Therefore, clear and convincing evidence was required to demonstrate that the Namibian government was unwilling or unable to protect them. The Respondent points to the fact that the Applicants did not demonstrate that they exhausted all resources available to them domestically before claiming refugee status in Canada. See *Hinzman v Canada (Citizenship and Immigration)*, 2007 FCA 171 at para 57.

(5) Internal Flight Alternative

[47] The Respondent argues that the RPD applied the correct legal test in assessing whether an IFA existed and came to a reasonable conclusion based on the evidence. Although the RPD did not explicitly lay out the applicable test in this case, the Respondent notes that the RPD's Decision clearly indicates that the proper legal test was applied. See *Abdalghader v Canada (Citizenship and Immigration)*, 2015 FC 581 at para 23 [*Abdalghader*].

[48] The Respondent states that the RPD clearly found that there was no evidence that Mr. Rukoro's father had any interest in locating him in the IFA eight years after his departure to Canada, nor the resources to do so, and that "anti-LGBT sentiment was less likely to affect [him] in a large, cosmopolitan city like Windhoek or Walvis Bay." Similarly, the RPD clearly found that there was insufficient evidence that Ms. Uandara's aunt had the ability to find and coerce her

into prostitution in either of the proposed IFAs. As such, it was reasonable to conclude that there was not a serious possibility of persecution in the IFA.

[49] As regards the reasonableness of the IFA, the Respondent notes that this Court has held that applicants must meet a very high threshold in order to establish that it would be unreasonable to seek refuge in a proposed IFA. The Respondent submits that the Applicants have not demonstrated that relocating to Windhoek or Walvis Bay would compromise their lives or safety. The RPD's finding regarding the existence of a viable IFA is therefore reasonable.

## VIII. ANALYSIS

### A. *Introduction*

[50] The Applicants make extensive arguments to the effect that the RPD failed to apply the presumption of truth. However, Mr. Rukoro's bisexual orientation and Ms. Uandara's past experiences with her aunt and forced prostitution was accepted by the RPD. The issue was whether they will face persecution if they are returned to Namibia. This requires an examination of their past experiences (which were accepted as truthful) and a forward-looking assessment as to whether they will face persecution in the future, either from those individuals they claim to fear or from others in Namibia who may not approve of them based on a stated ground of persecution. The forward-looking risk is not about whether the Applicants are telling the truth. As the Respondent puts it, the "presumption of truth only requires that the Board accept their uncontradicted sworn acts as credible. It does not require that the Board accept as true any deductions the Applicants choose to draw from their facts, nor does it entitle the Applicants to a

particular outcome in their claim." I would only add that the presumption of truth does not require the RPD to accept the Applicants' interpretation of the objective country evidence about Namibia, and what it says about the risks the Applicants face if returned to that country.

[51] The Applicants rely upon the discrimination and harassment that Mr. Rukoro has experienced in Canada from the Namibian community as a reason why he should not be returned to Namibia. Once again, however, Mr. Rukoro's bisexuality is accepted by the RPD as is the fact that he would face a certain degree of discrimination and harassment if returned to Namibia. The issue is whether this amounts to persecution. The fact that he has experienced discrimination from the Namibian community in Canada does not mean he will face persecution in Namibia.

[52] The issues for the RPD were clear:

(a) Have the Applicants established that they face a forward-looking risk of persecution if they are returned to Namibia?

(b) Do the Applicants have a viable IFA in Walvis Bay and/or Windhoek?

[53] The Applicants raise inadequate state protection as an issue, but this matter is subsumed to some extent in the RPD's forward-looking persecution analysis. In addition, the RPD makes it clear that its IFA analysis does not mean that it accepted that the Applicants had established persecution (which is a stand-alone ground for refusing the application). The IFAs are only put forward as an alternative ground or a "suggestion" that would alleviate any of the risks they claim they will face in Namibia.

B. *Joinder of Claims*

[54] As a preliminary matter, the Applicants say that the RPD should not have heard the claims of Mr. Rukoro and Ms. Uandara together because they were "not provided with a fair process due to their claims being heard together although they were substantially different." Besides this bald assertion, the Applicants do not explain why joining the claims resulted in an unfair process, and there is nothing in the Decision or the record to support such an assertion. Rules 55 and 56 of the *Refugee Protection Division Rules* require that family claims be joined "unless it is not practicable to do so." The Applicants have provided no evidence or argument as to why these rules should not have been followed in this case.

C. *Persecution*

(1) Ms. Uandara

[55] The easiest claim to assess is Ms. Uandara's because, apart from any future persecution she might face because of her marriage to Mr. Rukoro and as the mother of their children, she says that she fears an aunt who had abused her in the past and forced her into prostitution in Namibia.

[56] The RPD accepted without reservation Ms. Uandara's past experiences in this regard at para 12: "The Panel has considered the CC's evidence as well as her testimony at the hearing, and is persuaded that she was forced into prostitution by her aunt during the period 2000-2003."

[57] After accepting Ms. Uandara's evidence, the RPD analysed the situation and came to the following conclusions:

> [22] She has testified that she fears, if returned to Namibia, her aunt will force both her and her daughter, the minor claimant, into prostitution. The panel notes, however, that in her PIF narrative, she has indicated that when her aunt followed her to the PC's village (Aminuis) and tried to force her to return with the aunt, she was unsuccessful. Later, the aunt apparently kept calling her and threatening to take her by force, but again the CC did not return. The CC left the aunt's house in 2003 and was in Namibia, living with the PC until 2011 when they left for Canada. During that period, the aunt would have had many opportunities to force the CC back into prostitution, but did not. The CC is now 35 years of age, has been out of the country for some eight years, and has not had any contact with her aunt since 2015. Despite the CC's assertion that her aunt is waiting for her, there is insufficient persuasive evidence that the aunt would be any more successful than she was during the eight-year period in Namibia after the CC left her home. The panel finds that the CC's fear of being forced into prostitution by her aunt to be not well-founded.

[58] The Applicants say that, in dealing with Ms. Uandara's claim, the RPD failed to consider and take into account the *Gender Guidelines*.

[59] In written submissions, the Applicants assert as follows:

> 32. The *Gender Guidelines* clearly requires the board to inquire from this perspective regarding the secondary Applicant's particular fear and [the] board failed to do so. The board erred when it failed to fully address this issue.
>
> 33. It is also submitted that the board failed to fully address the negative aspects of the country reports on gender based persecution in Namibia and by not fully examining the negative aspects of the evidence provided by the secondary applicant.
>
> …
>
> 65. Forced prostitution is analogous to a form of domestic violence against women especially when it occurs in the familial

> context as with the secondary applicant. Domestic violence is typically examined from a familial perspective.
>
> 66. The country conditions in various objective reports attest to the prevalent gender-based violence faced by women in Namibia.
>
> 67. Thus, it is submitted that the secondary claimant as a female forced into prostitution which falls into a particular social group, women who face domestic violence based on the mere fact that they are women so based on her testimony, objective country condition documents, the case law and *section 96* of *IRPA* the member erred in law by not providing a positive finding.

[60] As the RPD points out, Ms. Uandara's stated fears were specific to her aunt, and were not connected to general persecution against women in Namibia: "She fears that her aunt would force her and her daughter, who is now thirteen years of age, into prostitution."

[61] Clearly the RPD addressed in full, and in a reasonable fashion, the specific fear stated by Ms. Uandara. The RPD is not required to address broader claims that do not reasonably arise on the facts and submissions made by an applicant. See *Yimer v Canada (Citizenship and Immigration)*, 2019 FC 1335 at para 16; *Hoch v Canada (Citizenship and Immigration)*, 2018 FC 580 at paras 17-20.

[62] As for the *Gender Guidelines*, the Applicants do not explain how they were not applied in this case. If Ms. Uandara's personal evidence was accepted as credible, it is difficult to see how she was disadvantaged in her testimony or written submissions by a failure to apply the *Gender Guidelines*.

[63] There is nothing unreasonable about the RPD's assessment and conclusion that Ms. Uandara does not face persecution if she is returned to Namibia.

(2) Mr. Rukoro

[64] Mr. Rukoro alleged that he would be persecuted as a bisexual male if he is returned to Namibia.

[65] Once again, the RPD has no credibility concerns with Mr. Rukoro's evidence:

> [7] The PC alleges that he is bi-sexual and was involved in same-sex relationships, both in Namibia and in Canada. In support of his allegations, the PC's brother and sister-in-law appeared as witnesses at the hearing. Both witnesses gave sworn testimony that they were aware that the PC was involved in same-sex relationships.
>
> [8] In addition to the witnesses, the PC provided a Statutory Declaration and a letter from a former same-sex partner in Canada, Laurens Kahuure. The PC also submitted a psychological counseling report, which indicates that he has experienced symptoms consistent with post-traumatic stress disorder (PTSD), and which the psychotherapist believes may, in part, be related to his bisexual orientation.
>
> …
>
> [10] The panel has considered the PC's evidence as well as his testimony at the hearing, and is persuaded that he is bisexual.
>
> [References omitted.]

[66] After examining and assessing Mr. Rukoro's personal evidence against the objective country evidence, the RPD concluded at para 20 that "[Mr. Rukoro] may face discrimination and harassment in Namibia, but it does not rise to the level of persecution."

[67] The RPD accepted Mr. Rukoro's evidence that he is bisexual, so I fail to see how the RPD "failed to fully address the evidence presented to him by the primary applicant regarding his sexual orientation" or how the RPD member "erred in law when he failed to provide a positive decision regarding the sexual orientation of the primary applicant."

[68] When it comes to the RPD's assessment of the objective country documentation before it, the Applicants simply provide the Court with their view as to how the evidence should have been weighed in their favour. Disagreement with the RPD's conclusions is not a ground of reviewable error.

[69] The Applicants also raise inadequate state protection analysis as a ground of review. However, that issue does not arise on the facts of this case seeing as the RPD found that what Mr. Rukoro faces if returned to Namibia does not rise to the level of persecution.

[70] There is no indication that, in its analysis, the RPD did not apply the spirit and intent of the *SOGIE Guidelines*.

D. *Internal Flight Alternative*

[71] The Decision stands upon the RPD's reasonable assessment of persecution. Although it did not need to, the RPD also provided an IFA analysis, apparently on the ground that if the Applicants wished to avoid any of the stated risks they might face, they could reasonably go to a larger centre. The RPD suggested either Walvis Bay or Windhoek as being viable IFAs.

[72] In general, the Applicants say that the RPD "(a) failed to state the correct test and (b) failed to apply the correct test for an IFA."

[73] It is true that the RPD does not formally state the two-pronged test for assessing an IFA set out in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, [1991] FCJ No 1256, but the Decision makes it clear that the RPD applied the substance of this test in its analysis as it addresses both the risk of persecution and the reasonableness issues. This is all that is required. See *Abdalghader*, at para 23.

[74] Once again, however, besides disagreement with the RPD's conclusion on both prongs of the test, the Applicants are simply asking the Court to review the evidence and reach a conclusion that favours them. The Court cannot do this. See *Vavilov*, at para 125.

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

**JUDGMENT IN IMM-3329-19**

**THIS COURT'S JUDGMENT is that**

1. The application is dismissed.

2. There is no question for certification.

"James Russell"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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|---|---|
| **DOCKET:** | IMM-3329-19 |
| **STYLE OF CAUSE:** | OWEN RUKORO ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | FEBRUARY 6, 2020 |
| **JUDGMENT AND REASONS:** | RUSSELL J. |
| **DATED:** | MARCH 25, 2020 |

**APPEARANCES:**

| | |
|---|---|
| Tricia Simon | FOR THE APPLICANTS |
| Kevin Doyle | FOR THE RESPONDENT |

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| Attorney General of Canada<br>Toronto, Ontario | FOR THE RESPONDENT |