

Federal Court



Cour fédérale

**Date: 20220331**

**Docket: IMM-4738-21**

**Citation: 2022 FC 446**

**Ottawa, Ontario, March 31, 2022**

**PRESENT: Madam Justice Walker**

**BETWEEN:**

**EDITH NGOZI UMEH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant, Ms. Edith Umeh, is a citizen of Nigeria. She seeks judicial review of a decision of the Refugee Appeal Division (RAD) dated June 22, 2021 (Decision) confirming the refusal of her refugee claim. The RAD agreed with the Refugee Protection Division (RPD) that the Applicant has viable internal flight alternatives (IFAs) in Benin City, Abuja and Port Harcourt, Nigeria, and is not a Convention refugee or a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] I have found that the Decision is reasonable. The RAD assessed the Applicant's evidence and submissions against the accepted test for a viable IFA and justified its conclusions with reasons that respond to the review framework established in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (*Vavilov*). As a result, this application for judicial review of the Decision will be dismissed.

I. **Background**

[3] The Applicant fears persecution in Nigeria from her late husband's family. She alleges that she will be forced to undergo certain rituals and will be harmed by members of the family because they believe she caused her husband's death in 2001.

[4] The Applicant states that, when the family became aware of her husband's death, they sent young men from their village to Lagos where she and her late husband lived. The men tried to force her to return to the village to undergo the rituals but the Applicant would not comply because she is Christian and the rituals are contrary to her faith. When she refused to return to the village, she was beaten and rushed to hospital.

[5] The Applicant remained in Lagos without contact from her late husband's family until 2015 when she encountered her husband's nephew in a marketplace and he followed her.

[6] With assistance from her Nigerian employer, the Applicant obtained a temporary work permit and came to Canada in September 2015 to live with her employer's daughter in Toronto. Over the next three years the Applicant worked for the daughter and the daughter's sister-in-law

in Windsor. She alleges mistreatment by both women. In 2018, the Applicant left Toronto and returned to Windsor on her own. There, she received assistance from the proprietor of a restaurant who encouraged her to make a refugee application and employed the Applicant at the restaurant.

[7] On November 3, 2020, the RPD refused the Applicant's refugee claim concluding that she has viable IFAs in Benin City, Abuja and Port Harcourt.

## II. Decision under review

[8] On appeal to the RAD, the Applicant raised a number of issues that can be summarized as arguments challenging the fairness of the RPD's hearing process and contesting the RPD's findings on both prongs of the test for an IFA set out in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) (*Rasaratnam*). The RAD determined that the RPD hearing was procedurally fair and the Applicant has not pursued her procedural fairness arguments in this application.

[9] The RAD agreed with the RPD's conclusion that the Applicant had not established that her agents of persecution are willing or able to locate her in any of Benin City, Abuja or Port Harcourt or that it would be unreasonable in the circumstances for the Applicant to seek refuge in the IFAs. The RAD acknowledged that the RPD had made some minor errors but confirmed its IFA analysis and dismissed the appeal.

[10] The RAD's findings regarding the first prong of the IFA test were:

1. The RPD did not misconstrue or misstate the Applicant's evidence. The RPD acknowledged the 2001 assault by her late husband's family and made no error in stating that the family had not escalated their actions beyond the 2015 altercation during which her husband's nephew trailed the Applicant after spotting her in a Lagos marketplace. The RPD's analysis was consistent with the Applicant's testimony.
2. The RPD acknowledged that, in 2016, her husband's family asked her sister where the Applicant was via Facebook. The RAD assessed the Applicant's evidence and found that the 2016 Facebook request to her sister does not equate to the agents of persecution actively looking for the Applicant in Nigeria. In the RAD's opinion, the request was an isolated inquiry, a finding confirmed by the Applicant's testimony.
3. The RAD considered the documentary evidence for Nigeria. The RAD noted that the Applicant's agents of persecution are non-state agents and that she had not provided evidence to establish the profile of her late husband's family members or how they would have the means and motivation to locate her in the proposed IFAs. In light of the lengthy timeline of events, the fact that the 2015 incident in the marketplace may have been a coincidence, and the absence of evidence to establish the family's profile and means, the RAD concluded that the Applicant provided no reason to support her position that the agents of persecution could find her. Therefore, she had not established that she would face a serious possibility of persecution or risk to life or danger of torture or cruel treatment in the proposed IFAs.

[11] Turning to the second prong of the IFA test, the reasonableness of the IFAs, the RAD found that the RPD had not failed to take into consideration the Chairperson's Guideline on *Women Refugee Claimants Fearing Gender-Related Persecution* (the Chairperson's Guideline). The RAD also confirmed the RPD's assessment of the Applicant's ability to travel safely to and live in the IFAs without undue hardship.

[12] The RAD considered the Applicant's personal circumstances, including her age and religion, and economic and cultural factors. The member addressed the concern that the Applicant would not be able to afford accommodation or to obtain a job but noted that she had

been able to support herself in Lagos following her husband's death in 2001 until her departure from Nigeria in 2015. The RAD stated that the Applicant's personal circumstances had not changed such that she would no longer be able to find similar housing and accommodation in the proposed IFAs.

### III. Analysis

[13] The RAD's reasons and conclusions regarding the availability of IFAs in Nigeria for the Applicant are subject to review for reasonableness (*Vavilov* at paras 10, 23; *Sadiq v Canada (Citizenship and Immigration)*, 2021 FC 430 at para 32).

[14] Where the Court reviews an administrative decision for reasonableness, its role is to examine the reasons given by the decision maker and 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). As the Applicant emphasizes, although the reasonableness standard requires deference it nonetheless demands a robust review of the underlying decision (*Vavilov* at paras 12-13).

[15] The concept of an IFA is integral to the definition of a Convention refugee. A claimant must be a refugee from a country, not from a particular region of a country. There are two prongs of the IFA test: is there a serious possibility of persecution or a section 97 risk in the proposed IFA, and is it reasonable for the Applicant to relocate there? (*Rasaratnam* at para 13). Once the issue of an IFA has been raised, the claimant bears the onus of establishing that they do not have

a viable IFA (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589, at p 594-595 (CA)).

*Is there a serious possibility of persecution or a section 97 risk in the proposed IFA?*

[16] The Applicant submits that it was unreasonable for the RPD and the RAD to conclude that she will not be found in the proposed IFAs. Her submissions address the means and motivation of her agents of persecution. The Applicant argues that the RAD unreasonably disregarded the probative value of the 2015 encounter with her nephew in Lagos and the 2016 Facebook inquiry by her late husband's family. She states that the two events demonstrate that the family is able and motivated to locate her in Lagos, the most populous city in Nigeria, and, in similar fashion, could do so in other Nigerian cities.

[17] I do not find the Applicant's arguments persuasive. The RAD's review of the first prong of the IFA test is detailed and intelligible. The member addressed each of the Applicant's appeal submissions with reference to the RPD decision and to their own assessment of the evidence in the record.

[18] The Applicant provided no evidence that her nephew's presence in Lagos in 2015 was the result of an active effort to locate her. Rather, she stated in her testimony before the RPD that she may have run into the nephew by coincidence. The Applicant's statement that she now believes her nephew's presence in Lagos was not a coincidence is not supported by any evidence and is inconsistent with her prior testimony.

[19] I find that the RAD did not err in concluding that the encounter was an isolated incident. While the marketplace incident may have prompted the 2016 Facebook inquiry to her sister, it was open to the RAD to confirm the RPD's conclusion that the two incidents were not sufficient to establish, on a balance of probabilities, the continued motivation of the family to locate her. The 2016 inquiry is the only evidence in the record of a conscious effort by the family to seek the Applicant in the 20 years since her husband's death.

[20] More importantly, a chance meeting in 2015 followed by an Internet inquiry do not undermine the RAD's finding that the Applicant provided little evidence of the ability of her husband's family to track her in Nigeria. The Applicant filed no evidence in her Basis of Claim form or at the RPD hearing to establish the family's profile or means to find her by virtue of their occupations, connections or influence. This absence of evidence, coupled with the ease with which an Internet inquiry can be made, justifies the RAD's conclusion that the Applicant provided no reason in support of her argument that the agents of persecution could find her in the proposed IFAs.

*Is it reasonable for the Applicant to relocate there?*

[21] The Applicant submits that the RAD erred in its conclusion that she could support herself in any of the proposed IFAs and failed to discuss in a meaningful way a number of issues relevant to the second prong of the IFA test. Specifically, she argues that the RAD failed to assess the importance of indigeneship and culture in Nigeria as barriers to her relocation. The Applicant states that the RAD cannot simply assert that it has considered her circumstances. It must demonstrate its analysis through its reasons.

[22] The Applicant argued before me that the major flaw in the Decision is the RAD's statement that she was able to obtain employment in Lagos following her husband's death. This statement was made as part of the RAD's consideration of whether the Applicant would be able to afford accommodation and obtain a job in the IFAs given her age. The Applicant states that she was not employed when her husband passed away and that the individual who took her in after his death gave her food and shelter but not employment. The Applicant simply repaid this kind gesture by performing housework.

[23] With respect, the Applicant's argument is not consistent with her evidence. In her Basis of Claim form, the Applicant stated that, after the violent incident with her late husband's family following his death, she stayed with the individual who provided her shelter and that "she later employed me as a house help". The RPD noted that the Applicant claimed a variety of work experience, including as a housekeeper. In her appeal submissions to the RAD, the Applicant referred to her work as house help and to her "employer" in Nigeria. I find that the record supports the RAD's conclusion that the Applicant had been able to support herself living as a single woman and a widow working as a housekeeper in Lagos after her husband's death.

[24] I agree with the Applicant that the RAD must reflect its consideration of her personal circumstances in assessing the second prong of the *Rasaratnam* test. The RAD addressed the fact that the Applicant is a single woman and widow who was 54 years of age, and assessed the RPD's analysis of her ability to travel safely to the IFAs. The RAD noted the RPD's references to the Applicant's faith, fluency in English and Igbo, high school education and work experience in Nigeria and Canada, and the fact that she has a supportive sister in Benin City. The RPD also



considered the issue of discrimination against non-indigenes but concluded that such discrimination is less important in large cities in Nigeria and that the Applicant's non-indigeneship would not render the IFAs unreasonable locations for her. The RAD found no error in the RPD's analysis and the Applicant has not identified a factual or analytical misstatement or oversight by either panel that warrants the Court's intervention.

[25] The Applicant's reliance on the general documentary evidence for Nigeria regarding the difficulties facing single women, widows and non-indigenes in the IFAs does not establish a reviewable error in the RAD's analysis of her personal circumstances or in its references to the RPD's analysis of these factors. Further, I am not persuaded by the Applicant's argument that the RAD was insensitive to the social, economic and cultural factors in Nigeria or to her circumstances. The RAD addressed her argument that the RPD referred to and discarded the Chairperson's Guideline without analysis.

[26] The Applicant submits that she would be required to disassociate from her own family to live safely in the proposed IFAs because some members of her family want her to take the oaths demanded by her late husband's family. She argues that the RAD's failure to address this issue is a reviewable error. I do not agree because the Applicant's fear of return to Nigeria has focused on the actions of her husband's family. In addition, the RAD noted the RPD's reference to the Applicant's sister in Benin City who supports her decision not to undergo the cleansing rituals demanded by her late husband's family.

[27] Finally, the Applicant submits that the RAD's failure to conduct its own credibility assessment before deciding on the viability of the IFAs is a reviewable error. However, the RAD's Decision was based on an analysis of the viability of one or more IFAs in Nigeria. The RAD made no adverse credibility findings and did not misstate the Applicant's evidence thereby impugning her credibility. Its statement that one of her arguments was not completely accurate was a correction based on the evidence in the record.

#### IV. **Conclusion**

[28] In summary, the RAD's finding of viable IFAs for the Applicant in Nigeria is reasonable in light of the evidence and applicable law, and its analysis is clear and complete. The RAD applied the test set out in the jurisprudence and the Applicant has not established a significant or central error in the Decision (*Vavilov* at para 100). As a result, the application is dismissed.

[29] No question for certification was proposed by the parties and none arises in this case.

**JUDGMENT IN IMM-4738-21**

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

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

"Elizabeth Walker"

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Judge

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

**DOCKET:** IMM-4738-21

**STYLE OF CAUSE:** EDITH NGOZI UMEH v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HEARD BY VIDEOCONFERENCE

**DATE OF HEARING:** MARCH 23, 2022

**JUDGMENT AND REASONS:** WALKER J.

**DATED:** MARCH 31, 2022

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