

Federal Court



Cour fédérale

Date: 20220518

Docket: IMM-4483-20

Citation: 2022 FC 738

St. John's, Newfoundland and Labrador, May 18, 2022

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

THANKGOD IKEMSNACHI OKORO

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Mr. Thankgod Ikemsnachi Okoro (the “Applicant”) seeks judicial review of the decision of the Immigration and Refugee Board, Refugee Appeal Division (the “RAD”). In that decision, the RAD dismissed the Applicant’s appeal from the decision of the Immigration and Refugee Board, Refugee Protection Division (the “RPD”), dismissing the Applicant’s claim for recognition as a Convention refugee or person in need of protection, pursuant to section 96 and

subsection 97(1), respectively, of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Applicant is a citizen of Nigeria. He fears persecution from the Black Axe confraternity. The RAD determined that an Internal Flight Alternative (“IFA”) was available in Lagos.

[3] The Applicant raises two issues. He argues that the RPD breached the duty of procedural fairness by failing to consider all the evidence he presented, that is at the hearing and post-hearing. He also submits that the RAD’s conclusion about the IFA is unreasonable.

[4] The Minister of Citizenship and Immigration (the “Respondent”) argues that any oversight on the part of the RAD in considering the documentary materials presented by the Applicant during his hearing before the RAD was corrected because the proceeding before the RAD proceeded on a “correctness” review. Otherwise, the Respondent submits that the finding of an IFA is reasonable.

[5] The issue of procedural fairness is reviewable on the standard of correctness; see the decision in *Canada (Minister of Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339.

[6] The RAD’s findings about an IFA are reviewable on the standard of reasonableness, following the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov* (2019), 441 D.L.R. (4th) 1 (S.C.C.).

[7] In considering reasonableness, the Court is to ask if the decision under review “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 that decision”; see *Vavilov, supra* at paragraph 99.

[8] In this case, I am satisfied that there was a breach of procedural fairness resulting from the failure of the RPD to show that it considered the post-hearing submissions that it allowed the Applicant to make, and that this breach was not “cured” by the proceedings before the RAD.

[9] The post-hearing submissions are included in the Applicant’s Application Record. He raised this issue before the RAD. The RAD did not address it.

[10] The post-hearing submissions are not found in the Certified Tribunal Record (the “CTR”). The Respondent does not deny that they were filed and does not comment upon their absence from the CTR.

[11] In these circumstances, I cannot say that the Applicant’s submissions and post-hearing submissions were considered either by the RPD or by the RAD. While no applicant is entitled to a particular result, an applicant is entitled to a fair hearing.

[12] It is not necessary for me to address the other arguments raised by the Applicant about the reasonableness of the IFA finding.

[13] In the result, the application for judicial review is allowed and the matter is remitted to a differently constituted panel of the RAD, to be re-determined on the basis of all the written materials submitted by the Applicant, including his post-hearing submissions. There is no question for certification.

JUDGMENT in IMM-4483-20

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, the matter is remitted to a differently constituted panel of the Immigration and Refugee Board, Refugee Appeal Division for re-determination upon the basis of all the written materials submitted by the Applicant, including his post-hearing submissions. There is no question for certification.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4483-20

STYLE OF CAUSE: THANKGOD IKEMSNACHI OKORO v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF TELECONFERENCE BETWEEN
TORONTO, ONTARIO AND ST. JOHN'S,
NEWFOUNDLAND AND LABRADOR

DATE OF HEARING: MAY 9, 2022

REASONS AND JUDGMENT: HENEGHAN J.

DATED: MAY 18, 2022

APPEARANCES:

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